

HIGH COMMISSIONER FOR HUMAN RIGHTS  
CENTRE FOR HUMAN RIGHTS  
Geneva



PROFESSIONAL TRAINING SERIES No. 5

# Human Rights and Law Enforcement

*A Manual on Human Rights  
Training for the Police*



UNITED NATIONS  
New York and Geneva, 1997

**NOTE**

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HR/P/PT/5

UNITED NATIONS PUBLICATION

*Sales No.* E.96.XIV.5  
ISBN 92-1-154121-2

ISSN 1020-1688

*The administration of justice, including law enforcement . . . agencies . . . in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development.*

. . .

*The advisory services and technical assistance programmes of the United Nations system should be able to respond immediately to requests from States for educational and training activities in the field of human rights as well as for special education concerning standards as contained in international human rights instruments and in humanitarian law and their application to special groups such as . . . law enforcement personnel . . .*

VIENNA DECLARATION AND PROGRAMME OF ACTION  
(Part I, para. 27; Part II, para. 82)

## NOTE TO MANUAL USERS

This manual is one component of a three-part package of materials for human rights training for police. The police training package also includes a loose-leaf trainer's guide, and a pocket book of human rights standards for police. The three components of the package are designed to complement each other, and, taken together, provide all necessary elements for the conduct of human rights training programmes for law enforcement officials, under the approach developed by the United Nations High Commissioner for Human Rights/Centre for Human Rights.

**This Manual** (Component One of the package) provides in-depth information on sources, systems and standards for human rights in law enforcement, along with practical guidance, and annexed international instruments.

**The Trainer's Guide** (Component Two of the package) provides instructions and tips for trainers, additional exercises, and sample training tools, such as overhead transparencies, to be used in concert with the manual in conducting police training courses.

**The Pocket Book** of standards (Component Three of the package) is designed to be a readily accessible and portable reference for law enforcement officers, containing hundreds of point-form standards, organized according to police duties, functions and topics, and referenced with detailed endnotes.

Manual users interested in obtaining copies of the Trainer's Guide and Pocket Book should contact the High Commissioner/Centre for Human Rights.

## FOREWORD

Consider the simple logic of the Universal Declaration of Human Rights<sup>a</sup> (preamble):

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law . . .

The message is as clear today as it was in 1948. Without the maintenance of the rule of law, violations of rights occur; and where violations occur, rebellion is fomented. The conclusion is inescapable: violating human rights cannot contribute to the maintenance of public order and security, but can only exacerbate their deterioration. This message should, by now, be seen as axiomatic. For the United Nations, at least, nothing could be more clear.

Why, then, do the old myths continue to survive in some law enforcement circles? We have all heard the argument that respect for human rights is somehow antithetical to effective law enforcement—the tired old notion that, in order to enforce the law, capture the criminal and secure his conviction, it is necessary to “bend the rules” a little. We have all seen the tendency to use overwhelming force in putting down demonstrations, or physical pressure to extract information from detainees, or excessive force to secure an arrest. To this way of thinking, law enforcement is a war against crime, and human rights are merely impediments thrown in the path of the police by lawyers and non-governmental human rights organizations. Such myths survive, even though history has shown us, again and again, that nothing could be further from the truth.

For the user of this manual, the task at hand is to work to dispel, once and for all, these foolish but enduring myths; to declare, and to convince your police colleagues, that violations of human rights by police can only make the already challenging task of law enforcement more difficult; to remind the world that, when the law enforcer becomes the lawbreaker, the result is not only an assault on human dignity, and on law itself, but the creation of barriers to effective policing.

The practical effects of police violations are multi-fold:

- they erode public confidence;
- they exacerbate civil unrest;
- they hamper effective prosecutions in court;
- they isolate the police from the community;
- they result in the guilty going free, and the innocent being punished;

<sup>a</sup> Source references for the international human rights instruments cited in this manual are given in the list of instruments on pp. xix to xxv below.

- they leave the victim of crime without justice for his suffering;
- they bisect the concept of “law enforcement”, removing the element of “law”;
- they force police agencies to be reactive, rather than preventive in their approach;
- they elicit international and media criticism and political pressure on the Government.

Conversely, respect for human rights by law enforcement agencies actually enhances the effectiveness of those agencies. In this sense, respect for human rights by police, in addition to being a legal and ethical imperative, is also a practical requirement for law enforcement. When police are seen to respect, uphold and defend human rights:

- public confidence is built and community cooperation fostered;
- a contribution is made to the peaceful resolution of conflicts and complaints;
- legal prosecutions are successful in court;
- police are seen as part of the community, performing a valuable social function;
- the fair administration of justice is served and, consequently, confidence in the system is enhanced;
- an example is set for others in society to respect the law;
- police are able to be closer to the community, and therefore in a position to prevent and solve crimes through proactive policing;
- support is elicited from the media, from the international community and from political authorities.

Police officers and law enforcement agencies that respect human rights thus reap benefits which advance the very objectives of law enforcement, while at the same time building a law enforcement structure that does not rely on fear and raw power, but rather on honour, professionalism and legality.

This vision of the police officer is the basis of the United Nations High Commissioner/Centre for Human Rights’ approach to human rights training for police. It sees the police officer not as the inevitable violator of human rights, but as the first line of defence in the struggle for human rights. Indeed, every time a law enforcement official reaches out to help a victim of crime, everything he does to serve the community and to uphold the law, including the law of human rights, places him at the forefront of this struggle.

The importance of ensuring that human rights are protected under the rule of law has been emphasized by the United Nations since the drafting of the Universal Decla-

ration, and has guided the Organization in its activities for the promotion and protection of human rights ever since. This notion has been central to the work of the United Nations Programme of Advisory Services and Technical Assistance in the Field of Human Rights. This programme has been engaged since 1955 in assisting States, at their request, in the building and strengthening of national structures which have a direct impact on the overall observance of human rights and the maintenance of the rule of law.

As the programme has evolved, so too have the areas of assistance on which it has focused. Guided by successive General Assembly and Commission on Human Rights resolutions, and by the nature of States' requests themselves, the programme gradually developed capacities for assistance in a range of areas, which now provide a useful framework for national efforts directed at strengthening human rights and the rule of law. Thus the High Commissioner/Centre for Human Rights now takes a comprehensive approach to human rights institution-building, seeing as fundamental a number of constituent elements in national efforts to secure the protection of human rights under the rule of law, including priority attention to the strengthening of fair administration of justice and humane law enforcement policies and practices.

The publication of *Human Rights and Law Enforcement* is, we believe, a significant event in the ongoing efforts of the United Nations to promote and protect human rights. Indeed, the crucial intersection between the protection of fundamental rights and the maintenance of law and order deserves significant attention. It is precisely this crucial nexus that was on the minds of the framers of the Universal Declaration when they elaborated article 29, paragraph 2, of that historic instrument:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Hence the mandate for police in modern democracies is to protect human rights, defend fundamental freedoms and maintain public order and the general welfare in a democratic society, through policies and practices which are lawful, humane and disciplined.

The police profession is, indeed, an honourable one, and one which is absolutely vital to the good functioning of a democratic society. Police should be proud that this was implicitly recognized in the Universal Declaration of Human Rights half a century ago, and has been explicitly stated in so many United Nations human rights instruments since then, including the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and a host of other declarations and guidelines. These are international standards directly relevant to the work of police, developed not to impede law enforcement, but to provide invaluable guidance for the performance of that crucial function in a democratic society.

Yet, in order to protect human rights, police must first know what they are. The United Nations has been providing human rights training to law enforcement officials for over three decades, in recognition of the key role that this group plays in the human rights situation in every society. Nevertheless, it was only in January 1992, after

a careful review of the methodology and impact of these courses, that the High Commissioner/Centre for Human Rights embarked on the new and innovative approach to law enforcement training that has resulted in the publication of this manual.

For years, the United Nations Programme of Advisory Services and Technical Assistance carried out innumerable training courses for police in each of the world's regions. In many cases, these courses were the first exposure that the participants had to the international human rights standards governing their professional conduct. As such, that these exercises were justified seems beyond dispute. But how effective were they? Three years ago, the High Commissioner/Centre for Human Rights initiated a process to answer this question. The results of this inquiry have dramatically changed the way we approach our efforts at assisting police agencies in respecting human rights.

Traditional approaches to human rights training certainly carried with them some level of benefit to course participants. At the very least, they helped to make national law enforcement officials aware of the existence of international sources, systems and standards for human rights in the administration of justice. But the High Commissioner/Centre for Human Rights, in its review of these activities, was not satisfied that such courses were imparting the necessary skills and attitudes to ensure that international principles could be translated by practitioners into appropriate and effective operational behaviour.

Early courses were comprised of a series of professorial and essentially theoretical lectures by human rights experts on general notions of human rights. As the trainers themselves had no practical experience as law enforcement officers, there was little effort, indeed little possibility, to leave behind a lasting capacity for the implementation of international standards in the everyday work of police. For the most part, information was delivered through lectures, and focused almost entirely on negative admonitions such as: "police shall not use excessive force in carrying out their duties".

Of course, police must know the rules. Yet this alone has clearly not been sufficient in and of itself, to affect police behaviour meaningfully. According to the report of one parliamentary commission investigating violations at the country's police stations, the police, when confronted with evidence of abuses,

said that they lacked understanding about interrogation methods and techniques, that they carried out interrogations by outdated methods, and that they did not know how interrogations were carried out in democratic and developed countries. In order to compare their methods and improve them, they wanted to have the chance to do research and make observations on interrogation methods in democratic countries.

Such statements reveal two important areas of focus for police trainees. First, offering justifications of any kind for serious violations like torture demonstrates a lack of familiarity with the most fundamental standards for human rights in the administration of justice. There are no legitimate justifications for such acts. Secondly, police in the real world want to know not just what the rules are, but also how to do their job effectively within the confines of those rules. Training efforts which ignore either of these areas will probably be neither credible nor

effective. Accordingly, the Centre includes practical information on proven techniques for the performance of the target audience's duties, as derived from the recommendations of experts and literature on the current best practice for the profession in question.

Thus the Centre became convinced that, to be truly practical, police training must include the participation of trainers experienced in law enforcement. In the experience of the Centre, much more can be accomplished through the collegial approach of police discussing with police than by a professor-student model of training. The Centre therefore began to assemble a list of trainers and consultants which is practical in orientation.

Rather than assembling panels composed entirely of professors and theorists, the Centre includes practitioners in the law enforcement field. This approach has allowed the Centre to access the distinct professional culture which surrounds police, and to make training sessions much more practical and relevant to the work of police. At the same time, police practitioners and trainers are rarely experts in human rights; they are therefore accompanied and directed by expert staff of the Centre and of the United Nations Crime Prevention and Criminal Justice Branch, thus ensuring that the substance of United Nations standards is fully and consistently reflected in the course contents. Panels of trainers composed of these two complementary groups provide the best hope of delivering courses which are adequate in both substance and the all-important element of practicality.

The Centre's review process provided other lessons as well. The Centre learned that police training courses must, if the audience is to be engaged, be organized around the daily duties of police (investigations; arrest; detention; the use of force and firearms), and not according to particular human rights instruments. Due attention must be paid to the rights of victims of crime, with whom the police most readily sympathize. Lecture presentations must make way for teaching techniques which are interactive (role-playing, practica, case-studies, and so on), thus assuring the active participation of trainees. A "train the trainers" approach must be employed, in order to multiply the impact of each course, and to build local capacity. A thorough presentation of standards must be complemented by sessions designed to sensitize police to the importance of human rights, and to their own potential for violative behaviour, however unintentional. Finally, each course developed under this approach must be carefully tailored to take account of the particular cultural, educational, historical and political realities of the country which the audience is charged with serving and protecting.

These fundamental lessons provided the basis for the development of the Centre's police programme. Each was incorporated into an approach to training police

which was formally introduced in 1992, and which has since been piloted in a number of countries in Africa, Asia, Latin America and Europe. National police trainers, commanders and operational officials, as well as police officials serving in civilian police (CIVPOL) components of United Nations peace-keeping operations, have benefited from courses under the programme. Most importantly, each piloting was followed by appropriate review and revision of the programme, in an ongoing and concerted programme development effort culminating in the publication of this manual.

The programme has, since its inception, benefited from the valuable input of a number of the Centre's partners. Useful advice has been received from the International Commission of Jurists, the Raoul Wallenberg Institute for Human Rights and Humanitarian Law, the Henri Dunant Institute, INTERPOL, UNHCR, ICRC and a number of police agencies and training institutes around the world. In addition, a workshop was convened in Geneva in May 1993 to discuss the Centre's proposed manual and approach to training. The workshop was attended by police trainers and practitioners from all regions, as well as by leading non-governmental organizations and human rights experts in the field. In the piloting of courses under the programme, the Centre has gained from the valuable expertise of dozens of police consultants from around the world. For all of this crucial support, the High Commissioner/Centre for Human Rights expresses its thanks.

Special acknowledgement is due to the Crime Prevention and Criminal Justice Branch of the United Nations Centre for Social Development and Humanitarian Affairs in Vienna. This manual, and the Centre for Human Rights' police programme, are two elements of a joint project conducted with the Crime Prevention and Criminal Justice Branch since 1992, in a full and fruitful partnership for which the High Commissioner/Centre for Human Rights is most grateful.

Finally, and most especially, the United Nations acknowledges and offers its thanks to the principal author of this manual's first draft, Mr. Ralph Crawshaw of the Human Rights Centre of the University of Essex in the United Kingdom.



José AYALA LASSO  
United Nations High Commissioner  
for Human Rights





## CONTENTS

	<i>Page</i>
Foreword .....	v
Abbreviations .....	xviii
International instruments cited in the present manual .....	xix
Statement of objectives .....	1

### Part One. Training law enforcement officials—Policy and practice

<i>Chapter</i>	<i>Paragraphs</i>	
I. APPROACH OF THE UNITED NATIONS HIGH COMMISSIONER/CENTRE FOR HUMAN RIGHTS TO POLICE TRAINING .....	1-10	5
A. Collegial presentations .....	2	5
B. Training the trainers .....	3	5
C. Pedagogical techniques .....	4	5
D. Audience specificity .....	5	5
E. Practical approach .....	6	5
F. Comprehensive presentation of standards .....	7	6
G. Teaching to sensitize .....	8	6
H. Flexibility of design and application .....	9	6
I. Evaluation tools .....	10	6
II. PARTICIPANTS IN TRAINING PROGRAMMES .....	11-20	7
A. Definition and categories .....	11-13	7
B. Specific reasons for training various categories of law enforcement officials .....	14-18	7
C. Significant characteristics of law enforcement agencies and officials ..	19-20	8
III. EFFECTIVE TRAINING TECHNIQUES .....	21-44	9
A. Learning objectives .....	21-22	9
B. General recommendations .....	23	9
C. The participatory method .....	24-26	9
D. Participatory techniques .....	27-42	10
1. Presentation and discussion .....	28-29	10
2. Panel discussion .....	30-31	10
3. Working groups .....	32	11
4. Case-studies .....	33-34	11
5. Problem-solving/brainstorming .....	35-36	11
6. Simulation/role-playing .....	37-38	11
7. Field trips .....	39	11
8. Practica (practical exercises) .....	40	11
9. Round-table discussions .....	41	11
10. Visual aids .....	42	11
E. Locations for training courses .....	43	11
F. Planning for participants' needs .....	44	12

<i>Chapter</i>		<i>Paragraphs</i>	<i>Page</i>
IV.	EDUCATORS AND TRAINERS .....	45-49	13
	A. Users of the manual .....	45-46	13
	B. Selection of educators and trainers .....	47	13
	C. Briefing of educators and trainers .....	48	13
	D. Tasks of the trainer .....	49	13
V.	USING THE MANUAL .....	50-89	15
	A. Part Two (Fundamental concepts) .....	53-58	15
	B. Part Three (Police duties and functions) .....	59-67	15
	C. Part Four (Groups requiring special protection or treatment) .....	68-73	16
	D. Part Five (Matters of command, management and control) .....	74-76	17
	E. Format of chapters .....	77-88	17
	F. Annexes .....	89	18
VI.	FORMAT AND CONTENT OF COURSES .....	90-115	19
	A. Introduction .....	90-92	19
	B. Observations on chapter topics .....	93-102	19
	C. Model course formats .....	103-114	20
	1. The full course .....	105-107	20
	2. Seminar for senior law enforcement officials .....	108-111	20
	3. Basic course for law enforcement officials below command level .....	112-114	21
	D. Concluding remarks .....	115	21

### **Part Two. Fundamental concepts**

VII.	SOURCES, SYSTEMS AND STANDARDS FOR HUMAN RIGHTS IN LAW ENFORCEMENT	116-172	25
	A. Relevance of international standards .....	116-119	25
	B. The basic sources .....	120-148	26
	1. Charter of the United Nations .....	120-122	26
	2. Universal Declaration of Human Rights .....	123	26
	3. Treaties: covenants and conventions .....	124-138	26
	4. Principles, minimum rules, and declarations .....	139-148	29
	C. United Nations human rights machinery .....	149-163	31
	1. Conventional (treaty-based) mechanisms .....	153-156	31
	2. Extraconventional (Charter-based) mechanisms .....	157-163	32
	(a) 1503 procedure .....	158-159	32
	(b) Selected special rapporteurs and working groups .....	160-163	32
	D. Sources, systems and standards at the regional level .....	164-170	33
	1. The European system under the Council of Europe .....	165-168	33
	2. The inter-American system under the Organization of American States .....	169	33
	3. The African system under the Organization of African Unity .....	170	33
	E. Conclusions .....	171-172	34
	F. Basic chapter review .....		34
	G. Hypothetical exercise .....		35
	H. Topics for discussion .....		35
VIII.	ETHICAL AND LEGAL POLICE CONDUCT .....	173-192	36
	A. International standards on ethical and legal police conduct—Information for presentations .....	173-192	36

<i>Chapter</i>	<i>Paragraphs</i>	<i>Page</i>
1. Introduction .....	173-176	36
2. General aspects of ethical and legal police conduct .....	177-186	37
(a) Fundamental principles .....	177	37
(b) Specific provisions on ethical and legal police conduct .....	178-186	37
(i) Police ethics and the use of force .....	182-183	37
(ii) Ethical and legal police conduct—individual responsibility .....	184	37
(iii) Ethical and legal police conduct—duty to report violations .....	185	38
(iv) Ethical and legal police conduct—exceptional circumstances and public emergencies .....	186	38
3. Concluding remarks .....	187-192	38
B. International standards on ethical and legal police conduct—Practical application .....		39
1. Practical steps for implementing international standards .....		39
2. Hypothetical exercises .....		40
3. Topics for discussion .....		40
IX. POLICING IN DEMOCRACIES .....	193-224	41
A. International standards on human rights and policing in democracies—Information for presentations .....	193-224	41
1. Introduction .....	193-198	41
2. General aspects of policing in democracies .....	199-222	42
(a) Fundamental principles .....	199	42
(b) Specific provisions on policing in democracies .....	200-206	42
(i) The right to freedom of thought, conscience and religion .....	201-202	42
(ii) The right to freedom of opinion and expression .....	203-204	42
(iii) The rights to freedom of peaceful assembly and association .....	205-206	43
(c) Political rights and the role of the police .....	207-209	43
(d) Specific provisions on policing and democratic elections .....	210-215	43
(e) Specific provisions on democratic policing .....	216	44
(i) Representative policing .....	217-218	44
(ii) Responsive policing .....	219-220	44
(iii) Accountable policing .....	221-222	44
3. Concluding remarks .....	223-224	44
B. International standards on human rights and policing in democracies—Practical application .....		45
1. Practical steps for implementing international standards .....		45
2. Hypothetical exercises .....		46
3. Topics for discussion .....		46
X. POLICE AND NON-DISCRIMINATION .....	225-298	48
A. International standards on non-discrimination—Information for presentations .....	225-298	49
1. Introduction .....	225-229	49
2. General aspects of non-discrimination .....	230-296	49
(a) Fundamental principles .....	230-231	49
(b) Specific provisions on non-discrimination .....	232-251	49
(i) The right to recognition as a person before the law .....	233-234	49
(ii) The right to equality before the law .....	235-237	49
(iii) The right to a fair trial .....	238-240	49
(iv) The right of equal access to public service .....	241-243	50
(v) Incitement to discrimination .....	244-247	50
(vi) Derogation from obligations in times of emergency .....	248-251	50

(c) Provisions in instruments of particular relevance to law enforcement .....	252-262	50
(i) Code of Conduct for Law Enforcement Officials .....	252-254	51
(ii) Basic Principles on the Use of Force and Firearms by Law Enforcement Officials .....	255-256	51
(iii) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment .....	257-258	51
(iv) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power .....	259-260	51
(v) Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment <i>and</i> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment .....	261-262	51
(d) Discrimination and race .....	263-270	51
(i) United Nations Declaration on the Elimination of All Forms of Racial Discrimination .....	264-267	51
(ii) International Convention on the Elimination of All Forms of Racial Discrimination .....	268-270	52
(e) Discrimination and religion .....	271-276	52
(i) Universal Declaration of Human Rights .....	272	52
(ii) Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief .....	273-276	52
(f) Discrimination and women .....	277-283	52
(i) Declaration on the Elimination of Discrimination against Women .....	278-280	52
(ii) Convention on the Elimination of All Forms of Discrimination against Women .....	281-283	52
(g) Discrimination and children .....	284-296	53
(i) International Covenant on Civil and Political Rights .....	285	53
(ii) Convention on the Rights of the Child .....	286-288	53
(h) Particular manifestations of discrimination .....	289-296	53
3. Concluding remarks .....	297-298	53
B. International standards on non-discrimination—Practical application .....		54
1. Practical steps for implementing international standards .....		54
2. Hypothetical exercises .....		54
3. Topics for discussion .....		55

### Part Three. Police duties and functions

XI. POLICE INVESTIGATIONS .....	299-344	59
A. International standards on police investigations—Information for presentations .....	299-344	60
1. Introduction .....	299-302	60
2. General aspects of human rights and police investigations .....	303-344	60
(a) Fundamental principles .....	303	60
(b) Specific provisions on investigations .....	304-326	60
(i) The presumption of innocence .....	305-307	60
(ii) The right to a fair trial .....	308-310	60
(iii) Minimum guarantees to secure a fair trial .....	311-321	61
a. To be informed promptly and in detail of the charge against him or her .....	311-313	61
b. To be tried without undue delay .....	314-316	61
c. To examine, or have examined, the witnesses against him or her .....	317-319	61
d. To be free from compulsion to testify against himself or herself, or to confess guilt .....	320-321	61

	(iv) Arbitrary interference with privacy .....	322-326	61
	(c) Technical aspects of investigations .....	327-330	62
	(d) Management of confidential informants .....	331-337	62
	(e) Victims .....	338-342	63
	3. Concluding remarks .....	343-344	64
B.	International standards on police investigations—Practical application .....		64
	1. Practical steps for implementing international standards .....		64
	2. Hypothetical exercises .....		65
	3. Topics for discussion .....		66
XII.	ARREST .....	345-380	67
A.	International standards on arrest—Information for presentations .....	345-380	68
	1. Introduction .....	345-347	68
	2. General aspects of human rights and arrest .....	348-378	68
	(a) Fundamental principles .....	348	68
	(b) Specific provisions on arrest .....	349-365	68
	(i) Prohibition of arbitrary arrest .....	350-353	68
	(ii) Procedures to be followed on arrest .....	354-356	69
	(iii) Additional safeguards .....	357-360	69
	(iv) Arrest of juveniles .....	361-362	69
	(v) Compensation for unlawful arrest .....	363-365	70
	(c) Measures of derogation .....	366-371	70
	(d) Enforced or involuntary disappearances .....	372-378	70
	Reports on disappearances .....	377-378	71
	3. Concluding remarks .....	379-380	71
B.	International standards on arrest—Practical application .....		71
	1. Practical steps for implementing international standards .....		71
	2. Hypothetical exercises .....		72
	3. Topics for discussion .....		73
XIII.	DETENTION .....	381-438	74
A.	International standards on detention—Information for presentations ...	381-438	75
	1. Introduction .....	381-384	75
	2. General aspects of human rights during detention .....	385-435	75
	(a) Fundamental principles .....	385-386	75
	(b) Specific provisions on detention .....	387	75
	(i) Prohibition of torture .....	388-397	75
	(ii) General requirements on humane treatment of detainees .....	398-403	76
	(iii) Juvenile detainees .....	404-410	77
	(iv) Women detainees .....	411-415	78
	(c) Interviewing or interrogating suspects .....	416-427	78
	(i) Relevant international standards .....	418-420	78
	(ii) Purpose of standards .....	421-422	79
	(iii) Implications of standards for the interviewing or interrogation process .....	423-427	79
	(d) Measures of derogation .....	428-433	79
	(e) Enforced or involuntary disappearances .....	434-435	80
	3. Concluding remarks .....	436-438	80
B.	International standards on detention—Practical application .....		80
	1. Practical steps for implementing international standards .....		80
	2. Hypothetical exercises .....		82
	3. Topics for discussion .....		83

<i>Chapter</i>		<i>Paragraphs</i>	<i>Page</i>
XIV.	USE OF FORCE AND FIREARMS .....	439-471	84
	A. International standards on the use of force—Information for presentations .....	439-471	86
	1. Introduction .....	439-442	86
	2. General aspects of the use of force .....	443-469	87
	(a) Fundamental principles .....	443	87
	(b) Specific provisions on the use of force .....	444-460	87
	(i) Regulations; differentiated use of force .....	448	87
	(ii) Non-violent means first .....	449	87
	(iii) Exercise of restraint; humanitarian measures .....	450	87
	(iv) Use of force to be reported .....	451	87
	(v) Use of firearms .....	452-454	87
	(vi) Policing public assemblies .....	455	87
	(vii) Use of force on detainees .....	456	87
	(viii) Recruitment and training .....	457	87
	(ix) Reporting and review .....	458	88
	(x) Management responsibility .....	459	88
	(xi) Unlawful orders .....	460	88
	(c) Use of force and the right to life .....	461-464	88
	(d) Use of force and extralegal killings .....	465-466	88
	(e) Use of force and disappearances .....	467-469	88
	3. Concluding remarks .....	470-471	88
	B. International standards on the use of force—Practical application .....		89
	1. Practical steps for implementing international standards .....		89
	2. Hypothetical exercise .....		90
	3. Topics for discussion .....		90
XV.	CIVIL DISORDER, STATES OF EMERGENCY AND ARMED CONFLICTS .....	472-569	91
	A. International standards on armed conflicts, states of emergency and civil disorder—Information for presentations .....	472-569	93
	1. Introduction .....	472-480	93
	2. General aspects of human rights and humanitarian standards during armed conflicts and civil disorder .....	481-566	94
	(a) Fundamental principles .....	481-482	94
	(b) Specific provisions on human rights and humanitarian standards during armed conflicts and civil disorder .....	483-490	94
	(i) Most vulnerable human rights .....	483	94
	(ii) The law regulating armed conflict .....	484-486	94
	(iii) Types of armed conflict and categories of persons .....	487-490	95
	(c) International armed conflict .....	491-499	95
	(i) Status of police .....	494-499	95
	(ii) Rights, duties and responsibilities of police .....	500-502	96
	(d) Non-international armed conflict .....	503-519	97
	(i) Common article 3 .....	505-507	97
	(ii) Additional Protocol II .....	508-517	97
	(iii) Status .....	518	98
	(iv) Duties and responsibilities of police .....	519	98
	(e) Civil disorder .....	520-536	98
	(i) Definitions and characteristics of civil disorder .....	522-523	99
	(ii) International standards .....	524-526	99
	(iii) Humanitarian principles and standards .....	527-534	100
	(iv) Duties and responsibilities of police .....	535-536	100
	(f) Terrorism .....	537-554	100
	(i) Definitions and types of terrorism .....	538-544	100
	(ii) Acts of terror during armed conflicts .....	545-547	101

	(iii) International cooperation against terrorism .....	548-553	101
	(iv) Duties and responsibilities of police .....	554	102
	(g) States of emergency and measures of derogation .....	555-566	102
	(i) Treaty provisions .....	556-565	102
	(ii) Responsibilities of police .....	566	103
	3. Concluding remarks .....	567-569	103
B.	International standards on armed conflicts and civil disorder— Practical application .....		103
	1. Practical steps for implementing international standards .....		103
	2. Hypothetical exercises .....		106
	3. Topics for discussion .....		107
<b>Part Four. Groups requiring special protection or treatment</b>			
XVI.	POLICE AND THE PROTECTION OF JUVENILES .....	570-675	111
A.	International standards on police and the protection of juveniles— Information for presentations .....	570-675	112
	1. Introduction .....	570-572	112
	2. General aspects of police and the protection of juveniles .....	573-671	112
	(a) Fundamental principles .....	573	112
	(b) Specific provisions on human rights, police and the protec- tion of juveniles .....	574-671	112
	(i) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) .....	575-607	112
	(ii) United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) .....	608-615	114
	(iii) United Nations Rules for the Protection of Juveniles Deprived of their Liberty .....	616-626	116
	(iv) Convention on the Rights of the Child .....	627-653	117
	(v) United Nations Standard Minimum Rules for Non- custodial Measures (Tokyo Rules) .....	654-671	119
	3. Concluding remarks .....	672-675	120
B.	International standards on police and the protection of juveniles— Practical application .....		121
	1. Practical steps for implementing international standards .....		121
	2. Hypothetical exercises .....		122
	3. Topics for discussion .....		122
XVII.	LAW ENFORCEMENT AND THE RIGHTS OF WOMEN .....	676-757	124
A.	International standards on law enforcement and the rights of women—Information for presentations .....	676-757	125
	1. Introduction .....	676-680	125
	2. General aspects of human rights of women and law enforcement .....	681-754	125
	(a) Fundamental principles .....	681-682	125
	(b) Specific provisions on human rights of women and law enforcement .....	683-754	125
	(i) Protection of women .....	684-754	125
	a. Women and discrimination .....	684-702	125
	b. Women as victims of domestic violence .....	703-719	127
	c. Women as victims of rape and other sexual offences .....	720-726	128
	d. Women as detainees .....	727-731	128
	e. Protection of women in time of conflict .....	732-746	129
	(ii) Women as police officials .....	747-754	130
	3. Concluding remarks .....	755-757	131

<i>Chapter</i>	<i>Paragraphs Page</i>
B. International standards on law enforcement and the rights of women—Practical application .....	131
1. Practical steps for implementing international standards .....	131
2. Hypothetical exercises .....	132
3. Topics for discussion .....	133
XVIII. REFUGEES AND NON-NATIONALS .....	758-823 134
A. International standards on refugees and non-nationals— Information for presentations .....	758-823 136
1. Introduction .....	758-765 136
2. General aspects of human rights of refugees and non-nationals ....	766-819 136
(a) Fundamental principles .....	766 136
(b) Specific provisions on human rights of refugees and non-nationals .....	767-771 136
(c) Specific provisions of the 1951 Convention relating to the Status of Refugees .....	772-782 137
(d) Specific provisions of international human rights law and international humanitarian law relevant to the situation of refugees .....	783-790 137
(e) Internally displaced persons .....	791-794 138
(f) Specific provisions of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live .....	795-802 139
(g) Specific provisions of international human rights law and international humanitarian law relevant to the situation of non-nationals .....	803-808 139
(h) Specific provisions of the 1954 Convention relating to the Status of Stateless Persons .....	809-817 140
(i) Specific provisions of international human rights law and international humanitarian law relevant to the situation of stateless persons .....	818-819 140
3. Concluding remarks .....	820-823 140
B. International standards on refugees and non-nationals— Practical application .....	141
1. Practical steps for implementing international standards .....	141
2. Hypothetical exercise .....	141
3. Topics for discussion .....	142
XIX. PROTECTION AND REDRESS FOR VICTIMS .....	824-877 143
A. International standards on human rights of victims, protection and redress—Information for presentations .....	824-877 144
1. Introduction .....	824-829 144
2. General aspects of human rights of victims, protection and redress	
(a) Fundamental principles .....	830 144
(b) Specific provisions on human rights of victims, protection and redress .....	831-836 144
(c) Protection of victims of crime .....	837-857 145
(d) Protection of victims of abuse of power .....	858-863 146
(e) Recommendations for implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power .....	864-866 147
(f) Protection of victims of conflict .....	867-873 147
3. Concluding remarks .....	874-877 148
B. International standards on human rights of victims, protection and redress—Practical application .....	148
1. Practical steps for implementing international standards .....	148
2. Hypothetical exercises .....	149
3. Topics for discussion .....	149



**Part Five. Matters of command, management and control**

XX.	HUMAN RIGHTS IN POLICE COMMAND, MANAGEMENT AND ORGANIZATION .....	878-943	153
	A. International standards on police command, management and organization—Information for presentations .....	878-943	154
	1. Introduction .....	878-884	154
	2. General aspects of human rights and police command, management and organization .....	885-940	155
	(a) Fundamental principles .....	885-887	155
	(b) Specific provisions on human rights implications for police command, management and control .....	888-889	155
	(c) Purposes and objectives of a police organization .....	890-893	155
	(d) Professional ethics .....	894-901	156
	(e) Strategic planning and policy-making .....	902-907	156
	(f) Systems for command, management and control .....	908-923	157
	(i) Responsive and accountable policing.....	909-910	157
	(ii) Human rights and police investigations .....	911-915	157
	(iii) Human rights on arrest .....	916	158
	(iv) Human rights during detention .....	917-919	158
	(v) Human rights and use of force by police .....	920-923	158
	(g) Recruitment .....	924	158
	(i) Human rights, police and non-discrimination .....	925	158
	(ii) Human rights and policing in democracies .....	926-927	158
	(h) Training .....	928-940	159
	(i) Use of force .....	932-933	159
	(ii) Treatment of detainees .....	934-935	159
	(iii) Armed conflict and civil disorder .....	936-937	159
	(iv) Protection of juveniles .....	938	159
	(v) Protection and redress for victims .....	939-940	159
	3. Concluding remarks .....	941-943	160
	B. International standards on police command, management and organization—Practical application .....		160
	1. Practical steps for implementing international standards .....		160
	2. Hypothetical exercise .....		161
	3. Topics for discussion .....		161
XXI.	INVESTIGATING POLICE VIOLATIONS .....	944-985	163
	A. International standards on investigating human rights violations by police—Information for presentations .....	944-985	164
	1. Introduction .....	944-948	164
	2. General aspects of investigating human rights violations by police .....	949-979	164
	(a) Fundamental principles .....	949-950	164
	(b) Specific provisions on complaint, review and investigation ...	951-973	164
	(i) Code of Conduct for Law Enforcement Officials .....	952-955	164
	(ii) Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment .....	956-957	165
	(iii) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment .....	958-961	165
	(iv) Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions .....	962-964	165
	(v) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment .....	965-969	165

	<i>Paragraphs</i>	<i>Page</i>
(vi) Basic Principles on the Use of Force and Firearms by Law Enforcement Officials .....	970-973	166
(c) Enforced or involuntary disappearances .....	974-978	166
(d) International procedures and bodies established to secure compliance with human rights standards .....	979	166
3. Concluding remarks .....	980-985	166
B. International standards on investigating human rights violations by police—Practical application .....		167
1. Practical steps for implementing international standards .....		167
2. Hypothetical exercises .....		168
3. Topics for discussion .....		169

### ANNEXES

I. Principal international instruments relating to law enforcement .....	173
II. Model course outline .....	200
III. Pre-course questionnaire .....	206
V. Post-course examination .....	207
V. Post-course evaluation .....	210

### ABBREVIATIONS

ECOSOC	Economic and Social Council
ICRC	International Committee of the Red Cross
INTERPOL	International Criminal Police Organization
OAU	Organization of African Unity
UNCHR	Office of the United Nations High Commissioner for Refugees

**INTERNATIONAL INSTRUMENTS  
cited in the present manual**

ABBREVIATIONS

<i>Compilation</i>	<i>Human Rights: A Compilation of International Instruments</i> , vol. I (2 parts), <i>Universal Instruments</i> (United Nations publication, Sales No. E.94.XIV.1); vol. II, <i>Regional Instruments</i> (to be issued)
Eighth Congress report	<i>Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat</i> (United Nations publication, Sales No. E.91.IV.2)

The instruments referred to in the manual are listed in chronological order in each of the categories below. Where relevant, the short title by which an instrument has been identified is indicated.

*Source*

UNIVERSAL INSTRUMENTS

INTERNATIONAL BILL OF HUMAN RIGHTS

Universal Declaration of Human Rights

General Assembly resolution 217 A (III) of 10 December 1948; *Compilation*, vol. I, p. 1. See also annex I.1 below.

International Covenant on Economic, Social and Cultural Rights (entry into force, 3 January 1976)

General Assembly resolution 2200 A (XXI) of 16 December 1966, annex; *Compilation*, vol. I, p. 8.

International Covenant on Civil and Political Rights (entry into force, 23 March 1976)

General Assembly resolution 2200 A (XXI) of 16 December 1966, annex; *Compilation*, vol. I, p. 20. See also annex I.2 below.

Optional Protocol to the International Covenant on Civil and Political Rights (entry into force, 23 March 1976)

General Assembly resolution 2200 A (XXI) of 16 December 1966, annex; *Compilation*, vol. I, p. 41.

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (entry into force, 11 July 1991)

General Assembly resolution 44/128 of 15 December 1989, annex; *Compilation*, vol. I, p. 46.

GENERAL

Vienna Convention on Consular Relations (Vienna, 24 April 1963) (entry into force, 19 March 1967)

United Nations, *Treaty Series*, vol. 596, p. 261.

Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations

General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

Vienna Declaration and Programme of Action

Adopted by the World Conference on Human Rights, Vienna, 25 June 1993 (A/CONF.157/24 (Part I), chap. III).

HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE

*Treatment of detainees*

Standard Minimum Rules for the Treatment of Prisoners

*First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report by the Secretariat* (United Nations publication, Sales No. 1956. IV.4), annex I.A; approved by Economic and Social Council resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; *Compilation*, vol. I, p. 243.

Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners

Economic and Social Council resolution 1984/47 of 25 May 1984, annex.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

General Assembly resolution 43/173 of 9 December 1988, annex; *Compilation*, vol. I, p. 265. See also annex I.5 below.

United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)

General Assembly resolution 45/110 of 14 December 1990, annex; *Compilation*, vol. I, p. 336.

Basic Principles for the Treatment of Prisoners

General Assembly resolution 45/111 of 14 December 1990, annex; *Compilation*, vol. I, p. 263.

*Torture and ill-treatment*

Declaration against Torture

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

General Assembly resolution 39/46 of 10 December 1984, annex; *Compilation*, vol. I, p. 293.

- |  |  |  |
|--|--|--|
| <p>Convention against Torture</p>  | <p>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (entry into force, 26 June 1987)</p> | <p>General Assembly resolution 39/46 of 10 December 1984, annex; <i>Compilation</i>, vol. I, p. 293.</p>                                   |
| <i>Capital punishment</i>  |  |  |
| <p>Safeguard guaranteeing protection of the rights of those facing the death penalty</p>   |  | <p>Economic and Social Council resolution 1984/50 of 25 May 1984, annex; <i>Compilation</i>, vol. I, p. 310.</p>                           |
| <p>Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (entry into force, 11 July 1991)</p> |  | <p>See above, <i>International Bill of Human Rights</i>.</p>   |
| <i>Extralegal executions</i>   |  |  |
| <p>Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions</p>  |  | <p>Economic and Social Council resolution 1989/65 of 24 May 1989, annex; <i>Compilation</i>, vol. I, p. 409. See also annex I.8 below.</p> |
| <i>Law enforcement</i>   |  |  |
| <p>Code of Conduct for Law Enforcement Officials</p>   |  | <p>General Assembly resolution 34/169 of 17 December 1979, annex; <i>Compilation</i>, vol. I, p. 312. See also annex I.3 below.</p>        |
| <p>Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials</p>  |  | <p>Economic and Social Council resolution 1989/61 of 24 May 1989, annex.</p>   |
| <p>Basic Principles on the Use of Force and Firearms by Law Enforcement Officials</p>  |  | <p>Eighth Congress report, chap. I, sect. B.2; <i>Compilation</i>, vol. I, p. 318. See also annex I.4 below.</p>                           |
| <i>Juvenile justice</i>  |  |  |
| <p>United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)</p>  |  | <p>General Assembly resolution 40/33 of 29 November 1985, annex; <i>Compilation</i>, vol. I, p. 356. See also annex I.9 below.</p>         |
| <p>Convention on the Rights of the Child (entry into force, 2 September 1990)</p>  |  | <p>General Assembly resolution 44/25 of 20 November 1989, annex; <i>Compilation</i>, vol. I, p. 174.</p>                                   |
| <p>United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)</p>  |  | <p>General Assembly resolution 45/112 of 14 December 1990, annex; <i>Compilation</i>, vol. I, p. 346.</p>                                  |

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

General Assembly resolution 45/113 of 14 December 1990, annex; *Compilation*, vol. I, p. 275.

*Protection of victims*

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

General Assembly resolution 40/34 of 29 November 1985, annex; *Compilation*, vol. I, p. 382. See also annex I.6 below.

*Enforced disappearance*

Declaration on the Protection of All Persons from Enforced Disappearance

General Assembly resolution 47/133 of 18 December 1992; *Compilation*, vol. I, p. 401. See also annex I.7 below.

PREVENTION OF DISCRIMINATION

*Race*

United Nations Declaration on the Elimination of All Forms of Racial Discrimination

General Assembly resolution 1904 (XVIII) of 20 November 1963; *Compilation*, vol. I, p. 61.

International Convention on the Elimination of All Forms of Racial Discrimination (entry into force, 4 January 1969)

General Assembly resolution 2106 A (XX) of 21 December 1965, annex; *Compilation*, vol. I, p. 66.

*Sex*

Declaration on the Elimination of Discrimination against Women

General Assembly resolution 2263 (XXII) of 7 November 1967; *Compilation*, vol. I, p. 145.

Convention on the Elimination of All Forms of Discrimination against Women (entry into force, 3 September 1981)

General Assembly resolution 34/180 of 18 December 1979, annex; *Compilation*, vol. I, p. 150.

*Particular manifestations of discrimination*

Slavery Convention (Geneva, 25 September 1926) (entry into force, 9 March 1927)

League of Nations, *Treaty Series*, vol. LX, p. 253; *Compilation*, vol. I, p. 201.

Convention on the Prevention and Punishment of the Crime of Genocide (entry into force, 12 January 1951)

General Assembly resolution 260 A (III) of 9 December 1948, annex; *Compilation*, vol. I, p. 673.

- Protocol amending the Slavery Convention signed at Geneva on 25 September 1926 (entry into force, 7 December 1953)
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (entry into force, 30 April 1957) (Geneva, 7 September 1956)
- International Convention on the Suppression and Punishment of the Crime of Apartheid (entry into force, 18 July 1976)
- Religion or belief*
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- MIGRANT WORKERS**
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- TERRORISM**
- International Convention against the Taking of Hostages (entry into force, 3 June 1983)
- Measures against international terrorism
- NATIONALITY, STATELESSNESS AND REFUGEES**
- Convention relating to the Status of Refugees (Geneva, 28 July 1951) (entry into force, 22 April 1954)
- Convention relating to the Status of Stateless Persons (New York, 28 September 1954) (entry into force, 6 June 1960)
- Protocol relating to the Status of Refugees (New York, 31 January 1967) (entry into force, 4 October 1967)
- Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live
- General Assembly resolution 794 (VIII) of 23 October 1953; *Compilation*, vol. I, p. 206.
- United Nations, *Treaty Series*, vol. 266, p. 3; *Compilation*, vol. I, p. 209.
- General Assembly resolution 3060 (XXVIII) of 30 November 1973; annex; *Compilation*, vol. I, p. 80.
- General Assembly resolution 36/55 of 25 November 1981; *Compilation*, vol. I, p. 122.
- General Assembly resolution 45/158 of 18 December 1990, annex; *Compilation*, vol. I, p. 554.
- General Assembly resolution 34/146 of 17 December 1979, annex.
- Eighth Congress report, chap. I, sect. C, resolution 25, annex.
- United Nations, *Treaty Series*, vol. 189, p. 137; *Compilation*, vol. I, p. 638.
- United Nations, *Treaty Series*, vol. 360, p. 117; *Compilation*, vol. I, p. 625.
- United Nations, *Treaty Series*, vol. 606, p. 267; *Compilation*, vol. I, p. 655.
- General Assembly resolution 40/144 of 13 December 1985, annex; *Compilation*, vol. I, p. 668.

## INTERNATIONAL ARMED CONFLICT

- 1907 Hague Convention      Hague Convention (IV) respecting the Laws and Customs of War on Land (The Hague, 18 October 1907) (entry into force, 26 January 1910)      J. B. Scott, ed., *The Hague Conventions and Declarations of 1899 and 1907*, 3rd ed. (New York, Oxford University Press, 1918), pp. 101-102; *Supplement to the American Journal of International Law* (New York), vol. 2 (1908), *Official Documents*, p. 90.
- First Geneva Convention      Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva, 12 August 1949) (entry into force, 21 October 1950)      United Nations, *Treaty Series*, vol. 75, p. 31; *Compilation*, vol. I, p. 685.
- Second Geneva Convention      Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva, 12 August 1949) (entry into force, 21 October 1950)      United Nations, *Treaty Series*, vol. 75, p. 85; *Compilation*, vol. I, p. 711.
- Third Geneva Convention      Geneva Convention (III) relative to the Treatment of Prisoners of War (Geneva, 12 August 1949) (entry into force, 21 October 1950)      United Nations, *Treaty Series*, vol. 75, p. 135; *Compilation*, vol. I, p. 732.
- Fourth Geneva Convention      Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949) (entry into force, 21 October 1950)      United Nations, *Treaty Series*, vol. 75, p. 287; *Compilation*, vol. I, p. 803.
- Additional Protocol I      Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Geneva, 8 June 1977) (entry into force, 7 December 1978)      United Nations, *Treaty Series*, vol. 1125, p. 3; *Compilation*, vol. I, p. 866.

## NON-INTERNATIONAL ARMED CONFLICT

- Additional Protocol II      Protocol (II) Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Geneva, 8 June 1977) (entry into force, 7 December 1978)      United Nations, *Treaty Series*, vol. 1125, p. 609; *Compilation*, vol. I, p. 934.



## REGIONAL INSTRUMENTS

- |   |   |   |
|---|---|---|
| European Convention on Human Rights   | Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950) (entry into force, 3 September 1953) | United Nations, <i>Treaty Series</i> , vol. 213, p. 221; <i>Compilation</i> , vol. II.  |
| Protocol No. 1 to the European Convention on Human Rights (Paris, 20 March 1952) (entry into force, 18 May 1954)  |   | United Nations, <i>Treaty Series</i> , vol. 213, p. 221; <i>Compilation</i> , vol. II.  |
| Protocol No. 4 to the European Convention on Human Rights (Strasbourg, 16 September 1963) (entry into force, 2 May 1968)  |   | Council of Europe, <i>European Treaty Series No. 46</i> ; <i>Compilation</i> , vol. II.   |
| American Convention on Human Rights ('Pact of San José, Costa Rica') (San José, 22 November 1969) (entry into force, 18 July 1978)                                    |   | United Nations, <i>Treaty Series</i> , vol. 1144, p. 123; <i>Compilation</i> , vol. II.   |
| African Charter on Human and Peoples' Rights (Nairobi, 26 June 1981) (entry into force, 21 October 1986)  |   | OAU, document CAB/LEG/67/3/Rev.; <i>International Legal Materials</i> (Washington, D.C.), vol. XXI (1982), p. 58; <i>Compilation</i> , vol. II. |
| European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Strasbourg, 26 November 1987) (entry into force, 1 February 1989) |   | Council of Europe, <i>European Treaty Series No. 126</i> ; <i>Compilation</i> , vol. II.  |



## STATEMENT OF OBJECTIVES

**This manual, the approach contained herein, and the courses offered in accordance with that approach are intended:**

(a) To provide information on international human rights standards relevant to the work of police;

(b) To encourage the development of skills, and the formulation and application of policies, necessary to transform that information into practical behaviour;

(c) To sensitize participants to their particular role in promoting and protecting human rights, and to their own potential for affecting human rights in their daily work;

(d) To reinforce law enforcement officials' respect for, and faith in, human dignity and fundamental human rights;

(e) To encourage and reinforce an ethos of legality, and of compliance with international human rights standards, within law enforcement agencies;

(f) To assist law enforcement agencies and individual law enforcement officials in providing effective policing through compliance with international human rights standards;

(g) To equip police educators and trainers to provide human rights education and training for law enforcement officials.

### **The intended principal beneficiaries are:**

—Police trainers and training institutions;

—National police officials, whether civilian or military;

—Civilian police (CIVPOL) components of United Nations peace-keeping operations.



*PART ONE*

**TRAINING LAW  
ENFORCEMENT OFFICIALS  
POLICY AND PRACTICE**



## CHAPTER I

# APPROACH OF THE UNITED NATIONS HIGH COMMISSIONER/ CENTRE FOR HUMAN RIGHTS TO POLICE TRAINING

1. The High Commissioner for Human Rights/Centre for Human Rights (HC/CHR), through its programme of advisory services and technical assistance, has been involved for many years in training practitioners in all areas of the administration of justice, including law enforcement. This manual is based on the approach developed during that time, which is comprised of the following fundamental elements:

### A. Collegial presentations

2. The HC/CHR draws from a list of experts which is practical in orientation. Rather than assembling panels composed entirely of professors and theorists, the HC/CHR opts for practitioners in the relevant field, including police officers and trainers. In the experience of the HC/CHR, much more can be accomplished through the collegial approach of police discussing with police than by a professor-student model of training. This approach allows the HC/CHR to access the distinct professional culture which surrounds police. At the same time, practitioners and trainers are accompanied and directed by expert staff of the HC/CHR and of the United Nations Crime Prevention and Criminal Justice Branch, thus ensuring that the substance of United Nations standards is fully and consistently reflected in the course contents.<sup>1</sup>

### B. Training the trainers

3. National participants in the HC/CHR's courses are selected on the understanding that their responsibilities will continue after completion of the training exercise. They are charged with conducting their own training and dissemination efforts after returning to their duty stations. In this way, the impact of courses is multiplied several-fold, as the information imparted is disseminated throughout the institutions concerned. Since 1992, the HC/CHR's courses have included capacity-building components, such as lessons and materials designed to impart training skills to participants, in addition to the substantive content of the courses. For maximum effect, course organizers should aim for the same capacity-building approach.

<sup>1</sup> Where United Nations human rights experts are not available, organizers preparing courses on the basis of this manual may wish to consider including the participation of experts from non-governmental human rights organizations.

### C. Pedagogical techniques

4. All courses developed by the HC/CHR include a variety of effective techniques for the training of adult audiences. In particular, suggestions are made for the use of creative, interactive teaching methods, which offer the best hope of securing the active involvement of future participants. Recent discussions between staff of the HC/CHR and a number of non-governmental organizations and institutions with extensive training experience have resulted in the identification of the following techniques as especially appropriate and effective in human rights training for adults: working groups, lecture-discussion, case studies, panel discussion, round-table discussion, brainstorming, simulation and role-playing, field trips, practica (including the drafting of course curricula and standing orders) and visual aids. Recommendations on how to use such techniques are given in chapter III below.

### D. Audience specificity

5. The HC/CHR has learned that the mere recitation of vague principles of general applicability offers little hope of affecting the actual behaviour of a given audience. To be effective—indeed, to be at all worthwhile—training and education efforts must be directly targeted and appropriately addressed to a particular audience, be they police, health-care workers, lawyers, students or others. Accordingly, the HC/CHR's teaching activities focus more on the standards directly relevant to, for example, the daily work of police, and less on the history and structure of United Nations machinery.

### E. Practical approach

6. Police in the real world want to know not just "what the rules are", but also how to do their job effectively within the confines of those rules. Training efforts which ignore either of these areas will probably be neither credible nor effective. Accordingly, in all its training courses, the HC/CHR includes practical information on proven techniques for the performance of the target audience's duties, as derived from the recommendations of experts and literature on the current best practice for the profession in question. However, while practical recommendations are a key component of courses, it would not be possible to provide detailed training on technical

policing skills in a human rights manual or course. Rather, the existence of such techniques should be highlighted, and they should be targeted for further training as a follow-up to the human rights training. Technical police training is offered, at the international level, by a number of specialized national police training institutions under long-standing international outreach programmes.

#### **F. Comprehensive presentation of standards**

7. The courses given by the HC/CHR are intended to be thorough in their presentation of relevant international standards. To this end, relevant instruments and simplified learning tools are translated and distributed to participants. In every case, specialized staff of the HC/CHR control the substantive content of the courses and workshops, and supplement course presentations as required. This manual provides a ready-made catalogue of that content, for the convenience of course presenters.

#### **G. Teaching to sensitize**

8. In addition to imparting standards and practical skills, the HC/CHR's courses include exercises designed to sensitize trainees to their own potential for violative behaviour, however unwitting. For example, well-developed exercises (including role-playing) for making trainees aware of gender or racial bias in their own attitudes or behaviour can be quite valuable. Similarly, the special import of particular standards as they apply to women, for example, is not always readily obvious.

Trainees should be made to understand that, for example, the term "degrading treatment", as found in various international instruments, may imply different activities and thresholds when applied to women as compared to men, or to one cultural group as opposed to another.

#### **H. Flexibility of design and application**

9. To be universally useful, training courses must be designed in such a way as to facilitate their flexible use, without imposing a single rigid focus or approach on the trainers. Courses must be adaptable to the particular cultural, educational, regional and experiential needs and realities of a diverse range of potential audiences within the target group. Accordingly, this manual is not intended to be "read" verbatim to trainees. Rather, trainers should select relevant material and create their own targeted presentation notes and materials, based on the manual's content and the particular realities on the ground.

#### **I. Evaluation tools**

10. The HC/CHR's courses include pre- and post-training evaluative exercises, such as testing questionnaires, which serve three crucial purposes. Pre-course questionnaires, when properly used, allow trainers to tailor their courses to the particular educational needs of the audience. Post-course questionnaires and evaluation sessions allow trainees to gauge what they have learned, and assist in the continuous (crucial) modification and improvement of courses offered by means of this manual.



## CHAPTER II

### PARTICIPANTS IN TRAINING PROGRAMMES

#### A. Definition and categories

11. Participants in training programmes for which this manual is devised are law enforcement officials. Such officials are defined in the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, as follows:

(a) 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.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

...

12. For the purposes of brevity and linguistic variation, the term "police" is also used in this manual, as an alternative to the term "law enforcement officials". Both terms refer to the type of official covered by the above definition, as well as to civilian police (CIVPOL) components of United Nations peace-keeping operations.

13. It is useful to distinguish between different categories of police officials, both in hierarchical and functional terms, in order to ensure that training programmes are appropriate to particular types of participant. The following broad categories of officials are identified for the purposes of training programmes and use of this manual:

**Senior national law enforcement officials**—those functioning at a policy-making or strategic level and having command responsibilities in police organizations;

**Educators and trainers of law enforcement officials**—those responsible for the education and training of law enforcement officials across the entire spectrum of police training;

**National law enforcement officials below command level**—those operating at "street level" and those officials with immediate supervisory responsibilities for such police. It is also useful to identify sub-categories of this level of official, for example crime investigators, those with a specific responsibility for dealing with civil disorder, and "generalist" police who perform a wide variety of policing functions;

**Officials serving in civilian police (CIVPOL) components** of United Nations peace-keeping operations.

TRAINERS' NOTE: Depending on rank structures and other organizational factors, middle-ranking or

"middle management" law enforcement officials may be included in training programmes directed either at senior police or at those below command level.

#### B. Specific reasons for training various categories of law enforcement officials

14. It is important to train senior law enforcement officials in order to give credibility to the training programme for the law enforcement agency as a whole, and because of their significance—not only within the organization, but also within the political and criminal justice systems. For example, police at this level may exert pressure to secure legislative or administrative changes which they consider necessary for the police task; they may be included on national bodies established to make recommendations on constitutional and legal changes or reform; they may formulate policy within the organization; and they make strategic operational decisions which can have far-reaching effects.

15. In particular, it is important to train this category of official in human rights and humanitarian standards in order to meet objectives (b) and (e) set out in the "Statement of Objectives" above (p. 1).

16. The importance of training educators and trainers of police is recognized in the High Commissioner/Centre for Human Rights' policy of training trainers. By training this category of official, it is possible to meet all the objectives set out in the "Statement of Objectives".

17. It is clearly important that law enforcement officials engaged in actual policing duties at "street level" should be aware of human rights and humanitarian standards, and that those standards should guide their attitudes and behaviour. This is true whether such officials carry out general policing duties or are specialists in such matters as criminal investigation or maintaining public order. It is in the actual process of basic policing activity that human rights are either respected or violated. Furthermore, it is frequently the case that police at this level operate alone or in small groups — often unsupervised. The need for them to accept that respect for human rights is an essential element of good policing is of fundamental importance.

18. Civilian police (CIVPOL) components of peace-keeping operations have a particular responsibility to respect United Nations standards for human rights, since

They serve under the flag of the Organization which gave birth to those standards. Their functions include, also, the duty to provide guidance to local law enforcement agencies based not on the laws of their home State, but on the international standards contained in this manual. Thus CIVPOL officers must scrupulously respect and actively promote United Nations standards for law enforcement.

### **C. Significant characteristics of law enforcement agencies and officials**

19. Not all characteristics of law enforcement agencies, or of police culture, are universal, and there are variations among law enforcement officials based on personality, generation and career orientation. However, it is possible to make a number of general statements about police organizations and officials which are significant in relation to human rights training programmes. The extent to which, and the ways in which, individual agencies and officials do not conform to these generalizations must, of course, be understood at the local level where programmes are implemented.

20. The general statements are:

Divisions within agencies along hierarchical and functional lines can be significant.

There is a tendency to make strong distinctions between activities defined as "real police work" (operational and practical policing) and other necessary functions of a law enforcement agency.

Some incompatibility is frequently felt between legal and administrative requirements and the imperatives of practical policing activities.

A corollary of the above tendencies is that policing is seen by many law enforcement officials as an essentially practical activity requiring pragmatic and often expedient responses to situations in which they provide immediate, though perhaps temporary, solutions.

**TRAINERS' NOTE:** Observations and comments in this chapter have formed the basis for some recommendations in ensuing chapters. They should be taken into account by organizers of courses and those making presentations.

## CHAPTER III

### EFFECTIVE TRAINING TECHNIQUES

#### A. Learning objectives

21. The objectives of the trainer are to facilitate satisfaction of the needs of the trainee. That being the case, three basic learning objectives form the foundation of this programme and mirror the following three educational needs of participants in all police training programmes:

—*To receive information and develop knowledge*—on what human rights and humanitarian standards are, and what they mean;

—*To acquire or reinforce skills*—so that the functions of law enforcement agencies and the duties of law enforcement officials can be fulfilled effectively with due respect for human rights. Simple knowledge of standards is not enough to enable police to transfer those rules into appropriate operational behaviour. The acquisition of skills is to be viewed as a process, as skills are fine-tuned through practice and application. This process may therefore need to be continued, in the light of training needs identified in specific areas of police work, through United Nations technical assistance programmes, or through cooperation under bilateral technical policing programmes;

—*To become sensitized, i.e. to undergo a change in (negative) or to reinforce (positive) attitudes and hence behaviour*—so that law enforcement officials accept, or continue to accept, the need to promote and protect human rights, and actually do so in the course of their duties. The subjects here are the values of the law enforcement officer. This, too, is a long-term process to be reinforced by further training and by appropriate command and management practices.

22. Thus effective training will aim to improve:

**knowledge**

**+ skills**

**+ attitudes**

to contribute to: **appropriate behaviour.**

#### B. General recommendations

23. On the basis of the information and comments regarding categorization of participants set out in chap-

ter II, the following general recommendations can be made about human rights training for police:

(a) Whenever possible, **separate training programmes** should be arranged for different categories of law enforcement officials—according to rank and function. This allows training to focus on:

—strategy and policy-making aspects of law enforcement for senior police officers;

—pedagogical aspects for educators and trainers;

—tactical and “street level” policing for officials not in the above categories;

—aspects of particular relevance to officials with specific functions, e.g. criminal investigation or maintaining public order, or to civilian police (CIVPOL) officials.

TRAINERS’ NOTE: As indicated in chapter II.A above, depending on rank structures and other organizational factors, middle-ranking law enforcement officials may be included in training programmes directed either at senior officials or those who function at “street level”. Should it be decided that the participation of officials with different functions in the same programme is unavoidable, or even desirable, then the different experience of participants can be exploited for training purposes. Differing perspectives and priorities can be contrasted to good effect.

(b) The largely **practical and pragmatic orientation** of police officers should be reflected in the education and training methods adopted. This means:

—creating the opportunity to translate ideas and concepts into practice;

—enabling participants to focus on real problems of policing;

—responding to issues of immediate concern to participants raised by them during the programme.

#### C. The participatory method

24. For maximum effect, a few basic principles should be kept in mind in applying the participatory training method described in chapter I.

25. Recall the nine elements of the High Commissioner/Centre for Human Rights' approach to training, as detailed in chapter I:

- collegial presentations;
- training the trainers;
- interactive pedagogical techniques;
- audience specificity;
- a practical approach;
- comprehensive presentation of standards;
- teaching to sensitize;
- flexibility of design and application;
- use of evaluation tools.

This method requires an approach which is interactive, flexible, relevant and varied, as described below:

**Interactive**—This programme implies the use of a participatory, interactive training method. Police, like other adult training audiences, most readily absorb course curricula when they are not spoonfed the material. Rather, for effective training, the trainees should be fully involved in the process. As practitioners, trainees will bring to the course a rich pool of experience, which must be actively drawn on to make an interesting and effective course.

**Flexible**—Contrary to certain myths associated with police training, it is not advisable to adopt a “military” approach and order trainees to participate. The result of such techniques is, more often than not, resentment among trainees and, consequently, the closing of avenues of communication between trainer and trainee. While a certain level of control should be maintained by the trainer, the first rule should be flexibility. Questions—even challenges—from the audience should be welcomed, and should be addressed by trainers in a positive and forthright manner. Similarly, excessively rigid timekeeping can leave participants feeling frustrated and resentful.

**Relevant**—The unspoken question of the trainee throughout the course will be: “What does this have to do with my daily work?” The extent to which trainers continuously answer this question will be an important factor in their success. Every effort must therefore be made to ensure that all material presented is relevant to the work of the audience, and that such relevance is made clear where it is not self-evident. This task may be easier when addressing operational themes, such as arrest or the use of firearms. It may require more careful planning, however, for more topical themes, such as policing in a democracy, or the protection of vulnerable groups.

**Varied**—To secure and retain the active engagement of participants, it is best to vary the teaching techniques used throughout the course. Most police are not accustomed to long classroom sessions, and a tedious and monotonous routine will leave them more conscious of the classroom than of the subject-matter.

A varied selection of techniques should be used, alternating discussion with role-playing, and case-studies with brainstorming, as appropriate to the subject-matter.

26. Broadly speaking, therefore, the following methods and approaches should be adopted:

**Presentation of standards**—a short presentation on the human rights and humanitarian standards relative to an aspect of policing, and on the implications of these for policing;

**Application of participatory techniques**—enables participants to use their knowledge and experience of policing to translate ideas and concepts expressed in the presentation into practice; and also enables them to consider the practical implications of human rights and humanitarian standards for their day-to-day policing activities;

**Focus and flexibility**—enables participants to focus on matters of real and current concern; and enables educators and trainers to adapt to participants' needs as the course progresses.

#### D. Participatory techniques

27. A selection of participatory techniques are outlined below.

##### 1. Presentation and discussion

28. Following a presentation (as described in paragraph 26 above), an informal discussion is useful to clarify points and facilitate the process of translating ideas into practice. Such discussions are conducted by the presenter, who should try to involve all participants. It is useful for presenters to have a prepared series of questions available to initiate the discussion.

29. At the conclusion of the presentation and discussion, the presenter should provide an overview or summary. Presenters should supplement the lecture portion with the use of pre-prepared visual aids or study materials distributed in advance to all participants.

##### 2. Panel discussion

30. The formation of a panel of presenters or experts, possibly following a presentation by one or more of them, has frequently been shown to be a useful training device. Such an approach is particularly effective when presenters have expertise in different aspects of a topic, because of their professional backgrounds or countries of origin. Ideally, human rights experts should be included together with experts in police practice and police training.

31. One presenter should act as facilitator, to enable the widest possible participation, to ensure that participants' needs are met, and to provide an overview or summary at the conclusion of the discussion. This method should include direct exchanges between panel

members themselves, and between the panel and the audience.

### 3. *Working groups*

32. A course may be divided into a number of small groups of five or six participants. Each group is given a topic to discuss, a problem to solve or something concrete to produce, within a short time period—up to 50 minutes. A facilitator may, where necessary, be assigned to each group. The course is then reconvened and the results of the deliberations of each group are presented by a spokesperson for the group. The course participants may then discuss the topics and the response of each group.

### 4. *Case-studies*

33. In addition to dealing with discussion topics, working groups may consider case-studies. These should be based on credible and realistic scenarios which are not too complex and which focus on two or three main issues. Case-studies should require participants to exercise their policing skills in responding to them, and to apply human rights and humanitarian standards. Senior law enforcement officials should be required to exercise command and management skills.

34. The scenario for a case-study can be presented to participants for consideration by them in its entirety, or “fed” to them sequentially as a developing situation (the “evolving hypothesis”) to which they have to respond.

### 5. *Problem-solving/brainstorming*

35. These sessions can be conducted as intensive exercises to seek solutions to problems which are both theoretical and practical. They require a problem to be analysed and then solutions to be developed. Brainstorming encourages and requires a high degree of participation and it stimulates those involved to maximum creativity.

36. Following presentation of the problem, all ideas in response to it are recorded on a board or flip chart. All responses are recorded, no explanations are required, and no interventions are judged or rejected at this stage. The presenter then categorizes and analyses the responses, at which stage some are combined, adapted or rejected. Finally, the group makes recommendations and takes decisions on the problem. The learning or sensitization process occurs as a result of the group discussion on each suggestion.

### 6. *Simulation/role-playing*

37. These exercises require participants to perform a task or tasks in a realistic situation simulating “real life”. In the context of human rights and law enforcement, simulation or role-playing exercises may be used to practice a skill or to enable participants to experience situations hitherto unfamiliar to them.

38. A written factual situation is distributed in advance, and each participant is allocated a particular role (the police officer, the victim, the witness, the judge, etc.). During the exercise, no one is allowed to leave his or her assigned role for any reason. This technique is particularly valuable for sensitizing participants to the feelings and perspectives of other groups, and to the importance of certain issues.

### 7. *Field trips*

39. Group visits to relevant institutions or locations (a police station, a refugee camp, a detention centre, etc.) can provide valuable perspective. The purpose of the visit should be explained in advance, and participants should be instructed to pay critical attention and to record their observations for a subsequent discussion.

### 8. *Practica (practical exercises)*

40. These involve the assignment of trainees to apply and demonstrate particular professional skills in a supervised procedure. Police may be required to draft human rights standing orders on a particular aspect of police work. Police trainers may be assigned to draft a lesson plan, or to deliver a session in the course itself.

### 9. *Round-table discussions*

41. Round-table discussions, like panel discussions, necessitate the assembling of a diverse group of resource persons, representing a variety of perspectives on the subject to be addressed. An animated discussion is the goal, and the crucial elements are a strong and dynamic moderator, skilled both in the subject-matter and in the techniques of devil’s advocate, and the use of the hypothetical. The moderator should be intentionally provocative, stimulating debate between and among the panelists and the audience, and should control the course of the discussion.

### 10. *Visual aids*

42. Adult learning can be enhanced by the use of blackboards, overhead transparencies, posters, displayed objects, flip charts, photographs, slides and videos/films.

## **E. Locations for training courses**

43. Ideally, the following conditions should be met in respect of the location for a training course:

(a) Courses should be held in a location away from the normal place of work of the participants.

(b) The room used for a course should be of sufficient size for the number of people it is intended to accommodate.

(c) There should be a sufficient number of small ancillary rooms available to accommodate working groups, so that participants may focus without interruption on their assigned topics.

(d) Seating facilities should be comfortable and flexible, allowing chairs, desks and tables to be moved around to accommodate various training techniques.

#### **F. Planning for participants' needs**

44. The level of physical comfort of course participants will have a direct impact on the outcome of the learning exercise. Keep in mind, for planning purposes, these few basic factors:

(a) It should be possible to regulate the temperature and ventilation of the room.

(b) Classrooms should never be filled beyond a comfortable capacity.

(c) Rest rooms should be easily accessible.

(d) The daily programme should include a 15-minute coffee/rest break at mid-morning, a lunch break of at least one hour, and a 15-minute coffee/rest break at mid-afternoon.

(e) Allow for participants, between scheduled breaks, to stand and stretch occasionally. Two or three minutes is sufficient for this, at appropriate intervals, perhaps twice a day.

(f) Where possible, provide for water, coffee or other soft drinks to be available in the classroom.

(g) Lunch breaks should be scheduled within the period to which participants are accustomed. This will vary from region to region, and from workplace to workplace.

## CHAPTER IV

### EDUCATORS AND TRAINERS

#### A. Users of the manual

45. The core users of this manual are:

- national trainers and organizers preparing human rights courses for police officials;
- staff of police training institutions and programmes;
- staff of United Nations agencies and programmes providing police training;
- trainers of United Nations civilian police (CIVPOL) forces;
- police-practitioner resource persons participating in human rights training courses;
- students who have completed courses under this programme;
- human rights experts and non-governmental organizations participating in police training courses.

46. The manual may also be of use as a source of reference to practitioners in the field of law enforcement.

#### B. Selection of educators and trainers

47. It is important that the selection of individuals to make presentations and provide other input on human rights training courses for police is based on the following criteria:

- expertise in the subject-matter;
- ability to adopt the methodology of the training programme, especially its participatory aspects;
- credibility and reputation, especially among law enforcement officials who are to participate in the programme.

Ideally, a panel of trainers should be composed primarily of police trainers and persons with experience in law enforcement, who should be accompanied by at least one expert in the field of human rights.

#### C. Briefing of educators and trainers

48. It is important that educators and trainers are adequately briefed on the following matters:

- basic historical, geographical, demographic, political, economic and social information on the country where the programme is to be introduced;
- basic information on the constitutional and legal arrangements of that country;
- human rights and humanitarian law treaties to which the State is a party;
- organization and size of the law enforcement agency or agencies within the country;
- categories and numbers of law enforcement officials—particular issues of current concern in relation to law enforcement and human rights in the country where the programme is to be introduced.

#### D. Tasks of the trainer

49. Trainers participating in courses based on this manual should be given the following instructions:

*Before the course:*

(a) Study the manual, giving particular attention to the sessions to which you are formally assigned.

(b) Prepare very brief lecture notes, keeping in mind the time limitations set out in the course programme.

(c) Think about what practical recommendations you might make to the trainees, based on your professional experience, to assist them in implementing relevant human rights standards in their daily work as police officers.

(d) Attend a pre-course briefing with the entire training team, at least one day prior to the course.

*During the course:*

(a) Participate in daily pre-course and post-course briefings with the rest of the training team.

(b) Attend and participate in all course sessions.

(c) Meet with your session co-leader the day before each scheduled presentation to prepare your presentations jointly.

(d) Deliver brief presentations, adhering to specified time-limits, based on the manual, for the topics assigned to you as a session co-leader.

(e) Make practical recommendations based on your professional experience during discussion and working-group periods, including during sessions for which you are not the session leader.

(f) Select a hypothetical exercise from the manual for each session you are to present, for use in working groups.

(g) Use visual aids whenever possible.

(h) Ensure that any comments or recommendations made are consistent with the international standards set out in the manual.

(i) Encourage active group participation and discussion.

(j) Provide advice and comments on the training materials used for the courses, including the manual.

(k) Attend all opening and closing ceremonies and events accompanying the training programme.

*After the course:*

(a) Participate in a final debriefing session with the rest of the training team.

(b) Study the manual to reinforce your knowledge of any subject-matter with which you were not completely comfortable.

(c) Refine and revise your personal teaching materials before each subsequent course.



## CHAPTER V

### USING THE MANUAL

50. Having considered four particular aspects of training policy and practice in the preceding chapters, it is now appropriate to explain the format and content of the remainder of the manual.

51. Parts two to five of the manual contain the essential information and material for training law enforcement officials in human rights, dealing with fundamental concepts (part two); police duties and functions (part three); groups requiring special protection or treatment (part four); and matters of command, management and control (part five). As will be seen, some of the material has differing relevance to the various categories of officials and this will be commented on as the specific content of each chapter is explained. The annexes contain texts of core international instruments, as well as other information supplementing the substantive chapters explained below.

52. Further guidance on use and applicability of pedagogical material will be given in section E below, where the general format and content of chapters are explained.

#### A. Part Two (Fundamental concepts)

53. Part two addresses the broad concepts of ethical policing, policing in democracies and non-discrimination. It deals with matters of principle which are important at the policy-making and strategic level of policing, and hence for officials working at that level. Its content is equally important for educators and trainers of police, who should be familiar with the essential concepts and principles relevant to law enforcement and human rights. Some of the matters dealt with in part two are also relevant to officials operating at "street level".

#### *Chapter VII—Sources, systems and standards for human rights in law enforcement*

54. This chapter provides an overview of the international system for the protection of human rights in law enforcement. It summarizes the various relevant international bodies, instruments and monitoring mechanisms, while highlighting certain types of violation to which police should be sensitized. This chapter is the basis for an introductory session which should initiate every course offered on the basis of this manual. It is, in essence, the foundation upon which the rest of the course is to be built.

#### *Chapter VIII—Ethical and legal police conduct*

55. The requirement to respect the essential dignity of the human person, and the legal basis for human rights standards, are fundamental to this chapter and are of considerable relevance to all categories of police officials.

#### *Chapter IX—Policing in democracies*

56. This chapter deals with the requirement that police be accountable to the public through democratic political institutions, as well as responsive to public needs and concerns. All law enforcement officials need to be confronted with, or reminded of, these requirements.

#### *Chapter X—Police and non-discrimination*

57. The principle of non-discrimination is fundamental to the protection of human rights and to effective, legal and humane policing. It is relevant at all levels of policing.

#### GENERAL COMMENTS ON PART TWO

58. While the fundamental aspects of these chapters (as outlined above) are relevant to all categories of law enforcement officials, presentations should be varied according to the needs of participants. Basic principles can be conveyed briefly and succinctly to those officials who are not required to consider all their implications for policing in its widest sense. However, theoretical concepts should be expanded and developed, and the wider issues discussed, where appropriate (e.g. with senior police officials and educators and trainers).

#### B. Part Three (Police duties and functions)

59. The chapters in part three provide the essential framework for any course on human rights training for police. They deal with standards directly relevant to key areas of policing where human rights are either respected and protected, or violated. For these reasons, the subject-matter of each chapter is relevant to every category of law enforcement official, although the ways in which it is presented must be varied according to the needs of participants.

60. This chapter identifies international standards having a direct bearing on police investigatory activities. Police officials with specialized investigatory functions should focus on its content in some detail. However, most police officers undertake investigations to some extent, even if only minimally; hence all participants should be made aware of the essential elements of the topic.

#### Chapter XII—Arrest

61. The power to arrest is an important police power, especially in human rights terms, and it is essential that all law enforcement officials are aware of international standards regulating it. Officials at “street level”, who actually exercise powers of arrest, must be familiar with the constraints and safeguards surrounding such powers.

#### Chapter XIII—Detention

62. Some law enforcement officials have specific responsibilities in relation to detainees and such officials should be exposed to the content of this chapter in some detail. However, the protection of detainees is such an important matter that all police officials need to be aware of international standards designed to secure it.

#### Chapter XIV—Use of force and firearms

63. Underlying law enforcement and the maintenance of order is the possibility that force may be used to secure those ends; hence the significance of this subject to all law enforcement officials.

64. Some officials are more likely to be called upon to use force than others, and indeed are specially trained to do so (e.g. those with specific responsibilities for dealing with public disorder). Chapter XIV has particular significance for this category of official.

#### Chapter XV—civil disorder, states of emergency and armed conflicts

65. In this chapter, principles and provisions of international humanitarian law are introduced in order to emphasize the requirement of humane conduct, and protection of victims, during conflict. In addition, other periods of heightened tension, such as civil disorder and states of emergency, are reviewed, introducing police to the legal limitations which accompany exceptional measures.

66. Most law enforcement officials are required to respond to conflict and disorder at some time during their careers, and the importance of the subject makes it an essential element of any human rights training course for police.

67. For all the subjects in this part, it is important to focus on strategic and policy-making aspects for senior law enforcement officials, and on practical, operational aspects for officials at “street level”. Training of the latter category of officials should focus on legal requirements and on the actual conduct of policing activities.

### C. Part Four (Groups requiring special protection or treatment)

68. Part four is important because of the vulnerability of the persons to whom each chapter relates, and the significance of policing activity to the situation of such people. Its content is more topical than operational, but no less important than other sections.

#### Chapter XVI—Police and the protection of juveniles

69. Some police officials have special responsibilities in relation to juveniles and this chapter is clearly important for them. However, the chapter identifies international standards on arrest and detention of juveniles, hence its importance to all law enforcement officials.

#### Chapter XVII—Law enforcement and the rights of women

70. This chapter considers women not only as victims or potential victims of human rights abuses and of crime, but also as actors and participants in the administration of justice. For this reason, all categories of law enforcement officials need to confront the issues it raises.

#### Chapter XVIII—Refugees and non-nationals

71. For historical and geographical reasons, some countries have huge and immediate responsibilities in relation to refugees. Most countries have to respond to the needs of non-nationals. Sometimes specialized units of police deal with such categories of people, although any police official may, at some time, become involved with them.

72. The extent to which, and the ways in which, this chapter XVIII is used as source material for a course will depend on the situation in the country concerned and the type of official participating. In any event, the special vulnerability of refugees and non-nationals, and the protective mandate of police, render this a subject worthy of serious attention.

#### Chapter XIX—Protection and redress for victims

73. All police officials must be aware of ways in which victims of crime and of human rights abuses can be supported. Clearly, the introduction of schemes and systems for this purpose is the responsibility of senior law enforcement officials, and an awareness of international standards on protection of victims will be of considerable interest to them.

#### **D. Part Five (Matters of command, management and control)**

74. Part five is of particular relevance to senior law enforcement officials, although the matters on which it touches are not solely their concern. Educators and trainers of police need to be aware of the content of chapters XX and XXI, as do some middle-ranking officials.

##### *Chapter XX—Human rights in police command, management and organization*

75. Having been made familiar with the subject-matter of the preceding chapters of the manual, law enforcement officials with command and management responsibilities must be given the opportunity to consider the implications of international human rights and humanitarian standards for those responsibilities. Chapter XX is intended to facilitate and encourage that process.

##### *Chapter XXI—Investigating police violations*

76. Clearly, the investigation of police violations is a matter for police commanders and managers, but other officials, perhaps those with internal disciplinary functions, will also benefit from training sessions based on chapter XXI. It may also be considered advantageous in some circumstances for “street-level” police officials to be made aware of some aspects of this topic.

#### **E. Format of chapters**

77. The chapters are formatted in such a way as to facilitate consideration of the practical policing implications of the topics, and to assist delivery of the material to different categories of law enforcement officials.

##### *Essential principles*

78. Each substantive chapter is headed by a list of Essential Principles. These are a combination of principles on which the detailed provisions of international human rights and humanitarian law are based, and principles fundamentally important to law enforcement. They provide a succinct summary of the substance of each topic and all categories of law enforcement officials must be aware of them.

79. Chapters VIII to XXI are then each divided into two sections, as explained below.

##### *Section A*

80. Section A sets out information for a presentation on the topic under three headings: Introduction, General aspects (of the topic) and Concluding remarks.

**Introduction**—This places the topic within the context of law enforcement.

**General aspects**—This subsection provides information under a number of subheadings:

**Fundamental principles**—an account and explanation of those fundamental principles of international human rights or humanitarian law on which the specific provisions relating to the topic are based;

**Specific provisions**—an account of the relevant standards pertaining to the topic as set out in the various instruments.

Any additional information based on international standards relevant to the topic is then set out under subsequent subheadings. For example, in chapter XIV on Use of Force and Firearms, there are third, fourth and fifth subheadings, on “Use of force and the right to life”, “Use of force and extralegal killings” and “Use of force and disappearances”, respectively.

**Concluding remarks**—These draw conclusions from the preceding material relevant to law enforcement in relation to the particular topic.

##### *Presentations to educators and trainers*

81. These presentations should contain a full account of all of the material in section A. Informal discussions following the presentation should focus on pedagogical issues arising out of the material and on conceptual aspects of the topic.

##### *Presentations to senior law enforcement officials*

82. These presentations should place emphasis on essential principles, whereas the detail under “Specific provisions” should be summarized. Informal discussions following presentations should focus on matters relevant to policing strategy, policy-making, command and management.

##### *Presentations to officials below command level*

83. Presentations to operational, “street-level” police should emphasize the details of “Specific provisions”, especially those which make stipulations about conduct. Statements of principles should be used to reinforce prohibitions and requirements. Informal discussions should focus on the tactical aspects of policing and on how specific policing actions can be carried out in accordance with human rights and humanitarian standards.

##### *Section B*

84. Section B deals with the practical application of human rights and humanitarian standards. It contains a list of practical steps to be taken by law enforcement agencies and officials to secure compliance with the standards; a series of hypothetical exercises; and a list of topics for discussion.

### *Practical steps*

85. The practical steps are separated into two categories: those applicable to all law enforcement officials, and those applicable to officials with command and supervisory responsibilities. They can be used in a variety of ways for training purposes, for example:

(a) to provide a basis for informal discussions with educators and trainers of law enforcement officials on important teaching and instructional points;

(b) to identify those aspects of the topic which are relevant to policing strategy, policy-making, command and management, for presentations to senior officials;

(c) to identify those aspects of the topic which are relevant to tactical or "street-level" policing, for officers below command level;

(d) to provide a focus for panel discussions;

(e) to provide further points for discussion by working groups;

(f) to provide a basis for problem-solving or brainstorming sessions (participants may be asked to consider how the requirements can be met).

### *Hypothetical exercises*

86. These exercises are based on practice and require participants to make judgements on factual situations. They should be used to reinforce understanding of international standards and to examine ways of implementing those standards through effective policing.

87. Depending on their format, the exercises can be used as discussion topics for working groups; as problem-solving or brainstorming exercises; and as case-studies. Some address strategic and policy-making issues, and hence are particularly suitable for consideration by senior police officials. Others address tactical and practical situations and are more suitable for consideration by officials below command level. The level at which the exercises are directed is sometimes indicated. However, some are suitable for consideration by any category of law enforcement official and no particular indication is made in respect of these.

### *Topics for discussion*

88. These topics are designed to stimulate discussion—either informally following a presentation, or in working groups and other appropriate settings. They can be used to reinforce knowledge of international standards and of the rationale behind their formulation.

## **F. Annexes**

89. There are several annexes which, collectively, are designed to supplement the content of parts one and two of the manual, and to facilitate the organization and administration of training programmes. Trainers and course organizers are encouraged to browse through the annexes before proceeding, in order to become familiar with some valuable reference materials contained therein.

## CHAPTER VI

### FORMAT AND CONTENT OF COURSES

#### A. Introduction

90. The broad format and content of human rights training courses for law enforcement officials based on this manual are dictated by considerations discussed in the preceding chapters, in particular:

(a) the approach of the United Nations High Commissioner/Centre for Human Rights—especially its emphasis on a practical approach to training;

(b) the participants in training programmes—taking into account their characteristics and the categories in which they belong;

(c) pedagogical techniques—emphasizing the participatory approach;

(d) educators and trainers—the requirement for them to be expert, adaptable and credible;

(e) the manual itself—the framework it provides for conceptualizing and categorizing the broad area of law enforcement and human rights as indicated by the part and chapter headings.

91. The actual format and content of a particular human rights training course may depend, additionally, on:

(a) the results of needs assessments carried out in relation to a country and its law enforcement agency or agencies, and the proposed participants;

(b) the time available for the course or courses.

92. Some recommendations will now be made on the weight to be given to topics in particular chapters of the manual, for courses for different categories of law enforcement officials. These should be taken into account when the time to be allocated for each topic on a course programme is being considered. Three model course formats will then be proposed.

#### B. Observations on chapter topics

##### *Part two (Fundamental concepts)*

TRAINERS' NOTE: Reference should be made to the observations in chapter V.A above.

93. Each chapter should be covered in some depth with educators and trainers of law enforcement officials. Such participants should be asked to consider the topics at a conceptual and theoretical level, as well as in practical, operational terms.

94. Senior law enforcement officials should also be required to consider the content of part two in detail, as it covers broad matters of principle relevant to their policy-making and command functions.

95. Officials below command level require substantial exposure to the topics in part two, as they provide a sound basis for encouraging the attitudes, and hence conduct, necessary for the promotion and protection of human rights. However, as indicated in chapter V.A above, the basic principles of the topics can be conveyed briefly and succinctly to this category of official.

96. Part two is especially important for civilian police (CIVPOL) trainees, as it sets out the framework for understanding the relevance of international (United Nations) standards for human rights in law enforcement.

##### *Part three (Police duties and functions)*

TRAINERS' NOTE: Reference should be made to the observations in chapter V.B above.

97. The points made in chapter V.B about the relevance of different chapters to various categories of police officials (e.g. chapter XI to investigators, chapter XIII to officials with special responsibilities for detainees, and chapters XIV and XV to officials specialized in dealing with public disorder) should be noted.

98. As further indicated in chapter V.B, the chapter topics in part three should be the central focus of human rights training courses for every category of police official. Consequently, the greater part of each course should be devoted to these topics, although the time allocated to any one topic should be varied according to the functions of the participants.

##### *Part four (Groups requiring special protection or treatment)*

TRAINERS' NOTE: Reference should be made to the observations in chapter V.C above.

99. The weight given to the chapter topics of part four is particularly dependent on the situation in the country concerned (e.g. Is there a significant refugee problem? Is the treatment of non-nationals an issue?), and on the functions of course participants (e.g. Do some

participants have special responsibilities for any of the categories of person in question?).

100. Educators and trainers should receive comprehensive instruction in, and guidance on, all topics.

101. If the time allocated for the course permits, senior law enforcement officials and officials below that level should also receive such comprehensive instruction and guidance. If this is not possible, they should be made aware of current issues of concern in relation to each topic; how the issues are addressed by international standards; and how solutions are adopted in different countries or regions to the problems identified. (This latter point is particularly important in relation to senior officials, in view of their responsibility to devise policy and strategy.)

#### *Part five (Matters of command, management and control)*

TRAINERS' NOTE: Reference should be made to the observations in chapter V.D above.

102. The subject-matter of every chapter in part five should form a significant component of courses for senior law enforcement officials and for educators and trainers. Where possible, elements of chapter XXI (Investigating police violations) should be incorporated into courses for police below command level.

### **C. Model course formats**

103. Three model formats are proposed below. They can be based on variations of the model course outline programme set out in annex II, or varied to suit local needs and circumstances. The model formats are for:

—*Full courses*—for all categories of law enforcement officials, where possible (with reduced input from part five of the manual for police below command level), for police trainers, and for CIVPOL officers.

—*Seminars*—for senior law enforcement officials.

—*Basic courses*—for officials below command level.

104. The following points should be noted in relation to these proposals:

*Sequence of topics:* This should follow the sequence of parts and chapters in the manual. There is a logic to this sequence. For example:

—the topics in part two are best dealt with as introductory topics, as they derive from fundamental concepts;

—the topics in part five are best dealt with at the conclusion of a course, when participants have an awareness of international standards;

—in terms of procedure, arrest precedes detention, hence the human rights aspects of those situations ought to follow the same sequence (chapters XII and XIII of part three);

—any consideration of human rights in situations of conflict and disorder (chapter XV) should be informed by an awareness of the broad area of human rights and law enforcement as set out in the preceding chapters of part three (especially chapter XIV on the use of force).

*Composition of a working day:* It is assumed that a working day on a course would begin at about 9 a.m. and conclude at about 6 p.m., and be partitioned by a midday break and two shorter breaks (for coffee)—one in the middle of the morning, and one in the middle of the afternoon, to ensure that participants remain fresh and alert. Lunch breaks should be scheduled according to the local tradition. Additional time should be set aside for the training team to meet for a brief preparatory session before each day begins, and for a debriefing at the end of each day.

#### *1. The full course*

105. The full course consists of a session on the topic of every chapter in parts two to five of the manual, in the sequence shown in the manual. In order to allow for:

a comprehensive presentation on each topic;

adequate informal discussion following the presentation; and

full treatment of hypothetical exercises and discussion topics,

it is recommended that a session should consist of half a working day. This means that each chapter topic is covered within one such half-day session. There are 15 chapter topics to be dealt with in this way (parts two to five).

106. It is recommended that a further half-day session be devoted to introductory and familiarization procedures, and another half-day session to procedures connected with the closure and evaluation of the course.

107. The recommended full course would therefore consist of 16 half-day sessions, or 8 training days.

#### *2. Seminar for senior law enforcement officials*

108. Where senior officials are not available to complete a full course, a short seminar could be conducted. The sequence of chapter topics shown in the manual should be maintained. In order to allow for adequate coverage of each topic within a short time-scale, it is recommended that half-day working sessions be devoted to:

the four chapters of part two (combined);

chapters XI — XIII of part three (combined);

chapters XIV and XV of part three (combined);

the four chapters of part four (combined); and

both chapters of part five (combined).

109. It is recommended that a further half-day session be devoted to opening and closing procedures (e.g. a half-day divided between the beginning and the end of the seminar).

110. The Seminar for senior law enforcement officials would therefore consist of 6 half-day sessions, or 3 training days.

111. In order to accommodate the chapter topics within these sessions and to meet the needs of senior officials, it is recommended that the fundamental principles of each topic be explained in a presentation, and that some reference be made to the international instruments setting standards. Examples of some of the standards could be given. The first part of a half-day session could then be concluded by informal discussion, and the second part of the session devoted to consideration of hypothetical exercises.

### 3. *Basic course for law enforcement officials below command level*

112. Where officials below command level are not available for a full course, a basic course could be conducted. The sequence of chapter topics shown in the manual should be maintained. It is recommended that half-day working sessions be devoted to:

chapters VII and VIII of part two (combined);

chapters IX and X of part two (combined);

chapters XI and XII of part three (combined);

chapter XIII of part three;

chapter XIV of part three;

chapter XV of part three;

chapters XVI and XVII of part four (combined); and

chapter XIX of part four and chapter XXI of part five (combined).

113. It is recommended that a further half-day session be devoted to opening and familiarization procedures, and another half-day session to closing and evaluation procedures.

114. The basic course for law enforcement officials below command level would therefore consist of 10 half-day sessions, or 5 training days.

### **D. Concluding remarks**

115. The above recommendations are made to provide a basis for various types of courses and seminars and, of course, variations of these are possible. For example, both the full course and the basic course may be varied to meet the needs of officials with specialized functions, so that chapter topics relevant to their specializations are expanded and others correspondingly reduced. As a rule of thumb, when formatting courses, course organizers should always focus on the particular needs of the audience.





*PART TWO*

**FUNDAMENTAL CONCEPTS**



## CHAPTER VII

### SOURCES, SYSTEMS AND STANDARDS FOR HUMAN RIGHTS IN LAW ENFORCEMENT

#### *Chapter Objectives*

*To introduce course presenters and, through them, course participants to the overall existing United Nations framework for the protection of human rights in law enforcement.*

*To provide an overview of principal instruments, monitoring mechanisms and authoritative United Nations bodies relevant to the work of police.*

*To highlight selected categories of human rights violations to which police should be sensitized.*

#### *Essential Principles*

*International human rights law is binding on all States and their agents, including law enforcement officials.*

*Human rights are a legitimate subject for international law, and for international scrutiny.*

*Law enforcement officials are obliged to know, and to apply, international standards on human rights.*

#### **A. Relevance of international standards**

116. International standards relating to human rights in law enforcement have been promulgated by a number of bodies within the United Nations system. Foremost among these bodies have been the Commission on Human Rights, its Sub-Commission on Prevention of Discrimination and Protection of Minorities, and the periodic United Nations Congresses on the Prevention of Crime and the Treatment of Offenders. The adoption of these standards by the General Assembly and the Economic and Social Council, two principal organs of the United Nations, has given them the character of universality—i.e. they are accepted by the international community as a whole as the minimum rules for law en-

forcement, regardless of the legal system or municipal-law framework of the member State.

117. Additionally, the normative content of these standards, and details on their proper implementation at the national level, are to be found in the evolving jurisprudence of the United Nations Human Rights Committee, a treaty-monitoring body set up under the International Covenant on Civil and Political Rights.

118. Before looking at the various sources, systems and standards existing at the international level, a word about the legal force of these standards is in order. The collective body of standards discussed in this manual spans the full range of international legal authority, from binding obligations set out in covenants and conven-

tions, to morally persuasive universal guidance offered through various declarations, minimum rules, and bodies of principles. Together, these instruments offer a comprehensive and detailed international legal framework for ensuring respect for human rights, freedom and dignity in the context of criminal justice.

119. In strict legal terms, one may argue that only the formal treaties ratified or acceded to by States have the character of binding law. Such treaties include the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Prevention and Punishment of the Crime of Genocide, and a number of others. Mention should also be made of the Charter of the United Nations, itself a legally binding treaty to which all Member States are parties. Nevertheless, the practical value of the various declarations, guidelines and minimum rules, which are discussed in this manual hand in hand with the relevant conventions, should not be overlooked on the basis of academic legal arguments. There are at least three essential reasons for this position:

(a) These non-treaty instruments represent statements of values shared by the major legal systems and cultures. Such statements are found in the domestic law of the world's major legal systems and have been drafted in an international process with input from the full spectrum of United Nations Member States. Accordingly, their moral persuasiveness is beyond dispute.

(b) Written treaties are not the only source of binding rules. Because of their international origin and their broad acceptance in municipal law, the provisions of declarations, bodies of principles, etc. are viewed by many legal scholars as "general principles of international law", the latter being one of the sources of international law recognized by the Statute of the International Court of Justice. Many such provisions are agreed to be declaratory of existing principles of so-called "customary international law", i.e. law which is binding on the basis of the consistent practice of States (in the belief by States that the principles are binding), rather than the existence of specific treaty provisions.

(c) International standards as set out in binding treaties are sometimes not sufficiently detailed to allow States to interpret their normative value, or to discern their implications at the level of implementation. The more detailed terms of guidelines, principles, minimum rules, etc. therefore provide a valuable legal complement for States seeking to implement international standards at the national level.

## **B. The basic sources**

### *1. Charter of the United Nations*

120. The primary source of authority for the promulgation of human rights standards by United Nations bodies may be found in the Charter itself. There, in the second preambular paragraph, we read that one of the principal aims of the Organization is:

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . .

Article 1, paragraph 3, of the Charter establishes the principle that international cooperation is to be sought in:

. . . promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion . . .

121. These should not be seen merely as empty statements of principle; rather, as already stated, the Charter is a legally binding treaty to which all Member States are parties. These provisions had the legal effect of, once and for all, putting to rest all arguments as to whether human rights and their enjoyment by individuals were subjects for international law, or merely matters of State sovereignty. Consequently, that police are bound by such rules is now beyond dispute.

122. The quasi-legislative activity of the United Nations has since produced several instruments, each building on and adding more detail to its predecessors. Most importantly, for present purposes, are the Universal Declaration of Human Rights of 1948, and its two implementing and legally binding covenants of 1966, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. Together, these three instruments are commonly referred to as the International Bill of Human Rights.

### *2. Universal Declaration of Human Rights*

123. The Universal Declaration represents a great step forward taken by the international community in 1948. Its persuasive moral character derives from the fact that it is agreed to be a statement of generally accepted international norms. This outline of human rights objectives is drafted in broad and general terms, and was the source—the substantive framework—for the two other instruments making up the International Bill of Human Rights. Moreover, the Universal Declaration enumerated and defined the fundamental rights proclaimed in the Charter of the United Nations. Of particular importance for the administration of justice are articles 3, 5, 9, 10 and 11 of the Universal Declaration. These articles address, respectively, the right to life, liberty and security of person; the prohibition of torture and of cruel, inhuman and degrading treatment or punishment; the prohibition of arbitrary arrest; the right to a fair trial; the right to be presumed innocent until proved guilty; and the prohibition of retroactive penal measures. While these articles are most directly relevant to law enforcement, the entire text of the Universal Declaration offers guidance for the work of police.

### *3. Treaties: covenants and conventions*

#### *International Covenant on Civil and Political Rights*

124. The content of the above rights received further elaboration when, in March 1976, the International Covenant on Civil and Political Rights entered into force. The Covenant, in articles 6, 7, 9, 11, 14 and 15, details the right to life; the prohibition of torture; the

prohibition of arbitrary arrest or detention; the prohibition of imprisonment for failure to fulfil a contractual obligation; the right to a fair trial; and the prohibition of retroactive criminal measures. With more than 100 States parties, the Covenant is a legally binding instrument which must be respected by Governments and their institutions, including the police. Its implementation is monitored by the Human Rights Committee, which was established under the terms of the Covenant itself.

#### *International Covenant on Economic, Social and Cultural Rights*

125. Publications such as this manual, focusing on international standards for law enforcement, necessarily draw mostly on instruments of a civil and political nature. Nevertheless, it would be a mistake to proceed without mention of the International Covenant on Economic, Social and Cultural Rights, which entered into force in January 1976. There are at least three good reasons for this:

(a) The law is not administered in a vacuum. Police must carry out their duties within the context of the prevailing economic realities faced by the people they are sworn to serve and protect.

(b) It is incorrect to assume that economic and social rights, as a set, are not relevant to the daily work of police. Clear examples of directly relevant economic rights, for instance, include non-discrimination, protection against forcible eviction, and basic labour standards.

(c) The two sets of rights protected under the two Covenants are universally recognized as equal and interdependent.

126. Accordingly, it is noted that the International Covenant on Economic, Social and Cultural Rights protects a broad range of rights, including the rights to work; to reasonable conditions of employment; to organize trade unions; to social security and social insurance; to protection of families and children; to an adequate standard of living; to health; to education; and to take part in cultural life. The implementation of the Covenant is monitored by the Committee on Economic, Social and Cultural Rights.

#### *First Optional Protocol to the International Covenant on Civil and Political Rights*

127. The first Optional Protocol to the International Covenant on Civil and Political Rights entered into force simultaneously with the Covenant. This additional instrument enables the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant. In considering such complaints, the Committee has developed a considerable body of jurisprudence, which provides useful guidance in interpreting the implications of the Covenant for the work of police.

#### *Second Optional Protocol to the International Covenant on Civil and Political Rights*

128. While the International Covenant on Civil and Political Rights does not prohibit capital punishment, it does impose strict limitations on its use. In the face of steadily growing world public opinion in favour of full abolition of capital punishment, the General Assembly, in 1989, adopted the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, which does, for States parties, prohibit use of the death penalty.

#### *Genocide Convention*

129. The Convention on the Prevention and Punishment of the Crime of Genocide entered into force in January 1951. It was, like the United Nations itself, a product of the universal horror and outrage felt by the international community at the gross violations of human rights which characterized the Second World War. The Convention confirms that genocide is a crime under international law, and aims to advance international cooperation towards the abolition of this atrocity. In particular, it addresses acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group through killing, causing serious bodily or mental harm, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, imposing measures intended to prevent births within the group, or forcibly transferring children of the group to another group.

### ***Law Enforcement Alert***

#### **GENOCIDE**

Acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, including:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

### *Convention against Torture*

130. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force in June 1987. The Convention goes considerably further than the International Covenant on Civil and Political Rights in protecting against the international crime of torture. Under the Convention, States parties are obliged to take effective legislative, adminis-

trative, judicial or other measures to prevent acts of torture; to commit to the principle of non-refoulement when there are grounds to suspect that a returned person would be tortured; to guarantee victims of torture a right to complain and to have their case promptly and impartially examined by competent authorities; to protect complainants and witnesses; to exclude evidence or statements obtained through torture; and to compensate victims and their dependants.

#### ***Law Enforcement Alert***

##### **TORTURE**

Any act committed with intent to cause severe pain or suffering, whether mental or physical, for purposes such as:

- (a) obtaining information or a confession;
- (b) punishing, intimidating or coercing.

### *Convention on the Elimination of Racial Discrimination*

131. The International Convention on the Elimination of all Forms of Racial Discrimination entered into force in January 1969, prohibiting all forms of racial discrimination in the political, economic, social and cultural spheres. Among other provisions, it requires equal treatment before all tribunals, agencies and bodies involved in the administration of justice, without distinction as to race, colour, or national or ethnic origin.

### *Convention on the Elimination of Discrimination against Women*

132. Upon entry into force in September 1981, the Convention on the Elimination of All Forms of Discrimination against Women became the principal international instrument addressing discrimination against women in the political, economic, social, cultural and civil fields. It requires States parties to undertake specific action in each of those fields to end discrimination against women, and to allow them to exercise and enjoy human rights and fundamental freedoms on a basis of equality with men.

### *Convention on the Rights of the Child*

133. The Convention on the Rights of the Child entered into force in September 1990, and now has more than 100 States parties. It provides for certain special rights for juvenile offenders, in recognition of their special vulnerability and society's interest in rehabilitating them. In particular, the Convention sets out a prohibition on life imprisonment of juveniles, as well as protecting them against capital punishment and torture. Imprisonment of juveniles must be a measure of last resort and,

when imposed, must be for the shortest possible period of time. In every case, the Convention requires that juveniles in conflict with the law be treated with humanity and respect for the dignity of the human person, and in a manner which takes into account the child's age and the possibility of rehabilitating him or her. The Convention is examined in more detail in chapter XVI on Police and the Protection of Juveniles.

### *Migrant Worker Convention*

134. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the General Assembly in December 1990. It was developed by the United Nations in recognition of the great impact of flows of migrant workers on the States and people concerned, and the need to develop norms which would contribute to harmonization of the attitudes of States through the acceptance of basic principles protecting migrant workers and their families. The Convention enumerates the basic rights of this particularly vulnerable group in human society and provides for the protection of those rights.

### *International humanitarian law*

135. For the purposes of police training, international humanitarian law may be defined as the subset of human rights law applicable in times of armed conflict. This area is explored in detail in chapter XV. The basic substance of humanitarian law is set out, article by article, in the four Geneva Conventions of 1949, which protect, respectively, the wounded and sick in the field; shipwrecked persons; prisoners of war; and civilian persons.

136. Additional sources include the two Additional Protocols (of 1977) to the Geneva Conventions. Protocol I reaffirms and further develops the provisions of the Geneva Conventions with regard to international armed conflicts, while Protocol II does the same for conflicts which are internal, rather than international.

137. Under these instruments, international humanitarian law is to be applied in all situations of armed conflict, during which principles of humanity are to be safeguarded in all cases. They hold further that non-combatants and persons put out of action by injury, sickness, capture or other causes must be respected and protected, and that persons suffering from the effects of war must be aided and cared for without discrimination. International humanitarian law prohibits the following acts in all situations:

- murder;
- torture;
- corporal punishment;
- mutilation;
- outrages upon personal dignity;
- hostage-taking;
- collective punishment;
- executions without regular trial;
- cruel or degrading treatment.

138. The same instruments also prohibit reprisals against the wounded, sick or shipwrecked, medical personnel and services, prisoners of war, civilians, civilian and cultural objects, the natural environment, and works containing dangerous forces. They establish that no one may renounce, or be forced to renounce, protection under humanitarian law. Finally, they provide that protected persons must at all times have resort to a protecting power (a neutral State safeguarding their interests), the International Committee of the Red Cross, or any other impartial humanitarian organization.

#### 4. Principles, minimum rules, and declarations

##### *Code of Conduct for Law Enforcement Officials*

139. In December 1979, the General Assembly adopted the Code of Conduct for Law Enforcement Officials. The Code is composed of eight fundamental articles, setting forth the specific responsibilities of law enforcement officials with regard to service to the community; protection of human rights; use of force; treatment of confidential information; prohibition of torture and cruel, inhuman or degrading treatment or punishment; protection of the health of detainees; corruption; and respect for the law and the Code itself. Each article is followed by a detailed commentary, clarifying the normative implications of the text. The Code is, in essence, the basic yardstick by which the conduct of police—civilian or military, uniformed or not—is to be gauged by the international community.

##### *Basic Principles on the Use of Force and Firearms*

140. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990. The Principles take into account the often dangerous nature of law enforcement, noting that a threat to the life or safety of law enforcement officials is a threat to the stability of society as a whole. At the same time, strict standards are set forth for the use of force and firearms by police, including with regard to when they may be used, how they may be used, what must be done after their use, and accountability for their misuse. The Principles emphasize that force may be used only when strictly necessary, and only to the extent required for the performance of legitimate law enforcement functions. The Principles are the product of a careful balancing between the duty of police to maintain public order and safety, and their duty to protect the right to life, liberty and security of the person. These provisions are examined in depth in chapter XIV on Use of Force and Firearms.

##### *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*

##### *Standard Minimum Rules for the Treatment of Prisoners*

##### *Basic Principles for the Treatment of Prisoners*

141. These three instruments provide a comprehensive regime for the protection of the rights of persons who are detained or imprisoned. The Body of Principles was adopted by the General Assembly in December 1988. The Standard Minimum Rules were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and later approved by the Economic and Social Council. The Basic Principles, adopted by the General Assembly in December 1990, complete the regime, with 11 point-form standards.

142. The content of these instruments is examined in some detail in chapter XIII on Detention. In sum, they provide that all prisoners and detainees must be treated with respect for their human dignity, with regard to the conditions of their detention; treatment and discipline; contact with the outside world; health; classification and separation; complaints; records; work and recreation; and religion and culture.

##### *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*

143. In its legislative activities, the United Nations has also addressed itself to the important issue of victims' rights. To this end, the General Assembly, in November 1985, adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The Declaration includes the requirements that States ensure that victims have access to justice; that they be treated by the legal system with compassion; that restitution be made where possible; that compensation be provided when restitution is not possible; and that victims receive medical, material, psychological and social aid.

*Safeguards guaranteeing protection of the rights of those facing the death penalty*

144. The safeguards guaranteeing protection of the rights of those facing the death penalty were approved by the Economic and Social Council in May 1984. They limit the types of crimes for which capital punishment may be imposed to the most serious, and prohibit the execution of persons who were minors at the time of commission of the crime, as well as of pregnant women, new mothers or the insane. In addition, the safeguards set forth certain procedural guarantees, and require that, where capital punishment does occur, it be carried out in a manner which inflicts the minimum possible suffering.

*Standard Minimum Rules for Non-custodial Measures*

145. In December 1990, the General Assembly adopted the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), in order to encourage the provision by States of a wide range of non-custodial measures. Such measures increase community involvement in the management of criminal justice and serve the cause of justice, while reducing the use of imprisonment, which in every case should be seen as an extreme penalty. Under the Rules, these measures are to take into consideration the human rights and rehabilitation of the offender, the protection of society, and the interests of victims. The Rules provide guidance for the use of furlough, work release, parole, remission, pardon, community service, economic sanctions, etc.

*United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)*

*United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*

*United Nations Rules for the Protection of Juveniles Deprived of their Liberty*

146. These three instruments, together with the Convention on the Rights of the Child, form the basic standards relevant to the administration of juvenile justice. Like the Convention, these instruments (adopted by the General Assembly in December 1990, November 1985 and December 1990, respectively) require that national legal systems take into account the special status and vulnerability of juveniles who have come into conflict with the law. They address both prevention and treatment, on the basis of the central principle that the best interests of the child are to guide all action in the field of juvenile justice. Their content is examined in detail in chapter XVI on Police and the Protection of Juveniles.

*Declaration on Enforced Disappearance*

147. In December 1992, the General Assembly adopted the Declaration on the Protection of All Persons from Enforced Disappearance. The Declaration expresses the international community's concern with this atrocious global phenomenon. The text comprises 21 articles designed to prevent, as crimes against humanity, acts whereby persons are taken into custody with no trace of their fate left behind. It requires the adoption of effective legislative, administrative, judicial and other measures to prevent and terminate such acts, and specifically provides for a number of such measures. These measures include attention to procedural guarantees, accountability, punishment and redress.

***Law Enforcement Alert***

**ENFORCED OR INVOLUNTARY DISAPPEARANCE**

Arrest, detention, abduction or other deprivation of liberty, by the Government or its agents, or with its complicity, tolerance or acquiescence, where the fate or whereabouts of the victim are not disclosed, or custody is not confirmed.

*Principles on Extralegal, Arbitrary and Summary Executions*

148. The Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions were recommended to States by the Economic and Social Council in May 1989. The Principles provide guidance to law enforcement and other national authorities on preventing and investigating such crimes, and on legal proceedings to bring perpetrators to justice. They

emphasize the importance of ensuring strict control, including a clear chain of command, over law enforcement agencies, as well as careful record-keeping, inspections, and notifications to families and legal representatives with regard to detention. They also require the protection of witnesses and family members of victims, and the careful collection and consideration of relevant evidence. The Principles give crucial detail to the provisions of human rights treaties guaranteeing the right to life. Their content is examined in more detail in chapter XXI on Investigating Police Violations.



## ***Law Enforcement Alert***

### **EXTRALEGAL, ARBITRARY OR SUMMARY EXECUTIONS**

Deprivation of life without full judicial process, and with the involvement, complicity, tolerance or acquiescence of the Government or its agents. This includes death through the use of excessive force by police or security forces.

### **MASSACRES**

The extralegal, arbitrary or summary execution of three or more persons.

#### **C. United Nations human rights machinery**

149. The United Nations has established a complex network of mechanisms for the promulgation of human rights standards, and for their implementation and monitoring.

150. Human rights standards relevant to law enforcement have been promulgated by a range of United Nations bodies, including the General Assembly, the Economic and Social Council, the Commission on Human Rights and the periodic United Nations Congresses on the Prevention of Crime and the Treatment of Offenders. The standard-setting process includes the full participation of all member States, representing all the world's cultural, legal, religious and philosophical traditions. It benefits also from the advice of non-governmental organizations, professional associations and law enforcement experts.

151. The above-mentioned bodies receive substantive assistance in these activities from two units of the United Nations Secretariat. The High Commissioner/Centre for Human Rights is the focal point within the Organization for all human rights issues. The Crime Prevention and Criminal Justice Branch serves as the focal point for criminal-justice matters.

152. Implementation and monitoring mechanisms may be divided into two basic types, according to the source of their respective mandates:

(a) *Conventional (treaty-based) mechanisms*: These include bodies set up under the terms of international human rights treaties to monitor the implementation of those treaties. Six such bodies are listed below.

(b) *Extraconventional (Charter-based) mechanisms*: These are the various special rapporteurs and working groups established by the Commission on Human Rights to monitor the human rights situations in particular countries or, alternatively, certain human rights phenomena, such as torture, arbitrary detention and disappearances. They are not based on a particular human rights treaty, but rather on the authority of the Economic and Social Council, and its functional commissions, under the

Charter of the United Nations. Several such mechanisms are listed below.

#### *1. Conventional (treaty-based) mechanisms*

153. A number of bodies within the United Nations system were set up under various international conventions and covenants for the purpose of monitoring the compliance of States parties with the provisions of those instruments. Such so-called treaty bodies have been established under, *inter alia*, the two International Covenants, the Convention against Torture, the Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of Discrimination against Women, and the Convention on the Rights of the Child.

154. In the course of their work, these committees provide valuable guidance for proper law enforcement, not only for the States under review, but for all States seeking to implement the rights set out in the instruments in question. Treaty provisions are often general in character, but must be implemented by specific, detailed provisions in domestic law. For example, the rights to life, liberty and security of the person cannot be implemented by mere declaratory legal provisions. Rather, detailed criminal, civil and administrative laws and procedures must exist to provide remedies for victims and sanctions for perpetrators, together with crucial procedural guarantees. Law enforcement officials and agencies play a central role in the implementation of international standards, through strict adherence to humane, legal and ethical law enforcement rules and practices.

155. The work of the treaty bodies—especially, for present purposes, the Human Rights Committee—in elaborating well-developed bodies of jurisprudence in the course of deciding complaints, reviewing country reports and issuing general comments and guidelines serves to inform domestic legislative processes and law enforcement agencies in their efforts to interpret and implement the rights guaranteed by the international instruments.

156. The six principal human rights treaties, and the bodies set up to monitor their implementation, are the following:

<i>Human rights treaty</i>	<i>Corresponding treaty body</i>
International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights (CESCR)
International Covenant on Civil and Political Rights	Human Rights Committee (HRC)
International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination (CERD)
Convention on the Elimination of All Forms of Discrimination against Women	Committee on the Elimination of Discrimination against Women (CEDAW)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee against Torture (CAT)
Convention on the Rights of the Child	Committee on the Rights of the Child (CRC)

## 2. *Extraconventional (Charter-based) mechanisms*

157. A number of procedures have been established under the authority granted by the Charter of the United Nations to the Economic and Social Council and, through it, to its subsidiary Commission on Human Rights and Sub-Commission on Prevention of Discrimination and Protection of Minorities. These procedures may be either confidential or public. The so-called “1503 procedure”, for example, is a confidential procedure, whereas the various thematic or country-oriented special rapporteurs and working groups of the Commission on Human Rights operate publicly.

### (a) *1503 procedure*

158. Pursuant to Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970, the Sub-Commission on Prevention of Discrimination and Protection of Minorities (a United Nations body of human rights experts), through its Working Group on Communications, screens thousands of communications per year received from individuals and groups alleging the existence of systematic violations of human rights. Where the Working Group identifies reasonable evidence of a consistent pattern of gross violations of human rights, the matter is referred for examination by the full Sub-Commission. The Sub-Commission then decides whether to refer the situation to the Commission on Human Rights, on the grounds that it reveals a consistent pattern of human rights violations. The Commission then determines whether to arrange for a thorough study of the situation, including a report and recommendations to the Economic and Social Council.

159. All the initial steps of the process are confidential, although Governments under consideration are offered an opportunity to make comments. The procedure becomes public, however, once a situation is referred to the Economic and Social Council. In this way, a pattern of abuses in a particular country, if not resolved in the early stages of the process, can be brought to the

attention of the world community through the Economic and Social Council—one of the principal bodies of the United Nations.

### (b) *Selected special rapporteurs and working groups*

#### *Special Rapporteur on extrajudicial, summary or arbitrary executions*

160. This mechanism was established in 1982 in order to allow the Commission on Human Rights to monitor the situation of arbitrary executions around the world and to respond effectively to information that comes before it, in particular when such an execution is imminent or threatened. The Special Rapporteur, assisted by the High Commissioner/Centre for Human Rights, receives and evaluates relevant information on such cases, and may communicate with the Governments concerned to avert imminent executions, or to request an official investigation and appropriate penal measures where an arbitrary execution has already occurred.

#### *Special Rapporteur on torture*

161. In 1985, the Commission on Human Rights established a Special Rapporteur on torture, to follow the question of torture and other cruel, inhuman or degrading treatment or punishment by communicating with Governments, visiting countries for consultations on preventing the crimes in question, and receiving requests for urgent action. The Special Rapporteur follows up these requests with the Governments concerned in order to secure protection for the individuals in question. It should be noted that the mandate of the Special Rapporteur does not duplicate that of the Committee against Torture, set up under the Convention against Torture, in that the Convention applies only to States parties to that instrument, whereas the mandate of the Special Rapporteur is global.

162. In 1980, the Commission on Human Rights established the Working Group on Enforced or Involuntary Disappearances, to follow the phenomenon, existing in a number of countries, whereby persons are “disappeared”, i.e. forcibly abducted by Governments or groups who leave behind no trace of the fate of the individual abducted. The Working Group has dealt with some 20,000 individual cases in more than 40 countries, using urgent action procedures to prevent cases from occurring, to clarify the fate of persons suspected of having been “disappeared”, processing complaints, and channelling information between Governments and the families concerned.

163. One final mechanism to be mentioned under this heading is the Working Group on Arbitrary Detention, which was established by the Commission on Human Rights in 1991 to investigate cases and report on its findings to the Commission. The Working Group uses urgent action procedures to intervene in cases where it is alleged that a person has been detained arbitrarily, and that person’s life or health is in danger due to that detention. The Working Group makes direct recommendations to the Governments concerned, and brings confirmed cases to the attention of the Commission.

***Law Enforcement Alert***

**ARBITRARY ARREST AND DETENTION**

Deprivation of liberty, without lawful reason or due process, by an act of the Government or its agents, or with its complicity, tolerance or acquiescence.

**D. Sources, systems and standards  
at the regional level**

164. This manual, intended to be a training tool of universal applicability, is based on the global standards produced by the United Nations. Nevertheless, trainers and students should also be aware of regional human rights instruments and arrangements in Europe, the Americas and Africa (no such arrangements exist yet for the Asian region).

1. *The European system under the Council of Europe*

165. The main human rights instrument in the European region is the Convention for the Protection of Human Rights and Fundamental Freedoms (generally referred to as the European Convention on Human Rights), which entered into force in September 1953. The organs of the European system relevant to the European Convention are the European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers of the Council of Europe.

166. The Commission is a quasi-judicial body which receives complaints (applications), attempts to achieve settlements between the parties, and issues non-binding opinions on whether or not a violation of the Convention has occurred.

167. The Court is a judicial body which gives some advisory opinions, and decides on cases which have already been heard by the Commission, at the request of one of the States concerned or the Commission itself, issuing binding decisions. Individuals do not appear as parties before the Court.

168. The Committee of Ministers is a political body composed of Governments. It decides on cases which have gone through the Commission, but which have not been referred to the Court. It supervises the implementation of judgements of the Court, issues resolutions requiring States to take necessary action in that regard, and can suspend or expel a State from the Council of Europe.

2. *The inter-American system under the  
Organization of American States*

169. Human rights at the regional level for the Americas are governed by the American Convention on Human Rights, which entered into force in July 1978. In the inter-American system, the Inter-American Commission on Human Rights receives complaints of violations of the Convention, inquires into the matter, decides the case, and makes specific non-binding recommendations to the Government concerned. Petitions against a State party to the Convention may ultimately be brought before the Inter-American Court of Human Rights for a binding decision.

3. *The African system under the Organization  
of African Unity*

170. The African Charter on Human and Peoples’ Rights was adopted by the Organization of African Unity in 1981 and entered into force in October 1986. Under the Charter, the African Commission on Human and Peoples’ Rights was established to promote and protect human rights in Africa. The Commission also interprets provisions of the Charter, and is empowered to receive complaints of human rights violations from States,

individuals and groups. On the basis of such complaints, the Commission may seek an amicable solution, initiate studies, and make recommendations.

### **E. Conclusions**

171. This chapter is intended to give only a brief overview of existing international sources, systems and standards for human rights in law enforcement. While trainers should familiarize themselves as much as possible with the subject-matter provided, it would not be advisable to attempt to transmit all of the information contained in this chapter in a single session. Rather, the chapter should be used as a source for the information necessary to give trainees a basic understanding of the international system relevant to their work in an introductory session, and as reference material for answering

questions about the international system throughout the entire course.

172. The basic message to be derived from this chapter is this: human rights are not a matter under the exclusive jurisdiction of the State or its agents. Rather, they are a legitimate concern of the international community, which has been engaged for half a century in the setting of standards, the establishment of implementation mechanisms, and the monitoring of compliance with the standards. Law enforcement officers and agencies that carry out their vital functions in a manner which respects and protects human rights bring honour not just to themselves, but to the Government which employs them and the nation which they serve. Those that violate human rights will, ultimately, draw the spotlight of international scrutiny, and the condemnation of the international community. The challenge for the true law enforcement professional, therefore, is at all times to enforce and uphold the law of human rights.

### **F. Basic chapter review**

#### **REVIEW ONE**

##### ***Selected principal United Nations bodies relevant to law enforcement***

General Assembly

Economic and Social Council

Commission on Human Rights

Sub-Commission on Prevention of Discrimination and Protection of Minorities

Periodic Congresses on the Prevention of Crime and the Treatment of Offenders

#### **REVIEW TWO**

##### ***Selected international human rights instruments relevant to law enforcement***

Universal Declaration of Human Rights

International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

Code of Conduct for Law Enforcement Officials

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Body of Principles for the Protection of All Persons  
under Any Form of Detention or Imprisonment

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Declaration on the Protection of All Persons from Enforced Disappearance

Principles on the Effective Prevention and Investigation of  
Extralegal, Arbitrary and Summary Executions

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

#### **REVIEW THREE**

##### ***Selected international human rights mechanisms relevant to law enforcement***

United Nations human rights treaty bodies

Confidential 1503 procedure

Special Rapporteur on extrajudicial, summary or arbitrary executions

Special Rapporteur on torture

Working Group on Enforced or Involuntary Disappearances

Working Group on Arbitrary Detention

### G. Hypothetical exercise

You have been designated as a police adviser to your country's official delegation to a United Nations human rights conference. The conference is to develop a new international declaration on the protection of human rights, for submission to the Economic and Social Council. As police adviser, and on the basis of your professional experience:

(a) Is there any particularly vulnerable group which you believe requires better protection under the international human rights system?

(b) Are there any particular law enforcement practices which you believe should be the subject of more stringent international control?

### H. Topics for discussion

1. Why should law enforcement officials concern themselves with *international* human rights standards?

2. To what extent does your domestic law incorporate international standards? Are there areas where the domestic law is stronger in its protection of human rights than the international standards? Are there areas where it is less strong?

3. Can police violations of human rights make the work of law enforcement more difficult? How?

4. Why is the national police role so important to the protection of human rights?

## CHAPTER VIII

# ETHICAL AND LEGAL POLICE CONDUCT

### *Chapter Objectives*

*To familiarize trainers and, through them, course participants with the basic ethical principles which are derived from the relevant international instruments, and applicable to their professional duties.*

### *Essential Principles*

*Human rights derive from the inherent dignity of the human person.*

*Law enforcement officials shall at all times respect and obey the law.*

*Law enforcement officials shall at all times fulfil the duty imposed on 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.*

*Law enforcement officials shall not commit any act of corruption. They shall rigorously oppose and combat all such acts.*

*Law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.*

*Law enforcement officials shall report violations of laws, codes and sets of principles which promote and protect human rights.*

*All police action shall respect the principles of legality, necessity, non-discrimination, proportionality and humanity.*

#### **A. International standards on ethical and legal police conduct—Information for presentations**

##### *1. Introduction*

173. The international human rights standards which concern law enforcement provide a sound basis for ethical and legal policing. However, some standards are particularly relevant to the ethics of policing, and some raise ethical issues for law enforcement agencies

and officials. This chapter focuses on those specifically relevant standards.

174. Human rights are founded on the notion of respect for the inherent dignity of the human person. These rights are inalienable: they cannot be taken away from any person. Furthermore, human rights are protected by international law and by the domestic laws of States.

175. It is clearly incumbent on police, as law enforcers, to obey the law—including laws enacted for the

promotion and protection of human rights. In doing so, they will be respecting the underlying principle on which that law is based—the principle of respect for human dignity. They will also be acknowledging the inalienability of the human rights of all persons.

176. The bases of ethical and legal police conduct, therefore, are respect for the law, respect for human dignity and, by those means, respect for human rights.

## 2. *General aspects of ethical and legal police conduct*

### (a) *Fundamental principles*

177. Law enforcement and the maintenance of public order must be compatible with:

- respect for, and obedience to, the law;
- respect for the dignity of the human person;
- respect for, and protection of, human rights.

It is these three fundamental principles on which ethical and legal policing is based, and from which all the following specific requirements and provisions pertaining to ethical and legal policing derive.

### (b) *Specific provisions on ethical and legal police conduct*

178. The above principles are expressed in articles 2 and 8 of the Code of Conduct for Law Enforcement Officials. In adopting the Code, in its resolution 34/169 of 17 December 1979, the General Assembly acknowledged the important task which law enforcement officials performed diligently and with dignity, in compliance with the principles of human rights; and urged that the Code's standards become part of the creed of every law enforcement official through education, training and monitoring.

179. The Code of Conduct consists of eight articles, each with an explanatory commentary, and may be summarized as follows:

*Article 1* requires law enforcement officials to fulfil the duty imposed on them by law. The term “law enforcement officials” is defined in the commentary as including all officials who exercise police powers, especially powers of arrest or detention.

*Article 2* requires law enforcement officials to respect and protect human dignity and maintain and uphold human rights. The commentary lists the international human rights instruments of relevance to law enforcement.

*Article 3* requires law enforcement officials to use force only when strictly necessary and to the extent required for the performance of their duty. The commentary refers to the principle of proportionality in the use of force and asserts that the use of firearms is considered an extreme measure.

*Article 4* requires law enforcement officials to keep confidential matters of a confidential nature which come

into their possession, unless the performance of duty or the needs of justice strictly require otherwise.

*Article 5* asserts the absolute prohibition of torture or other ill-treatment. It also states that no law enforcement official may invoke superior orders or exceptional circumstances such as war or a threat to national security as a justification of torture.

*Article 6* requires law enforcement officials to ensure full protection of the health of persons in custody.

*Article 7* prohibits law enforcement officials from committing any act of corruption.

*Article 8* requires law enforcement officials to respect the law and the Code of Conduct, and to prevent and rigorously oppose any violations of them. They are also required to report violations of the Code.

180. “Superior orders” and “exceptional circumstances” as referred to in article 5 of the Code, and the reporting of violations as referred to in article 8, are clearly important in relation to the ethics of policing and they will be considered later in more detail as they arise in other instruments.

181. The Code of Conduct may be seen as an ethical code which provides guidance on meeting legal obligations to protect and promote human rights. It also reasserts some of those obligations. The Code is an ideal basis for the development of national codes of ethics for police officials.

#### (i) *Police ethics and the use of force*

182. The use of force by police is considered in a separate chapter of this manual. However, it is important at this stage to refer to principle 1 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which includes a requirement that “Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review”.

183. The requirement of a constant review of ethical issues means that systems need to be established for that purpose, and it has implications for training programmes on which both the theoretical and the practical aspects of the use of force are addressed.

#### (ii) *Ethical and legal police conduct—individual responsibility*

184. The individual responsibility of police officials is addressed in a number of instruments, as follows:

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:** Article 2, paragraph 3, states: “An order from a superior officer or a public authority may not be invoked as a justification of torture.” This provision applies to any public official or person acting in an official capacity. It therefore applies to police officials. However, as already indicated, the Code of Conduct for Law Enforcement Officials includes a similar provision.

**Code of Conduct for Law Enforcement Officials:** Article 5, which repeats the prohibition of torture, states that no law enforcement official may invoke superior orders as a justification of torture.

**Basic Principles on the Use of Force and Firearms by Law Enforcement Officials:** These include three principles referring to individual responsibility, as follows:

*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 officials 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 police officials who, in compliance with the Code of Conduct for Law Enforcement Officials or the 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 police 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. The same provision stipulates that responsibility also rests on the superior officials who give the unlawful orders.

**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 authorizing 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 emphasize 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.

(iii) *Ethical and legal police conduct—duty to report violations*

185. The duty of police officials to report violations is addressed in the following instruments:

**Code of Conduct for Law Enforcement Officials:** As already indicated, article 8 addresses the question of reporting violations. The actual requirement is that police officials who believe that a violation of the Code of Conduct has occurred or is about to occur shall report the matter to superior authorities and, where necessary, to other appropriate authorities or

organs vested with reviewing or remedial power. The commentary to the article acknowledges the need to maintain the internal discipline of an agency. The requirement on law enforcement officials is that they are to make such reports outside the chain of command only when no other remedies are available or effective.

**Basic Principles on the Use of Force and Firearms by Law Enforcement Officials:** The requirement to report violations of the Principles is not explicitly stated but, as already indicated, principle 25 prohibits criminal or disciplinary sanctions from being imposed on officials making such reports.

**Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment:** These include one principle, containing a number of provisions, which requires violations to be reported. Principle 7, paragraph 2, states that officials who believe a violation of the Body of Principles has occurred or is about to occur shall report the matter to superior authorities and, where necessary, to other appropriate authorities vested with reviewing or remedial powers.

(iv) *Ethical and legal police conduct—exceptional circumstances and public emergencies*

186. The following instruments address the question of exceptional circumstances and public emergencies:

**Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:** Article 3 states that exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other ill-treatment.

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:** Article 2, paragraph 2, contains a provision similar to that of the Declaration.

**Code of Conduct for Law Enforcement Officials:** As already indicated, article 5 specifically prohibits police officials from invoking exceptional circumstances or public emergencies as a justification of torture or ill-treatment.

**Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions:** Under principle 1, which requires Governments to prohibit by law all such executions, exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of extralegal, arbitrary or summary executions.

### 3. Concluding remarks

187. The other relevant parts of the human rights instruments referred to above will be discussed in subsequent chapters. Clearly, compliance by police with the provisions of these instruments will ensure ethical and legal policing in the areas to which they relate.



188. Apart from the provisions of the Code of Conduct for Law Enforcement Officials, which have general relevance for policing ethics, the provisions of the other instruments cited in this chapter have been emphasized because they deal with matters of specific relevance to ethical and legal policing.

189. For example, the question of **individual responsibility**—of superior officials who may issue unlawful orders and of other officials who may be given such orders—is very important in a disciplined, hierarchical organization. The provisions of the instruments discussed in this chapter are quite clear about where individual responsibility lies—on the individual who issues unlawful orders, and on the individual who commits an unlawful act, notwithstanding that he or she may have been ordered by a superior to commit that act.

190. As for the provisions requiring police to report human rights violations, the instruments not only establish this **requirement to report** as an international standard, but they also indicate when a law enforcement official may and should go outside the law enforcement agency to do so.

191. The third matter of specific relevance raised, i.e. the **prohibition on exceptional circumstances and**

**emergencies** being invoked to justify illegal and unethical policing, is most significant. When exceptional circumstances arise, and during public emergencies, police may come under considerable pressure to be effective and to “get results”. This pressure may derive from political sources, from public opinion, or from within the law enforcement agency itself. Such situations raise both ethical and legal dilemmas for individual police officials, and international standards, which are very clear on the matter, provide an invaluable reference point for both law enforcement officials and law enforcement agencies.

192. In essence, the requirement of ethical and legal policing means that individual police officials and police organizations must strive for effectiveness while, at the same time, respecting the law, human dignity and human rights. Securing effective policing is, in part, a matter of professional and technical competence; but, whatever that level of competence, maximum policing effectiveness will not be achieved without the active support and cooperation of the general public. Such support and cooperation are more likely to be gained and retained when policing is lawful and humane. An arbitrary, violent and lawless police invokes fear and contempt. Such a police receives—and deserves—no public support.

## **B. International standards on ethical and legal police conduct—Practical application**

### *1. Practical steps for implementing international standards*

#### ***All Police Officials***

*Enrol in in-service training programmes to understand better your legal powers, and their limitations.*

*Remember that “obedience to superior orders” may not be invoked to justify serious human rights violations such as unlawful killings and torture.*

*Familiarize yourself with both internal and external complaints and reporting procedures.*

*Report breaches of the law and human rights violations.*

#### ***Command and Supervisory Officials***

*Provide in-service training to ensure that all police officials understand fully their legal powers and the legal rights of citizens.*

*By example and good command and management practice, ensure that all police officials maintain respect for the dignity of all persons.*

*Ensure that all police policy and strategy, and orders to subordinates, take into account the requirement to protect and promote human rights.*

*Ensure that all reports and complaints of human rights violations are fully and properly investigated.*

*Develop and enforce standing orders incorporating international human rights standards.*

*Develop an ethical code of conduct for your police service, incorporating the international standards addressed in this chapter.*

## 2. Hypothetical exercises

### Exercise 1

One problem confronting educators and trainers of police, especially educators and trainers of newly appointed police, is that attitudes and skills developed in training programmes are sometimes undermined by attitudes and behaviour actually prevailing within a police organization. In other words, the culture of the organization can be hostile to some attitudes and skills thought to be desirable in police officials. This is especially true in relation to training police in human rights standards.

What can be done to overcome this problem by:

- (a) educators and trainers of police?
- (b) commanders and supervisors of police?

Draw up a short statement setting out the advice you would give to a newly appointed police official who arrives in your area of command or supervision on how he or she can remain an effective police official, while at the same time respecting human rights.

### Exercise 2

Imagine that you are a member of a committee given the task of drawing up a code of ethics for the police of your country. Your brief is to take into account

- (a) the principle of respect for the inherent dignity of the human person;
- (b) the United Nations Code of Conduct for Law Enforcement Officials;
- (c) prevailing circumstances in your country, including any concerns about current crime trends and about policing activity,

and to draw up a code of ethics consisting of a number of articles, each with an explanatory commentary, for issue to all police officials individually. The code will also be made public. Draw up a document which fulfils the terms of this brief.

### Exercise 3

Principle 1 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials requires Governments and law enforcement agencies to “keep the ethical issues associated with the use of force and firearms constantly under review”.

1. What procedures and practices can be adopted to keep the ethical issues associated with the use of force and firearms constantly under review?
2. Consider and describe ways in which ethical issues associated with the use of force and firearms by police may be dealt with during the training of police officials.

### Exercise 4

Principle 7, paragraph 2, of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states:

Officials who have reason to believe that a violation of this Body of Principles 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 powers.

1. What difficulties within a police organization could face a police official who made such a report?
2. How could any such difficulties be overcome?
3. Would a police official who believed a violation of the Body of Principles had occurred ever be justified in reporting the matter outside the police organization—to the press, for example?
4. How would you advise police recruits undergoing training to respond to any mistreatment of persons in detention by colleagues which they may witness?

### 3. Topics for discussion

1. What advantages are there in asserting that human rights are inalienable, and inherent in every person, and not rights granted by States?
2. Why should some police officials feel that there is a degree of incompatibility between enforcing the law and protecting human rights?
3. What can be done to overcome the view among some police officials that respecting human rights may be incompatible with law enforcement?
4. What uses do internationally devised codes, such as the Code of Conduct for Law Enforcement Officials, serve for individual police officials and law enforcement agencies?
5. What supervisory and managerial procedures can be adopted to ensure that all police officials respect the requirement of confidentiality laid down in article 4 of the Code of Conduct for Law Enforcement Officials?
6. Article 7 of the Code of Conduct for Law Enforcement Officials prohibits police officials from committing any act of corruption. How would you define an act of corruption? List three conditions which you consider the most important for preventing corruption by police.
7. The application of force by police against a person is both an ethical and a legal issue. What level of force does a police official need to exert for such issues to arise? In other words, is even the most minimum application of force a question of ethics and legality, or do such issues arise only if injuries are caused?
8. Given that police are bound to comply with the provisions of domestic law, which defines police powers and protects human rights, what purpose do ethical codes adopted in individual countries serve?
9. What qualities would you look for in an applicant to a police agency bearing in mind the requirement that he or she should be capable of acting effectively and ethically as a police official?
10. Are there any advantages in devising ethical codes for different categories of police official—for criminal investigators, for example? How would such a code differ from the basic provisions of the United Nations Code of Conduct for Law Enforcement Officials?

## CHAPTER IX

### POLICING IN DEMOCRACIES

#### *Chapter Objectives*

*To sensitize trainers and course participants to standards for and approaches to policing which are consistent with the principles of a democratic order, as opposed to authoritarian policing models.*

#### *Essential Principles*

*In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law.*

*Limitations on the exercise of rights and freedoms shall be only those necessary to secure recognition and respect for the rights of others, and to meet the just requirements of morality, public order and the general welfare in a democratic society.*

*Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*

*The will of the people is the basis of the authority of government.*

*The will of the people shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage.*

*Every law enforcement agency shall be representative of and responsive and accountable to the community as a whole.*

*Everyone has the rights to freedom of opinion, expression, assembly and association.*

*All police officials are part of, and have a duty to serve, the community.*

#### **A. International standards on human rights and policing in democracies—Information for presentations**

##### *1. Introduction*

193. The term “democracy” has many meanings, and there are a variety of forms of democratic govern-

ment. As this manual is to be used on a global scale, and as it concerns human rights and law enforcement, the term will be understood in a very broad sense and in the ways in which it is expressed in various human rights instruments.

194. For example, most of the Essential Principles set out above are drawn from the Universal Declaration

of Human Rights, article 21 of which refers to the right of everyone:

- to take part in the government of his country, directly or through freely chosen representatives;
- to have equal access to public service.

Article 21 further states that:

- the will of the people is to be the basis of the authority of government;
- this will is to be expressed in periodic and genuine elections;
- elections shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

195. The International Covenant on Civil and Political Rights (art. 25) expresses the same rights:

- to take part directly or indirectly in public affairs;
- to have equal access to public service;
- to vote at genuine, periodic elections.

TRAINERS' NOTE: The following regional human rights treaties contain similar provisions:

African Charter on Human and Peoples' Rights—article 13;

American Convention on Human Rights—article 23;

Protocol No. 1 to the European Convention on Human Rights—article 3.

Reference should be made to these texts where appropriate.

196. Democracy is linked with two other ideals significant to law enforcement:

- the rule of law;
- the promotion and protection of human rights.

In fact, the three ideals are interdependent, for human rights are best protected by effective democratic processes and the rule of law; and human rights texts enshrine rights and freedoms which are essential to both democratic processes and the rule of law.

197. A significant aspect of policing in democracies which must be referred to in these introductory remarks is "democratic policing". This is an important concept, for policing is one of the means by which States are governed. As democratic processes and forms of government are basic human rights, the notion of democratic policing is grounded on those rights. One requirement of democratic policing is accountability of the police to the public they serve.

198. Rights essential to democracy, and the role of police in relation to those rights, will be considered later, as will democratic policing and its requirements.

## 2. *General aspects of policing in democracies*

### (a) *Fundamental principles*

199. The fundamental democratic principles as set out in human rights texts are the principles of:

- participatory and representative government (whereby people have the right, directly or indirectly, to take part in the government of their country);
- equal access to public service;
- universal and equal suffrage based on free and periodic elections;
- respect for fundamental freedoms.

Specific provisions of human rights texts are designed to give effect to the above principles, and these are considered next.

### (b) *Specific provisions on policing in democracies*

200. The rights which are fundamental to democratic political processes and to the principles set out above (which are, in themselves, enshrined in human rights instruments) are the following:

#### (i) *The right to freedom of thought, conscience and religion*

201. This right is protected under the Universal Declaration of Human Rights (art. 18); the International Covenant on Civil and Political Rights (art. 18); the African Charter on Human and Peoples' Rights (art. 8); the American Convention on Human Rights (art. 12); and the European Convention on Human Rights (art. 9).

202. Freedom of thought, and freedom to hold and practice beliefs, are clearly important for people, whether as individuals or in groups, to enable them to consider and develop ideas and ideals. This, in turn, is an essential element of democratic political processes.

#### (ii) *The right to freedom of opinion and expression*

203. This right is protected under the Universal Declaration of Human Rights (art. 19); the International Covenant on Civil and Political Rights (art. 19); the African Charter on Human and Peoples' Rights (art. 9); the American Convention on Human Rights (art. 13); and the European Convention on Human Rights (art. 10).

204. Freedom of opinion is essential for political processes in the same way that freedom of thought is. The ability to communicate thoughts and opinions is a further necessary step in the exercise of democracy.

(iii) *The rights to freedom of peaceful assembly and association*

205. These rights are protected under the Universal Declaration of Human Rights (art. 20); the International Covenant on Civil and Political Rights (arts. 21 and 22); the African Charter on Human and Peoples' Rights (arts. 10 and 11); the American Convention on Human Rights (arts. 15 and 16); and the European Convention on Human Rights (art. 11).

206. Politics can be conducted only in association with others, and when there are forums for the communication of ideas, proposals and policies. For these reasons, the rights to freedom of peaceful assembly and association are of equal importance to the rights set out under the previous headings.

TRAINERS' NOTE: 1. Reference is made to the right to freedom of peaceful assembly in principle 12 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. This principle, and the two succeeding principles concerning the use of force against unlawful assemblies and violent assemblies, respectively, are reproduced in chapter XV, section A.Z (e), below, which deals with civil disorder (see para. 525).

2. In the introduction to this chapter, the three interdependent ideals of democracy, the rule of law, and the protection of human rights were identified. As the rights essential to democracy have been discussed, it is appropriate to refer briefly to rights essential to the rule of law. Examples of these are the right to be presumed innocent and the right to a fair trial when charged with a penal offence. These rights are protected under the Universal Declaration of Human Rights (arts. 10 and 11); the International Covenant on Civil and Political Rights (art. 14); the African Charter on Human and Peoples' Rights (art. 7); the American Convention on Human Rights (art. 8); and the European Convention on Human Rights (art. 6). Other examples can be found and, indeed, it could be argued that all rights classified as "civil rights" are supportive of the rule of law.

(c) *Political rights and the role of the police*

207. The political rights described above, which are international standards legally binding on States parties to the various treaties, have implications for policing policy and practice. They require a number of active responses from police, and these are set out in section B.1, "Practical steps for implementing international standards", below. However, it would be useful at this stage to consider the broad role of police in relation to political rights.

208. In many ways, police can be seen as facilitators of political rights, enabling people to enjoy them. This means:

—securing the correct balance between public order and the exercise, by individuals and groups, of the rights;

—maintaining impartiality, and not discriminating between individuals and groups seeking to exercise the rights.

209. More broadly, police are to maintain social order (social peace and tranquillity) so that political processes can be conducted constitutionally and lawfully, and so that political rights necessary for those processes can be enjoyed. In fact, article 28 of the Universal Declaration of Human Rights states:

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

The maintenance of social order is one of the prime police functions.

(d) *Specific provisions on policing and democratic elections*

210. Police and security forces play a dual role in an election setting. Effective administration of justice during an election period requires a balance between, on the one hand, the need for electoral security and maintenance of order, and on the other hand, the need for non-interference with rights and for an environment free of intimidation. The Code of Conduct for Law Enforcement Officials imposes a duty of service to the community on all officers of the law. This notion necessarily requires that security forces strive to ensure that all citizens benefit from elections that are administratively sound and free of any disruptive forces seeking to undermine the free expression of popular will.

211. The Code of Conduct also provides that "law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons" (art. 2), meaning not only the right to take part in elections, but all human rights. Police agencies that do not respect fundamental human rights have the potential to create an intimidating atmosphere which will inhibit the electorate and thereby subvert the genuineness of the election.

212. In addition, the Code of Conduct requires law enforcement officials to "rigorously oppose and combat" any act of corruption (art. 7). This clearly includes a duty to prevent attempts at election fraud, personation, bribery, intimidation and any other acts that may affect the authenticity of election results. The Code also provides that law enforcement officials "shall not commit any act of corruption" (art. 7). This is of extreme importance, given the tendency to associate police and security forces with one or the other side in election processes in some countries. Finally, in order to ensure that security forces remain impartial, the role of police in providing security for elections is often made subordinate to that of polling officers during electoral periods.

213. In the case of national police services, any police presence at places of registration or polling should be discreet, professional and disciplined. In general, this requires that police and security personnel be posted in the minimum necessary number to assure security in a given location. This "minimum necessary number" is usually determined in consultation with electoral officials. In any event, police should never be positioned in

such a way as to impede legitimate access, or to intimidate voters or discourage them from participating.

214. Civilian police (CIVPOL) components of peace-keeping operations are usually required to take a somewhat different approach. Their mandate includes a certain confidence-building element, and thus the very visibility of such officers at registration and polling places can help to reassure voters of the neutrality, fairness and safety of the process. CIVPOL officers should, of course, behave in an absolutely objective manner and, like their national counterparts, demonstrate the highest level of discipline and professionalism.

215. For both national police officials and CIVPOL officers, the task is to contribute to a real and perceived atmosphere of safety and order, while behaving objectively and upholding the rights of parties, candidates, voters and the general public during polling periods.

(e) *Specific provisions on democratic policing*

216. In its resolution 34/169 of 17 December 1979, by which it adopted the Code of Conduct for Law Enforcement Officials, the General Assembly stated that

like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole.

Representative, responsive and accountable policing, in other words democratic policing, is fundamental to policing in democracies.

(i) *Representative policing*

217. This means that police must ensure that their ranks are sufficiently representative of the community they serve. Minority groups must be adequately represented within police agencies, through fair and non-discriminatory recruitment policies, and through policies designed to enable members of those groups to develop their careers within the agencies.

218. Furthermore, police need to consider the qualitative make-up of the personnel within a police agency, as well as the numerical make-up. This means ensuring not only that there are adequate numbers of police, properly representative of the population, but also that police officials have the willingness and the capacity to carry out democratic policing in a democratic political system.

(ii) *Responsive policing*

219. This requires police to be aware of, and responsive to, public needs and expectations. Clearly, the public needs and expects police to:

—prevent and detect crime;

—maintain public order.

However, those are very broad needs and expectations. Police must also consider:

—the ways in which the public requires those objectives to be attained (e.g. lawfully and humanely);

—what specific needs and expectations the public has at any one time and in any one locality.

It is the responsibility of police commanders to understand the needs and expectations of the public they serve; to exercise their own professional judgement; and to take both into account when devising policing policy and strategy.

220. Another aspect of responsive policing—one linked to the notion of accountable policing—is the requirement that the actions of law enforcement officials be responsive to public scrutiny. Ways in which this type of responsiveness may be secured are suggested in paragraph (d) of the preamble to General Assembly resolution 34/169. These include scrutiny by a review board, a ministry, a specialized panel, the judiciary, an ombudsman, a citizens' committee, or any combination thereof.

(iii) *Accountable policing*

221. This is achieved in three principal ways:

—legally—as with all individuals and institutions in States where the rule of law prevails, police are accountable to the law;

—politically—police are accountable to the public they serve through the democratic political institutions of government. In this way, their policies and practices of law enforcement and order maintenance come under public scrutiny;

—economically—police are accountable for the way in which they use resources allocated to them. This goes beyond scrutiny of their main law enforcement functions, and is an additional form of democratic control over the entire command, management and administration of a law enforcement agency.

222. It is also possible to devise more informal methods of accountability at a very local level—police/citizens' liaison groups, for example. Furthermore, this form of accountability is a means by which police can become aware of, and responsive to, immediate local needs.

### 3. *Concluding remarks*

223. Considering policing in democracies highlights political aspects of policing. This can be a sensitive and difficult area because:

(a) circumstances in countries engaged in transition to democratic government create particular difficulties for police. In such cases, police need to be acutely sensitive to the need for impartiality and non-discrimination;

(b) in countries with long-established democracies, there is a tendency to ignore or underplay the political aspects of policing—a tendency arising partly out of concern to remain non-partisan and unbiased. This can lead to a certain naivety in some highly political situations.

However, in a very broad sense, policing is sometimes a highly political activity. The requirement is to make it a

non-partisan, impartial activity. This can be done if all police retain an awareness that they do not serve a particular Government or a particular regime.

224. The bases of all policing activity are the constitution and the law. Police serve the rule of law and the ends of justice.

## **B. International standards on human rights and policing in democracies— Practical application**

### *1. Practical steps for implementing international standards*

#### ***All Police Officials***

*Exhibit political independence and impartiality at all times.*

*Become familiar with the people in the community to which you are assigned.*

*Get close to the community. Generally, do not stay in the station when you can patrol in a vehicle; do not patrol in a vehicle when you can patrol on foot.*

*Volunteer for community-service assignments.*

*At polling places, while providing electoral security, meet first with the electoral officials and maintain a discreet, disciplined and professional demeanour with the voting public.*

*When policing rallies and political demonstrations, practise tolerance, and remember that the objectives of public safety and non-escalation should be paramount.*

#### ***Command and Supervisory Officials***

*Establish and enforce policies and strategies of the police agency based on respect for democratic government.*

*Introduce community policing strategies, in which police form a partnership with the community and are seen as part of the community.*

*Hold public consultations to discover the specific needs of the local community, and adopt measures to respond to those needs.*

*Organize public relations programmes encouraging police-community cooperation.*

*Ensure that the composition of the police agency is representative of the entire community through fair and non-discriminatory recruitment and management policies and practices.*

*Establish recruitment procedures and training programmes designed to recruit and retain police officials willing and able to meet the demands of democratic policing under democratic government.*

*Establish close cooperative contacts with electoral authorities, trade union leaders and non-governmental organizations.*

*Where possible, deploy officers for electoral security according to needs determined by electoral authorities.*

*Deploy the minimum number of officers necessary for electoral security.*

*Establish a publicly accessible mechanism for the receipt of citizens' complaints, suggestions and concerns.*

## 2. Hypothetical exercises

### Exercise 1

One of the most important requirements of police in democracies is for them to remain impartial and independent politically.

In view of this, should police officials be allowed to:

- (a) vote?
- (b) belong to political parties?
- (c) belong to trade unions?
- (d) express political opinions?
- (e) write letters to correspondence columns of newspapers?

For the purposes of discussion, imagine that you have been formed into a working group to draw up a set of guidelines for police officers on how they should maintain political impartiality. The guidelines will be used in the training of newly appointed police officials and to remind serving police officials of their responsibilities in this respect. The guidelines should consist of a number of practical points designed to guide police officials in their actions while on duty and during the course of their private lives. Discuss what the content of the guidelines should be.

### Exercise 2

General Assembly resolution 34/169 of 17 December 1979, by which the Code of Conduct for Law Enforcement Officials was adopted, states:

... like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole.

1. In what ways may a law enforcement agency be representative of the community as a whole?
2. One way in which it may be representative of the whole community is to recruit into its ranks a proportionate and representative number of members of minority groups within society. In view of this:
  - (a) identify a minority group within your society which is not adequately represented in your agency;
  - (b) specify the difficulties which exist to prevent adequate representation of that group in the agency at present;
  - (c) consider ways in which those difficulties may be overcome and set out the broad steps of a strategy designed to overcome them.

### Exercise 3

General Assembly resolution 34/169 of 17 December 1979, by which the Code of Conduct for Law Enforcement Officials was adopted, states:

... like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole.

1. In what ways may a law enforcement agency be responsive and accountable to the community as a whole?

2. To be responsive to a community means being aware of what the community needs and then meeting those needs. In what ways may a law enforcement agency become aware of a community's needs?

3. Senior law enforcement officials are responsible for the command and management of law enforcement agencies. They are also responsible for the strategic command of operational situations. How does the requirement to be responsive and accountable to the community affect those responsibilities?

### Exercise 4

Bearing in mind the requirements on police to:

- provide an effective policing service;
  - respect and protect human rights;
  - remain representative of and responsive and accountable to the community as a whole:
- (a) What personal qualities and characteristics are desirable in police officers?
  - (b) What qualities and characteristics are undesirable?
  - (c) What methods and techniques can be used to identify desirable and undesirable qualities and characteristics in people applying to become law enforcement officials?

## 3. Topics for discussion

1. Consider the differences between policing in a democratic society and policing in a non-democratic society. List five of these differences which you consider to be the most significant.

2. Article 21 of the Universal Declaration of Human Rights enshrines the right of everyone to participate in the government of his country, either directly or through freely chosen representatives. In what ways does this political right enhance the protection of other civil and political rights?

3. What do you understand by the term "the rule of law"? Why is it important that all persons and all institutions of a State be subject to the rule of law?

4. When the rule of law does prevail within a State, how does this promote and protect human rights?

5. Consider ways in which police may protect the right to freedom of thought, conscience and religion in a society. List five of these ways which you consider to be the most important.

6. Consider ways in which police may protect the right to freedom of opinion and expression in a society. List five of these ways which you consider to be the most important.



7. Consider ways in which police may protect the right to freedom of assembly and association in a society. List five of these ways which you consider to be the most important.

8. How can police best perform their role during periods of elections, in an unbiased and non-partisan manner, in maintaining order, polling security and peace? Should police publicly support the political campaigns of candidates who advocate strong policies for law and order?

9. Consider the system in your country for making police accountable to the public they serve through democratic political institutions. Is it satisfactory? If not, what are its shortcomings? How can it be improved?

10. While it is essential that police are accountable to the public through democratic political institutions, it is also essential that politicians do not interfere with day-to-day policing operations. Why is it essential that police should retain this form of operational independence?

## CHAPTER X

# POLICE AND NON-DISCRIMINATION

### *Chapter Objectives*

*To familiarize police with the legal requirements for non-discriminatory behaviour, and to sensitize them to the damaging effects of discriminatory attitudes.*

### *Essential Principles*

*All human beings are born free and equal in dignity and rights.*

*Human rights derive from the inherent dignity of the human person.*

*Law enforcement officials shall at all times fulfil the duty imposed on them by law, by serving the community and by protecting all persons against illegal acts.*

*Law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.*

*All persons are equal before the law, and are entitled, without discrimination, to equal protection of the law.*

*In protecting and serving the community, police shall not unlawfully discriminate on the basis of race, gender, religion, language, colour, political opinion, national origin, property, birth or other status.*

*It shall not be considered unlawfully discriminatory for police to enforce certain special measures designed to address the special status and needs of women (including pregnant women and new mothers), juveniles, the sick, the elderly, and others requiring special treatment in accordance with international human rights standards.*

*The recruitment, hiring, assignment and promotion policies of police agencies shall be free of any form of unlawful discrimination.*

## A. International standards on non-discrimination—Information for presentations

### 1. Introduction

225. In the Charter of the United Nations, Member States reaffirm their faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women. They also pledge themselves to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

226. Article 2 of the Universal Declaration of Human Rights states:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

...

227. Various human rights treaties bind States parties to respect and ensure to all, without discrimination, the rights enshrined in those treaties. For example, article 2, paragraph 1, of the International Covenant on Civil and Political Rights states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

228. Since States either meet, or fail to meet, their international legal obligations through the actions of officials exercising powers on their behalf, it is clearly important that police officials understand and respect the basic principle of non-discrimination. Furthermore, it is important for police officials to understand provisions of international human rights texts, and of domestic legislation, which seek to give effect to that basic principle.

229. This chapter examines international standards concerning non-discrimination, with particular reference to those significant to the process of law enforcement and order maintenance.

### 2. General aspects of non-discrimination

#### (a) Fundamental principles

230. Non-discrimination is, in itself, a fundamental principle—essential to the protection and promotion of all human rights and freedoms. All members of the human family are endowed with equal and inalienable rights. These are derived from the inherent dignity and worth of all human persons, and they are universal rights.

231. The three fundamental principles associated with non-discrimination are:

- the equality of rights;
- the inalienability of rights;
- the universality of rights.

#### (b) Specific provisions on non-discrimination

232. The following specific provisions all have direct relevance to law enforcement or to policing in general:

##### (i) *The right to recognition as a person before the law*

233. This right is enshrined in article 6 of the Universal Declaration of Human Rights, which reads:

Everyone has the right to recognition everywhere as a person before the law.

It is expressed in virtually identical terms in the International Covenant on Civil and Political Rights (art. 16); and the American Convention on Human Rights (art. 3). Article 5 of the African Charter on Human and Peoples' Rights guarantees the right to recognition of legal status.

234. The right applies to "everyone", and recognition as a person before the law is fundamental to a system whereby human rights are given protection under the law. Deprivation of this right can lead to deprivation of other rights. It requires all citizens of a State to be given equal and full legal recognition.

##### (ii) *The right to equality before the law*

235. This right is protected under article 7 of the Universal Declaration of Human Rights, which reads:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

236. The International Covenant on Civil and Political Rights contains similar provisions, and requires the law to prohibit discrimination on any of the usual grounds, such as race, colour, sex, language and religion (art. 26); the African Charter on Human and Peoples' Rights states that every individual shall be equal before the law and entitled to equal protection of the law (art. 3); and the American Convention on Human Rights makes the same provisions, but adds that the entitlements are to be granted "without discrimination" (art. 24).

237. These requirements are clearly significant in policing terms, for they mean that police are to give equal protection to all in enforcing the law. There is to be no adverse discrimination in law enforcement.

##### (iii) *The right to a fair trial*

238. This right is protected under article 10 of the Universal Declaration of Human Rights, which reads:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

239. The International Covenant on Civil and Political Rights (art. 14); the African Charter on Human and Peoples' Rights (art. 7), the American Convention on Human Rights (art. 8) and the European Convention on Human Rights (art. 6) all guarantee the right to a fair

trial. They also add other requirements designed to secure that end. More importantly, in the present context, they stipulate that the right shall apply to “all persons”, or “every individual”, or “every person”, or “everyone”.

240. While these provisions impose obligations on courts and legal systems in general, it is important to remember that unethical, illegal or discriminatory conduct by police in the process of law enforcement can subvert the right to a fair trial. In order for a fair trial to proceed, courts must be able to consider evidence which is truthful and impartial, and which has been obtained by ethical and legal means. This is one of the necessary conditions for securing the right to a fair trial for all.

(iv) *The right of equal access to public service*

241. This right is linked to the right of everyone to take part in the government of his or her country and the right to vote in free and genuine elections. It is expressed in article 21, paragraph 2, of the Universal Declaration of Human Rights, which reads:

Everyone has the right to equal access to public service in his country.

242. Article 25 (c) of the International Covenant on Civil and Political Rights states that every citizen is to have access “on general terms of equality” to public service in his country. The right is similarly protected under the African Charter on Human and Peoples’ Rights (art. 13) and the American Convention on Human Rights (art. 23). All these articles set out the rights to participate in public affairs or government, and to free and fair elections. These rights are to be granted without discrimination to “every citizen”.

243. Policing is an important public-service function. Every citizen who is properly qualified, and wishes to do so, should be given the opportunity to have access to, and participate in, that function. Access to the police service of a country should be based solely on grounds of qualifications, fitness to perform the function, and competence. There can be no exclusion based solely on such grounds as race, colour, or sex.

(v) *Incitement to discrimination*

244. Article 20, paragraph 2, of the International Covenant on Civil and Political Rights states:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

This requirement on States parties to the Covenant means that they are to enact and enforce laws prohibiting incitement to discrimination in the terms described by the article.

245. As indicated above, article 7 of the Universal Declaration of Human Rights sets out an entitlement to equal protection against any discrimination in violation of the Declaration and against any incitement to such discrimination.

246. The provisions of the Covenant and the Universal Declaration have clear implications for law enforcement, for when States enact laws in compliance with those provisions, it is the responsibility of police to enforce them.

247. Given the seriousness of acts contravening such laws, their adverse effects on human rights, and the possibility that incitement to discrimination, hostility or violence could lead to serious public disorder, police responses to such crimes must be prompt and effective.

(vi) *Derogation from obligations in times of emergency*

248. Article 4 of the International Covenant on Civil and Political Rights allows States parties to take measures derogating from some of their obligations under the Covenant in times of public emergency which threaten the life of the nation. Such an emergency must be officially proclaimed, and the derogation measures adopted must be limited to those strictly required by the exigencies of the situation. Furthermore, such measures:

- must not be inconsistent with a State’s other obligations under international law; and
- must not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

There may be no derogation from some articles, including those protecting the right to life and prohibiting torture and ill-treatment.

249. Similar provisions are set out in article 27 of the American Convention on Human Rights. (The derogation provisions in article 15 of the European Convention on Human Rights make no specific reference to the question of discrimination.)

250. The requirement for derogation measures to be non-discriminatory is of considerable importance. Public emergencies are frequently declared in times of civil disorder and tension. Under such circumstances, a Government may, for example, feel it necessary to increase police powers of arrest, thus derogating from the provisions of treaties protecting the right to liberty and security of the person. If such a course of action is taken, it is crucial that any extra powers accorded to police are exercised strictly within legal limits and without discrimination. The illegal or discriminatory exercise of police powers in time of civil disorder and tension can be a significant factor in exacerbating such disorder and tension.

251. The question of derogation measures is considered in more detail in chapter XV on Civil Disorder, States of Emergency and Armed Conflicts.

(c) *Provisions in instruments of particular relevance to law enforcement*

(i) *Code of Conduct for Law Enforcement Officials*

252. Articles 1, 2 and 8 of the Code are relevant to the question of non-discrimination.

253. Article 1 requires law enforcement officials to serve the community and protect all persons against illegal acts. Article 2 requires them to protect human dignity and maintain and uphold the human rights of all persons. Article 8 requires law enforcement officials to respect the law and the Code of Conduct itself.

254. Clearly, references to “all persons” in articles 1 and 2 exclude any question of discrimination, and the provision in article 8 means that any measures under the law prohibiting discrimination, and those in the Code of Conduct, are to be complied with.

(ii) *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*

255. Principle 5 of this instrument refers to situations when the use of force and firearms by police is unavoidable.

256. Principle 5 (b) requires police to minimize damage and injury, and respect and preserve human life. Principle 5 (c) requires police to ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment. This means that there is a general requirement to respect human life—all human life—and to ensure that medical aid is rendered.

TRAINERS’ NOTE: This instrument is considered in more detail in chapter XIV on Use of Force and Firearms.

(iii) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*

257. Principle 1 requires all persons under any form of detention or imprisonment to be treated in a humane manner and with respect for the inherent dignity of the human person.

258. Principle 5, paragraph 1, requires the Principles to be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status. However, paragraph 2 adds an important condition:

Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

TRAINERS’ NOTE: This instrument is considered in more detail in chapter XIII on Detention.

(iv) *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*

259. As the General Assembly stated in its resolution 40/34 of 29 November 1985 (third preambular paragraph), by which it adopted this Declaration:

... the victims of crime and the victims of abuse of power, and also frequently their families, witnesses and others who aid them, are un-

justly subjected to loss, damage or injury and ... that they may, in addition, suffer hardship when assisting in the prosecution of offenders.

260. Paragraph 3 of the Declaration requires the provisions of the instrument to be applicable to all, without distinction of any kind. It adds to the usual distinctions (such as race, colour, sex, etc.) “cultural beliefs or practices” and “disability”.

TRAINERS’ NOTE: This instrument is considered in more detail in chapter XIX on Protection and Redress for Victims.

(v) *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

and

*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

261. There are introductory paragraphs to both of these instruments (in the preamble to the General Assembly resolution adopting the Declaration, and in the text of the Convention itself) stating that, in accordance with the principles expressed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

262. Furthermore, both instruments contain provisions (article 8 of the Declaration; article 13 of the Convention) which accord any individual who alleges that he has been subjected to torture the right to complain to the competent authorities of the State concerned.

TRAINERS’ NOTE: Both of these instruments are considered in more detail in chapter XIII on Detention.

(d) *Discrimination and race*

263. There are two instruments dealing specifically with racial discrimination.

(i) *United Nations Declaration on the Elimination of All Forms of Racial Discrimination*

264. Article 1 states that discrimination between human beings on the ground of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples.

265. Article 2, paragraph 2, requires that no State shall encourage, advocate or lend its support, through police action or otherwise, to any discrimination based on race, colour or ethnic origin by any group, institution or individual.

266. Article 7 requires everyone to have equality before the law; the right to equal justice under the law; the right to security of person and protection by the State against violence or bodily harm; and the right to an effective remedy and protection against any discrimination he may suffer on the ground of race, colour or ethnic origin.

267. Article 9, paragraph 2, requires all incitement to or acts of violence against any race or group of persons of another colour or ethnic origin to be punishable under law.

(ii) *International Convention on the Elimination of All Forms of Racial Discrimination*

268. Racial discrimination is defined in article 1 as:

... any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

269. Under article 2, States parties to the Convention condemn racial discrimination and undertake to pursue a policy of eliminating such discrimination in all its forms.

270. Under article 5, States parties undertake to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of a number of rights. These include:

- the right to equal treatment before tribunals;
- the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution.

(e) *Discrimination and religion*

271. The right to freedom of thought, conscience and religion is protected under global and regional instruments, and discrimination on religious grounds is dealt with in a declaration devoted to the subject.

(i) *Universal Declaration of Human Rights*

272. Religious freedom is protected under article 18 in the following terms:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

It is also protected under the International Covenant on Civil and Political Rights (art. 18); the African Charter on Human and Peoples' Rights (art. 8); the American Convention on Human Rights (art. 12); and the European Convention on Human Rights (art. 9).

(ii) *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*

273. Under article 1, the right to freedom of religion and belief is protected in the same terms as under article 18 of the Universal Declaration of Human Rights.

274. Article 2 states that no one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.

275. Discrimination on grounds of religion or belief is condemned under article 3 as an affront to human dignity and a violation of the rights and freedoms proclaimed in the Universal Declaration.

276. Under article 4, States are required to take effective measures to prevent and eliminate discrimination on grounds of religion or belief, and they are to enact or rescind legislation, where necessary, to prohibit any such discrimination.

(f) *Discrimination and women*

277. There are two instruments dealing specifically with discrimination against women. As with the specific instruments on discrimination and race, and discrimination and religion, these supplement the provisions on discrimination in the general global and regional human rights instruments.

(i) *Declaration on the Elimination of Discrimination against Women*

278. Article 1 condemns discrimination against women as fundamentally unjust and an offence against human dignity.

279. Article 2 requires existing laws, customs, regulations and practices which are discriminatory against women to be abolished.

280. Article 10 requires measures to be taken to ensure to women equal rights with men in the field of economic and social life. In particular, it requires women to have the right to receive vocational training, the right to work, the right to free choice of profession and employment, and the right to professional and vocational advancement.

(ii) *Convention on the Elimination of All Forms of Discrimination against Women*

281. Discrimination against women is defined in article 1 as:

... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

282. Under article 2, States parties condemn discrimination against women and undertake, among other things, to refrain from engaging in any act or practice of

discrimination against women and to ensure that public authorities and institutions act in conformity with this obligation.

283. Under article 11, paragraph 1 (b), States parties are to ensure the right to the same employment opportunities for women as for men, including the application of the same criteria for selection in matters of employment.

TRAINERS' NOTE: Both of these instruments are considered in more detail in chapter XVII on Law Enforcement and the Rights of Women.

#### (g) *Discrimination and children*

284. There are two instruments referring to discrimination against the child.

##### (i) *International Covenant on Civil and Political Rights*

285. Article 24, paragraph 1, states:

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

##### (ii) *Convention on the Rights of the Child*

286. As with most international human rights instruments, the equal and inalienable rights of all members of the human family are referred to in the preambular paragraphs.

287. Article 1 defines a child as any human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

288. Article 2 requires States parties to:

... to respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

and to:

... take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

TRAINERS' GUIDE: This instrument is considered in more detail in chapter XVI on Police and the Protection of Juveniles.

#### (h) *Particular manifestations of discrimination*

289. Particular, and serious, forms of discrimination are genocide, slavery and apartheid, which are briefly discussed below.

290. **Genocide** is defined in article II of the Convention on the Prevention and Punishment of the Crime of Genocide as:

... any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

291. Article IV of the Convention requires persons committing genocide to be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

292. **Slavery** is prohibited under article 4 of the Universal Declaration of Human Rights in the following terms:

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

It is also prohibited under the African Charter on Human and Peoples' Rights (art. 5); the American Convention on Human Rights (art. 6); and the European Convention on Human Rights (art. 4).

293. There is a **Slavery Convention** which contains detailed provisions to prevent and suppress slavery; a **Protocol** mending that Convention; and a **Supplementary Convention** on the abolition of slavery.

294. **Apartheid** is classified as a crime against humanity under article I of the International Convention on the Suppression and Punishment of the Crime of Apartheid.

295. The Convention is a detailed instrument designed to prevent and abolish apartheid. Under article I, paragraph 2, States parties declare criminal those organizations, institutions and individuals committing the crime of apartheid.

296. The crime of apartheid is defined at length in article II. It includes a number of specified acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.

### 3. *Concluding remarks*

297. Because non-discrimination is such a fundamental aspect of the protection and promotion of human rights, it is relevant to the topics of every chapter in this manual. It touches on every aspect of law enforcement and is an essential element in ethical, legal and democratic policing.

298. This chapter has focused on elements of non-discrimination of particular significance to policing policy and practice, and to the command and management of police organizations. By presenting the topic in this rather concentrated and detailed manner to law enforcement officials, it is hoped that they will become fully alerted to, or reminded of, the absolute requirement to police in an impartial and non-discriminatory manner.

## **B. International standards on non-discrimination—Practical application**

### *1. Practical steps for implementing international standards*

#### ***All Police Officials***

*Become familiar with the community you serve. Meet with leaders and representatives of various ethnic and racial communities.*

*Participate in foot patrols and community service activities in ethnically diverse neighbourhoods.*

*Speak out against ethnic or racial stereotyping or slurs in the community, and in the police station.*

*Participate in ethnic or race-relations training programmes offered by your service.*

*Speak to minority group members in the communities you serve, to learn their needs, complaints and suggestions. Be sensitive and responsive.*

#### ***Command and Supervisory Officials***

*Organize in-service training to sensitize police to the importance of good ethnic/race relations and fair, non-discriminatory law enforcement.*

*Develop a race-relations plan of action, in consultation with various ethnic communities.*

*Issue clear orders on appropriate comportment, language and attitudes vis-à-vis various ethnic and racial groups.*

*Evaluate your recruitment, hiring and promotion policies to ensure fairness among various groups.*

*Actively recruit members of ethnic and racial minorities, and of groups underrepresented in your police service.*

*Establish mechanisms to receive, continuously, the complaints and suggestions of members of ethnic, racial, religious and linguistic groups in the community.*

*Adopt community policing strategies.*

*Appoint a minority-relations coordinator within your service.*

*Punish discriminatory, insensitive or otherwise inappropriate professional behaviour.*

*Reward officer initiatives supportive of better community relations.*

*Provide in-service training in racial/ethnic relations for all police.*

### *2. Hypothetical exercises*

#### *Exercise 1*

For the purposes of discussion, imagine that a new law designed to maintain and control public order has been promulgated in your country. It contains provisions which state that the following will be criminal offences:

—words, writing or conduct intended to stir up hatred, ridicule or contempt against any racial, ethnic or religious group or which, under the prevailing circumstances, is likely to do so;

—abusive or insulting words, writing or conduct intended or likely to provoke violence or physical attacks against individuals because they are members of a particular racial, ethnic or religious group.



You have been formed into a working group with the following terms of reference:

“Consider the new law creating crimes of racial hatred and racial abuse.

“1. Make recommendations to your chief officer of police on police policy in relation to the new offences. Draft a brief statement (one paragraph) on that policy for issue to the news media.

“2. Prepare a brief statement for circulation within the police agency reminding police officials of the requirement to act impartially and without discrimination, and listing three of the most important reasons for that requirement.

“3. Devise a brief set of guidelines to police on the two new crimes in order to assist enforcement of the law creating them.”

### *Exercise 2*

You have been asked to deliver a lecture to newly appointed police officials on “Non-discrimination and law enforcement”.

1. Prepare an outline set of notes (topic headings) for your lecture.

2. Set out the principles and provisions of international human rights law relevant to your lecture, and outline the provisions of the law of your country which you would refer to.

3. Summarize the general, practical guidelines you would give on the subject, as an experienced police official, to newly appointed officials.

### *3. Topics for discussion*

1. When considering non-discrimination, what is the importance of the principle: “All human beings are born free and equal in dignity and rights”?

2. Enumerate briefly the various ways in which a State can meet its obligations to ensure human rights to all individuals in its territory without distinction on such grounds as race, colour, sex, religion and belief.

3. Enumerate briefly the ways in which police can assist the State to meet its obligations to ensure human rights to all individuals in its territory without distinction on such grounds as race, colour, sex, religion and belief.

4. Consider the entitlement to equal protection of the law for all persons, and enumerate the implications of that right for policing.

5. The International Covenant on Civil and Political Rights (art. 20) requires advocacy of racial hatred to be prohibited by law. There is also a right to freedom of opinion and expression (i.e. “free speech”). How can these two requirements be reconciled? Which is the most important?

6. The Convention on the Elimination of All Forms of Discrimination against Women (art. 11) requires States parties to ensure that women have the same employment opportunities as men, including the application of the same criteria for selection in matters of employment. What difficulties does this create for recruitment in a police agency? How can these difficulties be overcome?

7. The Universal Declaration of Human Rights (art. 6) and other human rights instruments require everyone to have recognition as a person before the law. What are the dangers to an individual who has no legal status “as a person before the law”?

8. Why is it important in the promotion and protection of human rights for those rights to be regarded as inalienable and universal?

9. While most forms of discrimination against people are violations of human rights, discrimination which favours certain categories of people (such as women and children) is encouraged and sometimes required. In what areas of law enforcement is this “positive” form of discrimination relevant and necessary?

10. Draft an article for a police discipline code which makes discrimination an offence under that code.



*PART THREE*

**POLICE DUTIES AND FUNCTIONS**



## CHAPTER XI

### POLICE INVESTIGATIONS

#### *Chapter Objectives*

*To illustrate the international standards relating to criminal investigations, and their relevance to police practice.*

#### *Essential Principles*

*In investigations, the interviewing of witnesses, victims and suspects, personal searches, searches of vehicles and premises, and the interception of correspondence and communications:*

*Everyone has the right to security of the person;*

*Everyone has the right to a fair trial;*

*Everyone is to be presumed innocent until proven guilty in a fair trial;*

*No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence;*

*No one shall be subjected to unlawful attacks on his honour or reputation;*

*No pressure, physical or mental, shall be exerted on suspects, witnesses or victims in attempting to obtain information;*

*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, are to be exercised at all times;*

*No one shall be compelled to confess or to testify against himself;*

*Investigatory activities shall be conducted only lawfully and with due cause;*

*Neither arbitrary, nor unduly intrusive, investigatory activities shall be permitted.*

## A. International standards on police investigations—Information for presentations

### 1. Introduction

299. The investigation of crime is the first essential step in the administration of justice. It is the means by which those accused of a crime may be brought before the courts and their guilt or innocence determined. It is also essential to the well-being of society, for crime distresses people and undermines social and economic development. For these reasons, effective, ethical and lawfully conducted criminal investigation is an extremely important aspect of policing.

300. The purpose of this chapter is to focus on the investigation of crime as a distinct police activity. Thus international human rights standards of particular relevance to criminal investigation will be considered. However, all the other standards relevant to policing, and dealt with in preceding and succeeding chapters of the manual, remain applicable.

301. During the course of an investigation, police may well exercise powers of arrest. These powers should be exercised only when necessary and when legal authority to do so exists. People suspected of the crime under investigation may be detained. When that is the case, such detainees must be treated humanely. It may be necessary to use force to arrest or detain a suspect. Force may be applied only when strictly necessary, and then only to the extent required to achieve the lawful purpose being pursued. Reference should be made to chapters XII, XIII and XIV below for full accounts of international standards on these aspects of policing.

302. For the investigation of crime to comply with ethical principles, there must be respect for human dignity and human rights, and compliance with the law by investigators. Investigation of crime in a democratic society entails accountability and responsiveness of the investigators to the community. Furthermore, investigations must be conducted with due regard to the principle of non-discrimination. Standards on ethical policing, policing in democracies, and non-discrimination have been considered in chapters VIII, IX and X above, and should be referred to for further information.

### 2. General aspects of human rights and police investigations

#### (a) Fundamental principles

303. The purpose of investigating a crime is to gather evidence, to identify the presumed author of the crime, and to present evidence before a court so that guilt or innocence may be decided. The fundamental principles derived from international human rights standards are therefore:

- presumption of innocence of all accused persons;
- entitlement to a fair trial of all accused persons;
- respect for the dignity, honour and privacy of all persons.

#### (b) Specific provisions on investigations

304. The above principles are embodied in provisions of human rights instruments guaranteeing the right to be presumed innocent until proved guilty; protecting the right to a fair trial; and prohibiting arbitrary and unlawful interference with privacy.

##### (i) *The presumption of innocence*

305. This right is expressed in article 11, paragraph 1, of the Universal Declaration of Human Rights, which reads:

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which he has had all the guarantees necessary for his defence.

It is also guaranteed in the International Covenant on Civil and Political Rights (art. 14, para. 2); the African Charter on Human and Peoples' Rights (art. 7, para. 1 (b)); the American Convention on Human Rights (art. 8, para. 2); and the European Convention on Human Rights (art. 6, para. 2).

306. Two important points arise out of these provisions:

(a) Guilt or innocence can be determined only by a properly constituted court, following a properly conducted trial at which the accused person has had all the guarantees necessary for his defence.

(b) The right to be presumed innocent until guilt is proved is fundamental to securing a fair trial.

307. The presumption of innocence has one important implication for the investigative process: all persons under investigation are to be treated as innocent people, whether they have been arrested or detained, or whether they remain at liberty during the investigation.

##### (ii) *The right to a fair trial*

308. This right is expressed in article 10 of the Universal Declaration of Human Rights, which reads:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

It is also expressed, and developed, in the International Covenant on Civil and Political Rights (art. 14); the African Charter on Human and Peoples' Rights (art. 7); the American Convention on Human Rights (art. 8); and the European Convention on Human Rights (art. 6).

309. In order for a person to receive a fair hearing of any charges against him or her, the entire investigation into the crime or crimes leading to those charges must be conducted in an ethical manner and in accordance with the legal rules governing investigations. Compliance with rules is particularly important in respect of:

- gathering evidence;
- interviewing suspects (also considered in chapter XIII below);

—the requirement to testify truthfully before the court or tribunal.

310. The provisions of the human rights instruments referred to above include a number of minimum guarantees considered necessary to secure the right to a fair trial. Those guarantees having particular implications for the investigation of crimes are considered below.

(iii) *Minimum guarantees to secure a fair trial*

a. *To be informed promptly and in detail of the charge against him or her*

311. This is a reiteration and reinforcement of an obligation on law enforcement officials which they must meet when exercising powers of arrest. For example, article 9, paragraph 2, of the International Covenant on Civil and Political Rights states:

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

This means that, when a person has been arrested, a two-stage process is involved:

ON ARREST—he or she must be informed immediately of the reason for arrest; and

AS SOON AS POSSIBLE AFTER ARREST—he or she must be informed of the charges being brought.

312. When a person subject to investigation has not been arrested, that person also has to be informed as soon as possible of the charge or charges he or she is to face.

313. Clearly, the nature of an investigation may affect the period of time within which a person can be informed of the charges against him or her. In very complex cases, this may be longer than in less complex cases. However, the standard remains the same: the person must be informed as soon as possible.

b. *To be tried without undue delay*

314. This guarantee means that the investigation must be carried out and concluded as quickly and efficiently as possible.

315. As with the first-mentioned guarantee, the complexity of the case may affect the actual time taken for the accused person to be brought to trial. Other factors, such as the availability of witnesses and the behaviour of the person under investigation, may also affect the length of the investigation. Nevertheless, the requirement remains for the trial to take place without undue delay.

316. The manner in which the police investigation is conducted must not be a cause of any failure to meet this guarantee.

TRAINERS' NOTE: There is also a minimum guarantee requiring an accused person to be given adequate time and facilities to prepare his or her defence,

which must be reconciled with the requirement of trial without undue delay.

c. *To examine, or have examined, the witnesses against him or her*

To obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.

317. The first part of this guarantee relates to the way in which a trial is conducted, but the second part has implications for the investigation. An example is given below, but others may arise in the various legal and policing systems of different Member States of the United Nations.

318. During the course of an investigation, police may encounter witnesses to the crime whose evidence does not support the case against the person under investigation. Clearly, such evidence may be sufficient to indicate that the person suspected of the crime was not, in fact, the author of the crime, in which case that person would cease to be the subject of investigation.

319. On the other hand, such evidence may simply weaken the case against the suspected person without undermining it completely. Sufficient evidence may remain to justify charging the suspect and placing him or her on trial. The fact remains, however, that the witness who can give evidence which weakens the case against the accused person is "a witness on his or her behalf". Under such circumstances, that witness should be made available for examination at the trial of the accused person.

d. *To be free from compulsion to testify against himself or herself, or to confess guilt*

320. While this guarantee protects an accused person during a trial, it also affects the investigation at the stage or stages when the suspect is questioned by police.

321. There are specific rules on conducting interrogation and interviews of suspects, which are considered in chapter XIII below. Some of these rules are designed to prevent undue compulsion on suspects to confess guilt. Clearly, if a suspect has been unlawfully or unethically compelled to confess guilt during the investigative stage of the procedure, this guarantee which exists to protect accused persons during their trial will have been subverted.

(iv) *Arbitrary interference with privacy*

322. The privacy, honour and reputation of individuals is protected under article 12 of the Universal Declaration of Human Rights, which reads:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

323. Similar provisions are set out in the American Convention on Human Rights (art. 11), and the Euro-

pean Convention on Human Rights (art. 8), although the latter provision (para. 2) limits the right in the following terms:

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

324. The implications of these provisions for the investigation of crime are clear:

SEARCHES—especially of individuals, and of their homes, other property, or vehicles,

and

INTERCEPTION—of correspondence, telephone messages or other communications,

must be strictly legal, and necessary for legitimate law enforcement purposes.

325. The protection of privacy is further reinforced by article 4 of the Code of Conduct for Law Enforcement Officials, which reads:

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.

The commentary to the article points out that, by the nature of their duties, police officials obtain information which may be potentially harmful to the reputation of others. It emphasizes that great care is to be taken in handling such information, and that disclosure other than in the performance of duty or to serve the needs of justice is wholly improper.

326. Improper disclosure of confidential information harmful to an individual's reputation would certainly breach the provisions of the Universal Declaration and the American and European Conventions referred to above.

### (c) *Technical aspects of investigations*

327. Effective investigation, if it is to be based on respect for human dignity and on the principle of legality, depends largely on:

- availability of scientific and technical resources, and intelligent use of those resources;
- intensive application of basic policing skills;
- the knowledge and awareness of investigators;
- compliance with legal rules governing criminal investigations, and with human rights standards.

328. Scientific and technical resources include, for example:

- the means to examine the scene of a crime; items and matter discovered at that scene; other material which may have value as evidence;

- the means to record, and cross-reference, information collated during an investigation. Large-scale investigations may well require computer facilities for this purpose.

329. Basic policing skills include, for example:

- interviewing of witnesses and suspects (these being distinct skills requiring different approaches);
- searching various locations such as open spaces, buildings and vehicles, and personal searches of individuals (these again being distinct skills requiring different approaches).

330. Knowledge and awareness of investigators include, for example:

- resources and means available to him or her;
- basic policing skills possessed by an investigator;
- legal powers and ethical standards.

TRAINERS' NOTE: Availability of resources, acquisition of policing skills, and levels of awareness of investigators are all matters regarding which law enforcement officials are dependent on Governments and law enforcement agencies. In order to maintain an effective and humane policing system, Governments must equip law enforcement agencies and, through them, train police officials and enable them to carry out their tasks.

The reasons for including these examples of technical aspects of policing in this chapter are to:

- create or reinforce the link in the minds of course participants between professional competence and the protection of human rights;
- provide an opportunity to discuss the availability of technical assistance through the United Nations Centre for Human Rights or Crime Prevention and Criminal Justice Branch, or through direct contact with Member States of the United Nations having technically skilled police agencies and officials in the required areas.

It should be emphasized to participants that lack of technical skills or resources is no excuse for human rights violations.

### (d) *Management of confidential informants*

331. The subject-matter of this subsection is a technical aspect of investigation, but as there are significant ethical and legal issues involved it is being given separate and special consideration.

332. Information on crime and criminals given to police by confidential informants is extremely important, and is sometimes the only means by which some criminals, especially those involved in organized crime, can be brought to justice. The cultivation and exploitation of confidential informants by individual police investigators can significantly enhance the effectiveness of the investigator and the police agency.



333. However, there are considerable dangers in this process, for the following reasons:

(a) confidential informants are often criminals themselves, or closely associated with criminals;

(b) information is usually traded for money or other favours;

(c) transactions between police officials and informants are, of necessity, conducted secretly.

334. The dangers in the process are that:

(a) an informant may exploit the situation so that he or she can commit crime and avoid detection;

(b) an informant may encourage others to commit crime in order to receive payment for providing information on that crime;

(c) a police official may cause an informant to encourage others to commit crime which the official can then detect for the purpose of showing enhanced effectiveness;

(d) a police official may become corrupted through his or her financial dealings with a confidential informant.

335. For the above reasons, law enforcement agencies need to establish and enforce rules governing relationships and transactions between police officials and confidential informants. Rules of this type should take into account the following:

(a) Only one police official should be responsible for 'handling' a confidential informant, i.e. conducting the relationship with the informant and carrying out all transactions with him or her. This type of arrangement makes one identifiable police official accountable for all transactions with the informant.

(b) While the identity of a confidential informant must remain generally secret, for the protection of the police official dealing with the informant, and for the protection of the informant, an official record should be kept showing the identity of the informant and the police official responsible for liaising with him or her. The record should be accessible to only one specific individual in the command structure of the police agency.

(c) The activities of a confidential informant should be strictly monitored. It is often the case that, not only is the informant aware of the planning of a proposed crime, but he or she may also be involved in that planning and be regarded as a potential participant in its execution. The general rule should be that this is not acceptable, because it will mean, almost inevitably, that the informant will be committing a criminal act.

(d) Very occasionally, the proposed criminal activity is of such a magnitude, and the non-participation of the informant will create such a danger to him or her, that the informant may have to take part in the criminal activity. Condoning any criminal activity, including that of confidential informants, raises very serious legal and ethical issues. Any decision to do so should be taken at the highest level within a police organization, and only after full consultation with prosecuting authorities. Such decisions and consultation can take place only on a case-

by-case basis. No general immunity must ever be granted.

(e) Financial rewards to confidential informants for the information they provide should not be excessive. Payments should not constitute a big inducement to provide information, otherwise they may tempt informants to encourage people to commit crime.

(f) Payments to confidential informants should be strictly controlled through rigorous accounting procedures and supervision. The official making the decision on payment should be unaware of the identity of the informant. The decision maker does need to know the details of the crime and the nature of the information provided.

336. The final comment to make on police relationships with confidential informants is that the likelihood of corruption of some police officials at some stage is so high as to be almost inevitable. Thus there is an enormous responsibility on senior police officials to:

(a) formulate a clear policy on which to base effective regulatory procedures and guidelines, and to maximize the benefits to be gained from the receipt of confidential information about crime and criminals;

(b) establish strict regulatory procedures and explicit guidelines so that subordinate police officials understand exactly how they are to conduct relationships with confidential informants, and the extent to which such relationships are monitored.

337. The establishment of a system for the effective management of confidential informants is vital to the prevention and detection of crime. Corruption of such a system entails corruption of police officials, subversion of the criminal justice system, and abuse of human rights.

#### (e) *Victims*

338. The subject of victims of crime is dealt with fully in chapter XIX below. However, as a number of matters concerning victims relate closely to the investigative process, it is appropriate to consider these briefly here.

339. One of the three fundamental principles referred to at the beginning of this chapter is that which requires respect for the dignity, honour and privacy of all persons. This principle applies particularly to victims. Paragraph 4 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states:

Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

340. Victims of crime are frequently important witnesses of crime. It is important for investigators to concern themselves with the welfare of victims for basic humanitarian reasons, and to ensure their willing assistance in the investigation of the crime and in the ensuing judicial process. This may be done by alerting appropriate welfare bodies or organizations as to the needs of indi-

vidual victims, or by advising victims of the existence of such bodies and organizations.

341. In addition to needs arising out of their victimization, victims also have needs arising out of their involvement in any ensuing judicial and administrative processes. The Declaration on victims of crime, referred to above, identifies these and stipulates how they may be met. Paragraph 6 states:

The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

342. Police officials investigating crime are often uniquely placed to ensure that the standards set out in the above text are met, and that other welfare needs of victims are satisfied. They may do so informally or in accordance with schemes established for those purposes. Some Member States of the United Nations have well-developed schemes for supporting victims of crime.

### 3. *Concluding remarks*

343. Course participants should be reminded that all international human rights standards applying to policing in general are applicable to police investigations. The standards considered in this chapter have particular relevance to investigations. Participants should also be reminded that competence in technical aspects of investigation is important, not only for effective crime detection, but also for the promotion and protection of human rights.

344. Expertise and experience in all the aspects of investigation considered in this chapter, including the management of confidential informants, are available in various Member States of the United Nations. Participants should be encouraged to seek such expertise and experience and to share that which they themselves have acquired.

## **B. International standards on police investigations—Practical application**

### 1. *Practical steps for implementing international standards*

#### ***All Police Officials***

*Develop standardized procedures for the recording of information during investigations.*

*When in doubt about the legality of an investigative activity, where possible, inquire with superiors 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 your investigation skills.*

*Always advise the victim, witness or suspect of his or her rights before interviewing.*

*Before taking any investigatory action, ask yourself: 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 the securing of independent evidence.*

*Seek a warrant or court order, whenever possible, before conducting searches. Searches 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.*

*Know the community to which you are assigned. Develop proactive strategies for preventing crime, including through awareness of risks existing in the community.*

## ***Command and Supervisory Officials***

*Establish administrative mechanisms to expedite the investigatory process.*

*Establish standing orders emphasizing legal safeguards for investigations.*

*Provide for 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 cooperation, 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.*

### *2. Hypothetical exercises*

#### *Exercise 1*

Police investigations involve the gathering of information. This can be done by technical means (e.g. intercepting telephone conversations) or by tactical means (e.g. the use of confidential informants).

Especially at critical stages in the investigation of serious crime, for example when an arrest may be imminent, police investigators may be strongly tempted to ignore ethical and legal standards. In fact, an investigator may feel it essential to violate standards on a particular occasion to ensure the success of the investigation.

1. Set out the arguments you would make on such an occasion to convince an investigator that ethical and legal standards should be complied with.

2. Is it ever justifiable to break the law in order to enforce the law?

3. If arguments are made to justify breaking the law in order to enforce the law, how can these be reconciled with the presumption of innocence of all persons suspected or accused of a crime?

4. If investigators are tempted to violate ethical and legal standards, what are the implications for supervision and management of investigations—especially in relation to the examples of information gathering given in the first paragraph of this exercise?

#### *Exercise 2*

Imagine that you are members of a working group established to advise the senior command structure of your police agency on ethical standards for investigations.

1. Draw up a code of conduct for the guidance of investigators on the ethical conduct of investigations.

2. Consider the advice you would give on whether breaches of such a code should form the basis of charges under a police disciplinary code, or whether disciplinary codes and disciplinary proceedings should be kept distinct from ethical codes. Give reasons for any conclusions you may come to.

#### *Exercise 3*

For the purposes of discussion, imagine that your police agency is investigating an organization engaged in drug trafficking. The people in this organization are extremely ruthless and efficient. The results of the investigation to date indicate that further progress can be made only by infiltrating the organization in order to obtain evidence of its activities. If the tactic of infiltration is successful, the intention would be to move to immediate arrest of those involved in the criminal activities of the organization. The senior officer of your agency authorizes the tactic of infiltration, but wants some guidelines drawn up for the officers who will infiltrate the organization, to ensure that they act in an effective and ethical manner.

1. Draw up the guidelines required by the senior officer.

2. What is your opinion on the length of time a police officer can be expected to operate within an organization of the type described in this scenario?

3. Should the assigned officer participate in the criminal activities of the organization? What advice would you give him or her on this point?

#### *Exercise 4*

The Minister of Justice is seeking recommendations and advice from a number of sources on the interception of private mail and telephone conversations by police for the purposes of investigating crime.

1. Set out the recommendations and advice you would offer as:

(a) a senior police official;

(b) the director of a civil liberties group concerned about excessive police powers and invasion of privacy.

2. Draw up a policy statement for the Minister based on equal consideration of both sets of recommendations and advice.

#### 3. *Topics for discussion*

1. Why is it important for the right to presumption of innocence to be respected?

2. How does the presumption of innocence contribute to respect for the right to a fair trial?

3. How does the right of a person to be informed promptly of the charges against him or her contribute to respect for the right to a fair trial?

4. Why is it important for a person accused of a crime to be free from any compulsion to testify against himself or herself?

5. What are the essential qualities of a police officer specialized in the investigation of crime?

6. Describe briefly the guidance you would give a newly appointed police officer on how to carry out a personal search of an individual.

7. Describe briefly the risks to a police officer when he or she is managing a confidential informant. How may these risks be lessened?

8. Describe briefly the risks to the achievement of ethical policing in the use of confidential informants. How may these risks be lessened?

9. Should the ethical standards which apply to the investigation of major crime be the same as those which apply to the investigation of minor crime?

10. Criminals do not obey rules. Why should police?

## CHAPTER XII

### ARREST

#### *Chapter Objectives*

*To enumerate the international standards applicable to any official action which has the effect of depriving a person of his or her liberty, including for the alleged commission of an offence, and to highlight selected practical aspects of the implementation of those standards.*

#### *Essential Principles (see also chapter XIII, Detention)*

*Everyone has the right to liberty and security of the person and to freedom of movement.*

*No one shall be subjected to arbitrary arrest or detention.*

*No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.*

*Anyone who is arrested shall be informed, at the time of the arrest, of the reasons for his arrest.*

*Anyone who is arrested shall be promptly informed of any charges against him.*

*Anyone who is arrested shall be brought promptly before a judicial authority.*

*Anyone who is arrested shall have the right to appear before a judicial authority for the purpose of having the legality of his arrest or detention reviewed without delay, and shall be released if the detention is found to be unlawful.*

*Anyone who is arrested has the right to trial within a reasonable time, or to release.*

*Detention pending trial shall be the exception rather than the rule.*

*All arrested or detained persons shall have access to a lawyer or other legal representative, and adequate opportunity to communicate with that representative.*

*A record of every arrest must be made and shall include: the reason for the arrest; the time of the arrest; the time of transfer to a place of custody; the time of appearance before a judicial authority; the identity of involved officers; precise information on the place of custody; and details of interrogation.*

*(Continued on next page.)*

(Continued from preceding page.)

*The arrest record shall be communicated to the detainee, or to his legal counsel.*

*The family of the arrested person shall be notified promptly of his arrest and place of detention.*

*No one shall be compelled to confess or to testify against himself.*

*Where necessary, an interpreter shall be provided during interrogation.*

**A. International standards on arrest—  
Information for presentations**

**1. Introduction**

345. To arrest someone is to deprive him of his liberty. In law enforcement, the usual purposes of arrest are:

- to prevent a person from committing, or continuing to commit, an unlawful act;
- to enable an investigation to be carried out in relation to an alleged unlawful act committed by the person arrested; or
- to present a person before a court for consideration of any charges against him or her.

346. Whatever the purpose or purposes of a person's arrest, there must be legal grounds for the arrest, and the arrest must be effected in a professionally competent and adept manner. This means that police must exercise both knowledge and skills when carrying out an arrest.

347. The term "arrest" is not defined in the human rights instruments prohibiting arbitrary arrest, but it is defined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, under "Use of terms", as:

... the act of apprehending a person for the alleged commission of an offence or by the action of an authority.

It is of paramount importance for law enforcement officials to be fully aware of how the term "arrest" is defined in their domestic legislation, and of the powers of arrest accorded them under that legislation.

**2. General aspects of human rights and arrest**

**(a) Fundamental principles**

348. The principle of individual liberty is one of the essential core principles from which all human rights flow. Deprivation of individual liberty is an extremely serious matter and can be justified only when it is both lawful and necessary. The three principles of liberty, legality and necessity underlie all the specific provisions on arrest.

**(b) Specific provisions on arrest**

349. There are various provisions in international human rights law designed to protect individual liberty. Provisions which relate specifically to arrest are the prohibition of arbitrary arrest; those which set out procedures to be followed on arrest; those on the arrest of juveniles; and those which require compensation for victims of unlawful arrest.

**(i) Prohibition of arbitrary arrest**

350. This prohibition is embodied in article 9 of the Universal Declaration of Human Rights, which reads:

No one shall be subjected to arbitrary arrest, detention or exile.

351. The prohibition is expressed in the following terms in article 9, paragraph 1, of the International Covenant on Civil and Political Rights:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

352. Arbitrary arrest is also prohibited under the African Charter on Human and Peoples' Rights (art. 6); the American Convention on Human Rights (art. 7, paras. 1-3); and the European Convention on Human Rights (art. 5, para.1). Each of these texts proclaims the right to liberty and security of person; the prohibition of arbitrary arrest; and the requirement that the grounds for arrest should be specified by law.

353. Article 5 of the European Convention actually states that no one shall be deprived of his liberty except in specified cases, which, in summary, are arrest or detention:

(a) following conviction by a competent court;

(b) for non-compliance with a lawful order of a court or to secure the fulfilment of an obligation prescribed by law;

(c) for the purpose of bringing a person before the competent legal authority on reasonable suspicion of having committed an offence;

(d) of a minor by lawful order for the purposes of educational supervision or bringing him or her before a competent legal authority;

(e) of persons for the purpose of preventing the spread of infectious diseases, or of persons of unsound mind, alcoholics or drug addicts, or vagrants;

(f) to prevent a person's unauthorized entry into, or residence in, the country.

These cases fall into three broad categories, although there is some overlap. Whereas those in (a) and (c) are clearly connected with criminal law and procedure, those in (b), (d) and (e) are more concerned with social protection or control, and those in (f) fall into the category of "administrative detention".

TRAINERS' NOTE: While the latter specific provisions apply only in States which are parties to the European Convention, it is highly likely that similar provisions are in force in many States around the world. Each of the different categories of cases has implications for policing which will vary from place to place, and these can be considered during formal and informal discussion sessions. Some of the issues arising out of these provisions are raised in the Topics for Discussion at the end of this chapter.

(ii) *Procedures to be followed on arrest*

354. Procedures to be followed on arrest are set out in article 9, paragraphs 2 and 3, of the International Covenant on Civil and Political Rights, which read:

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

355. These provisions are repeated in the American Convention on Human Rights (art. 7, paras. 4-5) and the European Convention on Human Rights (art. 5, paras 2-3). No similar provisions are contained in the African Charter on Human and Peoples' Rights.

356. Four of the principles in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment refer to procedures to be followed on arrest, as follows:

*Principle 2*—Arrests are to be carried out in accordance with the law and by competent officials or authorized persons.

*Principle 10*—At the time of arrest, persons are to be informed of the reason for their arrest. They are to be informed promptly of charges against them.

*Principle 12*—A record is to be made of the reason for arrest; the time of arrest, arrival at place of custody and first appearance before a judicial or other authority; the identity of law enforcement officials concerned; and precise information concerning place of custody.

*Principle 13*—Persons arrested are to be provided with information on, and an explanation of, their rights and how to avail themselves of them.

(iii) *Additional safeguards*

357. Various instruments include additional safeguards designed to secure supervision of the arrest process.

358. Article 9, paragraph 4, of the International Covenant on Civil and Political Rights states:

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

This type of provision is repeated in the American Convention on Human Rights (art. 7, para. 6) and the European Convention on Human Rights (art. 5, para. 4), but not in the African Charter on Human and Peoples' Rights.

359. Principle 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states:

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

360. Principle 2 of the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions states:

In order to prevent extralegal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command, over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.

(iv) *Arrest of juveniles*

361. Rule 10 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) requires:

(a) the parents or guardians of arrested juveniles to be immediately notified of the fact of such arrest;

(b) a judge or other competent official or body to consider, without delay, the issue of release;

(c) contacts between law enforcement officials and juvenile offenders to be managed in such a way as to respect the legal status of the juvenile and avoid harm to him or her, with due regard to the circumstances of the case.

362. The Convention on the Rights of the Child also refers to the arrest of juveniles. Article 37 (b) states:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

TRAINERS' NOTE: Reference should also be made to chapter XVI on Police and the Protection of Juveniles.

(v) *Compensation for unlawful arrest*

363. Article 9, paragraph 5, of the International Covenant on Civil and Political Rights requires victims of unlawful arrest or detention to be given an enforceable right to compensation. Article 5, paragraph 5, of the European Convention on Human Rights repeats this requirement.

364. There is no such requirement in the African Charter on Human and Peoples' Rights or the American Convention on Human Rights. However, article 10 of the latter instrument requires compensation for a person sentenced by a final judgement through a miscarriage of justice. Unlawful arrest or detention may be an element in a miscarriage of justice.

365. Principle 35 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment requires damage incurred because of acts or omissions by a public official contrary to the rights contained in the Principles to be compensated for according to the applicable rules on liability under domestic law.

(c) *Measures of derogation*

366. Under certain circumstances, Governments may feel it necessary and correct to limit individual freedoms in the wider public interest, and for the purpose of securing other benefits such as civil order and public safety.

367. The need to impinge on human rights to secure the survival of the nation is acknowledged and allowed for under the International Covenant on Civil and Political Rights (art. 4); the American Convention on Human Rights (art. 27); and the European Convention on Human Rights (art. 15).

368. In general terms, there must be a public emergency which threatens the life of the nation, and measures of derogation may be introduced only to the extent required by the exigencies of the situation. There remains some degree of international control over the actions of Governments when such measures are taken.

369. There are some non-derogable rights which remain protected under all circumstances. These vary slightly according to the provisions of the instrument concerned, but they always include:

- the right to life;
- the prohibition of torture;
- the prohibition of slavery.

370. The question of derogation measures is considered in more detail in chapter XV on Civil Disorder, States of Emergency and Armed Conflicts. Such measures are referred to briefly here to point out that there are some consequential effects of derogation. For example,

safeguards designed to secure judicial supervision over arrest and detention of individuals may be removed or diminished, arbitrary arrests, torture and other ill-treatment of detainees are in danger or occurring as a consequence.

371. It should be emphasized to course participants that, when measures of derogation are taken, police officials must comply strictly with those safeguards which do remain for the promotion and protection of human rights.

(d) *Enforced or involuntary disappearances*

372. An example of an enforced or involuntary disappearance is given in the United Nations Centre for Human Rights' *Fact Sheet No. 6* (Rev.1), which deals with the subject, in the following terms (p. 2):

... a person is arrested, detained, abducted or otherwise deprived of his/her liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on their behalf, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of his/her liberty, thereby placing such person outside the protection of the law.

373. Where law enforcement officials are involved in enforced or involuntary disappearances, a grave perversion of the police role is committed, because a "disappeared" person is removed from the protection of the law and hence deprived of all human rights.

374. Enforced or involuntary disappearances involve the violation of a number of fundamental human rights, namely:

- the right to liberty and security of person;
- the right to humane treatment as a detainee;
- the right to life.

TRAINERS' NOTE: Further brief reference is made to the phenomenon of enforced or involuntary disappearances in chapters XIV and XXI below.

375. Clearly, if law enforcement officials are responsible for enforced or involuntary disappearances, they are exercising powers of arrest unlawfully and violating the right to liberty and security of the person. They are also violating standards established as additional safeguards for people who have been arrested.

376. It is the responsibility of law enforcement officials:

(a) to prevent and detect all crimes connected with enforced or involuntary disappearances;

(b) to ensure that other officials in the law enforcement agency in which they serve are not involved in such crimes.



377. By its resolution 20 (XXXVI) of 29 February 1980, the Commission on Human Rights established the Working Group on Enforced or Involuntary Disappearances, consisting of experts appointed in their individual capacities to examine questions relevant to such disappearances of persons.

378. The Working Group receives and examines reports on disappearances submitted by relatives of missing persons, or by human rights organizations acting on their behalf. After determining whether the reports comply with a number of criteria, the Working Group transmits individual cases to the Governments concerned, requesting them to carry out investigations and inform the Working Group of the results of the investigations.

379. The power to arrest is an essential police power. It is essential for the purposes of law enforcement and the administration of justice. The right to individual liberty is a fundamental human right. It is essential for the enjoyment of other human rights, and it is a prerequisite for democratic government and democratic citizenship.

380. The international standards described in this chapter indicate how an essential police power can be reconciled with a fundamental human right. Police need to have a complete understanding of their powers in this respect, and the limits on them. They also require the necessary practical and tactical skills to put their powers into effect with due regard to those limits. It is in the actual practice of policing that powers are properly exercised or exceeded, and rights either respected or violated.

## B. International standards on arrest—Practical application

### 1. Practical steps for implementing international standards

#### *All Police Officials*

*Review regularly, for a clear understanding, your powers of arrest and the procedures to adopt upon and following arrest.*

*Participate in training to develop and maintain the necessary interpersonal skills, and especially skills of communication, to enable you to effect arrests expertly, discreetly and with due respect for human dignity.*

*Where resistance is not evident, attempt calm, polite, disarming language when effecting an arrest, resorting to strong, authoritative tones only when necessary.*

*Develop and maintain the necessary technical and tactical skills to enable you to carry out arrests expertly, discreetly and with due respect for human dignity.*

*Develop and maintain skills in the use of handcuffs and other means of restraint.*

*Develop your self-confidence, including through self-defence skills.*

*Study carefully chapter XIV of this manual, on the use of force, as it applies to arrests.*

*Seek an arrest order/warrant, whenever possible.*

*Carry a small card in your uniform, setting forth the rights of an arrestee, and read those rights, verbatim, to the arrestee once he has been secured.*

*Study conflict-resolution techniques, through in-service training or in available community educational programmes.*

*Keep careful arrest records, with detail as the first rule of thumb.*

## ***Command and Supervisory Officials***

*Issue and enforce clear standing orders on arrest procedures.*

*Provide for continuous training for all officers on procedures for arrest, the rights of the arrested, and techniques for effecting arrest safely and humanely.*

*Provide for training in interpersonal skills, conflict-resolution techniques, self-defence, and the use of restraint mechanisms.*

*Develop standard forms for the recording of arrest information, based on this chapter and the laws and procedures for arrest in your jurisdiction.*

*When arrests can be planned in advance, ensure that a range of options is available, and that planning, preparation, briefing and tactics adopted are appropriate to the circumstances and conditions under which the arrest is to be effected.*

*Debrief the officers involved after every arrest, and carefully check the arrest record to ensure that it is complete.*

*Establish procedures to ensure the unhindered access of legal counsel to arrested persons.*

### *2. Hypothetical exercises*

#### *Exercise 1*

A fundamental human right which is relevant to the actions of police officials is the right of people not to be subjected to arbitrary arrest or detention.

Discuss:

(a) How this right is protected under the constitution and laws of your country.

(b) The effectiveness of any guidelines issued by government or legal departments to assist police in respecting this right.

(c) The effectiveness of any specific instructions issued by police command or supervisory officials on the exercise of powers of arrest, and on avoidance of arbitrary arrest.

(d) The ways in which supervisory systems within the police organization seek to prevent arbitrary arrests.

(e) Draw up a brief list of guidelines and instructions to be issued to police personnel, designed to ensure that only legal and necessary arrests are effected.

#### *Exercise 2*

Consider the following provisions of article 9 of the International Covenant on Civil and Political Rights (paras. 1-2):

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

1. Taking these provisions into account, consider what other safeguards might be necessary to protect people from arbitrary arrest.

2. Discuss the extent to which the provisions of the law of your country are sufficient to protect people from arbitrary arrest.

3. How are police officials in your country trained in their powers of arrest and in techniques of arrest?

4. Discuss ways in which that training could be improved to ensure that all arrests made by police officials were lawful and necessary.

#### *Exercise 3*

You are required to arrest a person who is considered to be armed and dangerous. This person is hiding in a house in town occupied by four other people. The person to be arrested is not aware that police know of his whereabouts and considers the house a safe place to hide. In the past, he has resisted arrest and used a firearm against police.

1. What other information do you require to make your plans to effect an arrest with minimum risk of causing any personal injury?

2. Set out the essential elements of a plan to secure the arrest of the person effectively, lawfully and safely.

3. Describe the part of the briefing you would give to police, prior to the arrest operation, on the use of firearms in the operation.

4. What effect does the presence in the house of four people, apart from the person to be arrested, have on your operational plan?

#### Exercise 4

Over a period of six months, five women have been brutally murdered in your capital city. The indications are that these murders are being committed by the same person—a man—and that they have a sexual motive. The general population is extremely worried, women are in great fear, and the media and politicians are questioning police competence. There has been no progress in the investigation.

1. Are these sufficient grounds for removing the protection against arbitrary arrest so that more men can be arrested and questioned about the crimes?
2. Set out the arguments for increasing police powers of arrest under such circumstances. What should those powers be?
3. Set out the arguments for retaining law, procedures and practice designed to protect people from arbitrary arrest under such circumstances.
4. Apart from exercising increased powers, what other steps can be taken by police to reassure the population?

#### 3. *Topics for discussion*

1. Why is the right to liberty and security of the person such an important right?
2. On the question of unnecessary arrests, give reasons why it is not always appropriate to arrest a person even when you have the legal power to do so.
3. International human rights texts forbid arbitrary arrests. Devise a definition of an arbitrary arrest.

4. In addition to their usual powers of arrest (e.g. for the arrest of persons who may have committed criminal acts), police are sometimes empowered to arrest persons for the purpose of preventing the spread of infectious diseases, persons of unsound mind, alcoholics, drug addicts and vagrants. Do you consider that it is a function of police to deal with all these categories of people? Which of these categories of people should be the concern of police? Is it always necessary to exercise powers of arrest when dealing with them?

5. Both international human rights instruments and domestic legal texts require a person arrested on a criminal charge to be brought promptly before a judge or other judicial authority. Why have such provisions been introduced?

6. What violations of international human rights standards are committed when people are subjected to enforced or involuntary disappearance? What breaches of the criminal law of your country would be committed if such acts were carried out?

7. Why are interpersonal skills, especially skills of communication, important when effecting an arrest?

8. Can interpersonal skills, including skills of communication, be taught successfully? Imagine that you have been asked to devise a course for training police in such skills. Prepare an outline course programme setting out the subjects to be covered.

9. Make a list of the main points of advice you would give a newly appointed police official on effecting lawful, necessary, expert and discreet arrests.

10. For the purposes of discussion, imagine that a team of police officers has carried out the arrest of a number of suspects for serious crime following a planned police operation. What points would you want to review during a debriefing exercise for this operation?

## CHAPTER XIII

### DETENTION

#### *Chapter Objectives*

*To provide an introduction to the international standards on conditions of detention and the treatment of detainees, and an opportunity for users of the manual and trainees to practice the application of those standards.*

#### *Essential Principles (see also chapter XII, Arrest)*

*Pre-trial detention shall be the exception, rather than the rule.*

*All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

*Everyone charged with a penal offence shall be presumed innocent until proved guilty.*

*No detainee shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, or to any form of violence or threats.*

*Detained persons shall be held only in officially recognized places of detention, and their families and legal representatives are to receive full information.*

*In places of detention, juveniles are to be separated from adults, women from men, and unconvicted persons from convicted persons.*

*Decisions about the duration and legality of detention are to be made by a judicial or equivalent authority.*

*Detainees shall have the right to be informed of the reason for detention and any charges against them.*

*Detainees have the right to contact with the outside world and to visits from family members, and the right to communicate privately and in person with a legal representative.*

*Detainees shall be kept in humane facilities, designed to preserve health, and shall be provided with adequate food, water, shelter, clothing, medical services, exercise and items of personal hygiene.*

*The religious and moral beliefs of detainees shall be respected.*

*Every detainee shall have the right to appear before a judicial authority, and to have the legality of his detention reviewed.*

*The rights and special status of women and juvenile detainees are to be respected.*

*No one shall take advantage of the situation of a detained person to compel him to confess or otherwise incriminate himself or another person.*

*Measures for discipline and order shall only be those set out in law, and regulations shall not exceed those necessary for safe custody, and shall not be inhumane.*

## **A. International standards on detention— Information for presentations**

### **1. Introduction**

381. International human rights standards and most national legal systems make a distinction between “detainees” and “prisoners”. A detainee is a person who is deprived of personal liberty, but who has not been convicted of an offence. A prisoner is a person deprived of liberty as a result of having been convicted. As police in most legal systems deal principally with pre-conviction detainees, this chapter focuses on that category of detainee.

TRAINERS’ NOTE: Manual users should be alerted to the fact that the subject-matter of this chapter is dealt with fully in *Human Rights and Pre-Trial Detention: A Handbook of International Standards relating to Pre-Trial Detention* (Professional Training Series No. 3), issued by the United Nations Centre for Human Rights and the United Nations Crime Prevention and Criminal Justice Branch. The handbook may be obtained directly from the Centre for Human Rights, or through United Nations Information Centres in most Member States (Sales No. E.94.XIV.6).

382. All persons deprived of their liberty are vulnerable to mistreatment. Some categories of detainee, such as women and children, are particularly vulnerable. Furthermore, as noted above, it is usually the case that detainees in police custody have not been convicted of any crime. They are innocent people in respect of whom the presumption of innocence applies.

383. For these reasons, police conduct towards detainees should be humane, and in strict compliance with the law and guidelines governing treatment of people in custody. This is particularly important when police are interviewing or interrogating persons suspected or accused of committing a crime.

384. International standards on the treatment of detainees set out fundamental principles and detailed provisions which, if complied with, will secure humane and legal conditions of detention for persons in police custody.

### **2. General aspects of human rights during detention**

#### **(a) Fundamental principles**

385. People are kept in police detention following the exercise of lawful powers of arrest by police, or following the decision of a judge or other legal authority exercising judicial power that they may be detained by police.

386. Detainees are subject to a legally sanctioned process, and they are a category of persons who benefit from specific forms of protection based on the following principles:

- no one shall be subjected to torture or other ill-treatment;
- all detainees are entitled to humane treatment and to respect for their inherent human dignity;
- all persons are presumed innocent until proved guilty according to law.

#### **(b) Specific provisions on detention**

387. International human rights instruments contain very detailed provisions on detention. They cover the prohibition of torture; general requirements on humane treatment; and specific requirements concerning juveniles and women. These are all considered in this chapter, together with other relevant topics: interviewing or interrogation of suspects; detention following measures of derogation from treaty provisions by Governments; and enforced or involuntary disappearances.

##### **(i) Prohibition of torture**

388. Torture has been comprehensively outlawed by the international community. It is prohibited by article 5 of the Universal Declaration of Human Rights, which reads:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

It is prohibited in virtually the same terms in the International Covenant on Civil and Political Rights (art. 7); the African Charter on Human and Peoples’ Rights (art. 5); the American Convention on Human Rights (art. 5, para. 2); and the European Convention on Human Rights (art. 3).

389. A United Nations Declaration, and a Convention, against torture set out detailed measures to counter the practice of torture.

*Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

390. The Declaration defines torture in article 1. The definition is relevant to police officials because part of it states that torture is severe pain or suffering, whether physical or mental, inflicted

by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. . . .

391. Various provisions of the Declaration require:

- (a) torture to be outlawed by States;
- (b) suspected acts of torture to be investigated;
- (c) training of law enforcement officials to take full account of the prohibition against torture;
- (d) the prohibition to be included in general rules or instructions issued to officials responsible for the custody of detainees;
- (e) States to keep under systematic review interrogation methods and practices;
- (f) arrangements for the custody and treatment of persons deprived of their liberty to be kept under review.

*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

392. The Convention is based on the Declaration, but it enlarges upon many of its provisions. For example, the definition of torture is extended under article 1 of the Convention to include severe pain or suffering, whether physical or mental, 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. . . .

This means that the responsibility of public officials is widened to include officials at all levels who may be held responsible if they knowingly fail to prevent torture.

393. Article 2 of the Convention has particular significance for police officials. It reads:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

394. The Convention includes provisions for bringing persons accused of torture to justice, regardless of their nationality or of where the crime is alleged to have been committed. It also established the Committee against Torture to assist in the implementation of the Convention.

TRAINERS' NOTE: There is also a European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Under this Convention, a Committee is established which, by means of visits, examines the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment (art. 1). Each State party is to permit visits, in accordance with the Convention, to any place within its jurisdiction where persons are deprived of their liberty by a public authority (art. 2).

395. It should be emphasized to law enforcement officials that there are no circumstances under which torture may be inflicted legally, or where it is justifiable. For example:

- The four Geneva Conventions of 1949, and the two 1977 Additional Protocols to those Conventions, prohibit torture in times of international and non-international armed conflict. (Further reference will be made to these instruments in chapter XV below.)
- The International Covenant on Civil and Political Rights, as well as regional treaties, permit no derogation from the provisions prohibiting torture during public emergencies.

396. Article 5 of the Code of Conduct for Law Enforcement Officials indicates the full extent of the prohibition of torture:

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.

397. Torture is never justified under any circumstances, and no public official has any defence available to him or her for committing torture.

(ii) *General requirements on humane treatment of detainees*

398. General requirements on humane treatment of detainees are set out in article 10 of the International Covenant on Civil and Political Rights, which requires:

- (a) all persons deprived of liberty to be treated with humanity and with respect for the inherent dignity of the human person;
- (b) accused persons to be segregated from convicted persons and given separate treatment appropriate to their status as unconvicted persons;
- (c) accused juveniles to be separated from adult detainees.

Similar provisions are set out in the American Convention on Human Rights, but not in the African Charter on Human and Peoples' Rights or the European Convention on Human Rights.

399. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment has direct relevance to police officials, applying to detained persons, who are defined under “Use of terms” as

any person deprived of personal liberty except as a result of conviction for an offence;

as well as to imprisoned persons, defined as

any person deprived of personal liberty as a result of conviction for an offence.

It is the former category of person which is normally detained in police custody.

400. The Body of Principles contains 39 principles. Principle 1 sets out the basic requirement to treat detained or imprisoned persons in a humane manner. Principle 6 enshrines the prohibition against torture.

401. The detailed provisions of this instrument may be discussed with course participants and its standards compared with domestic law, with instructions and guidelines in accordance with which they work, and with actual police practice. Of particular importance are the provisions which require:

(a) judicial supervision of detainees (principles 4, 11 and 37);

(b) detainees to have the right to consult legal counsel (principles 11, 15, 17 and 18);

(c) detainees to have the right to communicate with, and retain contact with, their families (principles 15, 16, 19 and 20);

(d) adequate medical supervision of detainees (principles 24 and 26);

(e) records to be kept of the circumstances of arrest and custody (principle 12);

(f) details of the circumstances of any interrogation to be recorded (principle 23).

402. The question of individual responsibility of law enforcement officials is addressed in principle 7, paragraph 2. This requires officials who believe that a violation of the Body of Principles has occurred or is about to occur to report the matter to superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.

403. The Body of Principles is more relevant to police supervision of detainees than the Standard Minimum Rules for the Treatment of Prisoners. However, where law enforcement officials have significant responsibilities for the custody of detainees, they should be made aware of that instrument—especially section C of part II (rules 84-93), under the heading “Prisoners under arrest or awaiting trial”.

### (iii) *Juvenile detainees*

404. In addition to the general principles and provisions on the treatment of detainees discussed above, the provisions of the following instruments also apply to juvenile detainees:

#### *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*

405. This instrument consists of 30 rules, each with an explanatory commentary, and is divided into six parts.

406. Course participants should be reminded of the aims of juvenile justice. These are set out in rule 5, which states:

The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

407. Part two of the Rules has most relevance to police treatment of juvenile detainees, as it concerns “Investigation and prosecution”. The following points should be emphasized:

(a) Rules 10.1 and 10.2 state that, on the arrest of a juvenile, the parents or guardian are to be notified immediately, and a judge or other competent body must consider the issue of release without delay.

(b) Rule 10.3 requires contacts between a law enforcement agency and a juvenile to be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to him or her, with due regard to the circumstances of the case.

(c) Rule 11 deals with diversion of juvenile offenders from the criminal justice system, and requires police who have discretionary powers to dispose of juvenile cases to do this without recourse to formal hearings wherever possible.

(d) Rule 12 requires specialized police officials and police units to deal with juveniles and juvenile crime.

#### *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*

408. This instrument consists of 87 rules and is divided into five sections. It is designed to ensure that juveniles are deprived of their liberty and kept in institutions only when there is an absolute need to do so; and that those juveniles who are detained are treated humanely, with due regard to their status as juveniles, and with due respect for their human rights.

409. Section III, “Juveniles under arrest or awaiting trial”, has most relevance to police officials. The two rules in that section (rules 17 and 18) stress the presumption of innocence and the special treatment which attaches to that status. These rules also set out basic requirements on the conditions under which untried juveniles are to be detained. These include:

(a) the right to legal counsel;

(b) opportunities to pursue work, with remuneration;

(c) opportunities for education and training;

(d) provision of materials for leisure and recreation.

#### *Convention on the Rights of the Child*

410. This instrument consists of 54 articles and is divided into three parts. It repeats and reinforces many of the prohibitions and requirements referred to in this chapter. Article 37 is particularly relevant, containing the following provisions:

(a) Paragraph (a) prohibits torture and ill-treatment of children, as well as capital punishment and sentences of life imprisonment.

(b) Paragraph (b) prohibits unlawful or arbitrary deprivation of a child's liberty.

(c) Paragraph (c) requires children deprived of liberty to be treated with humanity and with respect for the inherent dignity of the human person. They are to be treated in a manner which takes into account the needs of persons of their age; they are to be kept separate from adults; and they shall have the right to maintain contact with their family.

(d) Paragraph (d) gives detained children the right of prompt access to legal assistance, and the right to challenge the legality of the detention before a court or other competent authority.

TRAINERS' NOTE: Reference should also be made to chapter XVI on Police and the Protection of Juveniles.

#### (iv) *Women detainees*

411. The special status of women is acknowledged and protected by two types of provision: one requiring women detainees to be accommodated separately from men, and the other on the question of discrimination.

412. ACCOMMODATION—is dealt with in rule 8 of the Standard Minimum Rules for the Treatment of Prisoners. Although Economic and Social Council resolution 663 C (XXIV) of 31 July 1957, by which the Council approved the rules, recommended that favourable consideration be given to their adoption and application in the administration of penal and correctional institutions, the principle of separation embodied in rule 8 is relevant to women detainees in police custody. This rule requires:

(a) different categories of prisoners to be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, etc.;

(b) men and women to be kept, so far as possible, in separate institutions. In an institution which receives both men and women, the premises allocated to women are to be kept entirely separate.

413. While, generally, the provision of separate institutions and premises for women detained in police custody is neither necessary nor feasible, the principle that they should be accommodated separately from men must be strictly complied with.

414. DISCRIMINATION is dealt with in principle 5 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This stipulates that:

(a) the principles are to be applied without distinction of any kind, such as race, colour, sex, language, etc.;

(b) measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, shall not be deemed to be discriminatory.

415. Domestic law and guidelines requiring:

(a) Women police officials to supervise women detainees;

(b) Searches of detainees to be carried out by persons of the same sex as the detainee.

must be strictly enforced and complied with.

TRAINERS' NOTE: Reference should also be made to chapter XVII on Law Enforcement and the Rights of Women.

#### (c) *Interviewing or interrogating suspects*

416. Interviewing or interrogating suspects is a necessary part of the investigative process. However, as persons interviewed as suspects are usually detainees, and as international standards on the subject refer to detainees, the topic is dealt with in this chapter rather than in chapter XI on Police Investigations.

417. To interview or interrogate an individual is to exercise a technical policing skill. A substantial body of theoretical knowledge and practical expertise has been developed on the subject. It is neither possible nor desirable to attempt to convey that knowledge or develop that skill during a training course on human rights and law enforcement. It is, however, appropriate:

- to identify relevant international standards;
- to consider the implications of those standards for the interviewing process;
- to point out the necessity of drawing on current theoretical knowledge and best policing practice in this area.

##### (i) *Relevant international standards*

418. The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires States to "keep under systematic review interrogation methods and practices" in order to prevent torture and ill-treatment of persons deprived of their liberty (art. 6).

419. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires States:

(a) to ensure that education and information regarding the prohibition against torture are included in the training of law enforcement personnel and other persons involved in the custody, interrogation or treatment of detainees (art. 10);

(b) to keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing torture (art. 11).

420. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment stipulates that:

(a) it shall be prohibited to take undue advantage of the situation of a detained person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person (principle 21, para. 1);

(b) no detained person while being interrogated is to be subject to violence, threats or methods of interrogation which impair his capacity of decision or judgement (principle 21, para. 2);



(c) the duration of an interrogation of a detainee, and of the intervals between interrogations, and the identity of officials conducting interrogations and other persons present are to be recorded and certified in a form prescribed by law (principle 23, para.1);

(d) non-compliance with the principles in obtaining evidence is to be taken into account in determining the admissibility of such evidence against a detainee (principle 27);

(e) a detainee suspected of or charged with a criminal offence is to be presumed innocent until proved guilty before a court (principle 36, para.1).

(ii) *Purpose of standards*

421. The purpose of the standards relating to interviewing or interrogation is to secure humane treatment of detainees:

(a) as an end in itself—in accordance with the principle of respect for the inherent dignity of the human person;

(b) to prevent miscarriages of justice occurring—through detainees falsely confessing, as a result of torture or ill-treatment, to crimes which they have not committed.

422. False confessions to crime in such circumstances are a very real danger, because of:

(a) the general vulnerability of detainees;

(b) the particular vulnerability of some detainees arising out of personal and psychological factors affecting their ability to make free decisions and rational judgements;

(c) the understandable tendency of people being mistreated to take whatever action they consider necessary to avoid further mistreatment, including falsely confessing to crimes which they have not committed.

(iii) *Implications of standards for the interviewing or interrogation process*

423. The standards set out above have implications both for the purpose of an interview or interrogation, and for the attitude, knowledge and awareness, and skills of police officials conducting it.

424. The purpose of interviewing or interrogating detainees is not:

—to compel a person to confess, to incriminate himself, or to testify against any other person; or

—to subject a person to treatment such that his capacity of decision or judgement is impaired.

Interviewing or interrogating detainees is part of the investigative process, and that involves information gathering and analysis. Both of these purposes will be enhanced if the interviewer approaches his or her task:

(a) with an open mind, i.e. not seeking to use the interview to reinforce preconceived ideas;

(b) with the aim of fact-finding or information gathering, i.e. not solely for the purpose of securing a confession from the person being interviewed.

425. The attitude of the interviewer should be conditioned by respect for the inherent dignity of the human person, and by the purpose of the interview or interrogation, as indicated above.

426. The interviewer's knowledge and awareness should cover:

(a) ethical and legal standards on interviewing or interrogation;

(b) all the information available on the crime or incident which is the subject of the interview;

(c) the psychological factors involved in the interview process, particularly those affecting the ability of individuals to make free decisions and rational judgements;

(d) the personality and character of the person to be interviewed.

The latter two areas of knowledge and awareness clearly need to be based on current theoretical work carried on in this area.

427. The skills of an interviewer will be derived from training and experience based on current knowledge on the theory and practice of interviewing.

TRAINERS' NOTE: These observations have focused on interviewing persons suspected or accused of crime. Interviewing witnesses to a crime is also extremely significant for the effective investigation of crime. Each type of interview requires a different approach and the application of different skills and techniques.

Considerable expertise on the theory and practice of interviewing, of both suspects and witnesses, has been developed by practitioners in the field of psychology and by police officials. This is available in various States and should be called upon where it is felt that there is a lack of expertise in this aspect of policing. Shortcomings in interviewing skills continue to lead to mistreatment of detainees and to miscarriages of justice.

(d) *Measures of derogation*

428. Under certain circumstances, Governments may feel it necessary and correct to limit individual freedoms in the wider public interest, and for the purpose of securing other benefits such as civil order and public safety.

429. The need to impinge on human rights to secure the survival of the nation is acknowledged and allowed for under the International Covenant on Civil and Political Rights (art. 4); the American Convention on Human Rights (art. 27); and the European Convention on Human Rights (art. 15).

430. In general terms, there must be a public emergency which threatens the life of the nation, and measures of derogation may be introduced only to the extent required by the exigencies of the situation. There remains some degree of international control over the actions of Governments when such measures are taken.

431. There are some non-derogable rights which remain protected under all circumstances. These vary slightly according to the provisions of the instrument concerned, but they always include:

- the right to life;
- the prohibition of torture;
- the prohibition of slavery.

432. The question of derogation measures is considered in more detail in chapter XV on Civil Disorder, States of Emergency and Armed Conflicts. Such measures are referred to briefly here:

(a) to emphasize that the prohibition of torture is absolute and remains, whatever the circumstances;

(b) to point out that there are some consequential effects of derogation. For example, safeguards designed to secure judicial supervision of detainees may be removed or diminished, and torture and other ill-treatment of detainees are in danger of occurring as a consequence.

433. It should be emphasized to course participants that, when measures of derogation are taken, police officials must comply strictly with those safeguards which do remain for the promotion and protection of human rights.

e) *Enforced or involuntary disappearances*

434. Reference should be made to the discussion of enforced or involuntary disappearances in chapter XII on Arrest (paras. 372-376 above). It was pointed out there that the right to humane treatment as a detainee is one of the fundamental human rights violated when enforced or involuntary disappearances occur.

435. Course participants should be reminded of the example of such a disappearance given in chapter XII (para. 372 above), and of the responsibilities of law enforcement officials in relation to such disappearances as set out in that chapter.

3. *Concluding remarks*

436. The care and custody of detainees is an extremely important aspect of policing. Despite the fact that the treatment of persons in detention is very closely regulated, under both international law and domestic law, abuses continue to occur.

437. Humane treatment of detainees does not require a high degree of technical policing skill; it requires respect for the inherent dignity of the human person, and compliance with some basic rules of conduct. Of all the topics considered in this chapter, only interviewing or interrogation is a matter of skill. Effective and ethical interviewing requires a high degree of skill on the part of police, and this can be developed through training and experience. However, it is essential that the training is based on sound theory and current best practice.

438. The way in which a police agency treats people in its control as detainees is a measure of the professionalism of its officers; of the ethical standards it is able to maintain; and of the extent to which it can be regarded as a service to the community, rather than an instrument of repression. These factors, in the long run, will determine the effectiveness of the agency.

**B. International standards on detention—Practical application**

1. *Practical steps for implementing international standards*

***All Police Officials***

*Enrol in training programmes to sharpen your 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.*

*Do not enter the detention facility carrying a firearm, except to transport a detainee outside.*

*Carry out regular, periodic checks of detainees, to ensure safety and security.*

*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. Use them only where necessary to prevent escape during 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.*

*Carefully study chapter XIV of this manual, on the use of force.*

*Review and follow relevant recommendations set out below for command and supervisory officials.*

## ***Command and Supervisory Officials***

*Establish, disseminate and enforce, and regularly review standing orders on the treatment of detainees.*

*Provide specialized 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); 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.*

*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 organizations.*

*Establish, and inform staff of, penalties for violations, ranging, as appropriate, from suspension, pay docking and termination, to criminal prosecution for serious violations.*

## 2. *Hypothetical exercises*

### *Exercise 1*

Article 6 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states:

Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

1. Devise a procedure, and compile a set of instructions, for use within your law enforcement agency to secure:

(a) a systematic review of interrogation methods and practices;

(b) a systematic review of arrangements for the custody and treatment of persons deprived of their liberty.

2. Draw up a short list of guidelines and instructions for law enforcement officials designed to secure humane treatment of detainees between the moment of arrest and arrival at a place of detention.

3. Draw up another set of guidelines and instructions designed to secure humane treatment of detainees while they are in a place of detention.

### *Exercise 2*

Article 9 of the International Covenant on Civil and Political Rights stipulates (paras. 3-4) that anyone arrested on a criminal charge shall be:

(a) brought promptly before a judge or other officer authorized by law to exercise judicial power;

(b) entitled to trial within a reasonable time or to release;

(c) entitled to take proceedings before a court in order that that court may decide without delay on the lawfulness of his detention.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment incorporates the above provisions and includes requirements for suspects or detainees to have access to:

(a) legal counsel;

(b) their families;

(c) a medical officer.

1. Under the law of your country, when may any or all of these entitlements (under the International Covenant and the Body of Principles) be denied or delayed?

2. Imagine that you are a member of a working group formed to consider the rights of detainees to be brought promptly before a judge or other judicial authority, and to have access to legal counsel.

(a) Identify the difficulties which exist in removing all restrictions on those rights.

(b) Suggest ways of overcoming those difficulties.

3. It is sometimes felt that access to legal counsel or family by a suspect can hinder a criminal investigation. Set out precisely the reasons why this should be so, then devise measures which could reconcile the requirement to detect crime with the rights of suspects to receive legal advice and to have their family informed of the fact of their detention.

### *Exercise 3*

Principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states:

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

1. Are similar rules incorporated into the laws of your country, or into instructions or guidelines issued to police?

2. When such rules are incorporated into domestic legislation, or into instructions or guidelines issued to police, is it realistic to expect supervisory police officers to ensure compliance with them by subordinates, or is some form of judicial or legal supervision always necessary?

3. One effect of principle 21 is to require police officers to exercise interviewing skills which do not rely on psychological or physical coercion. Do police officers in your law enforcement agency possess such skills?

4. Imagine that you are a member of a working group with terms of reference to make recommendations on:

(a) supervision measures;

(b) training programmes,

necessary to ensure effective, ethical and lawful interviewing of suspects by police officers.

Set out the main points of your recommendations and outline how these could be implemented.

### *Exercise 4*

Imagine that there have been a number of cases recently in your country in which people have been convicted of serious crimes and sentenced to long terms of imprisonment following confessions which were later shown to be false. This has led to a great loss of confidence in the judicial and policing systems. The main reason for the false confessions was ill-treatment by police, and especially by police conducting interviews.

Police misconduct in these cases is being dealt with by means of normal criminal investigatory processes and internal disciplinary processes.

The Commission of Inquiry appointed by the Government to make recommendations on reforms to the criminal justice system and to police procedure for interviewing suspects has made a number of recommendations, including the following:

(a) When a person suspected of crime is being interviewed by police, the suspect's legal representative shall be present throughout the interview.

(b) All interviews of suspects by police shall be videoed, and those recordings shall be available as evidence in any subsequent legal proceedings.

(c) There shall be no conviction for a criminal offence based solely on evidence of confession. Confession must always be corroborated by additional evidence of guilt.

(d) When a person confesses a crime to a police officer, that person shall be brought immediately before a court so that a judge or other judicial authority may verify that the confession has been made voluntarily and without any undue pressure.

The Government has made it clear that it will introduce at least some of these recommendations.

For the purposes of discussion, imagine that you are a member of a police working group charged with drawing up the police response to the Government on these four recommendations. Set out the arguments for and against each of them, and select the recommendation or recommendations which you think should be adopted. Give the reasons for your choice.

### 3. *Topics for discussion*

1. You have arrested a man who has concealed a bomb somewhere in a city centre. It is due to explode within one hour and he will not tell you where it is. Are you justified in torturing him to make him disclose its whereabouts?

2. In what ways can the training of law enforcement officials ensure that full accounts taken of the prohibition against torture, as required by the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art.5)?

3. Why is it important for accused persons to be segregated from convicted persons and given separate treatment?

4. Why is it important to divert juvenile offenders from the criminal justice system, as required by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (rule 11)?

5. What are the advantages in having specialized police units to deal with juveniles and juvenile crime?

6. What personal and psychological factors may affect the ability of a detainee who is being interviewed to make free decisions and rational judgements?

7. In what ways will the conduct of an interview differ if an approach is taken to use the interview for the purpose of fact-finding and information gathering, rather than purely to secure a confession?

8. What personal qualities are necessary in a police officer for that officer to be an effective and ethical interviewer? Is it possible to train people to carry out effective and ethical interviews, or is this an inborn skill?

9. What are the advantages and disadvantages of making video recordings of police interviews of suspects? Specify all the purposes for which they could be used.

10. It has been shown that people who have falsely confessed to crime have been able to give convincing accounts of their involvement because police officers conducting interviews have unwittingly conveyed sufficient information about the crime for those accounts to be constructed. How can this be avoided?

## CHAPTER XIV

### USE OF FORCE AND FIREARMS

#### *Chapter Objectives*

*To provide guidance to law enforcement officials on the use of force, and of firearms, their impact on the rights to life and to security of the person, and international requirements for the appropriate use of force and firearms for lawful policing purposes.*

NOTE: Five separate Essential Principles charts are given for this chapter, in contrast to the single chart in other chapters of the manual. They are designed to respond to the need of trainers and trainees for clearly enumerated rules for this highly technical area of police activities.

#### *Essential Principles:*

##### *THE USE OF FORCE*

*Non-violent means are to be attempted first.*

*Force is to be used only when strictly necessary.*

*Force is to be used only for legal law enforcement purposes.*

*No exceptions or excuses shall be allowed for unlawful use of force.*

*Use of force is always to be proportional to lawful objectives.*

*Restraint is to be exercised in the use of force.*

*Damage and injury are to be minimized.*

*A range of means for differentiated use of force is to be made available.*

*All officers are to be trained in the use of the various means for differentiated use of force.*

*All officers are to be trained in the use of non-violent means.*

***Essential Principles:***

***ACCOUNTABILITY FOR THE USE OF FORCE AND FIREARMS***

*All incidents of the use of force or firearms shall be followed by reporting and review by superior officials.*

*Superior officials shall be held responsible for the actions of police under their command if the superior official knew or should have known of abuses but failed to take concrete action.*

*Officials who refuse unlawful superior orders shall be given immunity.*

*Officials who commit abuses of these rules shall not be excused on the grounds that they were following superior orders.*

***Essential Principles:***

***PERMISSIBLE CIRCUMSTANCES FOR THE USE OF FIREARMS***

*Firearms are to be used only in extreme circumstances.*

*Firearms are to be used only in self-defence or defence of others against imminent threat of death or serious injury*

*— or —*

*To prevent a particularly serious crime that involves a grave threat to life*

*— or —*

*To arrest or prevent the escape of a person posing such a threat and who is resisting efforts to stop the threat*

*— and —*

*In every case, only when less extreme measures are insufficient.*

*Intentional lethal use of force and firearms shall be permitted only when strictly unavoidable in order to protect human life.*

***Essential Principles:***

***PROCEDURES FOR THE USE OF FIREARMS***

*The officer is to identify himself or herself as a police official*

*— and —*

*The officer is to give a clear warning*

*— and —*

*The officer is to allow adequate time for the warning to be obeyed*

*— but —*

*This shall not be required if the delay would result in death or serious injury to the officer or others*

*— or —*

*If is clearly pointless or inappropriate in the circumstances to delay.*

***Essential Principles:***

***AFTER THE USE OF FIREARMS***

*Medical aid is to be rendered to all injured persons.*

*The relatives or friends of those affected are to be notified.*

*Investigation is to be allowed where requested or required.*

*A full and detailed report of the incident is to be made.*

**A. International standards on the use of force—  
Information for presentations**

1. *Introduction*

439. Police in every society are entrusted with a variety of powers for the purposes of enforcing law and maintaining order. Inevitably, the exercise by a police official of any of the powers which are vested in him or her has an immediate and direct effect on the rights and freedoms of fellow citizens.

440. Along with the authority of police to use force under certain conditions and restraints comes a great responsibility to ensure that this authority is exercised lawfully and effectively. The task of police in society is a difficult and delicate one, and it is recognized that the use of force by police under clearly defined and controlled circumstances is entirely legitimate. However, abuse of the power to use force strikes at the very principle on which human rights are based—that of respect for the inherent dignity of the human person. It is, therefore,

essential that steps be taken to prevent such abuse, and to provide for effective remedies, investigations and sanctions when there has been excessive or abusive use of force.

441. The concept of “force” is not defined in international texts relevant to the use of force by police. Dictionary definitions of force usually invoke such terms as “strength”, “power”, “violence” and “exertion”. Law enforcement officials should be familiar with the ways in which “force” has been defined under their own domestic laws and codes, and should be reminded of any such definitions when this subject is dealt with.

442. The following sections set out the international principles and standards which should guide police behaviour with regard to the use of force. These standards are an attempt to reconcile requirements for the maintenance of public order and safety with respect for both the personal safety of police officials and the protection of human rights.



## 2. *General aspects of the use of force*

### (a) *Fundamental principles*

443. The principles of necessity and proportionality lie behind all the detailed provisions regulating the use of force by police. These principles require, respectively, that force should be used by police only when strictly necessary for law enforcement and maintaining public order, and that the application of force should be proportional, i.e. force should be applied only to the extent required for the legitimate ends of law enforcement and maintaining public order.

### (b) *Specific provisions on the use of force*

444. The above principles are embodied in article 3 of the Code of Conduct for Law Enforcement Officials, which states:

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

The commentary to article 3 repeats the requirement of proportionality in the use of force and states that the use of firearms is considered an extreme measure.

445. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide specific and detailed guidelines on how the requirements of necessity and proportionality can be met.

446. In the preamble to the Principles, it is acknowledged that:

... the work of law enforcement officials is a social service of great importance. . . .

... a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

... law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

... .

447. The Principles may be summarized under the headings set out below.

#### (i) *Regulations; differentiated use of force*

448. Governments and law enforcement agencies must adopt, implement and constantly review regulations controlling the use of force and firearms. With a view to restraining the application of means capable of causing death or injury to persons, they must make available a range of means for differentiated use of force. These include non-lethal incapacitating weapons and self-defensive equipment such as shields and helmets.

#### (ii) *Non-violent means first*

449. As far as possible, law enforcement officials shall apply non-violent means before resorting to the use of force and firearms.

#### (iii) *Exercise of restraint; humanitarian measures*

450. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials must exercise restraint in such use, minimize damage and injury, and respect and preserve human life. To these ends, they

must ensure that medical assistance is rendered to any injured or affected persons at the earliest possible moment, and ensure that relatives or friends of injured or affected persons are notified.

#### (iv) *Use of force to be reported*

451. Injury or death resulting from the use of force or firearms must be reported to superior officers, and any arbitrary or abusive use of force must be dealt with as a crime. Exceptional circumstances or public emergencies do not justify departure from the Principles.

#### (v) *Use of firearms*

452. The use of firearms is permissible in self-defence or defence of others against the imminent threat of death or serious injury, or to arrest a person presenting such a threat, when less extreme means are insufficient. Intentional lethal use of firearms is forbidden except when strictly unavoidable in order to protect life.

453. Before using firearms against persons, police must identify themselves and give a clear warning. Time must be allowed for the warning to be observed, unless this would be likely to result in death or serious injury to the officer or others, or clearly pointless or inappropriate in the circumstances.

454. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that specify the circumstances under which officials are authorized to carry firearms; ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of harm; regulate the control, storage and issuing of firearms; and provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

#### (vi) *Policing public assemblies*

455. In the dispersal of unlawful but non-violent assemblies, law enforcement officials shall avoid the use of force or, where that is not practicable, restrict force to the minimum necessary. In dispersing violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable. In any event, as indicated above, firearms may be used only in self-defence or defence of others against the imminent threat of death or serious injury, or to arrest a person presenting such a threat. Intentional lethal use of force or firearms is forbidden except when strictly unavoidable in order to protect life.

#### (vii) *Use of force on detainees*

456. Force may not be used on persons in detention except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened. Firearms may not be used against such persons except in self-defence or defence of others against the immediate threat of death or serious injury, or to prevent escape by a detainee presenting such a threat.

#### (viii) *Recruitment and training*

457. All law enforcement officials must have the appropriate moral, psychological and physical qualities,

be adequately trained, and have their fitness to perform their functions periodically reviewed. Training should include proper use of force, human rights, and technical policing skills—special attention being given to alternatives to the use of force and firearms, including the peaceful settlement of conflicts. Stress counselling must be available for officers involved in situations where force and firearms are used.

(ix) *Reporting and review*

458. Effective reporting and review procedures must be in place to address all incidents involving the use of force and firearms. Persons affected are to have access to independent judicial processes.

(x) *Management responsibility*

459. Superior officers are to be held responsible for unlawful use of force or firearms by officers under their command if they knew, or should have known, of such abuses and failed to take corrective measures.

(xi) *Unlawful orders*

460. Officers who refuse to obey unlawful orders to use force or firearms are to have immunity, and those who obey such orders are not excused from liability because of those orders.

(c) *Use of force and the right to life*

461. The exercise of the power to use force can affect the most fundamental of rights—the right to life. Police use of force which amounts to a violation of the right to life represents a clear defeat of one of the prime purposes of policing, that of maintaining the safety and security of fellow citizens. Depending on the circumstances, it may also be a very serious breach of both domestic criminal law and international law.

462. The right to life is protected under customary international law, and by article 3 of the Universal Declaration of Human Rights, which states:

Everyone has the right to life, liberty and security of person.

It is also protected under the International Covenant on Civil and Political Rights (art. 6), and under regional instruments such as the African Charter on Human and Peoples' Rights (art. 4), the American Convention on Human Rights (art. 4) and the European Convention on Human Rights (art. 2).

463. The International Covenant requires the right to life to be protected by law, and forbids arbitrary deprivation of life; the American Convention and the European Convention require the right to life to be protected by law; and the African Charter and the American Convention state explicitly that no one shall be arbitrarily deprived of life.

464. An "arbitrary" action can be taken to mean one which is not in conformity with the law, or one which is unjust notwithstanding conformity with the law. Arbitrary deprivations of life include such atrocities as genocide, war crimes, deaths arising from executions not preceded by proper legal proceedings, deaths arising from torture or ill-treatment, and deaths arising from excessive use of force by law enforcement officials.

(d) *Use of force and extralegal killings*

465. The term "extralegal killings" refers to arbitrary deprivations of life as described above which are carried out, for example, by police, army or other State officials. This is a form of State terrorism, and is sometimes performed by units which have come to be known as "death squads".

466. Measures to counter these gross violations of the right to life are set out in the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions. This instrument consists of 20 principles designed to prevent extralegal executions and secure thorough investigations of such killings when they do occur. The Principles require strict control to be exercised over officials responsible for arrest and detention, and over those authorized to use force and firearms.

(e) *Use of force and disappearances*

467. Reference should be made to chapter XII, on Arrest, for general observations on enforced or involuntary disappearances (paras. 372-376 above).

468. The phenomenon of enforced or involuntary disappearances is referred to here because a person taken under such circumstances will almost certainly have been the victim of unlawful force. Furthermore, it is frequently the case that victims of this form of abuse are unlawfully killed, and hence the right to life is violated.

469. Law enforcement officials should be reminded of their responsibility, in respect of enforced or involuntary disappearances, namely:

(a) to prevent and detect all crimes connected with enforced or involuntary disappearances;

(b) to ensure that other officials in the law enforcement agency in which they serve are not involved in such crimes.

3. *Concluding remarks*

470. In addition to ethical and legal reasons for police compliance with international standards on the use of force and firearms, there are also practical and political considerations. Abuses and excesses in the use of force by police can have the effect of making an already difficult job impossible. Furthermore, such abuses and excesses serve to undermine one of the prime objectives of policing—that of maintaining social peace and stability. Incidents have occurred where excessive use of force by police has resulted in public unrest on such a scale and of such ferocity that law enforcement agencies have been rendered temporarily unable to maintain order and protect public safety. The widespread consequences of such incidents, and the immediate and dramatic publicity which they receive, seriously erode crucial public support for police.

471. In summary, international human rights law demands that use of firearms by police must be exceptional; use of force by police must be necessary and proportional; and use of force and firearms by police must be regulated, monitored and consistent with the fundamental rights to life, liberty and security of the person.

## **B. International standards on the use of force—Practical application**

### *1. Practical steps for implementing international standards*

#### ***All Police Officials***

*Enrol in training programmes to improve your skills in first aid; self-defence; the use of defensive equipment; the use of non-lethal instruments; the use of firearms; crowd behaviour; conflict resolution; and personal stress management.*

*Acquire, and practise the use of, shields, defensive vests, helmets and non-lethal instruments.*

*Acquire, practise and utilize a range of means for the differentiated use of force, including non-lethal incapacitating weapons.*

*Participate in stress-counselling activities.*

*Carefully store and secure all firearms issued to you.*

*Assume that every firearm is a loaded firearm.*

*Study, and employ, techniques for persuasion, mediation and negotiation.*

*Plan in advance for the gradual, progressive use of force, beginning with non-violent means.*

*Be alert to the physical and mental state of your colleagues, and intervene where necessary to see that they receive appropriate care, counselling or training.*

#### ***Command and Supervisory Officials***

*Establish and enforce clear standing orders on the use of force and firearms.*

*Provide for regular training in first aid; self-defence; the use of defensive equipment; the use of non-lethal weapons; the use of firearms; crowd behaviour; conflict resolution; stress management; and persuasion, mediation and negotiation.*

*Acquire and issue defensive equipment, including helmets, shields, defensive vests, gas masks, and bulletproof vehicles.*

*Acquire and issue non-lethal incapacitating and crowd-dispersal instruments.*

*Acquire the broadest possible range of means for the differentiated use of force.*

*Provide for periodic assessments of officers, to gauge their mental and physical health and their suitability to judge the necessity for, and appropriate use of, force and firearms.*

*Provide for stress counselling for all officers involved in the use of force.*

*Establish clear reporting guidelines for every incident involving the use of force or firearms.*

*Strictly regulate the control, storage and issuing of firearms, including procedures for ensuring that officers are accountable for arms and ammunition issued to them.*

*Prohibit the use of weapons and ammunition which cause unwarranted injury, damage or risk.*

*Periodically check to ensure that only officially issued weapons and ammunition are being carried by officers. Provide appropriate sanctions for any officer found in possession of materials not officially issued (especially such items as fragmentation, hollow-point or dum dum bullets).*

*Develop strategies which will reduce the risk of officers being forced to use firearms.*

## 2. *Hypothetical exercise*

For the purposes of discussion, imagine that the following incidents have occurred in the area you police:

(a) A patrolling police officer witnessed a man rob a passer-by. The thief had threatened his victim with a handgun and stolen his wallet and briefcase. As the thief ran away, the officer shouted at him, ordering him to stop. The thief continued to run and the police officer drew his gun and shot him. The thief was fatally wounded.

(b) A patrolling police officer witnessed two people smashing the window of a jewellery shop and stealing a large quantity of jewels from the display. Neither appeared to be carrying a weapon. As they ran from the scene, the officer shouted at them, ordering them to stop. One of the thieves stopped, and the other continued to run away. The police officer drew his revolver and, after shouting once more to the escaping thief to stop, shot and killed him. The accomplice, who did stop, was arrested.

Comment on the legal justification for the use of lethal force in each case, in relation to:

- the law and guidelines on the use of force by police in your country;
- the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, particularly principle 9.

## 3. *Topics for discussion*

1. Why do States and the international community impose restrictions on the use of force by police?

2. How do abuses and excesses in the use of force by police make their task more difficult?

3. What is meant by the term ‘‘proportional use of force’’ in relation to policing?

4. What alternatives are there to the use of force? What technical policing skills do they require and how can police officials be trained in them?

5. When is intentional lethal use of force by police justified?

6. Why does international law not accept unlawful superior orders as a justification for human rights violations?

7. How can police agencies make it easier for police officers to resist unlawful superior orders which may lead to human rights violations?

8. Consider the various ways in which police protect the right to life.

9. International standards on the use of force by police encourage the use of non-lethal incapacitating weapons. What weapons of that nature are you aware of? How many types of such weapons are available for your use and what are the dangers in using them? How can those dangers be overcome?

10. There is a requirement that law enforcement officials must report use of force by them to superior officials. What levels of force should this apply to? How is it possible to describe different levels of force to police officers so that they may be aware of what they should report?

## CHAPTER XV

### CIVIL DISORDER, STATES OF EMERGENCY AND ARMED CONFLICTS

#### *Chapter Objectives*

*To introduce users of the manual and course participants to human rights and humanitarian law standards applicable to policing during exceptional circumstances, and to limitations on exceptional measures to be adopted during periods characterized by such circumstances.*

#### *Essential Principles:*

##### **CIVIL DISORDER**

*All measures for the restoration of order shall respect human rights.*

*Restoration of order shall be achieved without discrimination.*

*Any limitations on rights shall be only those determined by law.*

*Any action taken, and any limitations on rights, shall be solely for the purpose of securing respect for the rights and freedoms of others, and of meeting the just requirements of morality, public order and the general welfare.*

*Any action taken, and any limitations on rights, shall be only those consistent with the requirements of a democratic society.*

*No exceptions shall be allowed with regard to the right to life; the right to freedom from torture; the prohibition of slavery; or the prohibition of imprisonment for failure to fulfil a contractual obligation.*

*Non-violent means shall be attempted before the use of force.*

*Force shall be used only when strictly necessary.*

*Force shall be used only for legal law enforcement purposes.*

*Force applied shall be proportional to legal law enforcement objectives.*

*Every effort shall be made to limit damage and injury.*

*A range of means for the differentiated use of force shall be available.*

*No unnecessary limitations on the rights to free speech, assembly, association or movement shall be imposed.*

*No limitations shall be imposed on freedom of opinion.*

*The independent functioning of the judiciary shall be maintained.*

*All wounded and traumatized persons shall be immediately cared for.*

***Essential Principles:***

**STATES OF EMERGENCY**

*States of emergency may be declared only in conformity with the law.*

*States of emergency may be declared only when a public emergency threatens the life of the nation, and where ordinary measures are plainly inadequate to address the situation.*

*States of emergency must be officially declared before exceptional measures may be taken.*

*Any exceptional measures must be strictly required by the exigencies of the situation.*

*Any exceptional measures must not be inconsistent with other requirements under international law.*

*Any exceptional measures must not discriminate solely on the basis of race, colour, gender, language, religion or social origin.*

*No exceptions are permitted with regard to the right to life; the prohibition of torture and other cruel, inhuman or degrading treatment; the prohibition of slavery; or the prohibition of imprisonment for failure to fulfil a contractual obligation.*

*No one may be held guilty of any criminal offence which was not an offence at the time when it was committed.*

*No one may be subjected to a heavier penalty than that which was applicable at the time when the offence was committed.*

*If the penalty for an offence is reduced by law subsequent to a commission of the offence, the offender must receive the lighter penalty.*

***Essential Principles:***

**ARMED CONFLICTS**

*During armed conflicts and occupation, police are to be considered non-combatants, unless formally incorporated into the armed forces.*

*Police have the right to abstain from fulfilling their functions under occupation, by reason of conscience, and this shall not result in an alteration of their status.*

*Humanitarian law applies in all situations of armed conflict.*

*Principles of humanity must be safeguarded in all situations.*

*Non-combatants and persons put out of action by injury, sickness, capture or other causes must be respected and protected.*

*Persons suffering from the effects of war must be aided and cared for without discrimination.*

*Acts prohibited in all circumstances include:*

- murder;*
- torture;*
- cruel or degrading treatment;*
- corporal punishment;*
- mutilation;*
- outrages upon personal dignity;*
- hostage-taking;*
- collective punishment;*
- executions without regular trial.*

*Reprisals against the wounded, sick or shipwrecked, medical personnel and services, prisoners of war, civilians, civilian and cultural objects, the natural environment, and works containing dangerous forces are prohibited.*

*No one may renounce, or be forced to renounce, protection under humanitarian law.*

*Protected persons must at all times have resort to a protecting power (a neutral State safeguarding their interests), the International Committee of the Red Cross, or any other impartial humanitarian organization.*

## **A. International standards on armed conflicts, states of emergency and civil disorder—Information for presentations**

### *1. Introduction*

472. To varying degrees, conflict and disorder create conditions of extreme hardship, suffering and cruelty and these conditions are exacerbated when the conduct of hostilities is unregulated. Furthermore, during conflict and disorder human rights of individuals and groups are extremely vulnerable.

473. International humanitarian law is designed to regulate the conduct of hostilities and to protect victims of conflict. It imposes obligations on all parties to a conflict and comes into effect only when armed conflict occurs. It is, in essence, a particular and highly detailed subset of human rights law applicable to situations of armed conflict.

474. International human rights law is designed to protect the rights of individuals and groups in all situations. It imposes obligations on Governments in relation to individuals and groups within their jurisdiction, and it applies in times of peace and of conflict.

475. Police have important and varying tasks to perform during different types of conflict and disorder. In carrying out those tasks, they must conform to the standards of international human rights and humanitarian

law. Standards particularly applicable to policing are identified and discussed in this chapter.

476. Policing during international armed conflict; non-international armed conflict (or civil war); states of emergency; and civil disorder are all discussed below. If trainers making presentations based on this chapter consider that it is not appropriate to use all of the material on armed conflicts, they may find it useful as background information for preparing presentations based on the remaining parts of the chapter.

477. It is important for police officials to be aware both of applicable human rights standards, and of principles derived from international humanitarian law which are applicable to the policing of civil disorder. Equally important is an understanding of the various thresholds which bring into play the various categories of standards.

478. In a hypothetical hierarchy of violence, one can imagine at least five levels:

**Level 1:** Normal situations.

**Level 2:** Internal tensions, disturbances, riots, and isolated and sporadic acts of violence.

**Level 3:** A declared state of emergency, due to the effects of internal tensions and sporadic acts of violence which threaten the life of the nation.

**Level 4:** Non-international armed conflict (civil war).

**Level 5:** International armed conflict.

479. Of course, a state of emergency may also be declared due to armed conflict, and the lines are not always clear between the various divisions. As a quick reference, the following categories of standards may be said to apply to each situation:

**Level 1:** All human rights, without derogation.

**Level 2:** All human rights, without derogation, and subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others, and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

**Level 3:** All human rights, with some, limited exceptions allowing non-discriminatory derogations to the extent strictly required by the exigencies of the situation. No derogations are permitted with regard to the right to life; the prohibition of torture; the prohibition of slavery; or the prohibition of imprisonment for failure to fulfil a contractual obligation.

**Level 4:** Article 3 common to the four Geneva Conventions of 1949, and Additional Protocol II of 1977 to those Conventions, as well as other human rights provisions, including the protection of non-derogable rights.

**Level 5:** The four Geneva Conventions and Additional Protocol I of 1977, as well as other human rights provisions, including the protection of non-derogable rights.

480. These various levels of violence and disorder are discussed in more detail below.

## 2. *General aspects of human rights and humanitarian standards during armed conflicts and civil disorder*

### (a) *Fundamental principles*

481. The basic message of international humanitarian law regulating armed conflict is that the right of belligerents to adopt means of injuring the enemy is not unlimited. The principles of proportionality (to the adversary's actions or to the anticipated military value of one's own actions) and discrimination (in the selection of methods, weaponry and targets) derive from that fundamental principle.

482. The regulation of civil disorder is determined largely by the principles of necessity and proportionality in the use of force. These require, respectively, that force be used by police only when strictly necessary for law enforcement and maintaining public order; and that the application of force be proportional—i.e. applied only to the extent required for the legitimate ends of law enforcement and maintaining public order.

### (b) *Specific provisions on human rights and humanitarian standards during armed conflicts and civil disorder*

#### (i) *Most vulnerable human rights*

483. The human rights which are most vulnerable during armed conflicts and civil disorder, and which have direct implications for law enforcement, are the right to liberty and security of the person, the right to humane treatment as a detainee, and the right to life. For full details on the standards protecting these rights, reference should be made to preceding chapters. In summary:

- the right to liberty and security of the person is, in part, protected by the prohibition of arbitrary arrest. All arrests must be lawful and necessary;
- the right to humane treatment as a detainee is protected by the prohibition of torture and the requirement that all persons deprived of their liberty be treated with humanity and with respect for the inherent dignity of the human person. It is also protected by more detailed provisions designed to give effect to the latter prohibition and requirement;
- the right to life is protected by requirements on States to protect the right to life by law, and to prohibit arbitrary deprivation of life. It is also protected by limitations placed on the use of force by police.

#### (ii) *The law regulating armed conflict*

484. The law regulating armed conflict consists of two sets of treaty law (so-called "Hague Law" and "Geneva Law"), plus a number of customary rules based on the fundamental principles outlined above.

485. "Hague Law" is largely embodied in a series of Declarations and Conventions, including the Hague Convention (IV) of 18 October 1907 respecting the Laws and Customs of War on Land (1907 Hague Convention). "Geneva Law" is largely embodied in the four Geneva Conventions of 12 August 1949, and the two Additional Protocols of 8 June 1977 to those Conventions, namely:

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention);
- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention);
- Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention);
- Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention);
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I);



—Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II).

486. The two strands of treaty law are distinguished in that “Hague Law” governs the conduct of hostilities—the permissible means and methods of war—whereas “Geneva Law” is concerned with the protection of victims of war. In fact, the distinction is not quite so marked, as the two strands are now merged to some extent by later treaty provisions—for example, in the two Additional Protocols to the Geneva Conventions.

(iii) *Types of armed conflict and categories of persons*

487. International humanitarian law recognizes two types of armed conflict:

(a) international armed conflict—i.e. inter-State wars, and wars of national liberation against colonial domination or alien occupation;

(b) non-international armed conflict, or civil wars.

488. Situations of internal disturbances and tensions, such as riots and sporadic acts of violence not amounting to armed conflict, are not regulated by international humanitarian law.

489. As far as categories of persons are concerned, the principal distinction is between those who have combatant status and those who do not. Broadly speaking, those with combatant status are members of armed forces of a party to a conflict who carry arms openly. Such status is accorded only to those fighting in international armed conflicts. Persons with combatant status:

- have a right to participate in hostilities;
- are entitled to be treated as prisoners of war if captured by the enemy;
- must obey the rules of war;
- receive some protection during hostilities through measures designed to regulate methods and means of warfare.

490. The above points are expanded under the headings “International armed conflict”, “Non-international armed conflict” and “Civil disorder” below. Other aspects are considered under the headings “Terrorism” and “States of emergency and measures of derogation”.

(c) *International armed conflict*

491. Traditionally, the law regulating armed conflict covered only inter-State wars. For example, article 2 of the 1907 Hague Convention states that the Convention and the Regulations annexed to it “do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention”.

492. Article 2 common to the 1949 Geneva Conventions limits the application of the Conventions to:

... all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

... all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

...

TRAINERS’ NOTE: As noted under the heading “Non-international armed conflict” below, article 3, common to the four Geneva Conventions is the only provision in those Conventions dealing with non-international armed conflicts.

493. The definition of an international armed conflict was broadened under article 1, paragraph 4, of Additional Protocol I to the Geneva Conventions to include:

... armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination ...

(i) *Status of police*

494. Reference was made to “combatant status” above (para. 489), and a broad definition was given, together with some of the rights and duties of combatants. The actual definition of a combatant has been amended over the years to reflect the realities of current types of conflict and the wishes of the international community.

495. For example, the definition of a combatant derived from articles 43 and 44 of Additional Protocol I to the Geneva Conventions makes no distinction between highly organized armed forces of a State and less tightly organized members of liberation movements. It thus allows legal recognition of certain types of guerrilla activity which have been a feature of more recent conflicts.

496. Nevertheless, although now somewhat blurred, the distinction between combatant and civilian remains—combatants continuing to receive, for example, protection afforded to prisoners of war in the event of their capture, and civilians continuing to receive the special protection to which they are entitled in time of war.

497. As far as police are concerned, it is clear that the civilian status of police forces is acknowledged and respected, and that the definition of a combatant does not include members of police forces. Furthermore, article 50 of Additional Protocol I defines a civilian as a person who does not belong to any of the categories of combatant as defined, and stipulates that in case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

498. Article 43 of Additional Protocol I contains a significant provision in paragraph 3, which reads:

Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

This means that, in order to acquire combatant status, police must be members of a law enforcement agency formally incorporated into the armed forces of a party to a conflict. This act of incorporation, coupled with notification to the other parties, not only alters the status of members of such an agency, it also underlines the civilian status of police who are members of agencies to which the provisions of article 43, paragraph 3, are not applied.

499. Finally, on the question of status, in part III, section III, of the Fourth Geneva Convention, dealing with the status and treatment of protected civilians in occupied territories, article 54 states:

The Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to . . . them, should they abstain from fulfilling their functions for reasons of conscience.

This provision gives some measure of protection to members of police forces within occupied territories against an occupying power seeking to use those officials to perform tasks, or to implement measures, which they may find unacceptable.

(ii) *Rights, duties and responsibilities of police*

500. Police officials with combatant status have the rights and responsibilities of combatants, in addition to those of law enforcement officials. Broadly speaking, these are as follows:

**RIGHTS**—to receive some protection during hostilities through measures designed to regulate methods and means of warfare; and to be treated as prisoners of war in the event of capture by the enemy.

**RESPONSIBILITIES**—as combatants engaging with the enemy, to comply with the rules of international law applicable in armed conflict. These are many, varied and detailed, and they include rules for:

(a) Protection of the wounded, sick and shipwrecked

For example, article 10 of Additional Protocol I to the Geneva Conventions requires all the wounded, sick and shipwrecked, of whichever party, to be respected and protected.

(b) Methods and means of warfare

For example, article 37 of Additional Protocol I states that it is prohibited to kill, injure or capture an adversary by resorting to perfidy. Examples of acts of perfidy given in the article include feigning an intent to negotiate under a flag of truce or of a surrender; and feigning an incapacitation by wounds or sickness.

(c) Treatment of prisoners of war

For example, article 14 of the Third Geneva Convention states that prisoners of war are entitled in all circumstances to respect for their persons and their honour.

(d) Protection of civilian persons and populations.

For example, article 51, paragraph 2, of Additional Protocol I states that the civilian population, as well as individual civilians, shall not be the object of attack. Furthermore, acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited.

501. It should be noted that, in varying ways, general policing duties become “skewed” from the peacetime norm towards duties arising out of the situation created by the conflict. This point is considered in more detail where the duties of police not having combatant status are discussed below.

502. Police officials not having combatant status, as officials carrying out solely law enforcement functions, are to act in compliance with domestic law—especially that expressing international human rights standards. These officials—i.e. those who have retained their civilian status—have the usual rights, duties and responsibilities of law enforcement officials. Broadly speaking, these are as follows:

**RIGHTS**—to benefit from the protection accorded to civilians in time of international armed conflict under the Fourth Geneva Convention and Additional Protocol I; and to benefit from the protection accorded to public officials under article 54 of the Fourth Geneva Convention, referred to under “Status of police” above (para. 499).

**DUTIES**—to engage in general policing duties (law enforcement and order maintenance). The situation created by the conflict could affect these duties drastically, in a variety of ways, as the following examples illustrate:

(a) Protection of prisoners of war

For example, article 12 of the Third Geneva Convention states that the detaining Power is responsible for the treatment given to prisoners of war. As that Convention includes provisions on escape and capture of prisoners of war, on criminal offences committed by and against them, and on judicial proceedings, it is highly likely that the police forces of the detaining Power will become involved.

(b) Protection of civilian persons and populations

For example, part IV, section I, chapter VI, of Additional Protocol I concerns civil defence. This is defined in article 61 as the performance of a number of humanitarian tasks intended to protect the civilian population against the dangers, and help them recover from the immediate effects, of hostilities. Under wartime conditions, police could be expected to carry out some of these tasks, which include warning, evacuation, rescue, detection and marking of danger areas, and restoration and maintenance of order in distressed areas.

(c) Policing under the authority of an occupying power

For example, article 43 of the Regulations annexed to the 1907 Hague Convention requires an occupying Power to restore and ensure public order and safety within the territory it has occupied. This includes a requirement—unless absolutely

prevented from doing so—to respect the laws in force in the country.

There are further, detailed measures under the Fourth Geneva Convention (arts. 64-78) and Additional Protocol I (arts. 75-77) on penal legislation and judicial procedure. These measures are based on the principle that the penal legislation of the occupied territory remains in force unless it constitutes a threat to the occupying Power, when it may be repealed or suspended by that Power. The purpose of this principle, and of the measures based on it, is to allow the institutions and public officials of the occupied territory to continue to function as before—in so far as they are able.

General policing duties would be affected not only by the general circumstances of the conflict, but also by the specific conditions of the occupation. Police officials would continue to function as before unless they abstained from fulfilling their functions for reasons of conscience, or were removed from their posts by the occupying Power, each case being provided for by article 54 of the Fourth Geneva Convention.

RESPONSIBILITIES—as police officials with general law enforcement functions:

(a) to comply with domestic law and procedures, especially those expressing international human rights standards;

(b) depending on how they are affected by the circumstances of the conflict, or by any occupation, to comply with rules of international law governing those situations.

(d) *Non-international armed conflict*

503. The four Geneva Conventions of 1949 comprise more than 400 detailed articles. Only one of these, article 3, common to all the Conventions, is designed to protect victims of conflicts “not of an international character”. It establishes certain minimum standards for the protection of persons taking no active part in hostilities, including members of armed forces who are *hors de combat*.

504. In 1977, the provisions of common article 3 were supplemented by Additional Protocol II to the Geneva Conventions. The Protocol is an instrument of 28 articles, and its more detailed provisions give better protection to victims of non-international armed conflicts.

(i) *Common article 3*

505. Article 3 common to the Geneva Conventions extends basic humanitarian protection to specified categories of people by applying principles on which the Conventions are based to non-international armed conflicts occurring in the territory of one of the parties. In such cases, each party to the conflict is bound to apply the provisions of the article “as a minimum”. Article 3 is sometimes described as a “convention within the Conventions”.

506. The fundamental principle of humane treatment is set out in paragraph 1, which also defines those protected by the article, as follows:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

...

The remainder of the paragraph then sets out a number of acts which are prohibited “at any time and in any place whatsoever” in respect of protected persons. Prohibited acts include:

(a) murder;

(b) torture;

(c) hostage-taking;

(d) outrages upon personal dignity;

(e) passing sentences and carrying out executions without previous judgement by a regularly constituted court which afforded all the necessary judicial guarantees.

507. Paragraph 2 of article 3 requires the wounded and sick to be collected and cared for. It also requires the parties to the conflict to endeavour to bring into force, by means of special agreements, all or part of the other provisions of the Conventions.

(ii) *Additional Protocol II*

508. Additional Protocol II to the Geneva Conventions, which supplements common article 3, applies to non-international armed conflicts which take place

in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol. (Art.1, para.1.)

This means that the Protocol regulates only those conflicts in which government forces confront dissident armed forces exercising control over territory. It does not regulate:

(a) conflicts between groups which do not include government forces;

(b) smaller-scale conflicts where dissident groups do not control territory.

PROTECTED PERSONS

509. The Protocol protects all persons affected by an armed conflict as defined in the Protocol. Falling into this category are:

(a) all persons who do not take a direct part in hostilities, or who have ceased to take part in hostilities, whether or not their liberty has been restricted (part II);

(b) wounded, sick and shipwrecked persons (part III);

(c) the civilian population (part IV).

510. Part II of the Protocol sets out fundamental guarantees for all persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted. These are:

(a) entitlement to respect for their person, honour and convictions, and religious practices;

(b) entitlement to humane treatment, without any adverse distinction.

511. A series of prohibited acts is then enumerated in article 4. These include:

(a) violence to life;

(b) torture;

(c) hostage-taking;

(d) acts of terrorism and outrages upon personal dignity.

512. Article 4 also sets out measures for the protection of children, including a prohibition on children under 15 years of age being recruited into armed forces or taking part in hostilities.

513. Article 5 sets out safeguards for persons whose liberty has been restricted—making no distinction according to the reason for restriction of liberty and creating no prisoner-of-war status. It is designed to secure humane treatment and safety for detainees.

514. Article 6 applies to prosecution and punishment for criminal offences related to the armed conflict. It sets out rules to enable basic minimum standards on the conduct of judicial proceedings to be met.

515. Part III of the Protocol contains six articles concerning those affected by an armed conflict by virtue of being “wounded, sick or shipwrecked”. It reaffirms the principle of humane treatment, and sets out provisions to secure the protection and care of this category of victim, and the protection of medical personnel and medical duties, units and transports.

516. Part IV of the Protocol contains six articles concerning protection of the civilian population. It provides that the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations, with the proviso that civilians shall enjoy such protection “unless and for such time as they take a direct part in hostilities” (art. 13, paras. 1 and 3). Paragraph 2 of article 13 prohibits making the civilian population and individual civilians the object of attack. It also prohibits acts or threats of violence the primary purpose of which is to spread terror among the civilian population.

517. The only protection provided for those actually engaged in hostilities is that laid down in article 4, paragraph 1, which states that it is prohibited to order that there shall be no survivors.

(iii) *Status*

518. In non-international armed conflicts, those engaged in hostilities are either:

(a) members of armed forces, police forces or other security forces of a State, who are bound by international human rights and humanitarian law, and by the domestic criminal law of the State;

or

(b) members of organized armed dissident groups, who are responsible under domestic criminal law for unlawful use of force, their acts of insurrection, and other criminal acts which they may commit, and who are bound also, as a “party to the conflict”, to respect international humanitarian law.

(iv) *Duties and responsibilities of police*

519. In non-international armed conflicts, the duties and responsibilities of police officials are as follows:

DUTIES—as law enforcement officials:

(a) depending on the functions and capabilities of the law enforcement agency, and the general situation, to confront armed opposition groups;

(b) to investigate criminal activities of members of armed opposition groups;

(c) to perform general policing duties, which—as in the case of international armed conflict—will become “skewed” from the peacetime norm due to the circumstances of the conflict.

RESPONSIBILITIES—as law enforcement officials:

(a) to comply with the rules of international law applicable in non-international armed conflicts;

(b) to comply with domestic law, especially law expressing international human rights standards.

(e) *Civil disorder*

520. Two categories of armed conflict, and one category of violent circumstances falling below the level of armed conflict, are distinguished in the “Geneva Law” discussed above. These are:

(a) international armed conflicts, to which all four Geneva Conventions of 1949, as well as Additional Protocol I to those Conventions, apply;

(b) high-intensity non-international armed conflicts, in which rebel forces have control of territory and are able to carry out sustained and concerted military operations. Additional Protocol II to the Geneva Conventions applies to these conflicts, as does article 3, common to the four Geneva Conventions;

(c) the category of violence specifically excluded by article 1, paragraph 2, of Additional Protocol II, namely:

... situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

It is this latter category of conflict which is considered here under the general heading of “Civil disorder”.

TRAINERS’ NOTE: While the distinction between armed conflict and internal disturbances and tensions is not made in the provisions of common article 3, the article clearly deals with armed conflicts involving hostilities between armed forces.

521. Despite of the distinction made between non-international armed conflict and “conflict” falling below the level of the legal definition of armed conflict, there remains some difficulty in distinguishing between them in practice. Some forms of civil disorder not amounting to, but approaching the threshold of, armed conflict can be almost indistinguishable from armed conflict in ferocity and intensity. Furthermore, such forms of civil disorder:

- (a) create victims who require protection;
- (b) involve a very high possibility of human rights violations.

(i) *Definitions and characteristics of civil disorder*

522. International experts have proposed various types of internal disturbances and tensions not amounting to armed conflict. The International Committee of the Red Cross, for its part, has identified a number of characteristics of disturbances and tensions, some or all of which may be present in any particular situation. Thus internal disturbances have been described as:

... situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterized by a certain seriousness or duration and which involves acts of violence. These latter can assume various forms, all the way from the spontaneous generation of acts of revolt to the struggle between more or less organized groups and the authorities in power. In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules.<sup>2</sup>

523. The term “internal tension” refers to situations of serious tension (political, religious, racial, economic, etc.) or to sequels of armed conflict or internal disturbance. Characteristics of internal disturbances and tensions may include:

- (a) the introduction of various forms of detention—large-scale and long-term;
- (b) torture and ill-treatment of detainees;
- (c) suspension of fundamental judicial guarantees;
- (d) forced disappearances and other acts of violence, such as hostage-taking;
- (e) repressive measures against families and associates of detainees;
- (f) the spreading of terror among the civilian population.<sup>3</sup>

<sup>2</sup> See *International Review of the Red Cross* (Geneva), 28th year, No. 262 (January-February 1988), p. 12.

<sup>3</sup> *Ibid.*, p. 13.

(ii) *International standards*

524. **International human rights law** is applicable both in time of peace and in time of conflict, across all the thresholds of conflict, namely:

- civil disorder;
- non-international armed conflict;
- international armed conflict.

Its purpose is the promotion and protection of human rights.

TRAINERS’ NOTE: The human rights most vulnerable during armed conflicts and civil disorder were identified earlier in this chapter (para. 483 above).

525. Particular reference must be made to the need for the use of force by police in dealing with civil disorder to be both necessary and proportional to the situation. In this respect, the following principles from the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials should be emphasized:

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

526. **International humanitarian law** is applicable only in time of armed conflict—international and non-international. Its purpose is the protection of victims. However:

(a) Some forms of civil disorder can be almost indistinguishable from armed conflict and exhibit at least some of the features of armed conflict.

(b) While human rights law remains applicable at all times, during public emergencies its effect can be reduced through certain limited, exceptional measures of derogation taken by Governments.

(c) Human rights law places obligations on Governments in relation to people within their jurisdiction, and not on groups and individuals who may be opposing Governments.

(d) International humanitarian law focuses on the material situation of victims.

(e) International humanitarian law places obligations on Governments and on other parties to a conflict in relation to victims of that conflict.

Consequently, while both international human rights law and international humanitarian law are relevant to the regulation of civil disorder, only international human rights law is legally applicable.

(iii) *Humanitarian principles and standards*

527. The problem of relevance and applicability of international standards to civil disorder has been addressed by international experts, and three texts embodying humanitarian principles and standards to be applied to civil disorder have been prepared. These texts exist only as draft instruments at present, but they are important because of the normative guidance they provide and the sources from which they are drawn. The three texts are:

(a) a code of conduct—prepared by Hans-Peter Gasser, Legal Adviser to the Directorate of the International Committee of the Red Cross;<sup>4</sup>

(b) a draft model declaration on internal strife—prepared by Theodor Meron, Professor of Law at New York University;<sup>5</sup>

(c) a draft declaration of minimum humanitarian standards—prepared by a group of experts convened at Abo Akademi University, Turku/Abo, Finland, elaborating on Professor Meron's draft.<sup>6</sup>

528. These texts are not proposed as a new body of law applicable in situations of civil disorder. In fact, they emphasize already existing fundamental rules drawn from general legal principles, custom and treaty law which are applicable in such situations. They emphasize imperative rules based on non-derogable rights and prohibitions embodied in:

(a) article 3 common to the 1949 Geneva Conventions;

(b) Additional Protocols I and II to those Conventions;

(c) human rights treaties such as the International Covenant on Civil and Political Rights.

529. The code of conduct expresses prohibitions and requirements set out as rules to be followed during internal disturbances and tensions. It is not proposed as a legal text, and is intended for wide dissemination in order to encourage the observance of basic humanitarian conduct.

530. The draft declarations are written in the form of legal texts. The draft declaration of minimum humanitarian standards is based primarily on human rights instruments, but it also draws on the Geneva Conventions and the Additional Protocols thereto.

531. The provisions of all three texts are applicable in every situation of internal disturbance or tension. They are intended to be respected by, and applied to, all persons and groups involved in such situations, without discrimination.

532. Each text contains a statement embodying a general principle of humane treatment and respect for human dignity, and prohibiting various acts which commonly occur in situations of internal disorder. These

include such acts as: murder, torture, mutilation, rape, hostage-taking, involuntary disappearances, pillage and acts of terrorism.

533. The three texts set out a series of humanitarian measures for the protection of victims and casualties of civil disorder, including the following:

(a) Wounded, sick and missing persons are to be searched for and recovered.

(b) The wounded and sick are to be protected and cared for.

(c) Facilities are to be granted to humanitarian organizations to enable them to assist victims.

534. The three texts express existing norms and standards, and may be put into use now as:

(a) statements of international human rights and humanitarian standards relevant and applicable to situations of internal disturbances and tensions;

(b) sources for education and training of police officials in such standards;

(c) sources for the development of police theory, strategy and tactics in dealing with civil disorder.

(iv) *Duties and responsibilities of police*

535. In situations of civil disorder, the duties and responsibilities of police officials are as follows:

DUTIES—as law enforcement officials, to restore civil order and perform general policing duties.

RESPONSIBILITIES—as law enforcement officials, to comply with international human rights and humanitarian standards and with domestic law, especially that expressing international human rights standards.

536. It is acknowledged that, during civil disorder, demands on police organizations are heavy and conflicting, and police as individuals are seriously endangered. However, the requirements on law enforcement officials to comply with measures designed to protect human rights and humanitarian standards are absolute.

(f) *Terrorism*

537. Acts of terrorism are contrary to the purposes and principles of the Charter of the United Nations and terrorism has been condemned in various General Assembly resolutions. In particular, terrorism is expressly forbidden in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in 1970.

(i) *Definitions and types of terrorism*

538. Terrorism is an elusive and often politically charged concept, and it has been difficult to agree on a definition for legal purposes. None of the international texts applicable to the subject-matter of this chapter offers a definition of terrorism.

<sup>4</sup> Ibid., pp. 38 ff.

<sup>5</sup> Ibid., pp. 59 ff.

<sup>6</sup> Ibid., 31st year, No. 282 (May-June 1991), pp. 328 ff.

539. A variety of definitions and types of terrorism have emerged from academic studies of the subject, and these tend to distinguish between:

(a) criminal terrorism—carried out with purely criminal motives,

and

(b) political terrorism—carried out with purely political motives,

although it is acknowledged that these motives may sometimes be mixed.

540. Another distinction made is between:

(a) State terrorism—committed by agents of a State for the purposes of repression,

and

(b) sub-State terrorism—committed by non-State groups or individuals as a form of subversion.

541. Yet another distinction is made between:

(a) acts of terror committed during the course of armed conflicts—whether international or non-international,

and

(b) acts of terror committed when there is no such conflict.

542. General definitions of terrorism offered in academic studies tend to emphasize the aspect of violence designed to instil fear—in victims, in potential victims and in the wider audience. Definitions of sub-State terrorism tend to emphasize the aspect of deliberate, indiscriminate infliction of death or injury.

543. Acts of terror are sometimes used as a method of combat, but, whether or not they are used during situations of armed conflict, they are entirely unlawful. Such acts are prohibited in armed conflicts under international humanitarian law, and they are prohibited under the domestic laws of States. The international community has adopted measures to cooperate in combating some forms of terrorism.

544. State terrorism can involve serious human rights violations, for international human rights law requires Governments to protect and promote the rights of people within their jurisdiction.

(ii) *Acts of terror during armed conflicts*

545. Acts of terror are explicitly prohibited during both international and non-international armed conflicts, as follows:

INTERNATIONAL ARMED CONFLICTS—Article 51 of Additional Protocol I to the 1949 Geneva Conventions states that acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited (para. 2).

NON-INTERNATIONAL ARMED CONFLICTS—Article 13 of Additional Protocol II to the Geneva Conventions makes the same prohibition (para. 2).

546. Acts of terror are implicitly prohibited during international armed conflicts:

(a) Against combatants—arising out of the general prohibitions on causing unnecessary suffering (for example, in article 35, paragraph 2, of Additional Protocol I); and on ordering that there shall be no survivors (in article 40 of the same instrument);

(b) Against prisoners of war—arising out of the general requirements to secure humane treatment under the Third Geneva Convention.

547. Acts of terror are implicitly prohibited during non-international armed conflicts:

(a) Against those who take part in hostilities—arising out of the general prohibition on ordering that there shall be no survivors (in article 4 of Additional Protocol II);

(b) Against persons taking no active part in hostilities—arising out of the general requirement of humane treatment and the prohibitions on specified acts (in article 3 common to the Geneva Conventions and article 4 of Additional Protocol II).

(iii) *International cooperation against terrorism*

548. There are a number of international instruments prohibiting terrorist violence and setting out measures to deal with acts of terror against specific targets. One example is the International Convention against the Taking of Hostages, adopted by the General Assembly in 1979.

549. The attention of course participants should also be drawn to the **Measures against international terrorism** proposed as valuable guidance for coordinated action against international terrorism at the national and international levels by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in 1990.

550. Paragraph 5 of the Measures urges the development of international cooperation in the prevention of terrorist violence, and lists a number of steps which should be taken. These include:

(a) Cooperation between law enforcement agencies, prosecution authorities and the judiciary;

(b) increasing integration and cooperation within the various agencies responsible for law enforcement and criminal justice, with due regard to fundamental human rights;

(c) increasing education and training for law enforcement personnel with regard to crime prevention and modalities of international cooperation in penal matters.

551. The Measures comprise 37 paragraphs on furthering international cooperation, including guidance on:

(a) extradition—urging the development and effective implementation of extradition treaties;

(b) non-applicability of defences based on obedience to superior orders or acts of States with respect to persons who have violated international conventions prohibiting acts of terrorism;

(c) protection of the judiciary, criminal justice personnel, and victims and witnesses of terrorist acts.

552. Paragraph 28 refers specifically to persons charged with, or convicted of, terrorist offences. These persons must be treated without discrimination and in accordance with internationally recognized human rights standards and norms, such as those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as in instruments prohibiting torture and slavery.

553. The provisions of paragraph 28 are important because, in seeking to combat terrorism, States should not adopt terrorist methods.

(iv) *Duties and responsibilities of police*

554. The duties and responsibilities of police officials with regard to terrorism are as follows:

**DUTIES**—to counter terrorism by preventive means, and by bringing perpetrators of terrorist acts to justice. In this respect, awareness of all the means and measures required or recommended by the international community and international bodies is of considerable importance.

**RESPONSIBILITIES**—to comply with the prohibition on acts of terror during armed conflicts, and with all human rights and humanitarian standards in times of conflict, civil disorder and peace.

(g) *States of emergency and measures of derogation*

555. The necessity of restricting certain human rights in times of public emergency is acknowledged and allowed for in human rights instruments. However, it must be emphasized that some rights are so fundamental that there may never be any derogation from treaty provisions which protect them.

(i) *Treaty provisions*

556. Article 4 of the International Covenant on Civil and Political Rights states that, during an officially proclaimed public emergency which threatens the life of the nation, States may take measures derogating from their obligations under the Covenant. Such measures must be:

- (a) strictly required by the exigencies of the situation;
- (b) not inconsistent with other obligations under international law;
- (c) not discriminatory on grounds of race, colour, sex, language, religion or social origin.

Other States parties to the Covenant must be advised immediately, through the intermediary of the Secretary-General of the United Nations, of the details of any such derogation and, eventually, of its termination.

557. No derogation is permitted from those articles of the Covenant which:

- (a) protect the right to life (art. 6);

(b) prohibit torture and other ill-treatment (art. 7);

(c) prohibit slavery and servitude (art. 8, paras. 1-2);

(d) prohibit imprisonment merely on the ground of inability to fulfil a contractual obligation (art. 11);

(e) prohibit retroactive legislation (art.15);

(f) accord everyone the right to recognition as a person before the law (art. 16);

(g) accord everyone the right to freedom of thought, conscience and religion (art. 18).

558. The African Charter on Human and Peoples' Rights contains no specific article entitling States to derogate from its provisions. However, many of the provisions contain "claw-back" clauses which entitle States to restrict rights to the extent permitted by domestic law. An example is the right to free association (art. 10), which is granted to every individual "provided that he abides by the law".

559. Such "claw-back" clauses do not provide for the type of external supervision over State behaviour stipulated in derogation provisions in the other treaties discussed.

560. Article 27 of the American Convention on Human Rights states that, in time of war, public danger, or other emergency threatening the independence or security of a State party, it may take measures derogating from its obligations under the Convention to the extent and for the period of time strictly required by the exigencies of the situation. As in the case of the International Covenant on Civil and Political Rights, such measures must not be inconsistent with other obligations under international law, and must not be discriminatory on any of the usual grounds.

561. Any State taking measures of derogation must immediately inform the other States parties through the Secretary-General of the Organization of American States. They must be advised of the provisions suspended, the reasons for the suspension, and the date set for the termination of the suspension.

562. The American Convention permits no derogation from the guarantees listed above (para. 557) for the International Covenant, except the one set out in subparagraph (d). Nor is any derogation permitted from those articles which:

- (a) protect family rights (art. 17);
- (b) accord the right to be given a name (art. 18);
- (c) protect the rights of the child (art. 19);
- (d) accord the right to a nationality (art. 20);
- (e) accord the right to participate in government (art. 23).

563. Article 15 of the European Convention on Human Rights states that, in time of war or other public emergency threatening the life of the nation, any State may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation, provided that the measures are not inconsistent with its other obligations under international law.



564. States taking measures of derogation must keep the Secretary-General of the Council of Europe fully informed of the measures it has taken and the reasons for doing so. They must also inform the Secretary-General when the measures have ceased to operate.

565. The European Convention permits no derogation from those articles which:

- (a) protect the right to life (art. 2), although an exception is allowed in respect of deaths resulting from lawful acts of war;
- (b) prohibit torture and other ill-treatment (art. 3);
- (c) prohibit slavery and servitude (art. 4, para. 1);
- (d) prohibit retroactive legislation (art. 7).

(ii) *Responsibilities of police*

566. The promotion and protection of human rights are especially difficult during armed conflicts or civil disorder. It is precisely at such times that States are likely to take measures of derogation. When this occurs, law enforcement officials have an absolute responsibility:

- (a) to respect and protect the hard core of non-derogable rights—at all times and under all circumstances;
- (b) to comply with those measures which remain for the protection of all other human rights following measures of derogation taken by Governments.

3. *Concluding remarks*

567. Various degrees of civil disorder and armed conflict are identified in the instruments examined in this chapter: civil disorder not amounting to armed conflict, low-intensity and high-intensity non-international armed conflict, and international armed conflict. However, it should be recognized that most lawful and peaceful assemblies of people remain lawful and peaceful, and do not turn into violent civil disorder. Similarly, most outbreaks of violent civil disorder do not escalate into armed conflict, and most civil wars do not escalate into inter-State wars.

568. Nevertheless, it should be recognized that the potential for escalation does exist in some cases, and that police have a crucial role to play in preventing such escalation. When people are exercising their right to lawful and peaceful assembly, it is the duty of police to assist them in exercising that right, and to take the necessary preventive action to ensure that violent civil disorder does not occur. When civil disorder does occur, police action can lead to a diminution, or an escalation, of that disorder.

569. The ability of police to prevent disorder, and to re-establish order quickly and humanely, depends on the application of the most appropriate policing strategy and tactics. Technical policing skills, and hence practical training, in this area are of crucial importance.

**B. International standards on armed conflicts and civil disorder—Practical application**

1. *Practical steps for implementing international standards*

**ARMED CONFLICTS:**

***All Civilian Police Officials***

*Undergo training in the requirements of human rights and humanitarian law during armed conflicts.*

*Undergo training in first aid, disaster management and civil-defence procedures.*

*Learn your agency's strategies for the maintenance of order and protection of the civilian population during periods of conflict.*

*Cooperate closely with medical services, fire-fighters, civilian authorities and the military.*

*Pay special attention to the special needs of particularly vulnerable groups during such periods, including refugees and displaced persons, children and the injured.*

**ARMED CONFLICTS:**

***Civilian police commanders and supervisors***

*Provide for training for all officers in the requirements of human rights and humanitarian law during armed conflicts.*

*Provide for training in first aid, disaster management and civil-defense procedures.*

*Develop clear strategies for the maintenance of order and protection of the civilian population during periods of conflict.*

*Develop standard emergency cooperative procedures for coordinated action with medical services, fire-fighters, civilian authorities and the military.*

*Issue clear instructions on the civilian status of police during armed conflicts.*

**ARMED CONFLICTS:**

***Police incorporated into armed forces during conflicts***

*Learn, and apply, the ‘soldier’s rules’:\**

- 1. Be a disciplined soldier. Disobedience of the laws of war dishonours your army and yourself, and causes unnecessary suffering. Far from weakening the enemy’s will to fight, it often strengthens it.*
- 2. Fight only enemy combatants and attack only military objectives.*
- 3. Destroy no more than your mission requires.*
- 4. Do not fight enemies who are put out of action (hors de combat) or who surrender. Disarm them and hand them over to your superior.*
- 5. Collect and care for the wounded and sick, be they friend or foe.*
- 6. Treat all civilians, and all enemies in your power, with humanity.*
- 7. Prisoners of war must be treated humanely and are bound to give information only as to their identity. No physical or mental torture of prisoners of war is permitted.*
- 8. Do not take hostages.*
- 9. Abstain from all acts of vengeance.*
- 10. Respect all persons and objects bearing the emblem of the Red Cross or the Red Crescent, the white flag of truce, or emblems designating cultural property.*
- 11. Respect other people’s property. Looting is prohibited.*
- 12. Endeavour to prevent any breach of the above rules. Report any violation to your superior. Any breach of the laws of war is punishable.*

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*\* Source: International Committee of the Red Cross.*

**CIVIL DISORDER:**

**All Police Officials**

*Adopt community-policing strategies, and monitor levels of social tension between various groups in society, and between those groups and the authorities.*

*Be alert as to any preparations for unlawful demonstrations.*

*Be tolerant of unlawful, but peaceful, non-threatening assemblies, so as not to escalate the situation unnecessarily.*

*Establish contacts with representatives, and individuals in the crowd.*

*Where it is necessary to disperse a crowd, always leave a clear and obvious corridor of escape.*

*Deal with a crowd as a group of independently thinking individuals, not as a single-minded mass.*

*Avoid unnecessarily provocative tactics.*

*Develop crowd-control techniques which minimize the need for the use of force.*

*Enrol in training programmes to improve your skills in first aid, self-defence, the use of defensive equipment, the use of non-lethal weapons, the use of firearms, crowd behaviour, conflict resolution and personal stress management.*

*Acquire, and practice the use of, defensive equipment, including shields, bulletproof vests, helmets and non-lethal instruments.*

*Acquire, practice and utilize a range of means for the differentiated use of force, including non-lethal incapacitating weapons.*

*Study, and employ, techniques for persuasion, mediation and negotiation.*

*Plan in advance for the gradual, progressive use of force, beginning with non-violent means.*

**CIVIL DISORDER:**

**Command and Supervisory Officials**

*Issue clear standing orders on respect for peaceful, free assembly.*

*Introduce community-policing strategies, and monitor levels of social tension between various groups in society, and between those groups and the authorities.*

*Instruct officials to be tolerant of unlawful, but peaceful, non-threatening assemblies, so as not to escalate the situation unnecessarily. The paramount objectives to be remembered in developing crowd-control strategies are the maintenance of order and safety, and the protection of human rights, not the enforcement of legal technicalities regarding permits, or unlawful but non-threatening behaviour.*

*Establish and enforce clear standing orders on the use of force and firearms.*

*Provide for regular training in first aid, self-defence, the use of defensive equipment, the use of non-lethal weapons, the use of firearms, crowd behaviour, conflict resolution, stress management, and persuasion, mediation and negotiation.*

*Acquire and issue defensive equipment, including helmets, shields, bulletproof vests, gas masks, and bulletproof vehicles.*

*Acquire and issue non-lethal incapacitating and crowd-dispersal instruments.*

*Acquire the broadest possible range of means for the differentiated use of force.*

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*Establish clear reporting guidelines for every incident involving the use of force and firearms.*

*Strictly regulate the control, storage and issuing of firearms, including procedures for ensuring that officers are accountable for arms and ammunition issued to them.*

*Prohibit the use of weapons and ammunition which cause unwarranted injury, damage or risk.*

*Develop strategies which will reduce the risk of officers being forced to use firearms.*

## 2. Hypothetical exercises

### Exercise 1

You have received information that there is to be a demonstration against racial discrimination in the town you police. There has been communication between police and the organizers of the demonstration, and it has been learned that there will be more than 10,000 people participating, and that their intention is to hold a peaceful, non-violent demonstration.

A route has been agreed with the organizers of the demonstration, and this will take participants through the centre of the town to the Town Hall, where a petition will be presented to the Mayor. The Mayor will then make a speech to the assembled people. The demonstrators will be escorted by police in ordinary uniform (i.e. not equipped with defensive shields and helmets) as they progress through the town. You have also agreed with the organizers that the police operation will be tolerant and low-profile.

Two days before the demonstration is due to take place, you receive intelligence that extremist political groups, opposed to the demonstration, intend to confront the demonstrators as they approach the Town Hall and to disrupt the proceedings. They hope to provoke serious disorder in order to discredit the purposes of the demonstration. Members of the extremist groups refuse to have any dialogue with police and it is difficult to find out much more about their plans, although it is estimated that they will be about 700 in number.

It has been decided as a matter of policy that the demonstration should be allowed to proceed, and that the right of the demonstrators to peaceful assembly should be protected. The following is the policy framework within which the policing of demonstrations of this nature is carried out:

- (a) Public order is to be maintained, with due respect for human rights.
- (b) Disturbances of public order and violations of the law will not be tolerated.
- (c) Those responsible for breaches of the public order or lawbreaking will be arrested, unless their arrest at that time would provoke a serious escalation of the situation.
- (d) Force may not be used unless there is an immediate threat to the life or safety of any person, or unless it is strictly necessary for the purposes of arrest or to prevent serious public disorder.

(e) The use of firearms is forbidden except when there is imminent threat of death or serious injury.

ASSIGNMENT: Taking into account the above information on the developing situation, and the policy framework:

1. Prepare a plan for the policing of the demonstration.
2. State the number of police officials you would deploy.
3. Stipulate the nature and quantity of any special equipment you would issue, or have available for issue, to police officials.
4. Describe the police command structure that would be in place for the command and control of the situation.
5. State broadly what the responsibilities of each level of command would be.
6. Describe the tactics you would use for policing the situation and how these would enable you to meet policing objectives.
7. State what facts you would communicate—and why—to the organizers of the demonstration about the intentions of the organizers of the extremist counter-demonstration.
8. Formulate that part of the briefing you would give to police officials on the use of force, arrest and general respect for human rights and humanitarian principles. What would your instructions be on care and treatment of injured demonstrators?

### Exercise 2

Consider the following provisions of the International Covenant on Civil and Political Rights:

- article 6 (right to life);
- article 7 (prohibition of torture and other ill-treatment);
- article 9 (right to liberty and security of the person);
- article 10 (right to humane treatment as a detainee);
- article 14 (right to a fair trial);

Consider also the provisions of article 3 common to the 1949 Geneva Conventions.

Write a code of conduct for police officials setting out instructions and guidelines on dealing with civil disorder, so that officials are made completely aware of relevant human rights and humanitarian standards with which they must comply in such situations.

### *Exercise 3*

For the purposes of discussion, imagine that a series of violent disturbances has taken place in various parts of your country. The disturbances have arisen because of conflict between two ethnic groups. The members of one group, which is the minority group, feel that they suffer discrimination at the hands of members of the majority group. The disturbances have resulted in casualties among police and participants.

During the last incident, a large number of serious casualties among participants in the disturbance was caused by police overreacting and using excessive force. This has provoked a hostile reaction against the police by the news media, some politicians, and members of the public from both ethnic groups.

The Government has since introduced economic, social and political measures designed to deal with grievances felt by the minority group, but there is strong political pressure on the police to introduce internal changes and reforms so that they deal with civil disorder more effectively and humanely.

As a member of a working group appointed by your chief of police:

1. Draft a brief statement of policy on the policing of civil disorder, setting out what the basic approach should be, and the broad objectives.

2. Draft brief guidelines for senior police officers, based on the policy statement, to which they must refer when planning strategy and tactics for the policing of particular incidents of civil disorder.

3. On the basis of the policy statement and guidelines you have drafted, draft terms of reference to be given to the officer in charge of training in your police force, for training all levels of police officials in the strategy and tactics of policing civil disorder.

### *3. Topics for discussion*

1. Why do you think it has been generally agreed that, in armed conflict, the right of belligerents to adopt means of injuring the enemy is not unlimited? If you are fighting an enemy, why should you not be able to adopt any means you choose to injure him?

2. Consider and discuss some of the moral dilemmas facing a police official who is serving in a country which has been occupied by an enemy occupying Power.

3. International humanitarian standards on non-international armed conflicts seek to protect those taking no active or direct part in hostilities. Protection is given to those actually taking part in hostilities in the prohibition on ordering that there shall be no survivors in Additional Protocol II to the 1949 Geneva Conventions. Are there any advantages in extending some form of protection to fighters in respect of the conduct of such hostilities, as has been done in the rules on international armed conflict?

4. In what ways could a code of conduct setting out rules of behaviour during civil disorder assist police?

5. Which hard-core non-derogable rights are most likely to be violated during armed conflict or serious civil disorder? Why are these human rights violated in such circumstances?

6. Why should the human rights of persons who have committed acts of terrorism, or who are suspected of committing acts of terrorism, be respected?

7. In what ways could police assist people in exercising their right to peaceful assembly?

8. What are the advantages and disadvantages of using the following in dealing with civil disorder: tear-gas; baton rounds (rubber or plastic bullets); water-cannon?

9. If a senior police officer commanding the policing operation at the scene of a serious riot orders a baton charge against a crowd of people, what are the ways in which he can remain in command and control of the situation to ensure that police officers do not use excessive force in following his orders?

10. There are advantages in having specially trained police units whose only function is to deal with civil disorder. There are also disadvantages. What are these and how can they be overcome?

11. Can the misuse of weapons intended to be non-lethal (such as tear-gas and rubber bullets) cause fatalities and serious injuries? How? How can these be prevented?



*PART FOUR*

**GROUPS REQUIRING  
SPECIAL PROTECTION OR  
TREATMENT**





## CHAPTER XVI

### POLICE AND THE PROTECTION OF JUVENILES

#### *Chapter Objectives*

*To give users of the manual a basic understanding of the international human rights standards applying to juveniles in contact with the criminal justice system, and to sensitize them to the importance of protecting all children from abuse, and of measures to prevent juvenile crime.*

#### *Essential Principles*

*Children are to benefit from all the human rights guarantees available to adults. In addition, the following rules shall be applied to children:*

*Children shall be treated in a manner which promotes their sense of dignity and worth; which facilitates their reintegration into society; which reflects the best interests of the child; and which takes into account the needs of a person of that age.*

*Children shall not be subjected to torture; to cruel, inhuman or degrading treatment or punishment; to corporal punishment; or to life-imprisonment without possibility of release.*

*Detention or imprisonment of children shall be an extreme measure of last resort, and shall be for the shortest possible time.*

*Children shall be separated from adult detainees.*

*Detained children shall be allowed to receive visits and correspondence from family members.*

*A minimum age for criminal responsibility shall be established.*

*Non-judicial proceedings and alternatives to institutional care shall be provided for.*

*The child's privacy shall be respected, and complete and secure records are to be maintained and kept confidential.*

*The use of physical restraints and force on children is to be exceptional, and employed only when all other control measures have been exhausted and have failed, and only for the shortest possible time.*

*Weapons shall not be carried in juvenile institutions.*

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*Discipline shall respect the child's dignity, and shall instil a sense of justice, self-respect and respect for human rights in the child.*

*Officials dealing with juveniles shall be specially trained and personally suited for that purpose.*

*Periodic, as well as unannounced, visits of inspectors to juvenile facilities shall be provided for.*

*Parents are to be notified of any arrest, detention, transfer, sickness, injury or death.*

**A. International standards on police and the protection of juveniles—  
Information for presentations**

1. *Introduction*

570. Juveniles are entitled to all the rights and freedoms discussed in the preceding chapters of this manual. For example, they are not to be subjected to arbitrary arrest; they must be treated humanely if detained and must not be tortured; and all the limitations on the use of force by police are applicable to them.

571. In addition, juveniles are protected by instruments expressing international standards which take into account their special status and needs. The international community, through the United Nations, acknowledges the importance of:

(a) protecting the well-being of all juveniles who come into conflict with the law;

(b) protecting juveniles against abuse, neglect and exploitation;

(c) taking special measures to prevent delinquency by juveniles.

In this latter respect, it is recognized that labelling a young person a "delinquent" or a "criminal" often contributes to the development of a consistent pattern of antisocial and undesirable behaviour by that young person.

572. Effective and humane law enforcement and crime prevention are dependent on police awareness of, and compliance with, law and best practice on the protection of juveniles and the prevention of juvenile delinquency. This law and this practice, as expressed in international instruments, are considered below.

2. *General aspects of police and the protection of juveniles*

(a) *Fundamental principles*

573. The principles of securing the well-being of juveniles and the diversion of juveniles from the criminal justice system are fundamental to human

rights and the protection of juveniles. They are also fundamental to the prevention of juvenile delinquency. All the detailed provisions to be considered in this chapter are derived from these principles.

(b) *Specific provisions on human rights, police and the protection of juveniles*

574. The provisions of five instruments setting out international standards relating to juveniles are considered below. However, reference should also be made to chapters XII and XIII above, where specific provisions on arrest and detention of juveniles are considered in the context of standards on arrest and detention generally.

(i) *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*

575. The Beijing Rules are set out in a detailed instrument of 30 rules contained in six parts: "General principles", "Investigation and prosecution", "Adjudication and disposition", "Non-institutional treatment", "Institutional treatment" and "Research, planning, policy formulation and evaluation".

576. PART ONE (GENERAL PRINCIPLES) contains nine rules. Those of direct relevance to law enforcement officials may be summarized as follows:

577. Rule 1 sets out "fundamental perspectives" which require:

(a) Member States to further the well-being of the juvenile;

(b) Member States to develop conditions that will ensure for the juvenile a meaningful life in the community, and foster a process of personal development and education that is as free from crime and delinquency as possible;

(c) positive measures that involve the mobilization of all possible resources, including the family, the community and community institutions, and schools, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with juveniles in conflict with the law;

(d) juvenile justice to be conceived as an integral part of the national development process of each country;

(e) the Rules to be implemented in the context of economic, social and cultural conditions prevailing in each Member State;

(f) juvenile justice services to be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services.

578. Under rule 2, a juvenile is defined as

a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult.

The commentary to rule 2 points out that age limits depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of each Member State.

579. Rule 3 requires the relevant provisions of the Rules to be applied not only to juvenile offenders, but also to juveniles who may be tried for behaviour not punishable if committed by an adult. In particular, efforts are to be made to extend the principles embodied in the Rules to juveniles who are dealt with in welfare and care proceedings.

580. Rule 4 concerns the age of criminal responsibility and requires those legal systems which recognize the concept not to set the beginning of that age at too low a level, "bearing in mind the facts of emotional, mental and intellectual maturity".

581. Rule 5 sets out the aims of juvenile justice, which are to emphasize the well-being of the juvenile and to ensure that any reaction to juvenile offenders is always in proportion to the circumstances of both the offenders and the offence.

582. The question of proportionality of the reaction to juvenile offenders is expanded on in the commentary to rule 5, which states:

...

... The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reaction (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to a wholesome and useful life).

...

583. Rule 6 concerns scope of discretion. It requires appropriate scope for discretion to be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions. Those who exercise discretion are to be specially qualified or trained to exercise it judiciously.

584. The commentary to rule 6 emphasizes the need to:

(a) permit the exercise of discretionary power at all significant levels of processing, so that those who make determinations can take the action deemed to be most appropriate in each individual case;

(b) provide checks and balances in order to curb any abuses of discretionary power;

(c) safeguard the rights of the young offender.

585. The rights of juvenile offenders are specifically referred to in rule 7. This requires basic procedural safeguards such as:

—the presumption of innocence;

—the right to be notified of charges;

—the right to remain silent;

—the right to counsel;

—the right to the presence of a parent or guardian;

—the right to confront and cross-examine witnesses; and

—the right to appeal to a higher authority to be guaranteed at all stages of proceedings.

586. Rule 8 is designed to protect the right to privacy. Under this provision, the juvenile's right to privacy is to be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender may be published.

587. PART TWO (INVESTIGATION AND PROSECUTION) contains four rules, which may be summarized as follows:

588. Rule 10 concerns initial contact and stipulates that:

(a) upon apprehension of a juvenile, her or his parents or guardian are to be notified immediately. Where immediate notification is not possible, it is to be made as soon as possible after apprehension;

(b) a judge or other competent official or body is to consider the issue of release without delay;

(c) contacts between a law enforcement agency and a juvenile offender are to be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

589. The commentary to rule 10 states that involvement in juvenile justice processes in itself can be "harmful" to juveniles and requires the term "avoid harm" to be broadly interpreted. It points out that this is especially important in the initial contact with law enforcement agencies, which might profoundly influence a juvenile's attitude towards the State and society. The commentary emphasizes that compassion and kind firmness are important in these situations.

590. Rule 11 requires consideration to be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial. The police and other

agencies dealing with juvenile cases are to be empowered to dispose of such cases, at their discretion, without recourse to formal hearings.

591. The commentary to rule 11 points out that diversion, involving removal from criminal justice processing and redirection to community support services, is commonly practised in many legal systems. It adds that, in many cases, non-intervention is the best response, and that diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case in respect of non-serious offences and where the family or other informal social control institutions have reacted, or are likely to react, in an appropriate and constructive manner.

592. The importance of securing the consent of the young offender (or the parent or guardian) to recommended diversionary measures is stressed.

593. Rule 12 requires police officers who frequently or exclusively deal with juveniles, or who are primarily engaged in the prevention of juvenile crime, to be specially instructed and trained. In large cities, special police units are to be established to deal with juvenile offenders and the prevention of juvenile crime.

594. The commentary to rule 12 points out that, as police are the first point of contact with the juvenile justice system, it is important that they act in an informed and appropriate manner.

595. With reference to specialized police units in cities, the commentary states that an increase in juvenile crime has been associated with the growth of large cities and that such units are indispensable not only for implementing provisions of the Rules, but also for improving the prevention and control of juvenile crime.

596. Rule 13 requires detention pending trial to be used only as a measure of last resort and for the shortest possible period of time. While in detention, juveniles are to be kept separate from adults and receive care, protection and all necessary assistance that they may require in view of their age, sex and personality.

597. The commentary to rule 13 emphasizes the danger of "criminal contamination" of juveniles while in detention pending trial and stresses the need for alternative measures.

598. PART THREE (ADJUDICATION AND DISPOSITION) contains nine rules, the provisions of most of which are not directly relevant to police officials.

599. Rule 14 requires competent authorities to adjudicate according to the principles of a fair and just trial when there has been no diversion under rule 11. Rule 15 requires the juvenile to have the right to be represented by a legal adviser throughout the proceedings, and the parents or guardian to be entitled to participate in the proceedings.

600. Rule 16 requires social inquiry reports on juvenile offenders to be available to competent authorities prior to sentence, and rule 17 lays down detailed guiding principles for such authorities in adjudication and disposition. Rule 18 sets out various disposition measures, and

rule 19 requires the least possible use of institutionalization.

601. Rule 20 seeks to avoid unnecessary delay and requires each case, from the outset, to be handled expeditiously.

602. Rule 21 requires records of juvenile offenders to be kept strictly confidential and closed to third parties. Access to such records is to be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

603. The commentary to rule 21 states that the rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control, versus the interests of the juvenile offender.

604. Rule 22 stresses the need for professional training to establish and maintain the professional competence of all personnel dealing with juvenile cases.

605. PART FOUR (NON-INSTITUTIONAL TREATMENT) and PART FIVE (INSTITUTIONAL TREATMENT) contain seven rules between them, none of which has direct relevance to police officials in their usual law enforcement or crime prevention roles. However, in some jurisdictions, police officials are involved in programmes for the rehabilitation of juvenile offenders within the community.

606. PART SIX (RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION) consists of rule 30. This requires efforts to be made to:

(a) organize and promote necessary research as a basis for effective planning and policy formulation;

(b) review and appraise periodically the trends, problems and causes of juvenile delinquency and crime, as well as the varying particular needs of juveniles in custody;

(c) establish a regular evaluative research mechanism built into the system of juvenile justice administration, and collect and analyse relevant data for assessment, and for improvement and reform of the administration.

607. The commentary to rule 30 points out the importance of mutual feedback between research and policy, and the fact that constant appraisal of the needs of juveniles, as well as of the trends and problems of delinquency, is a prerequisite for improving the methods of formulating policies and establishing interventions.

(ii) *United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)*

608. The Riyadh Guidelines are set out in a detailed instrument of 66 paragraphs contained in seven parts: "Fundamental principles", "Scope of the Guidelines", "General prevention", "Socialization processes", "Social policy", "Legislation and juvenile justice administration" and "Research, policy development and coordination".

609. PART I (FUNDAMENTAL PRINCIPLES) contains six paragraphs. In summary, these state that:

(a) the prevention of juvenile delinquency is an essential part of crime prevention in society;

(b) the successful prevention of juvenile delinquency requires efforts on the part of the entire society;

(c) for the purpose of the interpretation of the Guidelines, a child-centred orientation should be pursued;

(d) in implementing the Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any prevention programme;

(e) the need for progressive delinquency-prevention policies and the elaboration of measures should be recognized. These should avoid criminal action against a child for behaviour that does not seriously harm the child or others. The policies and measures should include:

- (i) the provision of opportunities to meet the varying needs of young persons;
- (ii) specialized philosophies and approaches for delinquency prevention;
- (iii) official intervention to be pursued in the overall interest of the young person and guided by fairness and equity;
- (iv) safeguarding the well-being, development, rights and interests of all young persons;
- (v) consideration that youthful conduct not conforming to overall social norms is often part of the maturation process and tends to disappear spontaneously with the transition to adulthood;
- (vi) awareness that labelling a young person as “deviant” or “delinquent” often contributes to the development of a consistent pattern of undesirable behaviour by that person;

(f) community-based services and programmes should be developed for the prevention of juvenile delinquency.

610. PART II (SCOPE OF THE GUIDELINES) contains paragraphs 7 and 8, which state that:

(a) the Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights and other instruments, including the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice;

(b) the Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

611. PART III (GENERAL PREVENTION) consists of paragraph 9, which has nine subparagraphs. In summary, it requires comprehensive prevention plans to be instituted at every level of government and to include:

(a) analyses of the problem and inventories of programmes, services and resources available;

(b) well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;

(c) mechanisms for the coordination of prevention efforts between governmental and non-governmental agencies;

(d) policies, programmes and strategies to be continuously monitored and evaluated during implementation;

(e) methods for effectively reducing the opportunity to commit delinquent acts;

(f) community involvement through a wide range of services and programmes;

(g) close cooperation between various levels of government, the private sector, representative citizens of the community, child-care agencies, and law enforcement and judicial agencies in taking action to prevent juvenile crime;

(h) youth participation in delinquency-prevention policies and processes, including youth self-help and victim compensation and assistance programmes;

(i) specialized personnel at all levels.

612. PART IV (SOCIALIZATION PROCESSES) contains 35 paragraphs under the subheadings “Family”, “Education”, “Community” and “Mass media”. They require emphasis to be placed on preventive policies facilitating the successful socialization and integration of all children and young persons. Those guidelines of particular relevance to law enforcement officials and agencies may be summarized as follows:

(a) Family:

—Every society should place a high priority on the needs and well-being of the family.

(b) Education:

—Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

—Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons.

(c) Community:

—Community-based services and programmes which respond to the special needs and concerns of young persons, and which offer counselling and guidance, should be developed or strengthened.

—Special facilities should be set up to provide shelter for young persons who are no longer able to live at home or who do not have homes.

—Services and assistance should be provided to deal with difficulties experienced by young persons. These should include programmes for young drug abusers which emphasize care, counselling and assistance.

—Government agencies should take responsibility and provide services for homeless or street children. Information about local facilities, accommo-

dation and other sources of help should be made readily available to young persons.

613. PART V (SOCIAL POLICY) contains seven paragraphs. Those of significance to law enforcement officials and agencies may be summarized as follows:

(a) Government agencies should give high priority to plans and programmes for young persons.

(b) The institutionalization of young persons should be a measure of last resort and for the minimum necessary period.

(c) Programmes to prevent delinquency should be planned and developed on the basis of reliable research findings, and periodically monitored, evaluated and adjusted accordingly.

(d) Information should be disseminated to the professional community and the public about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

(e) Governments should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal-justice system to prevent domestic violence against young persons and to ensure fair treatment to these victims of domestic violence.

614. PART VI (LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION) contains eight paragraphs. Some make stipulations on enforcement or are otherwise relevant to police officials. In summary, these require:

(a) governments to enact and enforce laws and procedures to promote and protect the rights and well-being of all young persons;

(b) legislation preventing the victimization, abuse, exploitation and use for criminal activities of children and young persons to be enacted and enforced;

(c) no child or young person to be subjected to harsh or degrading correction or punishment at home, in schools or in any other institution;

(d) legislation and enforcement aimed at restricting and controlling accessibility of weapons to children and young persons to be pursued;

(e) legislation to be enacted to ensure that conduct not considered an offence if committed by an adult is not considered an offence if committed by a young person, in order to prevent stigmatization and criminalization of young persons;

(f) law enforcement personnel of both sexes to be trained to respond to the special needs of young persons, and to be familiar with and use programmes and referral possibilities for the diversion of young persons from the criminal-justice system;

(g) legislation to be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

615. PART VII (RESEARCH, POLICY DEVELOPMENT AND COORDINATION) contains seven paragraphs. Those relevant to law enforcement officials and agencies may be summarized as follows:

(a) Efforts should be made and mechanisms established to promote interaction and coordination between economic, social, educational and health agencies and services, the justice system, youth, community and development agencies, and other relevant institutions.

(b) The exchange of information, experience and expertise gained through programmes and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at national, regional and international levels.

(c) Regional and international cooperation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed.

(d) Collaboration should be encouraged in undertaking research with respect to effective modalities for youth crime and juvenile delinquency prevention, and the findings of such research should be disseminated and evaluated.

(iii) *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*

616. These Rules are set out in a detailed instrument of 87 rules contained in five sections: "Fundamental perspectives", "Scope and application of the Rules", "Juveniles under arrest or awaiting trial", "The management of juvenile facilities" and "Personnel".

617. The instrument applies to all types and forms of detention facilities in which juveniles are deprived of their liberty. However, the bulk of its provisions are more relevant to institutions where juveniles are detained on a longer-term basis for treatment and rehabilitation than to detention in police custody. Detention of juveniles by police is usually of short duration and for reasons connected with the immediate protection of the juvenile or the investigation of crime.

618. Those principles and provisions which are of interest to law enforcement officials, or which have greater relevance to the treatment of juveniles detained by police, are considered below.

619. SECTION I (FUNDAMENTAL PERSPECTIVES) contains 10 rules. Those relevant to detention by police may be summarized as follows:

(a) The juvenile-justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles.

(b) Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period.

(c) The Rules should be applied impartially and without discrimination on any of the usual grounds, such as race, colour, sex, language, or religion. The religious and cultural beliefs and practices of a juvenile should be respected.

(d) Juveniles not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter.

620. SECTION II (SCOPE AND APPLICATION OF THE RULES) contains six rules. The first provides the following definitions:

(a) A juvenile is every person under the age of 18, the age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

621. The remaining rules may be summarized as follows:

(a) The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles.

(b) Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled.

(c) The protection of the rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority.

(d) The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty.

(e) The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

622. SECTION III (JUVENILES UNDER ARREST OR AWAITING TRIAL) contains two rules, both of which reassert the presumption of innocence in respect of accused but unconvicted people. The provisions of these rules may be summarized as follows:

(a) Juveniles who are detained under arrest or awaiting trial are presumed innocent and shall be treated as such.

(b) Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances.

(c) When juveniles are, nevertheless, detained under arrest or awaiting trial, courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible period of detention.

(d) Untried detainees should be separated from convicted juveniles.

(e) Juveniles should have the right to legal counsel and be enabled to apply for free legal aid where such aid is available.

(f) Juveniles should be able to communicate regularly with their legal advisers, under conditions of privacy and confidentiality.

(g) Juveniles should have the opportunity to pursue work, with remuneration, and to continue education or training, but should not be required to do so.

(h) Work, education or training should not cause the continuation of detention.

(i) Juveniles should be provided with such materials for their leisure and recreation as are compatible with the interests of the administration of justice.

(j) Untried juveniles should benefit from such other provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of detention, and the legal status and circumstances of the juvenile.

623. SECTION IV (THE MANAGEMENT OF JUVENILE FACILITIES) contains 62 detailed rules under 14 subheadings: "Records", "Admission, registration, movement and transfer", "Classification and placement", "Physical environment and accommodation", "Education, vocational training and work", "Recreation", "Religion", "Medical care", "Notification of illness, injury and death", "Contacts with the wider community", "Limitations of physical restraint and the use of force", "Disciplinary procedures", "Inspection and complaints" and "Return to the community".

624. Section IV sets out standards for the detention of juveniles on a longer-term basis for treatment or rehabilitation. As such, it has no direct relevance to the treatment of juveniles in police custody. For standards on the treatment of juveniles in police custody, reference should be made to chapter XIII of the manual, on Detention, and to relevant provisions of the instruments discussed in the present chapter—for example, those relating to juveniles under arrest or awaiting trial, set out in paragraph 622.

625. It is important, however, to emphasize one particular provision of section IV of the present Rules, namely the requirement in rule 56 that the family or guardian of a juvenile be notified immediately of:

(a) his or her death in detention;

(b) illness requiring transfer to an outside medical facility;

(c) a condition requiring clinical care within the detention facility for more than 48 hours.

626. SECTION V (PERSONNEL) contains seven detailed rules on such matters as the qualifications, selection, training and conduct of staff in institutions established for the treatment and rehabilitation of juveniles.

(iv) *Convention on the Rights of the Child*

627. This important Convention comprises 54 articles providing comprehensive protection for children.

628. The preamble to the Convention:

(a) recalls that the Universal Declaration of Human Rights proclaims that childhood is entitled to special care and assistance;

(b) recognizes that, in all countries of the world, there are children living in exceptionally difficult conditions who need special consideration.

629. A child is defined in article 1 of the Convention as:

... every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

630. Article 2 requires States parties to ensure the rights set forth in the Convention to each child within their jurisdiction, without discrimination on any of the usual grounds, such as race, colour, sex, language or religion.

631. Article 3 requires that, in all actions concerning children undertaken by public or private social-welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

632. The matters dealt with in the Convention which are relevant to law enforcement officials and agencies can be categorized under the headings "Protection of rights", "Protection from exploitation" and "Protection in special circumstances". The provisions in question are summarized below.

#### *Protection of rights*

633. Article 6 of the Convention recognizes that every child has the inherent right to life and requires States parties to ensure, to the maximum extent possible, the survival and development of the child.

634. Article 8 sets out the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

635. Article 12 requires States to assure to children capable of forming their own views the right to express those views freely in all matters affecting them. For this purpose, a child must, in particular, be provided the opportunity to be heard in any judicial or administrative proceedings affecting him or her, either directly or through a representative.

636. Article 13 sets out the right to freedom of expression. This right includes freedom to seek, receive and impart information, regardless of frontiers, either orally, in writing, in the form of art, or through any other media of the child's choice.

637. Article 14 protects the right of the child to freedom of thought, conscience and religion. Parents or guardians have the right to provide direction to the child in the exercise of this right.

638. Article 15 sets out the right to freedom of association and peaceful assembly.

639. Article 16 protects children from arbitrary or unlawful interference with their privacy, family, home or correspondence, and from unlawful attacks on their honour or reputation. Children have the right to the protection of the law against such interference or attacks.

640. Article 30 states that, in those States where there are ethnic, religious or linguistic minorities or persons of indigenous origin, children belonging to such a minority or who are indigenous shall not be denied the right, in community with other members of their group,

to enjoy their own culture, to profess and practice their own religion, or to use their own language.

641. Article 37 contains four paragraphs:

(a) protecting the child from torture and other cruel, inhuman or degrading treatment or punishment, and from capital punishment and life imprisonment;

(b) prohibiting unlawful or arbitrary arrest;

(c) requiring humane treatment of child detainees, respect for their human dignity, treatment which takes into account the needs of people of their age, separation of child detainees from adults, and the right to maintain contact with family;

(d) where a child is deprived of his or her liberty, according the right to prompt access to legal assistance and the right to challenge the legality of detention.

642. Article 40 requires States to recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner:

(a) consistent with the promotion of the child's sense of dignity and worth;

(b) which reinforces the child's respect for the human rights and fundamental freedoms of others;

(c) which takes into account the child's age, and the desirability of promoting the child's reintegration and assumption of a constructive role in society.

#### *Protection from exploitation*

643. Article 19 requires States to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of:

(a) physical or mental violence;

(b) injury or abuse;

(c) neglect or negligent treatment;

(d) maltreatment or exploitation;

(e) sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

644. Such protective measures are to include procedures for identification, reporting, referral and investigation, as well as for judicial involvement.

645. Article 32 requires States to protect children from economic exploitation, and to take the necessary legislative, administrative, social and educational measures for that purpose.

646. Article 33 requires States to take the necessary legislative, administrative, social and educational measures to:

(a) protect children from the illicit use of narcotic drugs and psychotropic substances;

(b) prevent the use of children in the illicit production and trafficking of such substances.



647. Article 34 requires States to protect children from all forms of sexual exploitation and sexual abuse. For these purposes, measures are to be taken to prevent:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances or materials.

648. Article 36 requires States to protect children against all other forms of exploitation prejudicial to any aspects of their welfare.

#### *Protection in special circumstances*

649. Article 9 concerns separation of children from their parents. It requires States parties to ensure that children are not separated from their parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

650. Where such separation results from any action initiated by a State, such as detention, imprisonment, exile, deportation or death of one or both of the parents or of the child, the article requires that State, on request, to provide the parents, the child, or another member of the family with essential information concerning the whereabouts of the absent member(s) of the family, unless the provision of such information would be detrimental to the well-being of the child.

651. Article 22 concerns refugees. It requires States to take appropriate measures to ensure that a child who is:

- (a) seeking refugee status; or
- (b) considered a refugee in accordance with applicable international or domestic law and procedures, whether unaccompanied or accompanied by his or her parents or any other person, receives appropriate protection and humanitarian assistance in the enjoyment of the applicable rights set forth in the Convention and in other international human rights or humanitarian instruments.

652. Article 35 concerns the abduction of, sale of, or traffic in children. It requires States to take all appropriate national, bilateral and multilateral measures to prevent such abuses.

653. Article 38 concerns armed conflicts. It requires States to respect and ensure respect for those rules of international humanitarian law relevant to children. In particular, States are to:

- (a) ensure that persons who have not attained the age of fifteen do not take a direct part in hostilities;
- (b) refrain from recruiting into their armed forces any person who has not attained the age of fifteen;
- (c) take all feasible measures to ensure protection and care of children affected by an armed conflict, in accordance with their obligations under international hu-

manitarian law to protect the civilian population in armed conflicts.

#### (v) *United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)*

654. The Tokyo Rules are set out in a detailed instrument of 23 rules contained in eight sections: “General principles”, “Pre-trial stage”, “Trial and sentencing stage”, “Post-sentencing stage”, “Implementation of non-custodial measures”, “Staff”, “Volunteers and other community resources” and “Research, planning, policy formulation and evaluation”.

655. The Rules are based on the notion that alternatives to imprisonment can be an effective means of treating offenders within the community, to the best advantage of both the offenders and society.

656. While the Rules are applicable to both adult and juvenile offenders, it is particularly important that they be considered in relation to juvenile offenders, in accordance with principles and provisions laid down in instruments discussed above. Examples of these are:

- (a) Juveniles deprived of their liberty are highly vulnerable to abuse, victimization and violation of their rights.
- (b) Institutionalization of juveniles should be a measure of last resort and for the minimum necessary period.
- (c) Criminal action against a child, and penalizing him or her, for some forms of delinquent behaviour should be avoided.
- (d) Whenever possible, juveniles should be diverted from criminal-justice processing and redirected to community support services.
- (e) Appropriate scope for discretion should be allowed at all stages of the juvenile-justice system.
- (f) Police and other agencies should be empowered to dispose of cases without recourse to formal hearings.

657. Provisions of the Rules of interest to police and relevant to policing functions in the administration of juvenile justice are summarized below.

658. Rules on “General principles” concern fundamental aims, the scope of non-custodial measures, and legal safeguards.

659. Rule 1 sets out the fundamental aims of the instrument, which are to provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment. It stipulates that the Rules are to be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal-justice system.

660. In implementing the Rules, States must endeavour to ensure a proper balance between:

- (a) the rights of individual offenders;
- (b) the rights of victims; and
- (c) the concern of society for public safety and crime prevention.

661. Rule 2 states that the Rules are to be applied to all persons subject to prosecution, trial or execution of sentence, at all stages of the administration of criminal justice. For the purposes of the Rules, these persons are referred to as “offenders”, irrespective of whether they are suspected, accused or sentenced.

662. The Rules are to be applied without discrimination on any of the usual grounds, such as race, colour, sex, age or religion.

663. Rule 2 also requires that consideration be given to dealing with offenders in the community, avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.

664. Rule 3 sets out legal safeguards designed to ensure compliance with the rule of law, and to protect the offender’s rights, dignity, safety and privacy, when non-custodial measures are being considered or applied. In particular:

(a) The selection of non-custodial measures is to be based on an assessment of the nature and gravity of the offence, the personality and background of the offender, the purposes of sentencing and the rights of victims.

(b) Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings, require the offender’s consent.

665. Rules on the “Pre-trial stage” concern pre-trial dispositions and avoidance of pre-trial detention.

666. Rule 5 requires the police, the prosecution service or other agencies dealing with criminal cases to be empowered, where this is appropriate and compatible with the legal system, to discharge the offender if they consider that it is not necessary to proceed with the case for:

(a) the protection of society;

(b) crime prevention;

(c) the promotion of respect for the law and the rights of victims.

For the purpose of deciding on the appropriateness of discharge or determination of proceedings, a set of criteria are to be developed within each legal system.

667. Rule 6 requires pre-trial detention to be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

668. Rules on the “Trial and sentencing stage” concern social inquiry reports and sentencing dispositions, and rules on the “Post-sentencing stage” concern post-sentencing dispositions. It is not usual for police to be directly involved in these processes.

669. Rules on “Implementation of non-custodial measures” concern supervision, duration, conditions, the treatment process, and discipline and breach of conditions. Again, it is not usual for police to be directly involved in these processes; however, in some jurisdictions police are involved in supervision of non-custodial measures.

670. Rules on “Staff” concern recruitment and training, and rules on “Volunteers and other community resources” concern public participation, public understanding and cooperation, and volunteers.

671. Rules on “Research, planning, policy formulation and evaluation” stress, *inter alia*, the importance of:

(a) carrying out research on problems confronting clients, practitioners, the community and policy makers (rule 20.2);

(b) regular evaluations with a view to implementing non-custodial measures more effectively (rule 21.2);

(c) establishing linkages between services responsible for non-custodial measures, other branches of the criminal-justice system, and social-development and welfare agencies (rule 22).

### 3. Concluding remarks

672. The number and variety of international standards concerning juveniles are indications of the importance placed on securing the protection of, and prevention of delinquency by, juveniles.

673. All police officials need some understanding of best practice—as expressed in international standards—in this area. Those police officials with special responsibilities for the protection of juveniles or for dealing with juvenile offenders need to have a complete understanding of that best practice.

674. A great deal of expertise in the care and protection of juveniles has been built up within some police agencies, and this expertise should be drawn on by officials seeking to improve the performance of the agencies within which they serve.

675. It is possible to respond to the requirements of the standards in a variety of ways to suit the social and cultural circumstances of individual States. It is in the interests of Governments to ensure that young people are treated in accordance with the standards.

**B. International standards on police and the protection of juveniles—  
Practical application**

1. *Practical steps for implementing international standards*

***All Police Officials***

*Enrol in specialized training on the effective and humane treatment and care of juvenile offenders.*

*Participate in educational programmes for children, to help in preventing juvenile crime and juvenile victimization.*

*Get to know the children in your duty area, and their parents.*

*Be alert to places and adults presenting criminal risks, and to the presence of children in such places, or in contact with such adults.*

*If children are seen away from school during school hours, investigate and notify parents and school authorities.*

*Promptly investigate any evidence of neglect or abuse of children in their homes or communities, or in police facilities.*

*Meet regularly with social workers and medical professionals to discuss children's issues relating to your work.*

*For non-serious offences, return juvenile offenders to parents or social agencies.*

*Keep all records pertaining to children in separate and secure storage.*

*Report to superiors any information indicating that a colleague is not suited to deal with juveniles.*

***Command and Supervisory Officials***

*Encourage the use of a variety of dispositions as alternatives to institutional treatment of children, including care, guidance and supervision orders; counselling; probation; foster care; educational and vocational training programmes; and other appropriate and proportional measures.*

*Keep complete and secure records on all detained juveniles, including identity; reasons for committal; day and hour of admission, transfer and release; details of notifications to parents; physical or mental health problems; and information regarding staff charged with care and treatment.*

*Establish procedures for complaints and communications to be made by juvenile detainees direct to the director of the institution, or to judicial authorities and social agencies.*

*Assist in the development and implementation of community programmes for the prevention of juvenile crime.*

*Recruit and specially train personnel experts in and appropriately suited to dealing with juvenile offenders.*

*Provide for periodic review and revision of policies for the treatment of juvenile offenders, in consultation with social agencies, medical personnel, the judiciary and community representatives.*

*Establish expedited procedures for bringing detained juveniles before a court, where judicial action is appropriate.*

*Establish close liaison and cooperation with juvenile-justice, child-protection, medical and social agencies.*

*(Continued on next page.)*

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*Develop strategies for giving regular attention to children in especially vulnerable circumstances, such as extreme poverty, homelessness, abusive households or high-crime areas.*

*If possible, establish a special juvenile unit for giving expert attention to juvenile crime and incidents of juvenile victimization.*

*Issue clear orders on the confidential handling of juvenile records.*

*Closely supervise staff charged with dealing with juveniles, and investigate and redress any incidents of abuse, mistreatment or exploitation of juveniles.*

## 2. Hypothetical exercises

### Exercise 1

Rule 1.2 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice requires States to:

... endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1. Identify the various methods by which law enforcement agencies and individual law enforcement officials can assist in meeting this requirement.

2. Select one of the methods not yet adopted in your country, and which you consider would be effective, and prepare a draft report to your chief police officer proposing that it be adopted and setting out the reasons why.

### Exercise 2

The United Nations Guidelines for the Prevention of Juvenile Delinquency contain a section on "Education". In that section, paragraph 23 recommends that young persons should be informed about the law and their rights and responsibilities under the law. Paragraph 25 states that special attention should be given to strategies for the prevention of alcohol, drug and other substance abuse by young persons. These are all areas in which police have some expertise.

1. What are the arguments for and against programmes in which police officials talk directly to young people in schools on such matters?

2. In what other areas do police have expertise which might be used in the social education of young people in schools?

3. If police were to talk to young people in schools about "rights" and "responsibilities", outline what they should say about both.

### Exercise 3

Paragraph 9 of the United Nations Guidelines for the Prevention of Juvenile Delinquency recommends the introduction of comprehensive crime-prevention plans, which should include methods for effectively reducing the opportunity for juveniles to commit delinquent acts.

1. Identify those methods which would be most effective in reducing the opportunity for juveniles to commit delinquent acts in your country.

2. In respect of each method, indicate which agencies, in addition to the police, would need to be involved in the process.

3. In respect of each method, outline what the role of the police should be and what you would expect of the other agencies you have identified.

### Exercise 4

Rule 11 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice states that the police must be empowered to dispose of cases in which juveniles have committed offences "at their discretion, without recourse to formal hearings". This may entail:

(a) diversion involving referral to appropriate community or other services; or

(b) "diversion at the outset" and without referral to alternative agencies, in cases where the family, the school, or other informal social-control institutions have already reacted, or are likely to react, in an appropriate manner.

Draw up a set of guidelines for police officials empowered to dispose of juvenile cases. The guidelines should lay down criteria to be taken into account by them when considering whether disposal should be:

(a) by way of formal hearing;

(b) by diversion involving referral to appropriate community services;

(c) by "diversion at the outset", without referral to alternative agencies.

## 3. Topics for discussion

1. Most experts believe that labelling a young person as "delinquent" or "criminal" often contributes to the development of a consistent pattern of antisocial and undesirable behaviour by that person. Do you agree? Give reasons for your responses.

2. How does the criminal-justice system within which you work ensure that reactions to juvenile offenders are always in proportion to the circumstances of the

offender and the offence? Suggest improvements which could be made to ensure greater proportionality.

3. Three important rights or procedural safeguards for juveniles suspected of crime are the right to remain silent; the right to legal counsel; and the right to the presence of a parent or guardian at all stages of the proceedings. How does the criminal-justice system within which you work guarantee these rights? What limitations does it place on them? Suggest improvements to the system to ensure the guarantees.

4. In some jurisdictions, police are involved in programmes for the rehabilitation of juvenile offenders within the community. What are the advantages and disadvantages of police being involved in such programmes?

5. Consider ways in which the law enforcement agency in which you work could contribute to a research programme on the causes and prevention of juvenile crime. What information could the agency provide? What expertise is available within the agency? Would your agency cooperate with such research carried out by a university in your country?

6. What are the various ways in which the criminal-justice system within which you work avoids criminal prosecution of juveniles for conduct that does not seriously harm the juvenile or others? What other ways are there?

7. The United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) state that “youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood” (para. 5 (e)). Do you agree? If the statement is largely true, what are the implications for police policy and practice?

8. The Riyadh Guidelines recommend that government agencies should take special responsibility and provide necessary services for homeless or street children. The Guidelines further recommend that information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons (para. 38). To what extent should police be involved in meeting these requirements? In what other ways can police assist in protecting and assisting homeless children?

9. Imagine that an information booklet is being produced by your Government for circulation to the public on the question of alcohol, drug and substance abuse by young people. Various agencies are contributing information and advice. Discuss what information and advice the police should offer for inclusion in the booklet.

10. Discuss the various ways in which police officials and schoolteachers can cooperate to prevent exploitation and abuse of children.

## CHAPTER XVII

### LAW ENFORCEMENT AND THE RIGHTS OF WOMEN

#### *Chapter Objectives*

*To give users of the manual a basic understanding of the international human rights standards applying to women in the administration of justice, and to sensitize them to the importance of eliminating gender discrimination in law enforcement activities, and to the important role of police in combating violence against women in all its forms.*

#### *Essential Principles*

*Women are entitled to equal enjoyment of all human rights in the political, economic, social, cultural, civil and all other fields.*

*These rights include, inter alia, the rights to life; equality; liberty and security of the person; equal protection under the law; freedom from discrimination; the highest attainable standard of mental and physical health; just and favourable conditions of work; and freedom from torture and other cruel, inhuman or degrading treatment or punishment.*

*Violence against women may be physical, sexual or psychological, and includes battering, sexual abuse, dowry violence, marital rape, harmful traditional practices, non-spousal rape and violence, sexual harassment, forced prostitution, trafficking in women, and exploitation-related violence.*

*Violence against women, in all its forms, violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms.*

*Police shall exercise due diligence to prevent, investigate and make arrests for all acts of violence against women, whether perpetrated by public officials or private persons, in the home, the community and official institutions.*

*Police shall take rigorous official action to prevent the victimization of women, and shall ensure that revictimization does not occur as a result of the omissions of police, or gender-insensitive enforcement practices.*

*Violence against women is a crime and must be treated as such, even when occurring within the family.*

*Arrested or detained women shall not suffer discrimination, and shall be protected from all forms of violence or exploitation.*

*Women detainees shall be supervised and searched by female officers and staff.*

*Women shall be detained separately from male detainees.*

*Pregnant women and nursing mothers shall be provided with special facilities in detention.*

*Law enforcement agencies shall not discriminate against women in recruitment, hiring, training, assignment, promotion, salary, or other career and administrative matters.*

*Law enforcement agencies shall recruit sufficient numbers of women to ensure fair community representation, and the protection of the rights of female suspects, arrestees and detainees.*

**A. International standards on law enforcement and the rights of women—Information for presentations**

1. *Introduction*

676. This chapter is broad in scope in that it brings together a wide variety of law enforcement and human rights issues, some of which have been considered in previous chapters, and some of which are considered for the first time.

677. The central issues are “discrimination” and “violence”. These are closely connected with the issue of women as victims in certain situations, and with that of the special status and needs of women, in others.

678. In respect of all these issues, the question of sensitization is very important. It is very important within law enforcement agencies which remain predominantly male numerically and culturally, and it is important within the wider community. The sensitization of police officials to the human rights of women in the process of law enforcement should be the prime purpose of presentations based on this chapter.

679. Police officials are required to carry out all their duties in accordance with the principle of non-discrimination; they are required to prevent, and deal with the consequences of, victimization; and, in their dealings with women, they are required to ensure that the special status of women is respected and their special needs met.

680. If they meet all these requirements, they will prevent, or remedy in some way, particular wrongs or injuries; they will sensitize the wider community to the issues involved; and they will, in some circumstances, prevent much greater harms or tragedies occurring.

2. *General aspects of human rights of women and law enforcement*

(a) *Fundamental principles*

681. The principle of non-discrimination is fundamental to the subject-matter of this chapter, as is the principle that measures applied under the law to protect the rights and special status of women shall not be deemed to be discriminatory.

682. All the standards and requirements considered in this chapter derive from these two principles.

(b) *Specific provisions on human rights of women and law enforcement*

683. The scope of this chapter makes it appropriate to consider specific provisions under two main headings: “Protection of women” and “Women as police officials”. Under the first heading, the provisions are considered under the more specific headings: “Women and discrimination”, “Women as victims of domestic violence”, “Women as victims of rape and other sexual offences”, “Women as detainees” and “Protection of women in time of conflict”.

(i) *Protection of women*

a. *Women and discrimination*

684. Reference should also be made to chapter X of the manual, on Police and Non-discrimination, for information and sources on the question of non-discrimination generally.

685. Discrimination in the enjoyment of human rights is prohibited under the principal human rights instruments. For example, article 2 of the Universal Declaration of Human Rights states:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex,

language, religion, political or other opinion, national or social origin, property, birth or other status.

...

686. Various human rights treaties bind parties to ensure the rights enshrined in the treaties to all without discrimination, including discrimination on grounds of sex. This type of provision is included in article 2 of the International Covenant on Civil and Political Rights; article 2 of the African Charter on Human and Peoples' Rights; article 1 of the American Convention on Human Rights; and article 14 of the European Convention on Human Rights.

687. Article 3 of the International Covenant adds an extra requirement that States parties must ensure the equal right of men and women to enjoy all civil and political rights set out in the Covenant.

688. There are two international instruments dealing specifically with discrimination against women: the Declaration on the Elimination of Discrimination against Women; and the Convention on the Elimination of All Forms of Discrimination against Women.

689. Article 1 of the Declaration states that discrimination against women "is fundamentally unjust and constitutes an offence against human dignity".

690. Article 2 requires all appropriate measures to be taken to abolish laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women.

691. Article 3 requires all appropriate measures to be taken to educate public opinion, and to direct national aspirations towards the eradication of prejudice and the abolition of practices which are based on the idea of the inferiority of women.

692. Article 8 of the Declaration requires all appropriate measures, including legislative measures, to be taken to combat all forms of traffic in women and exploitation of prostitution of women.

693. A definition of "discrimination against women" is set out in article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, which states that the term means:

... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

694. Article 2 of the Convention requires States parties to condemn discrimination against women in all its forms, and to agree to pursue a policy of eliminating such discrimination. The article requires States to take a number of measures, which include embodying the principle of the equality of men and women in national constitutions or legislation; adopting legislative measures prohibiting discrimination against women; establishing legal protection of the rights of women on an equal basis with men; and taking measures to eliminate discrimina-

tion against women by any person, organization or enterprise.

695. Article 6 requires States to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

696. The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention, considers reports submitted to the Secretary-General by States parties on the measures they have adopted to give effect to the provisions of the Convention. The Committee may make recommendations based on the examination of reports and information received from States, when it reports annually to the General Assembly through the Economic and Social Council.

697. The Convention also allows disputes between States parties concerning the interpretation or application of the Convention not settled by negotiation to be submitted to arbitration (art. 29). If the parties are unable to agree on the organization of the arbitration, the dispute may be referred to the International Court of Justice. This provision is subject to no party to the dispute having declared itself not bound by it at the time of signature or ratification of the Convention, or of accession thereto.

698. Two aspects of non-discrimination particularly relevant to the protection of women, and of special importance to the matters considered under the next two subheadings, are the right to equality before the law and the right to equal protection of the law.

699. These rights are enshrined in article 7 of the Universal Declaration of Human Rights, which reads:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

700. The same rights are repeated in article 26 of the International Covenant on Civil and Political Rights; article 3 of the African Charter on Human and Peoples' Rights; and article 24 of the American Convention on Human Rights. In these instruments, the rights are given legal force in those States which are parties to the treaties.

701. Clearly, the process of law enforcement is one of the means by which people may secure equality before the law and be given the protection of the law, and policing must be carried out in such a way that these rights are respected.

702. This requirement is set out in article 1 of the Code of Conduct for Law Enforcement Officials, which states that police officials shall at all times fulfil the duty imposed on them by law by serving the community and by protecting all persons against illegal acts. Article 2 of the Code requires police to respect and protect the human dignity and maintain and uphold the human rights of all persons.



b. *Women as victims of domestic violence*

703. Violence against women by their male partners is a serious violation of their rights. When it occurs, it means that a State has failed to protect the right to security of the person, and possibly even the right to life, in respect of a person or persons within its jurisdiction.

704. Clearly, it is partly through policing that States are able to secure these two fundamental rights, and it is for this reason that the question of domestic violence is an important aspect of human rights courses for law enforcement officials. However, the police response to domestic violence is a technical policing matter with implications for such topics as policy, practice, command and management, training, and relationships with other agencies and groups.

705. A great deal of research has been carried out on the phenomenon of domestic violence, and law enforcement agencies should ensure that all the relevant areas of policing are fully informed about best practice based on this research. This can be done, for example, through direct contact with police agencies in States where effective strategies in this area have already been developed.

**TRAINERS' NOTE:** Some of these strategies have been identified in *Strategies for Confronting Domestic Violence: a Resource Manual*, published by the United Nations Centre for Social Development and Humanitarian Affairs in 1993. The following paragraphs are drawn from that manual and are intended to provide an outline of those aspects of the topic relevant to policing.

706. **DEFINITION:** A variety of definitions are used, but in essence the term "domestic violence" means physical or mental assault of women by their male partners. Examples of the phenomenon range from minor physical assaults to murder. They include repeated verbal abuse, confinement, and deprivation of resources.

707. **EXTENT OF THE PROBLEM:** Estimates of the incidence of domestic violence are difficult to arrive at, because it is largely a hidden problem, but it is common in many families in developed and developing countries. It is known to occur in families from every social class, and it crosses all cultural boundaries. There appears to be no part of the world where it is unknown.

708. **EFFECTS AND CAUSES:** The effects of domestic violence include death, physical injury, psychological problems, and hazards to other members of the family, especially children.

709. While individual causes, such as abuse of alcohol or drugs, can be identified, some theories suggest that the social, political and economic dependence of women on men provides the structure whereby men can perpetrate violence on women.

710. It is argued that the origins of such violence can be found in the social structure, and in cultural habits and beliefs—those concerning male superiority, for example.

711. Special approaches and policies are therefore necessary, not only because of harmful effects and complex causes, but also because domestic violence is a crime which takes place within the family between people emotionally and financially involved with each other.

712. **POLICIES FOR LAW ENFORCEMENT:** Two policy approaches have been identified as being necessary when domestic violence is dealt with through the criminal-justice system. The policies must:

- (a) reflect the unique nature of domestic crime, providing support for the victim and for her dependants;
- (b) take into account cultural, economic and political realities of the country concerned.

Furthermore, the effectiveness of these policy approaches is dependent on a number of requirements being met. These include:

- (a) intensive training for police on how to deal with the phenomenon;
- (b) a family consultation service providing 24-hour crisis intervention;
- (c) emergency shelters for women and children;
- (d) advisory clinics to provide emotional counselling for women;
- (e) treatment for men who abuse and assault (in addition to criminal prosecution).

These requirements depend on a multi-agency approach which, in turn, is dependent on resources. Where resources are limited, a more active role on the part of the community is necessary.

713. When recourse is made to criminal law, two procedures are usually available. Perpetrators may be:

- (a) charged with criminal offences disclosed by the investigation and supported by evidence; or
- (b) dealt with under legislation which provides for a court order protecting the victim against further abuse or attacks. Breach of the order is a criminal offence for which police have power of arrest.

The effectiveness of approaches based on recourse to the criminal-justice system is clearly dependent on policing policy and practice.

714. **THE ESSENTIAL ROLE OF THE POLICE** is indicated by the following characteristics of policing:

- (a) powers of arrest and detention vested in police officials;
- (b) availability of police officials 24 hours a day;
- (c) ability of police agencies to provide an emergency response.

715. Given the serious and widespread nature of domestic violence and the critical role of police in responding to it, it is recommended that all police agencies should:

- (a) have in place policy guidelines for police action;
- (b) ensure an effective organizational response to the problem.

716. Police policy guidelines usually include:

- (a) a definition of what domestic violence is;
- (b) an explanation of the status of domestic violence law;
- (c) a clear account of expectations of police behaviour in dealing with incidents of domestic violence;
- (d) an outline of procedures for protecting victims;
- (e) an emphasis on police responsibility for referring victims to appropriate support services;
- (f) a recognition of the fact that police need to collaborate with other community-service practitioners at all stages of their involvement with particular cases, and with the problem in general.

717. Effective organizational responses include:

- (a) establishing special units to deal with domestic violence;
- (b) developing victim-oriented crisis-intervention techniques and practices to improve the level of service offered to victims;
- (c) ensuring effective investigation of crimes arising out of incidents of domestic violence.

718. All these recommendations relate to policing policies, practices and techniques which have been developed to a high degree in the police agencies of some United Nations Member States. Police agencies seeking to improve their performance in these areas should draw on the available expertise.

719. INTER-AGENCY COOPERATION: Domestic violence is a complex problem requiring the efforts of people from different professional backgrounds, and from the community in general. Those who generally become involved include educators, personnel from religious organizations, social workers, health workers, housing agency staff, members of women's groups, and people working in shelters and refuges for victims of domestic violence. Cooperation between police and these people and groups is essential for the necessary combined approach to be adopted; to prevent duplication of effort; and to ensure that the essential functions of one organization or group are not subverted by the actions of another.

c. *Women as victims of rape and other sexual offences*

720. Sexual abuse of women, in all its forms, is a serious violation of their rights and a crime of the gravest kind. As is the case with domestic violence, it signifies that a State has failed to protect the right to security of person and possibly even the right to life of a person or persons within its jurisdiction. For this reason, and because rape and other sexual attacks are criminal offences, it is the responsibility of police to ensure that they are effective in both the prevention and the detec-

tion of such crimes, and that their response to victims is humane and professionally competent.

721. PREVENTION requires the development of effective prevention strategies, both generally and in response to situations in which there is a heightened risk of victimization because of a particular offence or series of offences which have not been detected.

722. General prevention strategies require police, for example, to give advice to women on how to avoid becoming victims of sexual attacks; to provide heightened security in high-risk areas; and to carry out effective—and legal—investigation and surveillance of suspects.

723. Prevention activities when there is a heightened risk of victimization include giving more specific advice on avoidance, and intelligent deployment of manpower and other resources—both based on an understanding and assessment of the specific risk.

724. DETECTION requires the application of the necessary expertise in all areas of crime investigation and detection, including primarily:

- (a) interviewing victims, witnesses and neighbours;
- (b) gathering and preserving forensic evidence;
- (c) interviewing suspects.

It is the responsibility of police commanders and managers to ensure that such expertise is available and applied. Where it is lacking, it is their responsibility to seek technical assistance so that the necessary skills can be developed.

725. RESPONSE TO VICTIMS: As is the case with responses to victims of domestic violence, this is an area of policing where a great deal of research has been carried out and where considerable expertise exists in some police agencies.

726. For a variety of reasons, mainly cultural and social, police responses to victims of sexual attacks have been unsatisfactory in many countries. They are characterized by a lack of sensitivity shown to victims. Steps to overcome this, and to ensure a more professional approach, include:

- (a) statements of policy requiring sensitive and humane responses to victims;
- (b) command, managerial and supervisory action to ensure compliance with such policy;
- (c) specialized training of some officials in techniques for humane and effective interviewing of victims;
- (d) providing a sympathetic environment for carrying out interviews and medical examinations of victims.

d. *Women as detainees*

727. The rights and special status of women detainees should be recognized by all police officials.

728. A full account of the human rights of detainees in police custody is given in chapter XIII of this manual, on Detention. In that chapter, the fundamental principles

identified are the prohibition on torture and ill-treatment; the requirement to treat detainees humanely; and the presumption of innocence. The standards with which law enforcement officials are to comply in their treatment of detainees are also considered in some detail.

729. The following requirements in relation to women detainees are emphasized:

- (a) women detainees are to be accommodated separately from men;
- (b) women detainees are to be supervised by women;
- (c) women detainees are to be searched by women.

730. Principle 5 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment requires the principles to be applied without distinction of any kind, including distinctions made on grounds of sex. It also states (para. 2):

Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers . . . shall not be deemed to be discriminatory. . . .

731. In order for the rights and special status of women detainees to be respected, it is necessary for:

(a) all law enforcement officials to be aware of the standards they are to comply with in their treatment of detainees, and of those standards relating particularly to women;

(b) officials with command and supervisory responsibilities to ensure compliance with those standards;

(c) sufficient numbers of women police officials to be appointed, trained and appropriately deployed so that they are available to supervise and, if necessary, search women detainees;

(d) facilities for the detention of women by police to be sufficient to respect the rights and special status of women detainees—especially in respect of the requirement for women to be detained separately from men.

e. *Protection of women in time of conflict*

732. While international human rights law remains applicable in time of conflict, its effect can be diminished through measures of derogation taken by Governments to deal with public emergencies. However, when conflict amounts to armed conflict, international humanitarian law becomes applicable and this law is specifically designed to regulate the conduct of hostilities and to protect victims of conflict.

733. Reference should be made to chapter XV of this manual, on Civil Disorder, States of Emergency and Armed Conflicts, for a full account of the principles and provisions of international humanitarian law relevant to law enforcement in times of conflict. Section A.2 (g) of that chapter deals with measures of derogation allowed under human rights treaties.

734. International humanitarian law contains measures to protect the rights and special status of women, just as human rights law does. The measures applicable in international armed conflict and non-international armed conflict are summarized below. Principles drawn

from international humanitarian law and relevant to disorders and tensions not amounting to armed conflict are also considered.

735. INTERNATIONAL ARMED CONFLICT: Article 12 of both the First and the Second Geneva Conventions of 1949 (relating to the protection of wounded and sick members of armed forces on land, and at sea, respectively) requires wounded and sick members of armed forces (and certain other categories of person) to be respected and protected in all circumstances. The articles set out requirements for the humane treatment of such people and state specifically that women shall be treated with all consideration due to their sex.

736. The Third Geneva Convention (relating to the treatment of prisoners of war) contains a variety of measures for the protection of women. There is a general requirement in article 14 that they be treated with all regard due to their sex, and there are specific requirements in a number of articles concerning such matters as conditions of detention, and disciplinary or judicial sanctions.

737. The Fourth Geneva Convention (relating to the protection of civilian persons in time of war) contains a general provision for the protection of women in article 27, which requires women to be especially protected against any attack on their honour, and in particular against rape, enforced prostitution, or any form of indecent assault. In addition, the Convention sets out specific provisions on such matters as conditions of detention for women who have been detained or interned, and special measures for the protection of pregnant women and mothers of young children.

738. Section III of part IV of Additional Protocol I to the 1949 Geneva Conventions makes stipulations on the treatment of persons in the power of a party to a conflict, and article 76 in that section relates to the protection of women. In particular, it requires that:

(a) women shall be the object of special respect and shall be protected against rape, forced prostitution and indecent assault;

(b) pregnant women and women with dependent infants who are arrested, detained or interned for reasons related to the conflict shall have their cases considered with the utmost priority;

(c) parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or women with dependent infants for an offence related to the conflict. In any event, the death penalty is not to be executed on such women.

739. Article 75 of Protocol I (para. 5) requires that women whose liberty has been restricted for reasons related to the conflict shall be held separately from men and shall be under the immediate supervision of women. When families are detained or interned, they are to be held in the same place and accommodated in family units whenever possible.

740. There are a number of other provisions in the Fourth Geneva Convention and in Additional Protocol I designed to protect pregnant women and mothers of

dependent children from the consequences of war, and on the provision of relief to such women.

741. NON-INTERNATIONAL ARMED CONFLICT: Article 3 common to the four Geneva Conventions of 1949 requires all persons taking no active part in hostilities to be treated humanely, without adverse distinction on any of the usual grounds, including sex.

742. Additional Protocol II to the 1949 Geneva Conventions develops and supplements common article 3 of the Conventions. Article 4, paragraph 2 (e), of Protocol II prohibits rape, enforced prostitution and any form of indecent assault.

743. Article 5 of the Protocol relates to persons whose liberty has been restricted for reasons related to a conflict. Paragraph 2 (a) of the article requires women to be held in quarters separated from men, and to be under the immediate supervision of women. The exception to this is when men and women of a family are accommodated together.

744. Article 6, paragraph 4, of the Protocol prohibits the death penalty being carried out on pregnant women or mothers of young children.

745. INTERNAL DISORDERS AND TENSIONS: The provisions of international humanitarian law do not apply to such conflicts as they are not armed conflicts. However, as already indicated in chapter XV, three texts embodying humanitarian principles and standards have been produced by international experts. These texts incorporate imperative rules based on non-derogable rights and prohibitions embodied in article 3 common to the 1949 Geneva Conventions; Additional Protocols I and II to those Conventions; and human rights treaties such as the International Covenant on Civil and Political Rights.

746. The three texts, which are described more fully in paragraphs 527 to 534 above, are a code of conduct, a draft model declaration on internal strife, and a draft declaration of minimum humanitarian standards. These texts prohibit the death sentence being carried out on pregnant women or mothers of young children, and the declaration of minimum humanitarian standards prohibits rape.

(ii) *Women as police officials*

747. This section concerns women in the profession or service of law enforcement. Although it is not concerned with “the protection of women”, as were the preceding sections, the question of discrimination—and protection from discrimination—does arise.

748. International standards relevant to the topic of women as police officials can be considered under the headings: “Access and appointment to the police service”, “Equality of opportunity within the police service” and “Deployment of women police officials”.

749. ACCESS AND APPOINTMENT TO THE POLICE SERVICE is governed by:

(a) The requirement that policing should be representative.

This requirement is considered in chapter IX of the manual, on Policing in Democracies. General Assembly resolution 34/169 of 17 December 1979, by which the Code of Conduct for Law Enforcement Officials was adopted, stipulates that every law enforcement agency should be representative of the community as a whole.

This means that there should be a sufficient number of women employed within a law enforcement agency for it to be considered representative of the community it serves.

(b) The right of equal access to public service.

This right is considered in chapter X, on Police and Non-discrimination. Article 21, paragraph 2, of the Universal Declaration of Human Rights states that everyone has the right to equal access to public service in his country. The same right is protected in the International Covenant on Civil and Political Rights (art. 25 (c)), and in regional treaties. The effect of this right is that women who are properly qualified should have access to, and be able to participate in, the public service of policing.

(c) The right to free choice of profession and employment.

This right is expressed in the Declaration on the Elimination of Discrimination against Women (art. 10, para. 1 (a)) and the Convention on the Elimination of All Forms of Discrimination against Women (art. 11, para. 1 (c)). Article 11, para. 1 (b), of the Convention also sets out the right of women to the same employment opportunities, including application of the same criteria for selection in matters of employment, as men.

The effect of these rights is that women who wish to serve in a police agency, and who meet the criteria for appointment, have the right to be appointed to that agency.

750. Clearly, appointment to a specific police agency is governed by the number of posts to be filled at any one time, as well as the criteria set for appointment to that agency. Given the requirement and rights set out above, such considerations should not be used as devices to exclude properly qualified women from appointment to an agency.

751. EQUALITY OF OPPORTUNITY WITHIN THE POLICE SERVICE is governed by:

(a) the right to receive vocational training;

(b) the right to vocational advancement or promotion;

(c) the right of women to equal remuneration with men and to equality of treatment in respect of work of equal value;

(d) the right to paid leave, and to security in respect of unemployment, retirement, sickness, invalidity and old age;

(e) the right to protection of health and safe working conditions;

(f) the right to protection against discrimination on grounds of marriage or maternity. (This includes requirements to prohibit sanctions or dismissal on grounds of pregnancy or maternity; to introduce maternity leave with pay or comparable benefits without loss of employment; to provide special protection to women during pregnancy; and to provide social services such as child-care services.)

These six points are summaries of measures specified in the Declaration on the Elimination of Discrimination against Women (art. 10) and the Convention on the Elimination of All Forms of Discrimination against Women (art. 11).

752. DEPLOYMENT OF WOMEN POLICE OFFICIALS is governed by:

(a) those rights which require equality of opportunity with men in employment (e.g. the rights to vocational training and to advancement). This means that women should be given the same opportunities as men to broaden and extend their policing experience, and to perform those policing functions considered necessary for career development and advancement;

(b) requirements on police agencies to deploy women in certain situations (e.g. supervising women detainees; searching women detainees).

753. Clearly, operational considerations may have a bearing on whether, or the extent to which, women police officers may be deployed in a specific situation. However, such considerations should not be used as de-

vices to deprive women of the opportunity to gain particular types of operational experience or to serve in any form of specialized police unit whatsoever.

754. To limit the appointment, career opportunities or modes of deployment of women police officials is to deny police agencies their talents and abilities, to the detriment of the agencies and the public they serve.

### 3. *Concluding remarks*

755. In the introduction to this chapter, the sensitization of police officials to the human rights of women in the process of law enforcement is identified as the prime purpose of the chapter. This means sensitization to the rights of women in terms of their needs and special status as people who require protection, and in terms of their needs and special status as colleagues in law enforcement.

756. For cultural and religious reasons, attitudes to women vary significantly from country to country. However, in their various ways, all cultures and all religions respect the inherent dignity of the human person and the needs and special status of women.

757. The standards considered in this chapter are global standards adopted by the international community. The process of sensitizing police officials to the human rights of women will be assisted by exposing officials to these standards, and by discussing with them how the standards may be applied in their countries and in the agencies in which they serve.

## **B. International standards on law enforcement and the rights of women—Practical application**

### 1. *Practical steps for implementing international standards*

#### ***All Police Officials***

*Treat crimes of domestic violence as equivalent to other assaults.*

*Respond promptly to domestic violence and to sexual violence calls; inform victims of available medical, social, psychological and material support; and provide transportation to a safe place.*

*Investigate domestic violence thoroughly and professionally. Interview victims, witnesses, neighbours and medical professionals.*

*Prepare detailed reports of domestic violence incidents, and follow up carefully, both with superiors and with the victim; check reports against previous incidents in the files; and take all necessary action to prevent reoccurrence.*

*After medical, administrative and other procedures have been completed, offer to accompany a victim of domestic violence to her home to move her personal effects to a safe place.*

*Enrol in training to develop your skills in aiding and protecting victims of domestic violence.*

*(Continued on next page.)*

(Continued from preceding page.)

*Cooperate closely with medical professionals and social agencies in handling cases of domestic violence.*

*Ensure that a female officer is present during all contact with women offenders, and with women victims of crime. Defer completely to female colleagues, where possible.*

*Separate female from male detainees. Be sure that female officers supervise and search female detainees.*

*If male, abstain from and discourage gender-insensitive conversations and jokes with male colleagues.*

*Ask female colleagues for their feelings and perceptions on any policies, practices, behaviour or attitudes which are gender-specific, initiate improvements yourself, and support them in their efforts to do so.*

### **Command and Supervisory Officials**

*Issue and enforce clear standing orders on prompt and effective responses to domestic violence calls, and on the legal equivalent of crimes of domestic violence to other forms of assault.*

*Provide for regular training of officials on addressing violence against women.*

*Establish a special police unit for domestic violence calls, and consider having social workers assigned to serve jointly in such units with police.*

*Establish close liaison and joint strategies with medical professionals, social-work agencies, local "safe houses" and relevant community organizations.*

*Review recruitment, hiring, training and promotion policies to remove any gender bias.*

*Assign female officers to deal with female victims of crime.*

*Assign female officers to carry out all searches and supervision of female detainees; separate female from male detainees.*

*Provide for special detention facilities for pregnant women and nursing mothers.*

*Adopt policies prohibiting discrimination against officers on the basis of pregnancy or maternity.*

*Establish open channels of communication for complaints or recommendations by female officers on issues of gender bias.*

*Increase patrols and preventive action in high-crime areas, including foot patrols and community involvement in crime prevention, to reduce the risk of violent crimes against women.*

## **2. Hypothetical exercises**

### **Exercise 1**

Policing "best practice" in responding to domestic violence includes having in place policy guidelines for police action. Produce policy guidelines for your police agency which are relevant to the cultural, economic and political realities of your country, and which include the following:

- (a) a definition of domestic violence;
- (b) an explanation of the status of domestic violence in the laws of your country;

(c) a clear account of expectations of police behaviour in dealing with incidents of domestic violence;

(d) an outline of procedures for protecting victims;

(e) emphasis on the police responsibility to refer victims to appropriate support services, and instructions on how this is to be done;

(f) recognition of the fact that police need to collaborate with other community-service practitioners at all stages of their involvement in particular cases, and with regard to the problem in general.

### **Exercise 2**

It has been decided that a special unit to deal with domestic violence will be established in your police

agency. As a member of a working group appointed by your chief officer:

1. Prepare draft terms of reference for the special unit.
2. Make recommendations on the rank structure and composition of the unit, including the number of officers it should consist of, and the combined skills required of officers working in the unit.
3. Identify the other social agencies with which the unit will be required to liaise.
4. Prepare draft instructions to be issued to all officers in your police agency indicating what their initial response to incidents of domestic violence should be; how they are to advise the special unit of such an incident and their response to it; and the stage at which, and the extent to which, the special unit will become involved in dealing with the incident.

### *Exercise 3*

As a matter of policy, it has been decided that women police officers will be deployed in a specialized unit in your police agency which is responsible for dealing with civil disorder and providing an armed response to terrorism. Draft recommendations to your chief officer on:

- (a) the ratio of women to men in the unit;
- (b) selection criteria, and a method of selection for women applying to join the unit;
- (c) the operational deployment of women, for example whether or not there should be limitations on their deployment, and how they are to be deployed when the unit is mobilized to deal with violent public disorder.

### *3. Topics for discussion*

1. Identify the factors that work against all people being given the equal protection of the law, and state what can be done to improve the situation.
2. Physical violence against a woman by her male partner is a crime. In view of this, why has it been necessary to emphasize to police agencies and police officials that such crimes are to be fully and fairly investigated?
3. It has been argued that social, economic and political inequalities of women in relation to men provide a structure whereby men perpetrate violence against women. Do you accept this argument? If not, why not,

and what alternative argument would you propose? If you do believe it is true, what can be done to correct the situation?

4. In what ways does violence against a woman by her male partner differ from unlawful acts of violence between other categories of people? Are such acts of violence dealt with under the normal law of assault in your country, or is there a separate and special offence of "wife assault" or "violent assault on a woman" with higher penalties on conviction than for other forms of assault? Discuss the advantages and disadvantages of having such a separate and special category of offence.

5. It is sometimes argued that, for social and cultural reasons, police responses to victims of sexual offences are not satisfactory. Specify what these cultural and social reasons might be. Are they applicable in your country? What can be done to overcome this problem?

6. One way of ensuring adequate cooperation between the various agencies which provide a response to domestic violence and other crimes against women would be to form a unit consisting of, for example, police officers, social workers, health workers and specialists in emotional counselling. What would be the advantages and disadvantages of forming such a unit?

7. Consider the various ways in which a police agency can provide a sympathetic environment for interviewing victims of rape. Which would be the most practical and effective in your country?

8. What methods are adopted in your police agency to ensure equality of opportunity for women police officials? Are the women police officials satisfied that these methods are sufficient? What else could be done to improve the career opportunities of women police officials?

9. If women were able to exercise fully their right to free choice of profession, it could mean that about half the members of a police agency would be women. Would such an agency be operationally more effective or less effective than agencies with a much smaller ratio of women to men officials? State what you consider to be the ideal ratio of women to men officials in a police agency. Give reasons for your replies.

10. For the purposes of discussion, imagine that a series of rapes and other violent attacks on women have taken place in the area of your police agency and that the attacker or attackers remain undetected. Consider all the steps that could be taken by your police agency to advise women on how to avoid becoming victims; to prevent further attacks; and to reassure the population generally.

## CHAPTER XVIII

### REFUGEES AND NON-NATIONALS

#### *Chapter Objectives*

*To give users of the manual a basic understanding of the special vulnerability of refugees and non-nationals, of the international standards protecting such groups, and of the role of police officials in enforcing those standards.*

#### *Essential Principles*

##### *REFUGEES*

*Everyone has the right to seek, and to enjoy, in another country, asylum from persecution.*

*A refugee is a person who, owing to a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group, or political opinion, is unable or unwilling to return to his or her country of origin (or, if stateless, to his or her country of habitual residence).*

*Refugees are entitled to all basic human rights, with the exception of certain political rights, but, if they are unlawfully within the territory of a State, certain limitations on movement may be applied in the interest of public order and health.*

*Refugees shall be granted treatment which is at least as favourable as that granted to nationals in the exercise of basic rights such as free association, religion, elementary education, public relief, access to courts, property and housing.*

*No one shall be returned to a country where his or her life or freedom would be threatened, or where he or she would be persecuted, nor to a third country likely to return the refugee to such a country.*

*Refugees unlawfully within the territory of a State who have come directly from a country of persecution and who present themselves without delay to the authorities shall not be penalized.*

*Refugees coming directly from a country of persecution shall not be refused at least temporary entry.*



*Refugees lawfully within the territory have the right to freedom of movement and residence.*

*Refugees lawfully within the territory shall be granted travel documents and identity papers.*

*Persons seeking asylum shall be informed of the necessary procedures, provided with the necessary facilities to apply for asylum, and allowed to remain, pending a final decision.*

*No refugee shall be expelled except on grounds of national security or public order, and only on the basis of a decision reached in accordance with due process of law.*

*Before expulsion, a refugee shall be given an opportunity to offer evidence, to be represented, and to appeal to a higher authority.*

### ***Essential Principles:***

#### ***Non-nationals***

*Non-nationals include foreigners and stateless persons.*

*Non-nationals are lawfully within the territory of a State if they have entered in accordance with the legal system, or if they possess a valid residence permit.*

*Non-nationals lawfully within the territory are entitled to all human rights, except certain political rights.*

*Non-nationals have the same right to leave and to emigrate as nationals.*

*Non-nationals lawfully within the territory who have close attachments to the State and view it as their own (who have set up a home, who were born in the State, or who have resided in the State for a long time) shall not be expelled.*

*Other non-nationals lawfully within the territory may be expelled only if decided by law, if the decision is not arbitrary, not discriminatory, and if procedural guarantees have been afforded.*

*Procedural guarantees for expulsion include the right to be heard, the right to review by a competent authority, the right to representation, the right to appeal to a higher authority, enjoyment of full facilities to pursue a remedy, the right to remain pending an appeal, and the right to be informed of available remedies.*

*Exceptions for some procedural guarantees may be allowed, but only for compelling reasons of national security, such as political or military threats to the whole nation.*

*Collective or mass expulsions are prohibited.*

*The spouse and minor dependent children of a non-national lawfully within the territory must be admitted to join the non-national.*

*All non-nationals must be free to communicate with their consulate or diplomatic mission.*

*Non-nationals who are expelled should be permitted to depart to any country which accepts them, and may not be sent to a country where their human rights would be violated.*

## A. International standards on refugees and non-nationals—Information for presentations

### 1. Introduction

758. The situation of refugees and displaced persons is one of the most complex and intractable problems which the world community currently faces.

759. When the Office of the United Nations High Commissioner for Refugees was established in 1951, the number of refugees within its mandate was about 1 million people. By the early 1990s, the number had risen to more than 17 million people. Furthermore, by the same time, the number of internally displaced persons stood at more than 25 million people.

760. Reasons for such vast and uncontrollable population movements vary from natural disasters and extreme poverty to persecution of individuals or groups. Violence is the greatest single factor behind involuntary departures from homes. Two world wars and some 130 armed conflicts since the end of the Second World War have resulted in millions of displacements of people and peoples around the world.

761. The term “refugee” is defined in the 1951 Convention relating to the Status of Refugees as a person who:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (Art. 1, sect. A (2).)

...

The 1967 Protocol relating to the Status of Refugees extended the application of the 1951 Convention to the situation of persons who, while meeting the Convention definition, had become refugees as a result of events occurring after 1 January 1951.

762. Other terms used in this chapter are “internally displaced persons” and “aliens” or “non-nationals”. Internally displaced persons are persons who have been forced to flee their homes but who remain within the territory of their own country; aliens are individuals who are not nationals of the State in which they are present.

763. An essential element of the definition of a refugee is the well-founded fear of persecution. However, as indicated above, movements of people occur for various complex reasons and are not simply the result of immediate persecution. This leads to some asylum seekers being classified in some countries as economic migrants and not refugees, although, in reality, it is not always possible to distinguish satisfactorily between the two categories of people.

764. There is a clear relationship between the refugee problem and human rights violations. Human rights violations cause mass exoduses; they are perpetrated on

people who have become refugees; and their persistence in the countries of origin of refugees hinders repatriation.

765. However they may be categorized, displaced people are entitled to respect for their inherent human dignity and for their basic human rights.

### 2. General aspects of human rights of refugees and non-nationals

#### (a) Fundamental principles

766. Four principles are associated with the treatment of refugees and non-nationals. These are:

—the equality of rights;

—the inalienability of rights;

—the universality of rights;

—the right to seek and to enjoy asylum from persecution.

#### (b) Specific provisions on human rights of refugees and non-nationals

767. The relevant provisions are embodied in texts relating specifically to refugees and non-nationals, and in human rights instruments.

768. The 1951 Convention relating to the Status of Refugees is the principal instrument on refugees. It stipulates minimum standards on the treatment of refugees, including basic rights to which they are entitled, and it establishes their juridical status. It contains provisions on the rights to gainful employment and to welfare, on the issuance of identity papers and travel documents, on the applicability of fiscal charges, and on the right of refugees to transfer their assets to another country where they have been admitted for the purpose of resettlement. Other important measures, and provisions of special relevance to law enforcement and the protection of human rights, are set out in more detail below.

769. As of 1 April 1992, there were 111 States parties to the Convention and/or the 1967 Protocol relating to the Status of Refugees, which, as indicated above, extends the application of the Convention to people becoming refugees as a result of events occurring after 1 January 1951.

770. It should be noted that there are also regional instruments dealing with refugees. In 1969, the Organization of African Unity adopted the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa; the Council of Europe has adopted several instruments concerning refugees; and there are instruments dealing with asylum in Latin America, as well as the 1984 Cartagena Declaration on Refugees.

771. Specific provisions of relevance to law enforcement and human rights are now considered in subsections (c) to (i) below, which deal with refugees, internally displaced persons, aliens or non-nationals, and stateless persons.

(c) *Specific provisions of the 1951 Convention relating to the Status of Refugees*

772. **INAPPLICABILITY OF THE CONVENTION:** The Convention does not apply to any person with respect to whom there are serious reasons for considering that he has:

(a) committed a crime against peace, a war crime, or a crime against humanity, as defined in international instruments;

(b) committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) been guilty of acts contrary to the purposes and principles of the United Nations (art. 1, sect. F).

773. **GENERAL OBLIGATIONS:** Every refugee has duties to the country in which he finds himself. In particular, he is to conform to its laws and regulations, as well as to measures taken for the maintenance of public order (art. 2).

774. **NON-DISCRIMINATION:** The provisions of the Convention are to be applied to refugees without discrimination as to race, religion or country of origin (art. 3).

775. **RIGHT OF ASSOCIATION:** Contracting States are to accord to refugees lawfully in their territory the most favourable treatment accorded to nationals of a foreign country as regards non-political and non-profit-making associations and trade unions (art. 15).

776. **ACCESS TO COURTS:** A refugee is to have free access to the courts of law on the territory of all contracting States. In the contracting State of his habitual residence he shall enjoy the same treatment as nationals in matters pertaining to access to courts, including legal assistance (art. 16).

777. **FREEDOM OF MOVEMENT:** Each contracting State is to accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances (art. 26).

778. **IDENTITY PAPERS:** Contracting States are to issue identity papers to any refugee in their territory who does not possess a valid travel document (art. 27).

779. **TRAVEL DOCUMENTS:** Measures include a requirement that such documents are to be issued to refugees lawfully in the territory of a contracting State for the purpose of travel outside its territory, unless compelling reasons of national security or public order require otherwise (art. 28).

780. **REFUGEES UNLAWFULLY IN THE COUNTRY OF REFUGE:** Measures include a requirement that contracting States are not to impose penalties, on account of illegal entry, on refugees who come directly from a territory where their life or freedom was threatened and who present themselves without delay to the authorities (art. 31).

781. **EXPULSION:** Contracting States are not to expel a refugee lawfully in their territory except on grounds of

national security or public order. Expulsions are to be only in pursuance of a decision reached in accordance with due process of law. There are provisions on the rights of refugees to submit evidence, to be represented and to appeal to competent authorities (art. 32).

782. **PROHIBITION OF EXPULSION OR RETURN:** No contracting State is to expel or return (*refouler*) a refugee to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion. A refugee for whom there are reasonable grounds to regard as a danger to the security of the country in which he is, or who, having been convicted of a particularly serious crime, constitutes a danger to the community of that country, may not claim the benefit of this provision (art. 33).

(d) *Specific provisions of international human rights law and international humanitarian law relevant to the situation of refugees*

783. Clearly, the provisions of most relevance to the situation of refugees are the right to freedom of movement and the right to seek and to enjoy asylum from persecution. These rights are protected under the Universal Declaration of Human Rights, as follows:

*Article 13*

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

*Article 14*

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

784. These rights are also protected under article 12 of the African Charter on Human and Peoples' Rights and article 22 of the American Convention on Human Rights. The right to freedom of movement and residence within a State, the freedom to leave any country and the right to return to one's own country are also protected under article 12 of the International Covenant on Civil and Political Rights and articles 2 and 3 of Protocol No. 4 to the European Convention on Human Rights.

785. Another provision of fundamental importance to the situation of refugees is the entitlement to enjoyment of rights without distinction or discrimination. This is expressed in article 2 of the Universal Declaration of Human Rights, as follows:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

...

The entitlement is also protected under the International Covenant on Civil and Political Rights (art. 2); the International Covenant on Economic, Social and Cultural Rights (art. 2, para. 2); the African Charter on Human

and Peoples' Rights (art. 2); the American Convention on Human Rights (art. 1); and the European Convention on Human Rights (art. 14).

786. Thus a wide range of human rights—economic, social and cultural, as well as civil and political rights—are protected in relation to refugees. However, the rights which are most vulnerable as far as law enforcement and policing activities in general are concerned, and the rights which are most dependent on policing and law enforcement for their protection, are civil and political rights.

787. In particular, law enforcement officials should be reminded that the following provisions of the Universal Declaration of Human Rights are of special relevance to the situation of refugees:

- (a) the right to life, liberty and security of person (art. 3);
- (b) the prohibition on torture and ill-treatment (art. 5);
- (c) the right to recognition as a person before the law (art. 6);
- (d) the entitlement to equality before the law and equal protection of the law (art. 7);
- (e) the prohibition on arbitrary arrest and detention (art. 9);
- (f) the right to a fair and public hearing in the determination of rights and obligations and of any criminal charge (art. 10);
- (g) the prohibition on arbitrary interference with privacy, family, home and correspondence (art. 12);
- (h) the right to freedom of thought, conscience and religion (art. 18);
- (i) the right to freedom of opinion and expression (art. 19);
- (j) the right to freedom of peaceful assembly and association (art. 20).

All the above rights and prohibitions are also embodied in the International Covenant on Civil and Political Rights and in regional treaties. They have each been considered in more detail in previous chapters of this manual.

788. The specific provisions of international humanitarian law relevant to the situation of refugees in international armed conflicts are embodied in:

- (a) article 44 of the Fourth Geneva Convention, relating to the protection of civilian persons in time of war, which states that, in applying the measures of control mentioned in the Convention, a detaining Power shall not treat aliens as an enemy exclusively on the basis of their nationality of an enemy State refugees who do not, in fact, enjoy the protection of any Government;
- (b) article 73 of Additional Protocol I to the 1949 Geneva Conventions, which states that persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments or under the national law of the State of refuge or residence shall be protected persons within the meaning of parts I and III of the Fourth Geneva Con-

vention. Part I of the Convention deals with general provisions, and part III with the status and treatment of protected persons.

789. There are no provisions of international humanitarian law specifically relating to the situation of refugees in non-international armed conflicts. However:

(a) article 3 common to the four Geneva Conventions of 1949, which applies in the case of armed conflicts not of an international character occurring in the territory of one of the parties, requires that persons taking no active part in the hostilities are to be treated humanely “without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria”;

(b) Additional Protocol II to the Geneva Conventions, which is also concerned with the protection of victims of non-international armed conflicts, is to be applied without any adverse distinction on similar grounds to those in common article 3 (art. 2).

790. In addition to these measures of protection, it should be remembered that the 1951 Convention relating to the Status of Refugees and other instruments on the status and treatment of refugees have particular relevance during armed conflicts and occupations.

#### (e) *Internally displaced persons*

791. A large number of mass displacements in recent years have resulted in “internally displaced persons”—persons who are forced to flee their homes but remain within the territory of their own country.

792. Most internally displaced populations are in developing countries and are composed largely of women and children. In some countries, the internally displaced have comprised more than 10 per cent of the population.

793. Since they continue to reside within their own countries, these people are excluded from the present system of refugee protection. However, law enforcement officials should be reminded that the principles and provisions of human rights law remain fully applicable. Internally displaced persons are extremely vulnerable people and are entitled to full enjoyment of human rights without any adverse distinction or discrimination.

794. Law enforcement officials should also be advised of the provisions of article 17 of Additional Protocol II to the 1949 Geneva Conventions, which is the Protocol relating to the protection of victims of non-international armed conflicts. Article 17 prohibits the forced movement of civilians. It provides that:

- (a) the displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians, or imperative military reasons, so demand;
- (b) if such displacements are carried out, all possible measures are to be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition;
- (c) civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

(f) *Specific provisions of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live*

795. ADOPTION OF THE DECLARATION: The Declaration was adopted by General Assembly resolution 40/144 of 13 December 1985. The resolution makes reference to:

(a) the Charter of the United Nations, which encourages universal respect for the human rights of all human beings without distinction as to race, sex, language or religion;

(b) the Universal Declaration of Human Rights, which proclaims that everyone is entitled to all the rights and freedoms set forth in that Declaration without distinction of any kind based on grounds which include race, colour or national origin; and which also proclaims that everyone has the right to recognition everywhere as a person before the law, that all are equal before the law and entitled without any discrimination to equal protection of the law, and that all are entitled to equal protection against discrimination.

Furthermore, the resolution recognizes that the protection of human rights and fundamental freedoms provided for in international instruments should also be ensured for individuals who are not nationals of the country in which they live.

796. DEFINITION: For the purposes of the Declaration, the term "alien" applies to any individual who is not a national of the State in which he or she is present (art. 1).

797. REQUIREMENTS ON ALIENS: Aliens are to observe the laws of the State in which they reside or are present and regard with respect the customs and traditions of the people of that State (art. 4).

798. RIGHTS OF ALIENS: Aliens are to enjoy, in accordance with the domestic law and subject to the relevant international obligations of the State in which they are present, the following rights, *inter alia*:

(a) the right to life and security of person; no alien shall be subjected to arbitrary arrest or detention; no alien shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law;

(b) the right to protection against arbitrary or unlawful interference with privacy, family, home or correspondence;

(c) the right to be equal before the courts, tribunals and all other organs and authorities administering justice and, when necessary, to free assistance of an interpreter in criminal proceedings and, when prescribed by law, other proceedings;

(d) the right to freedom of thought, opinion, conscience and religion; the right to manifest their religion or beliefs, subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others (art. 5, para. 1).

799. RIGHTS SUBJECT TO CONDITIONS: Subject to legal restrictions necessary in a democratic society to protect national security, public safety, public order, public health or morals, or the rights and freedoms of others, and which are consistent with the other rights recognized in the relevant international instruments and those set forth in the Declaration, aliens are to enjoy the rights:

(a) to leave the country;

(b) to freedom of expression;

(c) to peaceful assembly;

(d) to own property alone as well as in association with others, subject to domestic law;

(e) (when lawfully in the territory of a State) to liberty of movement and freedom to choose their residence within the borders of the State (art. 5, paras. 2-3).

800. FREEDOM FROM TORTURE: No alien shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (art. 6).

801. EXPULSION: An alien lawfully in the territory of a State may be expelled only in pursuance of a decision reached in accordance with the law. Individual or collective expulsion of such aliens on grounds of race, colour, religion, culture, descent or national or ethnic origin is prohibited (art. 7).

802. COMMUNICATION: Any alien shall be free at any time to communicate with the consulate or diplomatic mission of the State of which he or she is a national or, in the absence thereof, with the consulate or diplomatic mission of any other State entrusted with the protection of the interests of the State of which he or she is a national in the State where he or she resides (art. 10).

(g) *Specific provisions of international human rights law and international humanitarian law relevant to the situation of non-nationals*

803. Standards of international human rights law relevant to the situation of non-nationals are set out in the various articles of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, referred to above. All these standards are embodied, to varying degrees, in the Universal Declaration of Human Rights and in global and regional treaties which have been considered in some detail in preceding chapters of this manual.

804. Particular reference should be made to the International Covenant on Civil and Political Rights (art. 13); the African Charter on Human and Peoples' Rights (art. 12); and the American Convention on Human Rights (art. 22). All these articles contain provisions which prohibit expulsion of aliens lawfully in the territories of States parties except in pursuance of a decision reached in accordance with the law. The regional treaties also prohibit mass expulsion of non-nationals.

805. Article 4 of Protocol No. 4 to the European Convention on Human Rights prohibits collective expulsion of aliens.

806. The specific provisions of international humanitarian law relevant to the situation of non-nationals during international armed conflict are largely embodied in the Fourth Geneva Convention, which relates to the protection of civilian persons in time of war, and part IV of Additional Protocol II to the 1949 Geneva Conventions.

807. Article 4 of the Fourth Geneva Convention states that persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in the case of a conflict or occupation, in the hands of a party to the conflict or occupying Power of which they are not nationals. In particular, the situation of neutral aliens, aliens in occupied territory, and aliens in the territory of a belligerent, is covered by the Convention.

808. The provisions of article 3 common to the four Geneva Conventions of 1949 and of Additional Protocol II to the Conventions, referred to in subsection (d) above (para. 789) in relation to refugees, are relevant to the situation of non-nationals.

(h) *Specific provisions of the 1954 Convention relating to the Status of Stateless Persons*

809. PREAMBLE: The first preambular paragraph refers to the affirmation in the Charter of the United Nations and in the Universal Declaration of Human Rights of the principle that human beings shall enjoy fundamental rights and freedoms without discrimination. The third preambular paragraph points out that only those stateless persons who are also refugees are covered by the 1951 Convention relating to the Status of Refugees and that there are many stateless persons who are not covered by that Convention.

810. DEFINITION: A stateless person is a person who is not considered as a national by any State under the operation of its law (art. 1).

811. OBLIGATIONS OF STATELESS PERSONS: Every stateless person has duties to the country in which he finds himself. In particular, he is to conform to its laws and regulations, as well as to measures taken for the maintenance of public order (art. 2).

812. RELIGION: Contracting States are to accord to stateless persons within their treatment at least as favourable as that accorded to their nationals with respect to freedom to practise religion and freedom as regards the religious education of their children (art. 4).

813. ACCESS TO COURTS: Stateless persons shall have free access to the courts of law in the territory of all contracting States. They shall enjoy in the contracting State in which they have habitual residence the same treatment as nationals in matters pertaining to access to the courts, including legal assistance (art. 16).

814. FREEDOM OF MOVEMENT: Contracting States are to accord to stateless persons lawfully in their territory the right to choose their place of residence and to move freely within the territory, subject to any regulations applicable to aliens generally in the same circumstances (art. 26).

815. IDENTITY PAPERS are to be issued by contracting States to stateless persons in their territory who do not possess valid travel documents (art. 27).

816. TRAVEL DOCUMENTS are to be issued by contracting States to stateless persons lawfully in their territory for the purpose of travel outside the territory, unless compelling reasons of national security or public order require otherwise (art. 28).

817. EXPULSION: Contracting States shall not expel stateless persons lawfully in their territory except on grounds of national security or public order. Any decision on expulsion must be reached in accordance with the due process of law (art. 31).

(i) *Specific provisions of international human rights law and international humanitarian law relevant to the situation of stateless persons*

818. The relevant provisions are essentially the basic civil and political rights, and the provisions of international humanitarian law designed to protect civilian persons and non-participants considered in preceding subsections.

819. Course participants should be particularly reminded:

(a) that everyone is entitled to the rights and freedoms set forth in the Universal Declaration of Human Rights;

(b) of the principle of non-discrimination in the application of provisions of the Universal Declaration and of global and regional human rights treaties;

(c) of the rights to equality before the law and to equal protection under the law.

### 3. *Concluding remarks*

820. The causes of mass displacements of people are multiple and complex, but it is certain that violations of human rights are a major cause. This is a clear indication of failure of government or abuse of power by government. As policing is one of the means by which government protects and promotes human rights, it may also be an indication of a failure of policing or abuse of power in the law enforcement process.

821. The situation of people once they have become displaced is often desperate, and such people are always vulnerable. Refugees and other categories of non-nationals are susceptible to xenophobic or racist aggression. In fact, the likelihood of victimization of non-nationals in this way is so great that the victimization is almost predictable.

822. There is a clear responsibility on police to operate effectively, lawfully and humanely so that they do not create or contribute to the conditions whereby people become displaced or whereby displaced people are unable to return to their homes.

823. There is a clear responsibility on police to protect non-nationals of whatever category, and the standards expressed in the instruments considered in this chapter provide an unambiguous measure of the success or failure of police in this respect.

## **B. International standards on refugees and non-nationals— Practical application**

### *1. Practical steps for implementing international standards*

#### ***All Police Officials***

*Be alert to any evidence of xenophobic or racist activity in your duty area.*

*Cooperate closely with immigration authorities and social agencies assisting refugees and non-nationals.*

*In areas with high immigrant concentrations, reassure residents of their right to seek police protection and assistance without fear of being deported.*

*Remind colleagues that unlawfully present non-nationals are not criminals, nor criminal suspects solely by virtue of their immigration status.*

*Provide visible security for refugee shelters and camps.*

#### ***Command and Supervisory Officials***

*Issue clear orders on the special vulnerability and protection needs of refugees and non-nationals.*

*Develop cooperative schemes with community representatives to combat racist and xenophobic violence and intimidation.*

*Organize foot patrols for areas of high refugee concentration, and consider establishing police substations in such areas.*

*Establish special units, with the necessary legal training, linguistic skills and social skills, to work with terms of reference focusing on protection, rather than enforcement of immigration laws.*

*Police agencies charged with border control and immigration law enforcement should provide specialized training in the rights of refugees and non-nationals, and in procedural guarantees afforded to such groups.*

*Liaise closely with social agencies providing support services to refugees and non-nationals in need.*

### *2. Hypothetical exercise*

Because of civil war and serious disorder taking place in a neighbouring country, a large number of people have crossed the border into your country. These people comprise mainly members of a minority group who are in conflict with their Government because they believe they are being persecuted as a minority and unfairly treated. The grievances of this minority group are among the causes of the civil war in that country.

Your Government has decided to grant these people asylum and they will be accommodated in a temporary camp, close to the border, in the area which you are responsible for policing. They will be provided with food, clothing and medical supplies by the international community and humanitarian organizations, and by direct as-

sistance from your Government. Some fear of, and resentment against, these refugees is felt by people in your community.

Your country's chief officer of police has required you, as the local police commander, to assess the situation in policing terms and to identify the problems you foresee. In view of this:

1. State what further information you will require about the circumstances.
2. Present an outline of the assessment you would provide and of the problems you foresee.

As a temporary measure, while you are awaiting a response and further assistance from your chief officer of police, prepare a set of general instructions and guide-

lines to be issued to the officers you command in respect of the situation.

Your responses to this situation should be based on practical policing considerations and relevant international standards.

### 3. *Topics for discussion*

1. The international nature and scope of problems created by the granting of asylum is recognized. In what ways could there be an international response to the policing problems created by an influx of refugees into a country?

2. Refugees and other non-nationals have a duty to respect the laws and regulations of the countries in which they find themselves. What can the police do to ensure that such persons are aware of local laws and regulations?

3. It is a principle of human rights law that all human beings are born free and equal in dignity and rights, yet non-nationals in any country generally enjoy fewer rights than nationals. How can this be justified?

4. The 1951 Convention relating to the Status of Refugees denies application of the Convention to a person who has "committed a serious non-political crime outside the country of refuge" (art. 1, sect. F (b)). What is a "political crime"? How does such a crime differ from a "non-political crime"?

5. What are the various ways in which police can monitor the attitudes and feelings of the local population in relation to refugees and other non-nationals, in order that they may take steps to prevent xenophobic or racist attacks?

6. If police become aware of animosity within the local community towards refugees or other non-nationals, what steps can be taken to prevent xenophobic or racist attacks against them?



## CHAPTER XIX

### PROTECTION AND REDRESS FOR VICTIMS

#### *Chapter Objectives*

*To give users of the manual an understanding of the special responsibility of police to protect victims of crime, abuse of power and human rights violations, to treat them with respect, compassion and care, and to act with due diligence in providing them with all available redress.*

#### *Essential Principles*

*All victims of crime, abuse of power or human rights violations shall be treated with compassion and respect.*

*Victims shall have access to mechanisms of justice and prompt redress.*

*Redress procedures shall be expeditious, fair, inexpensive and accessible.*

*Victims shall be informed of their rights in seeking redress and protection.*

*Victims shall be informed of their role in formal proceedings, the scope, timing and progress of proceedings, and the disposition of their cases.*

*Victims shall be allowed to present their views and feelings on all matters where their personal interests are affected.*

*Victims shall receive all necessary legal, material, medical, psychological and social assistance, and shall be informed of the availability of such assistance.*

*Inconvenience to victims in the handling of their cases shall be minimized.*

*The privacy and safety of victims shall be protected.*

*Unnecessary delay in the handling of victims' cases shall be avoided.*

*Offenders should, where appropriate, make restitution.*

*Governments should make restitution where public officials are at fault.*

*Financial compensation should be made available from the offender or, if this is impossible, from the State.*

*Police shall be trained in the needs of victims and should be provided with guidelines to ensure proper and prompt aid.*

**A. International standards on human rights of victims, protection and redress—  
Information for presentations**

**1. Introduction**

824. The situation of victims of crime and of abuse of power is a matter of considerable concern at the national, regional and international levels. This concern is evidenced by the scope of academic research on the subject, and by the political, legal and administrative activity it has engendered.

825. There is now a very clear understanding of what is required to assist victims and what this means for the various parts of a criminal-justice system. Clearly, the most effective way to assist victims is to prevent criminal activity and abuse of power, so that victimization, and revictimization, are minimized.

826. Responsibility for prevention rests upon the State, for the safety and security of citizens is a prime function of government. However, the community and the individual can act through positive steps to avoid becoming victims: by adopting prudent precautions and by avoiding certain courses of action.

827. The role of police in preventing victimization and in assisting victims is critical; but so, too, is the reliance of police on the cooperation of victims. It is clear from research that most crimes in a society are not dealt with by the criminal-justice system: first, because many victims decide not to report crimes, and secondly because the great majority of those crimes which are reported are not detected.

828. Police depend on cooperation from victims not only in invoking the criminal-justice system by reporting crime, but also in providing information on which successful investigations can be based. This means that the relationship between police and victims is one of mutual dependence and importance.

829. The international standards considered in this chapter are expressions of the criminal-justice policy of Member States of the United Nations. Their application can have a powerful and positive impact on the relationship between police and victims—to the benefit of both.

**2. General aspects of human rights of victims, protection and redress**

**(a) Fundamental principles**

830. Two principles are fundamental to securing protection and redress for victims:

- victims are entitled to be treated with compassion and with respect for their human dignity;
- victims are entitled to prompt redress for the harm they have suffered.

All the standards considered in this chapter derive from these two principles.

**(b) Specific provisions on human rights of victims, protection and redress**

831. In 1985, the General Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The Declaration sets out basic standards for the treatment of victims of crime and abuse of power, for example in respect of access to judicial and administrative procedures, the right to information and fair treatment, consideration of their views, restitution and compensation.

832. In its resolution 40/34 of 29 November 1985, by which it adopted the Declaration, the General Assembly affirmed:

the necessity of adopting national and international measures in order to secure the universal and effective recognition of, and respect for, the rights of victims of crime and of abuse of power (Para. 1.)

The resolution calls upon Member States to take the necessary steps to give effect to the Declaration and to endeavour to carry out a number of measures, including:

- (a) reducing victimization and encouraging assistance to victims in distress;
- (b) promoting community efforts and public participation in crime prevention;
- (c) periodically reviewing existing legislation and practices in order to ensure responsiveness to changing circumstances;
- (d) enacting and enforcing legislation proscribing acts that violate internationally recognized norms relating to human rights, corporate conduct and abuse of power;
- (e) promoting the observance of codes of conduct and ethical norms, in particular international standards, by such people as public servants and law enforcement officials.

833. In its resolution 1989/57 of 24 May 1989, the Economic and Social Council made a number of recommendations regarding implementation of the Declaration. One such recommendation was that a guide for criminal-justice practitioners be prepared, published and disseminated (para. 1).

834. In 1990, the United Nations Secretariat produced a *Guide for practitioners regarding the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.

835. The Council of Europe has also been active in this area, producing a number of texts, including the European Convention on the Compensation of Victims of Violent Crimes (1983) and two recommendations: the 1985 Recommendation (No. R (85) 11) on the position of the victim in the framework of criminal law and procedure, and the 1987 Recommendation (No. R (87) 21) on assistance to victims and the prevention of victimization.

836. Specific provisions of the 1985 United Nations Declaration are considered below under the headings ‘Protection of victims of crime’ and ‘Protection of victims of abuse of power’. Some of the recommenda-

tions in ECOSOC resolution 1989/57 on implementation of the Declaration are set out under the heading “Recommendations for implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”. Sources for standards on the treatment of victims of conflict are set out under the heading “Protection of victims of conflict”.

**TRAINERS’ NOTE:** Reference should also be made to chapter XVII of this manual, on Law Enforcement and the Rights of Women, and in particular to those parts of that chapter dealing with women as victims of domestic violence and women as victims of rape and other sexual offences.

(c) *Protection of victims of crime*

837. **DEFINITION:** In paragraph 1 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, “victims” of crime are defined as

persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

838. Paragraph 2 of the Declaration states that a person may be considered a victim under the Declaration regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted, and regardless of the familial relationship between the perpetrator and the victim. It adds that, where appropriate, the term “victim” may include the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. Clearly, this latter category could include police officials.

839. **DISCRIMINATION:** Paragraph 3 of the Declaration requires the provisions of the Declaration to be applicable to all, without distinction on any of the usual grounds, such as race, colour, sex, age, and ethnic or social origin.

840. **TREATMENT, ACTION AND REDRESS:** Paragraph 4 of the Declaration states that victims should be treated with compassion and respect for their dignity. They are entitled to:

- (a) access to the mechanisms of justice;
- (b) prompt redress,

as provided for by national legislation, for the harm that they have suffered.

841. The principles of access to justice and redress are stated in article 8 of the Universal Declaration of Human Rights, which reads:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

The rights of access to mechanisms of justice and to an effective remedy are protected under article 2, paragraph 3, of the International Covenant on Civil and Political Rights; article 25 of the American Convention on Human Rights; and article 13 of the European Conven-

tion on Human Rights. Article 7 of the African Charter on Human and Peoples’ Rights protects the right to appeal to competent national organs against acts violating rights guaranteed by law.

842. **MECHANISMS TO OBTAIN REDRESS:** Paragraph 5 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power requires judicial and administrative mechanisms to be established and strengthened where necessary to enable victims to obtain redress through formal and informal procedures. These procedures are to be expeditious, fair, inexpensive and accessible. Victims are to be informed of their rights in seeking redress through such mechanisms.

843. **RESPONSIVENESS OF JUDICIAL AND ADMINISTRATIVE PROCESSES:** Paragraph 6 of the Declaration states that such responsiveness is to be facilitated by:

(a) informing victims of their role in proceedings, of the scope, timing and progress of the proceedings, and of the disposition of their cases;

(b) allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal-justice system;

(c) providing proper assistance to victims throughout the legal process;

(d) minimizing inconvenience to victims, protecting their privacy, and ensuring their safety, as well as that of their families and witnesses on their behalf;

(e) avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

This final requirement is consistent with the right of an accused person to trial without undue delay set out in article 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights; article 7, paragraph 1 (d), of the African Charter on Human and Peoples’ Rights; article 8 of the American Convention on Human Rights; and article 6 of the European Convention on Human Rights.

844. **INFORMAL MECHANISMS FOR THE RESOLUTION OF DISPUTES:** Paragraph 7 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that mechanisms such as mediation, arbitration and customary justice or indigenous practices should be utilized where appropriate to facilitate conciliation and redress for victims.

845. These mechanisms are not proposed as alternatives to the criminal-justice process. They are intended to resolve disputes and facilitate conciliation—whatever course the criminal-justice system may take. The terms “customary justice” and “indigenous practices” refer to processes whereby disputes are dealt with as they arise within the framework of traditional mechanisms and social relationships—the family, community or workplace, for example. Again, these methods do not preclude the criminal-justice system taking its course.

846. **RESTITUTION:** Paragraph 8 of the Declaration states that, where appropriate, restitution should be made

to victims, their families or dependants by offenders or third parties responsible for their behaviour. This includes such measures as return of property or payment for harm or loss suffered.

847. Sometimes, property is recovered by police from accused persons and retained pending conclusion of legal proceedings. As “return of property” is an important aspect of restitution, it is clear that such property seized by police should be returned to victims at the earliest possible opportunity. The necessity of retaining the property as evidence should be considered generally by legislators, and specifically in each case by police and prosecutors.

848. **RESTITUTION AS A SANCTION:** Paragraph 9 of the Declaration requires Governments to consider restitution as a sentencing option in criminal cases, in addition to other sanctions.

849. **RESTORATION OF THE ENVIRONMENT:** Paragraph 10 of the Declaration states that, when restitution is ordered in cases of substantial harm to the environment, it should include such measures as restoration of the environment, reconstruction of the infrastructure and replacement of community facilities.

850. **STATE RESPONSIBILITY FOR OFFICIALS AND AGENTS:** Paragraph 11 of the Declaration states that, where public officials or agents acting in an official or quasi-official capacity have violated criminal laws, victims should receive restitution from the State, whose officials or agents were responsible for the harm.

851. The right to an effective remedy referred to above, as it is embodied in the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the European Convention on Human Rights (see para. 841 above), includes a provision to the effect that the right exists notwithstanding that the violation has been committed by a person acting in an official capacity.

852. **STATE COMPENSATION:** Paragraph 12 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power requires States to endeavour to provide financial compensation to victims who have sustained significant injury as a result of serious crimes, when compensation is not fully available from the offender or other sources. When persons have died or become incapacitated as a result of such victimization, their families or dependants should be compensated financially.

853. **COMPENSATION FUNDS:** Paragraph 13 of the Declaration stipulates that the establishment or strengthening of national funds to compensate victims should be encouraged.

854. **ASSISTANCE TO VICTIMS:** Paragraph 14 of the Declaration states that victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

855. **INFORMATION AND ACCESS:** Paragraph 15 of the Declaration stipulates that victims should be informed of

available health and social services, and other relevant assistance, and be afforded access to them.

856. **TRAINING:** Paragraph 16 of the Declaration states that police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims. Guidelines should be provided to ensure proper and prompt aid.

857. **SPECIAL NEEDS:** Paragraph 17 of the Declaration requires attention to be given to victims who have special needs because of the nature of the harm inflicted or because of other factors which may disadvantage them in some way.

(d) *Protection of victims of abuse of power*

858. **DEFINITION:** In paragraph 18 of the Declaration, “victims” of abuse of power are defined as

persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

The wording of this definition is identical to that set out in paragraph 1, relating to victims of crime, except that it refers to acts which do not yet constitute violations of national criminal laws, whereas the definition in paragraph 1 refers to acts or omissions which are in violation of those laws.

859. “Internationally recognized norms relating to human rights” are contained in treaties, resolutions, guidelines, principles or rules adopted within the United Nations framework or within the framework of regional bodies. Norms relating to law enforcement and human rights are discussed in the preceding chapters of this manual.

860. Clearly, violations of international norms relating to human rights which are also violations of national criminal law will be dealt with under the provisions of that law. Paragraphs 1 to 17 of the Declaration are relevant to such violations.

861. **NATIONAL NORMS AND REMEDIES:** Paragraph 19 of the Declaration requires States to consider incorporating into national law norms proscribing abuses of power and providing remedies to victims of such abuses. Such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

862. **TREATY ADHERENCE:** Paragraph 20 of the Declaration requires States to consider negotiating multilateral international treaties for the protection of human rights.

863. **LEGISLATION AND PRACTICES:** Paragraph 21 of the Declaration requires States:

(a) to review existing legislation and practices to ensure their responsiveness to changing circumstances;

(b) to enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power;

(c) to promote policies for the prevention of such acts;

(d) to develop and make readily available appropriate rights and remedies for victims of such acts.

(e) *Recommendations for implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*

864. As indicated above (para. 833), the Economic and Social Council, in its resolution 1989/57, made recommendations regarding implementation of the 1985 United Nations Declaration. Most have relevance to the purposes of this manual and are summarized below.

865. MEMBER STATES are recommended:

(a) to adopt and implement the provisions of the Declaration in accordance with constitutional process and domestic practice;

(b) to examine methods of assisting victims, including adequate redress for the actual harm or damage inflicted, identifying limitations and exploring ways by which these may be overcome, to ensure that they meet effectively the needs of victims;

(c) to establish measures to protect victims from abuse, calumny or intimidation in the course of or as a result of any criminal or other proceedings related to the crime, including effective remedies should such abuses occur.

866. MEMBER STATES, IN COLLABORATION WITH RELEVANT SERVICES, AGENCIES AND ORGANIZATIONS, are recommended:

(a) to encourage the provision of assistance and support services to victims of crime, with due regard to different social, cultural and legal systems, taking into account the experience of different models and methods of service delivery and the current state of knowledge concerning victimization;

(b) to develop suitable training for all who provide services to victims to enable them to develop the skills and understanding needed to help victims cope with the emotional impact of crime and overcome bias, where this may exist, and to provide factual information;

(c) to establish effective channels of communication between all those who are involved with victims, organize courses and meetings and disseminate information to enable them to prevent further victimization as a result of the workings of the system;

(d) to ensure that victims are kept informed of their rights and opportunities with respect to redress from the offender, from third parties or from the State, as well as of the progress of the relevant criminal proceedings and of any opportunities that may be involved;

(e) to ensure, where informal mechanisms for the resolution of disputes exist, that the wishes and sensibilities of victims are fully taken into consideration and that the outcome is at least as beneficial for the victims as would have been the case if the formal system had been used;

(f) to establish a monitoring and research programme to keep the needs of victims and the effectiveness of

services provided to them under constant review. Such a programme might include meetings and conferences of representatives of sectors of the criminal-justice system and other bodies concerned with victims, in order to examine the extent to which existing law and practice are responsive to victims' needs;

(g) to undertake studies to identify the needs of victims in cases of unreported crime and to make the appropriate services available to them.

(f) *Protection of victims of conflict*

867. Victims of conflict have special needs. These are recognized and addressed in the principles and provisions of international humanitarian law which protect different categories of victim in different types of conflict.

868. INTERNATIONAL ARMED CONFLICT: In this type of conflict, wounded, sick and shipwrecked members of armed forces, prisoners of war and civilian persons are protected (First to Fourth Geneva Conventions of 1949).

869. NON-INTERNATIONAL ARMED CONFLICT: In this type of conflict, persons protected are:

(a) those taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause (article 3 common to the four Geneva Conventions of 1949);

(b) those who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted (Additional Protocol II to the 1949 Geneva Conventions).

870. INTERNAL DISTURBANCES AND TENSIONS: Persons protected in these cases are all those present in a State where there are tensions, disturbances and conflict not amounting to armed conflict.

871. The provisions of international humanitarian law relating to international and non-international armed conflict are not applicable to this type of conflict. However, draft instruments have been prepared (see paras. 527-534 above) embodying existing fundamental rules drawn from general legal principles, custom and treaty law which are applicable in such situations. Reference should be made to chapter XV of this manual, which sets out humanitarian standards applicable during armed conflict, for a full account of the principles and provisions relevant to law enforcement in times of conflict.

872. PROTECTION OF VICTIMS OF CRIME AND ABUSE OF POWER: It should be noted that the provisions of instruments for the protection of this type of victim remain in force in times of conflict.

873. Clearly, when there is a serious breakdown of law and order of the sort that may occur in time of war, national legislation of any sort, including that based on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, may be unenforceable. However, the probability of victimization through criminal activity and abuse of power is extremely high in times of conflict, and it is not always the case that law

enforcement is ineffective under these circumstances. Whenever it is possible, the care and protection of such victims should be given a high priority.

### 3. CONCLUDING REMARKS

874. The standards set in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and in other instruments designed to secure protection for victims are basic standards. They provide a measure of the degree of protection provided to victims by the various agencies of the States in question.

875. When these standards are part of the law of a State, it is necessary to secure effective implementation of that law through the different means set out as requirements and recommendations in the texts considered

above. These include, especially, training for practitioners, and research and exchange of information.

876. Every effort must be made to secure compliance with the standards, but not at the expense of the rights of suspects. Arguably the most important of these is the right to presumption of innocence. This and other important rights of persons suspected of crime are considered in some detail in preceding chapters of this manual, and especially in chapters XI (Police investigations), XII (Arrest) and XIII (Detention).

877. Neglect of victims' rights and failure to protect the rights of suspects both lead, in different ways, to loss of confidence in a State's capability to protect people within its jurisdiction. The maintenance of that confidence is essential for the purposes of effective, ethical and humane law enforcement.

## B. International standards on human rights of victims, protection and redress— Practical application

### 1. Practical steps for implementing international standards

#### ***All Police Officials***

*Inform all victims, in clear and understandable language, of available legal, material, medical, psychological and social assistance. If they so desire, put them directly in contact with such assistance.*

*Keep a list of contacts handy, with all information on available services for assistance to victims.*

*Carefully explain to victims their rights, their role in legal proceedings, the scope, timing and progress of such proceedings, and the disposition of their cases.*

*Provide transportation to medical services, and to the victim's residence, and offer to check the security of the premises and patrol the area.*

*Enrol in victim-assistance training.*

*Keep records on victims secure, and carefully protect their confidentiality. Inform victims of measures that will be taken to these ends.*

*Return any recovered property of a victim as soon as possible after completing necessary procedures.*

#### ***Command and Supervisory Officials***

*Provide for victim-assistance training for all officials.*

*Establish close cooperative procedures with medical, social, legal and other victim-assistance agencies and programmes.*

*Establish victim-assistance units, comprised of police officials (male and female), medical or paramedical professionals, social workers and counsellors, for rapid deployment.*

*Establish official victim-assistance guidelines, ensuring prompt, proper and comprehensive attention to the legal, material, medical, psychological and social assistance needs of victims.*

*Review crime records, in developing preventive strategies, with a focus on preventing revictimization.*

*Assign designated officers to follow and expedite victims' cases in seeking redress and justice.*

## 2. *Hypothetical exercises*

### *Exercise 1*

As a member of a national working group formulated for the purpose, draw up a draft set of:

(a) crime victims' rights—to be guaranteed to people who become victims of crime and to assist them in their immediate plight;

(b) pre-trial rights—to be guaranteed to victims of crime where there is to be a prosecution of those suspected of committing the crime in question.

Once both sets of victims' rights have been agreed, draw up a set of guidelines for police officials on how they are to respect and protect those rights.

### *Exercise 2*

Paragraph 16 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power requires police and other personnel concerned with victims of crime to receive training to sensitize them to the needs of victims.

This provision was included because it was felt that the routine work carried out by police and others in the criminal-justice system lessens their awareness of the needs of victims. This may occur because of the need to develop emotional detachment in order to cope with distressing situations, or because police have other priorities (e.g. prevention and detection of crime) which divert them from providing proper assistance and protection to victims.

As a member of a working group appointed by your chief officer of police, make recommendations on the following:

(a) ways in which police officials can be assisted in coping with distressing situations while at the same time retaining a degree of sensitivity towards victims of those situations;

(b) other ways, in addition to training, of sensitizing police officials to the needs of victims;

(c) the format and content of a training programme for officials in your law enforcement agency to sensitize them to the needs of victims, and to instruct them on the various resources both within and outside the criminal-justice system which can be employed to assist victims;

## 3. *Topics for discussion*

1. Discuss three examples of serious ways in which women are victimized in your society, and suggest policies and guidelines for police to follow which demonstrate sensitivity to the concerns and needs of female victims and which prevent "double victimization".

2. In addition to the Government having responsibility for the safety and security of citizens, both the community and private individuals must help to prevent crime and hence victimization. What measures can the community and individual citizens take to prevent

crime? How can the police encourage them in their efforts to do so?

3. Studies have shown that a large proportion of the crime actually committed is not reported to the police. Should police encourage the reporting of a greater proportion of that crime? What would be the advantages and disadvantages of a higher proportion of actual crime being reported to police?

4. What positive effects for the prevention and detection of crime arise out of police providing greater support and assistance to victims of crime?

5. Discuss the informal mechanisms for the resolution of disputes between victims and perpetrators of crime, such as mediation, arbitration and customary practices, which are in place in your country. How effective are they? Could other mechanisms be introduced? In what ways are police involved in these informal mechanisms? How could the mechanisms be made more effective?

6. Return of property is an important element of restitution to a victim of crime. What opportunities are there in your country for victims to have stolen property returned to them before any case against suspects is concluded? In what ways can the system of returning stolen property to victims in your country be improved?

7. Persons suspected of crime and victims of crime each have rights. Some of these rights may conflict, examples being the suspect's right to be released on bail vs. the victim's right to personal security and freedom from fear of further crime; the suspect's right to a public hearing vs. the victim's right to privacy; and the suspect's right to have adequate time and facilities to prepare a defence vs. the victim's right to timely justice and a resolution of the case. Identify other rights of suspects and victims which may conflict and discuss how the rights of the two groups may be reconciled.

8. Discuss how the provisions of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power can be adapted to the specific legal, social and cultural circumstances of your country. Draw up draft guidelines to assist police officials to comply with those principles.

9. Discuss how victims of crime are protected from abuse and intimidation as a result of their involvement in criminal proceedings, and how their physical safety is ensured, in your country. How can the protection of victims in these respects be enhanced?

10. What organizations, within and outside the criminal-justice system, are involved in providing assistance to victims in your country? Discuss the relationship between these organizations and your police agency. What channels of communication exist between these organizations and the police and how can they be improved? In what ways do these organizations assist police in their general task of preventing and detecting crime?

11. Discuss the various ways in which police could assist with research programmes on victimization. Which aspects of victimization would you like researched? How could research into those aspects be initiated and how could your agency assist in the initiation of, and contribution to, such work?





*PART FIVE*

**MATTERS OF COMMAND, MANAGEMENT  
AND CONTROL**



## CHAPTER XX

# HUMAN RIGHTS IN POLICE COMMAND, MANAGEMENT AND ORGANIZATION

### *Chapter Objectives*

*To give users of the manual an understanding of the particular human rights requirements and responsibilities of command and management officials, including human rights implications of recruitment, hiring, assignments, supervision, discipline and strategic planning.*

### *Essential Principles*

*Law enforcement officials shall at all times fulfil the duty imposed on 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.*

*Law enforcement officials shall not commit any act of corruption. They shall rigorously oppose and combat all such acts.*

*Law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.*

*Every law enforcement agency shall be representative of and responsive and accountable to the community as a whole.*

*The recruitment, hiring, assignment and promotion policies of police agencies shall be free from any form of unlawful discrimination.*

*Clear, complete and accurate records shall be maintained on matters of investigations, arrests, detention, the use of force and firearms, victim assistance, and all matters of police activity.*

*Training and clear guidelines shall be made available on all matters of police activities affecting human rights.*

*Police agencies shall make available a range of means for the differentiated use of force, and shall train officers in their use.*

*All incidents of the use of force or firearms shall be followed by reporting and review by superior officials.*

*(Continued on next page.)*

(Continued from preceding page.)

*Superior officials shall be held responsible for the actions of police under their command if the superior knew or should have known of abuses but failed to take action.*

*Officials who refuse unlawful superior orders shall be given immunity.*

*Confidential information is to be handled securely.*

*All police candidates shall be of appropriate mental and physical character.*

*All police are to be subject to continuous and effective reporting and review procedures.*

*Police shall develop strategies for law enforcement which are effective, lawful and respectful of human rights.*

**STRATEGY NOTE:**

**Community policing**

*Establish a partnership between police and law-abiding members of the community.*

*Adopt a community-relations policy and plan of action.*

*Recruit from all sectors of the community.*

*Train officers to deal with diversity.*

*Establish community outreach and public information programmes.*

*Liaise regularly with all groups in the community.*

*Build contacts with the community through non-enforcement activities.*

*Assign officers to a permanent neighbourhood beat.*

*Increase community participation in policing activities and community-based public-safety programmes.*

*Involve the community in identifying problems and concerns.*

*Use a creative problem-solving approach to develop responses to specific community problems, including non-traditional tactics and strategies.*

*Coordinate policies, strategies and activities with other government agencies, and with non-governmental organizations.*

**A. International standards on police command, management and organization—Information for presentations**

1. *Introduction*

878. A basic function of government is to maintain peace and security within the borders of the State. As police are one of the means by which Governments fulfil this function, a law enforcement agency is a significant organ in the governance of a State.

879. Another basic function of government is to ensure that the State meets its obligations under international law to promote and protect the human rights of people within its jurisdiction. Police are also one of the means by which Governments fulfil this function.

880. The above points are made to emphasize the importance of policing in the government of a State, and hence the importance of securing good command and management of police agencies.

881. International legal obligations are translated into national legal obligations by the constitutional and

legal arrangements of States. In this way, human rights are protected by domestic law. However, effective protection of human rights engages almost the entire range of government activity, including the activities of law-making, resource allocation, formulation of policies and practices, and the establishment of structures and systems throughout the machinery of government and within ancillary governmental organizations and agencies.

882. In relation to policing, the promotion and protection of human rights requires close attention to be paid to detailed aspects of command, management and administration of a police organization, as well as to the actual processes of law enforcement and order maintenance. This is achieved, in the first instance, by making police accountable and through supervision. Police are to be accountable to government, and hence to the public they serve, through the democratic political process; and policing activities are to be subjected to judicial and legal supervision.

883. The extent to which policing is carried out with due respect for human rights is, therefore, dependent on the political and legal systems and the actors within those systems. It is also crucially dependent on officials responsible for the command and management of police organizations.

884. This Chapter discusses the implications of the legal imperative to protect and promote human rights for those officials with responsibilities for the command and management of police agencies.

## 2. *General aspects of human rights and police command, management and organization*

### (a) *Fundamental principles*

885. The following principles are fundamental to the promotion and protection of human rights by and through policing:

- respect for, and obedience to, the law;
- respect for the inherent dignity of the human person;
- respect for human rights.

886. Police agencies are to be commanded and managed in accordance with these principles, and in accordance with the following principle expressed in General Assembly resolution 34/169 of 17 December 1979 (preamble), by which the Code of Conduct for Law Enforcement Officials was adopted:

... every law enforcement agency should be representative of and responsive and accountable to the community as a whole.

887. Finally, police agencies should be commanded and managed in accordance with the principle of responsibility. This requires police officials to be personally responsible under the law for their own acts or omissions.

### (b) *Specific provisions on human rights implications for police command, management and control*

888. In order for policing to be carried out in accordance with international human rights and humanitarian standards, the above principles must be taken into account when:

- (a) the purposes and objectives;
- (b) the ethical standards;
- (c) the strategic plans and policies

of a police organization are being established or reviewed. These aspects of command and management are considered under separate headings below.

889. In addition to the above considerations, some human rights instruments contain provisions which have more specific implications for command and management of police organizations. These are considered under the headings: "Systems for command, management and control", "Recruitment"; and "Training".

### (c) *Purposes and objectives of a police organization*

890. Taking into account:

- (a) the importance of policing in the government of a State;
- (b) the right to participatory and representative government as set out in the Universal Declaration of Human Rights (art. 21); the International Covenant on Civil and Political Rights (art. 25); the African Charter on Human and Peoples' Rights (art. 13); the American Convention on Human Rights (art. 23); and Protocol No. 1 to the European Convention on Human Rights (art. 3);
- (c) all the fundamental principles set out above, particularly the principle that police should be responsive and accountable to the community as a whole (see para. 886), the purposes and objectives of every police organization should be clearly and publicly stated, and should include the promotion and protection of human rights.

891. The purposes and objectives of a police organization can be stated in general terms as:

- (a) the prevention and detection of crime;
- (b) the maintenance of public order;
- (c) the rendering of humanitarian assistance in emergencies to those in need of immediate aid;
- (d) the promotion and protection of human rights.

892. Officials responsible for the command and management of law enforcement agencies should prepare and publish statements of purposes and objectives which are relevant to the particular circumstances of their agency. For example, some agencies may focus on only one aspect of general police functions, such as the detection of crime, and many agencies will be confronted with situations which need to be specifically identified in statements of purposes and objectives.

893. Whatever the specific functions of a police organization and whatever the particular situation, the

promotion and protection of human rights should always be included in any such statement. Furthermore, in order to facilitate participatory and representative government, and responsive and accountable policing, statements of purposes and objectives should be made public.

(d) *Professional ethics*

894. All citizens of a State, including law enforcement officials, are subject to the law of the State. It is essential for the promotion and protection of human rights that police officials be personally accountable to the law for their own acts or omissions.

895. In addition to being accountable to the law, many law enforcement officials are subject to the constraints and sanctions of codes, such as discipline codes, which are applicable within law enforcement agencies and only to members of those agencies. The existence of such codes does not mean that police officials should not be accountable to the law of the State. Accountability to that law is of prime importance.

896. However, in carrying out their duties, police officials:

- (a) have to resolve moral dilemmas;
- (b) are confronted with situations in which they may feel justified in breaking the law in order to achieve results;
- (c) are subjected to corrupting influences.

For these reasons, it is very important that the general ethical standards of law enforcement agencies be of the highest level, and that they be clearly understood and accepted by all officials.

897. When professional ethical standards are high, police officials are better able to resolve their moral dilemmas, and to resist temptations to act unlawfully and corruptly. This means that establishing and maintaining a high standard of professional ethics within a police organization is one of the prime tasks of police commanders and managers. This can be done in a variety of ways, including:

- (a) example, and good management and command practice;
- (b) ensuring that all police officials are accountable to the law and to any internal discipline codes;
- (c) setting out ethical standards in a code of practice.

898. Such a code of ethical standards:

- (a) should not contain sanctions—those are provided by the law and by discipline codes;
- (b) should state ethical values and relate them to the stated purposes and objectives of the organization;
- (c) should provide ethical guidelines by clearly addressing the specific moral dilemmas and temptations faced by police.

899. Taking into account all the fundamental principles set out above, particularly the principles of respect for human dignity and respect for human rights, and the

principle that police should be responsive and accountable to the community as a whole (see paras. 885-886):

- (a) the requirement to promote and protect human rights should be explicitly stated in the code;
- (b) the code of ethical standards should be made public.

900. The standards expressed in a statement of ethical values or a code of practice must be accepted by, and have credibility for, all those at whom they are directed. This can be achieved in various ways, including:

- (a) involving all members of the police organization in the preparation or revision of the code through a process of consultation;
- (b) requiring familiarity with, and formal acceptance of, the code as a condition for recruitment into the organization;
- (c) presentations on the code and its purposes during training programmes.

901. It should be noted that texts expressing human rights and humanitarian standards, particularly those which relate directly to law enforcement, are rich sources of reference for the drafting of ethical codes.

(e) *Strategic planning and policy-making*

902. Strategic planning and policy-making involve the formulation of long-term plans and broad policy to meet the purposes and objectives of the police organization. Taking into account the principles of:

- (a) respect for, and obedience to, the law;
- (b) respect for the inherent dignity of the human person;
- (c) respect for human rights,

it is essential for such plans and policy to comply with the stated ethical standards of the organization—which have been developed in accordance with those and other fundamental principles.

903. The process of strategic planning and policy-making requires consideration of such matters as:

- (a) the current political, economic and social circumstances of the country;
- (b) existing and forecast levels and patterns of criminality;
- (c) existing and forecast levels and patterns of public disorder;
- (d) government policy and guidelines on all matters affecting policing;
- (e) anticipated constitutional and legislative changes affecting law enforcement;
- (f) technological innovations applicable to policing;
- (g) perceived concerns and expectations of the public.

904. In addition to ensuring that such plans and policy accord with the ethical values of the organization, the requirement to promote and protect human rights

means that commanders and managers of police organizations should ensure that human rights considerations figure in statements of strategy and policy. For example:

(a) Strategy and policy on the prevention and detection of crime might include references to such matters as ethical standards on police investigations derived from international human rights standards.

(b) There might be a long-term plan to improve interviewing skills throughout the organization.

(c) Strategy and policy on dealing with civil disorder might include specific references to the principles of necessity and proportionality in the use of force.

(d) There might be a long-term plan to improve technical skills in dealing with civil disorder in an effective and humane manner.

905. Where it is possible to follow the good-management practice of involving all members of the organization in the planning and policy-making process by consultative means, this should be done:

(a) to increase awareness of strategic plans and policy;

(b) to ensure greater acceptance of strategic plans and policy;

(c) to enhance the possibility of fulfilling such plans and policy.

906. In accordance with the principle of accountability, consideration should be given to making strategic plans and policy public. Such matters do not touch on tactical policing matters, and operational policing activities are therefore not endangered.

907. In recent years, police agencies around the world have begun to adopt so-called “community-policing strategies”, designed to strengthen the partnership between the police and their community. Some ideas associated with such strategies are set out in the “Strategy Note” at the beginning of this chapter.

(f) *Systems for command, management and control*

908. The requirement to establish, maintain and review systems for command, management and control of law enforcement agencies stems from specific provisions of a variety of human rights instruments. This requirement is both explicit and implicit, as can be shown by various examples from preceding chapters of this manual.

(i) *Responsive and accountable policing*

909. Responsive policing and accountable policing have been identified as fundamental principles for the command and management of police organizations—these principles, being derived from General Assembly resolution 34/169 by which the Code of Conduct for Law Enforcement Officials was adopted (see para. 886 above).

910. As indicated in chapter IX of this manual (Policing in democracies):

RESPONSIVE POLICING may be achieved by:

(a) considering the ways in which the public require the broad policing objectives of crime prevention and detection, and public-order maintenance to be attained;

(b) considering the specific needs and expectations of the public at any one time and in any one locality.

ACCOUNTABLE POLICING may be achieved by:

(a) formal means—through the law and through democratic political processes;

(b) informal means—at a local level through police/citizen liaison groups, for example.

This means that police commanders and managers should establish and maintain systems within law enforcement agencies:

(a) to enable police to be legally and politically accountable—for example, through the establishment of proper reporting and recording systems open to external scrutiny;

(b) to enable communication between the police and the community at a local level.

(ii) *Human rights and police investigations*

911. Among the matters considered in chapter XI of this manual (Police investigations) are the right to a fair trial and the management of confidential informants.

912. The ways in which evidence is gathered by police and presented to the prosecuting authorities and the courts are crucial to protection of the right to a fair trial. This means that effective internal monitoring and supervisory systems must be in place to ensure that the conduct of police investigators in this respect is entirely proper.

913. One of the minimum guarantees necessary for a fair trial is the entitlement to trial without undue delay. This implies the need for supervisory systems within police organizations to ensure that investigations into crime are carried out and concluded as quickly and efficiently as possible.

914. The correct management of confidential informants is extremely important for police effectiveness and for the protection of human rights. The importance of a clear policy, and strict regulatory procedures and rules based on that policy, is emphasized in chapter XI. Some points to be taken into account when formulating such regulatory procedures and rules are also set out in that chapter.

915. Officials with command and managerial responsibilities in law enforcement agencies must establish systems for the management of confidential informants which:

(a) exploit such sources of intelligence on criminal activity to the full;

(b) limit the possibilities of police corruption and human rights abuse to the absolute minimum.

(iii) *Human rights on arrest*

916. Procedures to be followed on arrest are considered in chapter XII of this manual (Arrest). These include the requirements that:

(a) a record be made of the circumstances of arrest (time of arrest, time of arrival at place of custody, identity of official concerned, etc.;

(b) the person arrested be provided with information on his or her rights;

(c) anyone arrested on a criminal charge be brought promptly before a judge or other judicial authority.

In each case, systems should be established and maintained in order that the procedures could be followed.

(iv) *Human rights during detention*

917. Among the matters considered in chapter XIII of this manual (Detention) are measures to prevent torture and ill-treatment of detainees. The Declaration against Torture requires States to keep under systematic review interrogation methods and practices, as well as arrangements for the custody and treatment of detainees (art. 6). It is not possible to comply with this double requirement without establishing specific command, management and supervisory systems.

918. While external systems need to be in place to monitor police agencies, monitoring systems internal to police agencies also need to be established. These systems may produce a number of benefits in addition to the prevention of torture and ill-treatment. They could:

(a) lead to enhancement of effectiveness in ethical interviewing techniques;

(b) generally promote the notion of ethical policing within the organization.

919. Other matters discussed in chapter XIII are general requirements on humane treatment of detainees, and one of these is that the circumstances of interrogation (duration, intervals between interrogations, identities of officials, etc.) are to be recorded. This is another requirement which is dependent on efficient and effective systems within law enforcement agencies.

(v) *Human rights and use of force by police*

920. The use of firearms by police is considered in chapter XIV of this manual (Use of force and firearms). There it is pointed out that the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require:

(a) the storage and issuing of firearms to be regulated;

(b) a system of reporting to be established—to be followed whenever firearms are used by police;

(c) reporting and review procedures to be established—to be invoked when death or injury is caused by police use of force or firearms.

921. Another matter considered in chapter XIV is the use of force and extralegal killings. The Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions require strict control to be exercised over officials responsible for arrest and detention, and over those authorized to use force and firearms.

922. The requirements of both these instruments can be met only if the necessary systems are established, maintained and reviewed within law enforcement agencies.

923. Other examples of the need for systems and structures deriving from specific provisions of human rights instruments can be found. In most law enforcement agencies, some or all such systems exist. Nevertheless, abuses of human rights arising out of failures of systems continue to occur, and this indicates that police commanders and managers constantly need to review systems to ensure that they are effective.

(g) *Recruitment*

924. Policy and practice on recruitment into law enforcement agencies should take into account the following considerations, referred to in preceding chapters of this manual:

(i) *Human rights, police and non-discrimination*

925. Among the matters discussed in chapter X of this manual (Police and non-discrimination) is the right of equal access to public service. This right is protected in global and regional treaties and means that every citizen who is properly qualified, and wishes to do so, should have the opportunity to have access to, and to participate in, the public service of policing. There should be no exclusion based solely on such grounds as race, colour, sex or religion. The only considerations to be taken into account for recruitment purposes should be the applicants' personal qualities and qualifications, and the number of vacancies available to be filled in an agency.

(ii) *Human rights and policing in democracies*

926. Among the matters discussed in chapter IX of this manual (Policing in democracies) is representative policing. This is required under General Assembly resolution 34/169 of 17 December 1979 (preamble), by which the Code of Conduct for Law Enforcement Officials was adopted. The actual requirement is that every law enforcement agency should be representative of the community as a whole, and it means that police commanders and managers need to ensure that the ranks of their agency are sufficiently representative of the community it serves.



927. Minority groups must be adequately represented within police agencies, and they must be able to develop their careers within those agencies.

(h) *Training*

928. Police officials with command and management functions have a clear responsibility to ensure that officials in their agencies are properly trained to carry out all their duties.

929. Taking into account the fundamental principles of:

- (a) respect for, and obedience to, the law;
- (b) respect for the inherent dignity of the human person;
- (c) respect for human rights,

it is essential that all police officials are aware of the provisions of their domestic law designed to safeguard human rights, as well as of international standards. This point is expressed in the Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials, adopted by Economic and Social Council resolution 1989/61 of 24 May 1989, which state (part I.A, para. 4):

Governments shall adopt the necessary measures to instruct, in basic training and all subsequent training and refresher courses, law enforcement officials in the provisions of national legislation connected with the Code as well as other basic texts on the issue of human rights.

930. The requirement to promote and protect human rights also means that police should be trained in the practical application of human rights and humanitarian standards, i.e. that they should be given guidance on how to police effectively in accordance with those standards.

931. Some texts expressing international standards make specific references to training, as indicated below.

(i) *Use of force*

932. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require:

(a) “continuous and thorough professional training” for all law enforcement officials (principle 18);

(b) law enforcement officials to be provided with training “in accordance with appropriate proficiency standards in the use of force” (principle 19);

(c) police officials who carry firearms to be authorized to do so “only upon completion of special training in their use” (principle 19);

(d) in the training of law enforcement officials, special attention to be given “to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms” (principle 20);

(e) training programmes to be reviewed in the light of particular incidents (principle 20).

933. The Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions require (principle 3):

(a) Governments to prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any extralegal, arbitrary or summary executions;

(b) all persons to have the right and the duty to defy such orders;

(c) training of law enforcement officials to emphasize the above provisions.

(ii) *Treatment of detainees*

934. The Declaration against Torture requires the training of law enforcement officials to take full account of the prohibition against torture and other ill-treatment (art. 5).

935. The Convention against Torture requires that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel (art. 10).

(iii) *Armed conflict and civil disorder*

936. Each of the four Geneva Conventions of 1949 contains an article requiring States parties to disseminate the text of the Convention and to include the study of the Convention in military and civil training programmes. Clearly, these provisions have great relevance to the training of those police officials who may have combatant status in international armed conflicts.

937. The Fourth Geneva Convention, relating to the protection of civilians, makes an additional requirement that police who assume responsibilities in respect of protected persons in time of war be “specially instructed” in the provisions of the Convention (art. 144).

(iv) *Protection of juveniles*

938. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice require police officials “who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime” to be specially instructed and trained (rule 12).

(v) *Protection and redress for victims*

939. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power requires police and other personnel concerned with victims to receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid (para. 16).

940. All the above specific references to training are made in relation to important areas of policing activity. They should be taken into account when training

policies are formulated, and be reflected in the actual practice of training.

### 3. *Concluding remarks*

941. The aspects of command and management considered in this chapter are some of those necessary for performance of the operational policing functions of a law enforcement agency. Each aspect requires the application of a variety of command and management skills by police leaders. It is the responsibility of Governments to ensure that those skills are sufficiently developed. As with other areas of policing considered in this manual, there is considerable expertise available in various Member States of the United Nations which may be called upon when required.

942. The requirement on police commanders and managers is to take fully into account the implications of the legal imperative to promote and protect human rights, so that policing is carried out effectively and in accordance with human rights and humanitarian standards. This applies to planned and coordinated policing operations carried out under the direct control of police commanders or supervisors, as well as to the unsuper-

vised actions of individual police officials undertaking their routine policing activities. In the former case:

(a) the requirement to promote and protect human rights by and through policing must be recognized in the planning, preparation and execution of police operations;

(b) briefing of police officials for operations, and debriefing following operations, must make specific reference to human rights issues arising out of the operation.

In the latter case, individual police officials need to accept fully, and without reservation, the necessity and desirability of respecting human rights during the course of their unsupervised policing activities. This acceptance depends on selection and training methods, the general ethical standards of the law enforcement agency, and other aspects of command and management discussed in this chapter.

943. Policing can be judged in a variety of ways and against a variety of measures. One of the ways in which it should be judged is the extent to which it meets the general objective of safeguarding human rights. The standards of international human rights and humanitarian law provide some of the measures.

## **B. International standards on police command, management and organization— Practical application**

### 1. *Practical steps for implementing international standards*

NOTE: Review closely the practical recommendations for command and supervisory officials made at the end of each chapter of this manual, in addition to the recommendations made below.

#### ***General Rule for Police Commanders and Supervisors***

*Police leadership is not a desk job. Remain in close contact with the realities of operational policing; with the feelings and concerns of the community which you serve; and with those you are charged to command.*

#### ***Command and Supervisory Officials***

*Develop a voluntary ethical code of conduct for law enforcement officials.*

*Issue clear and binding standing orders on respect for human rights in all areas of police work.*

*Provide for entry-level and continuous in-service training for all officials emphasizing the human rights aspects of police work contained in this manual.*

*Develop careful screening processes for new recruits, and periodic assessments of all officers, to determine appropriate character for law enforcement duties.*

*Develop community-policing strategies, as indicated in the "Strategic Note" at the beginning of this chapter.*

*Establish and enforce strict guidelines for record-keeping and reporting.*

*Establish an accessible mechanism for receipt of complaints by members of the community, and fully investigate and redress all such complaints.*

*Develop a plan to ensure that the composition of your police agency is representative of the entire community, including fair and non-discriminatory recruitment and management policies.*

*Solicit technical assistance from international and bilateral programmes, to develop techniques and technical policing skills and capacities for proper and effective law enforcement.*

*Establish, and announce, an appropriate range of penalties for police violations, from suspension, pay docking and termination, to criminal penalties for serious violations.*

*Strictly regulate the control, storage and issuing of weapons and ammunition.*

*Carry out periodic, unannounced spot checks on detention facilities, police stations and substations, and inspect weapons and ammunition being carried by police to ensure that they comply with official regulations.*

*Establish close cooperative relationships with other law enforcement agencies, judges and prosecutors, medical facilities, social service agencies, emergency services, the media, and community organizations.*

*Develop specialized units to professionalize police attention to juveniles, victims, crowd situations, women's detention facilities, border control, etc.*

## 2. Hypothetical exercise

### Exercise 1

For the purposes of discussion, imagine that it has been agreed that three middle managers from industry and from commerce are to “exchange jobs” with three middle-ranking police officers for the purposes of broadening the managerial experience of all of them.

One police officer is to be attached to a large public relations organization, another to the editorial office of a national newspaper, and the third to the personnel office of a multinational oil company.

1. Prepare a text which sets out the terms of reference for the three police officers. These should include the broad objectives of the attachments; the particular skills the police managers may have which could prove useful in each of the three organizations; and, more importantly, what managerial and organizational skills the three police officials could develop by their attachment to each specific organization.

2. Select suitable posts within a law enforcement agency for each of the three non-police managers and prepare a text which sets out their terms of reference. These should include stipulations designed to ensure the personal safety of each individual. Indicate in respect of each person what in particular they would learn from their individual attachment. Identify a particular aspect of the police organization which you would want each person to examine in order that he or she may make recommendations on it.

## 3. Topics for discussion

1. What are the arguments for and against appointing a professional public relations expert to work within a police organization?

2. For the purposes of preparing an ethical code for a police agency, identify three moral dilemmas faced by police officials in the performance of their duties and suggest responses to them.

3. Devise a scheme for involving all members of a large police organization in the preparation of a code of ethics for that organization. What consultative techniques would you use?

4. In this chapter of the manual, the following aspects of police organization and management were considered: purposes and objectives of a police organization; professional ethics; strategic planning and policy-making; systems for command, management and control; recruitment; and training. Identify some other aspects of organization and management affected by the obligation to safeguard human rights and state how they are affected.

5. Identify four ways in which a police commander can become aware of public needs and expectations.

6. Identify six command and managerial skills important in a senior police officer and say how you think an individual police officer may develop these.

7. What is the difference between “command” and “management”? What is “leadership” and is this a quality of a commander or a manager?

8. Identify some of the ways in which a senior police officer can become aware of those police officials under his or her command who generally respect human rights, and those who tend to violate human rights.

9. In what ways is it possible to acknowledge and reward police officials who carry out their duties with due respect for human rights?

10. A proposal has been made that police buildings in which people suspected of crime are detained may be visited at any time by a committee of people who can have immediate access to any detainee. The committee would consist of a lawyer, an elected politician and a doctor. In what ways would such a scheme assist in safeguarding human rights? Set out the arguments for and against such a scheme.

## CHAPTER XXI

### INVESTIGATING POLICE VIOLATIONS

#### *Chapter Objectives*

*To give users of the manual an understanding of the importance of strict measures for preventing human rights violations by police, of prompt, thorough and effective investigations of such acts, when they are committed, and of effective sanctions for guilty parties.*

#### *Essential Principles*

*Law enforcement officials shall respect and protect human dignity, and shall maintain and uphold the human rights of all persons.*

*Law enforcement agencies shall be accountable to the community as a whole.*

*Effective mechanisms shall be established 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 human rights violation has occurred, or is about to occur, shall report the matter.*

*Procedures shall be established for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of those procedures shall be publicized.*

*Investigations into police violations of human rights shall be prompt, competent, thorough and impartial.*

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

*Crime scenes shall be carefully processed.*

*Superior officers shall 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 police.*

**A. International standards on investigating human rights violations by police—  
Information for presentations**

*1. Introduction*

944. The legal obligation on States to promote and protect the human rights of people within their jurisdiction means that there is a general requirement to investigate allegations of human rights abuse. Human rights are not protected when there is a failure to investigate abuse of those rights.

945. This general requirement is reinforced by international measures of supervision and implementation. For example, procedures and bodies have been established under some human rights treaties to supervise implementation of the provisions of those treaties. When such procedures are invoked, a State may be called upon to explain an alleged failure on its part to meet the provisions of a treaty. In order to make such an explanation, an investigation into a human rights violation may be required.

946. More specifically, some human rights instruments contain provisions which place direct requirements on States to investigate complaints of violations of the standards they embody, and some instruments require States to establish mechanisms and procedures which could lead to investigations and reviews. These more specific requirements are detailed in subsection 2 (b) below. They are a feature of instruments with special relevance to human rights and law enforcement, and it is important for police officials to be aware of them.

947. On the other hand, police officials do not require a detailed understanding of international procedures and bodies established to supervise the promotion and protection of human rights by States. It is, however, important for police officials to be aware that such procedures and bodies exist. For this reason, they are briefly referred to in subsection 2 (d) below.

948. Subsection 2 (c) below refers to investigations which could arise from reports of enforced or involuntary disappearances.

*2. General aspects of investigating human rights violations by police*

*(a) Fundamental principles*

949. The principle of accountability is paramount in the investigation of human rights violations—accountability of law enforcement agencies to the community through democratic political processes, and accountability of individual law enforcement officials to the law. Without accountability there can be no meaningful investigation.

950. The second fundamental principle derives from the first, and it requires investigations to be thorough, prompt and impartial.

*(b) Specific provisions on complaint, review and investigation*

951. It is an indication of the importance attached by the international community to certain human rights standards relevant to law enforcement that provisions on complaint, review and investigation should be embodied in instruments expressing those standards. These provisions are set out below under the headings of the various instruments.

*(i) Code of Conduct for Law Enforcement Officials*

952. General Assembly resolution 34/169 of 17 December 1979, by which the Code of Conduct was adopted, states (preamble):

... the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency.

953. Article 8 of the Code of Conduct states:

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.

Paragraph (c) of the commentary to article 8 states:

The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

Paragraph (d) of the commentary states:

In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

TRAINERS' NOTE: Article 4 of the Code of Conduct requires matters of a confidential nature in the possession of police officials to be kept confidential "unless the performance of duty or the needs of justice strictly require otherwise".

954. By its resolution 1989/61 of 24 May 1989, the Economic and Social Council adopted the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials.

Part I.B, paragraph 3, of the Guidelines states:

*Discipline and supervision.* Effective mechanisms shall be established to ensure the internal discipline and external control as well as the supervision of law enforcement officials.

Part I.B, paragraph 4, states:

*Complaints by members of the public.* Particular provisions shall be made, within the mechanisms mentioned under paragraph 3 above, for the receipt and processing of complaints against law enforcement offi-

cially made by members of the public, and the existence of these provisions shall be made known to the public.

955. The combined effect of these provisions is that there should be:

(a) public scrutiny of the actions of individual law enforcement officials by effective and independent bodies external to law enforcement agencies;

(b) effective disciplinary mechanisms within law enforcement agencies;

(c) accessibility of these bodies and mechanisms to members of the public and to law enforcement officials wishing to report violations or initiate inquiries.

These are all provisions which can result in investigation of human rights violations by police.

(ii) *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

956. Under the Declaration against Torture, individuals alleging torture are to have the right of complaint, and suspected cases of torture are to be investigated regardless of whether or not there has been a complaint. Criminal law is to be invoked against alleged offenders.

957. Article 8 of the Declaration states:

Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.

Article 9 states:

Wherever there is reasonable ground to believe that an act of torture as defined in article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

Article 10 states:

If an investigation under article 8 or article 9 establishes that an act of torture as defined in article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

(iii) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

958. The provisions of the Declaration against Torture are expanded in the Convention and a requirement to pay compensation to victims is added.

959. Article 12 of the Convention states:

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13 states:

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially ex-

amined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14 states:

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

960. Article 4 of the Convention requires acts of torture, attempts to commit torture, and complicity or participation in torture to be offences under criminal law.

961. Both the Declaration and the Convention contain provisions requiring investigations which would apply to allegations of torture or ill-treatment made against law enforcement officials, or where such officials are otherwise suspected of being involved in acts of torture.

(iv) *Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions*

962. This instrument contains detailed provisions on investigations into extralegal killings, many of whose provisions are extendable, by analogy, to other types of human rights violations.

963. Principle 9 states:

There shall be thorough, prompt and impartial investigation of all suspected cases of extralegal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

964. Principle 10 requires investigative authorities to have the necessary powers to obtain information, and the necessary resources to carry out inquiries. Their powers are to include power to compel witnesses, including officials, to testify.

(v) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*

965. Principle 7, paragraph 2, of this instrument requires law enforcement officials who believe that a violation of the Body of Principles has occurred or is about to occur to report the matter to their superior authorities or other appropriate authorities having review or remedial powers. Principle 7, paragraph 3, requires any other person to have the right to make such a report.

966. Principle 29 states that places of detention shall be visited by qualified and experienced persons appointed by a competent authority which is distinct from the detaining authority. This is to ensure observance of

the relevant laws and regulations, and the principle requires detainees to be given the right to communicate in confidence with persons who make such visits.

967. Principle 33 requires:

(a) a detainee or his counsel to have the right to make a request or complaint concerning his treatment to the authorities responsible for administering the place of detention, and to authorities with review or remedial powers;

(b) a member of the detainee's family, or any other person with knowledge of the situation, to be able to exercise the above right in those cases where neither the detainee nor his counsel has the possibility to do so;

(c) confidentiality concerning the request or complaint to be maintained at the request of the complainant;

(d) every request or complaint to be promptly dealt with and, if it is delayed or rejected, a complainant to have the right to bring it before a judicial or other authority.

968. The provisions of each of the above principles could result in investigations of human rights violations by law enforcement officials.

969. Principle 35 requires compensation to be made in respect of damage incurred because of acts or omissions by a public official contrary to the rights contained in the Body of Principles.

(vi) *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*

970. Principles 22 and 23 of this instrument are relevant to this chapter.

971. Principle 22 refers to principle 6 (which concerns reports by law enforcement officials to superiors in respect of death or injury caused by the use of force and firearms by police) and to principle 11(f) (which requires a system of reporting to be provided for situations in which law enforcement officials use firearms in the performance of their duty). Principle 22 requires an effective review process for incidents reported pursuant to principles 6 and 11(f). It also requires that independent administrative or prosecutorial authorities be in a position to exercise jurisdiction in appropriate circumstances. In cases of death or serious injury, a detailed report is to be sent to the competent authorities responsible for administrative and judicial control.

972. Principle 23 requires persons affected by the use of force and firearms, or their legal representatives, to have access to an independent process, including a judicial process.

973. It is clear that the procedures required by these provisions could result in investigations of human rights violations by police.

(c) *Enforced or involuntary disappearances*

974. Reference should be made to chapter XII of this manual (Arrest) where enforced or involuntary dis-

appearances are considered (see paras. 372 ff. above). There, reference is made to the Working Group on Enforced or Involuntary Disappearances established by the Commission on Human Rights in 1980.

975. The objective of the Working Group is to assist families in determining the fate and whereabouts of their missing relatives. To that end, the Working Group attempts to establish a channel of communication between families and the Government concerned in order to ensure that cases brought to the Working Group's attention are investigated and the whereabouts of missing persons clarified.

976. Clearly, investigations into cases of disappeared persons involve examination of a variety of human rights violations, which may include breaches of the rights to:

- (a) life;
- (b) liberty and security of the person;
- (c) humane treatment as a detainee.

977. When law enforcement officials are responsible for enforced or involuntary disappearances, and hence for human rights violations, communications between the Working Group and Governments may lead to investigation of human rights violations by such officials.

978. The function of the Working Group is fulfilled in any particular case when the fate and whereabouts of the missing person have been established as a result of investigations by the Government—irrespective of whether that person is alive or dead. The Working Group operates on the principle that Governments must assume responsibility for human rights violations within their territory. That responsibility includes a requirement to investigate allegations of human rights violations by police officials.

(d) *International procedures and bodies established to secure compliance with human rights standards*

979. As indicated in the introduction to this chapter, not all police officials require a detailed understanding of this aspect of the topic. Nevertheless, it is important for police to be aware of the existence of international mechanisms which monitor police behaviour. Users of the manual are therefore referred to chapter VII (Sources, systems and standards for human rights in law enforcement) for an overview of relevant mechanisms and bodies.

### 3. *Concluding remarks*

980. The task of promoting and protecting human rights is primarily a national one. It is the responsibility of each State through democratic institutions, adequate legislation and an independent judiciary to achieve respect for, and observance of, human rights. This task and this responsibility include a requirement to investigate human rights violations.



981. Because of the nature of policing, and of the human rights which are vulnerable to policing activity, it is highly likely that human rights violations by police will be offences punishable under criminal law.

982. When police officials are suspected or accused of committing criminal acts, including criminal acts which are human rights violations, they should be subject to the investigatory processes normally adopted in the State concerned. Similarly, criminal charges against police officials should be heard before the normal criminal courts.

983. This means that an independent judiciary and a properly functioning legal system provide the basic structure for the protection of human rights at the national level. However, in many countries, institutions which complement the functions of the judiciary and courts in this respect have been created, and these may provide additional means for the investigation of human rights violations by police. These institutions fall into three broad categories:

(a) human rights commissions—established to ensure that laws and regulations protecting human rights are properly applied. These are usually empowered (by legislation or decree) to receive and investigate complaints from individuals or groups; to review the Government's human rights policies; and to improve general awareness of human rights within the community;

(b) ombudsman offices—established to protect the rights of individuals who complain that they are victims of injustice on the part of public administration. These are appointed on the basis of establishing legislation, to receive and investigate complaints of such maladministration;

(c) specialized institutions—established to promote government and social policy for the protection of vulnerable and minority groups. These are usually authorized to investigate discrimination against individuals or groups.

984. Commissions, ombudsmen and specialized institutions differ from country to country in their structures and functions, and also in the extent to which and the ways in which any of them may have responsibilities for investigating allegations of human rights violations by police.

985. In addition to these institutions, many States have established bodies specifically to receive complaints of police wrongdoing, including violations of human rights, and to investigate or cause to be investigated those complaints. There are two principal advantages in establishing such bodies. One is that expertise and specialization may be developed in the investigation of complaints against police, and the other is that the investigation of complaints or allegations against police is seen as having some importance.

## **B. International standards on investigating human rights violations by police— Practical application**

### *1. Practical steps for implementing international standards*

#### ***Command and Supervisory Officials***

*Issue clear standing orders, and provide for regular training, on protection of the human rights of all persons who come into contact with the police. Emphasize that all officers have both the right, and the duty, to defy unlawful superior orders, and to report such unlawful orders to a higher official at once.*

*Remove from service any official implicated in a human rights violation, pending the outcome of an appropriate investigation. If the official is found to be guilty (after a trial), criminal and disciplinary sanctions should be imposed. If innocent, the official's name should be cleared, and all benefits restored.*

*Issue a clear statement of policy, and corresponding orders, requiring full disclosure and the cooperation of all officials with both independent and internal investigations.*

*Establish, and strictly enforce, heavy sanctions for interference or non-cooperation with internal and independent investigations.*

*Review regularly the effectiveness of the chain of command within the law enforcement agency, and take prompt action to strengthen that chain of command where necessary.*

*Provide clear guidelines on the preparation of reports, the collection and preservation of evidence, and procedures for protecting witness confidentiality.*

*Provide entry-level and continuous in-service training for all officials emphasizing the human rights aspects of police work contained in this manual.*

*(Continued on next page.)*

(Continued from preceding page.)

*Develop careful screening processes for new recruits, and periodic assessments of all officers, to determine appropriate character for law enforcement duties.*

*Establish an accessible mechanism for receipt of complaints by members of the community, and fully investigate and redress all such complaints.*

*Strictly regulate the control, storage and issuing of weapons and ammunition.*

*Carry out periodic, unannounced spot checks on detention facilities, police stations and substations, and inspect weapons and ammunition being carried by police to ensure that they comply with official regulations.*

## 2. Hypothetical exercises

### Exercise 1

General Assembly resolution 34/169 of 17 December 1979, by which the Code of Conduct for Law Enforcement Officials was adopted, requires the actions of law enforcement officials to be subject to public scrutiny. Among the bodies it suggests should be responsible for this are a ministry, the judiciary and a citizens' committee.

1. In terms of securing proper investigation of human rights violations by police officials, set out the advantages and disadvantages of each type of body.

2. For the purposes of discussion, imagine that local citizens' committees to scrutinize police action are to be established in your country. Such committees will be empowered to:

(a) visit detainees in police custody;

(b) question police commanders about incidents in which it appears that police may have used excessive force;

(c) discuss local policing objectives with police commanders.

Prepare a set of instructions and guidelines for local police commanders in respect of each of these three areas of the committees' activities to ensure that they will cooperate as fully as possible with the committees and that, at the same time, operational effectiveness of policing is not diminished.

### Exercise 2

Part I.B, paragraph 3, of the Guideline for the Effective Implementation of the Code of Conduct for Law Enforcement Officials states:

... Effective mechanisms shall be established to ensure the internal discipline and external control as well as the supervision of law enforcement officials.

1. What are the various mechanisms for:

(a) internal discipline;

(b) external control

of a law enforcement agency? Which, in each case, are the most effective?

2. You have been asked to prepare a draft of the section of an internal discipline code which sets out acts or omissions of police officials which will be offences contrary to that code.

(a) Which acts or omissions would you include in the code?

(b) Would you make "violation of human rights" a specific offence contrary to the code, or would you identify particular actions which amounted to human rights violations and make those offences? State reasons for your preference.

3. You have been asked to advise on the preparation of a training course for newly appointed first-line supervisors of police officials.

(a) What subjects would you recommend for inclusion in the course?

(b) In his speech to open the course, the commandant of the Police Academy wants to stress to participants the importance of first-line supervisors in securing effective, legal and humane policing. Draft outline notes of his speech for him.

### Exercise 3

For the purposes of discussion, imagine that you are a member of a working group formed to make recommendations to the Government on the establishment of a system to secure investigation of criminal activity, including human rights violations, by police.

At present, such investigations are undertaken by a specialized bureau staffed entirely by police officials, but concern has been expressed by the judiciary and politicians, and in the media, about failures to investigate human rights violations by police promptly and effectively.

The terms of reference of the working group are:

To make recommendations to the Minister of the Interior on the establishment of a system to investigate allegations and complaints of criminal activity and human rights violations by police, with particular reference to:

(a) the need to secure easy access by members of the public to the system;

(b) the composition of the investigative body in terms of professional background and qualifications;

(c) the legal powers to be given to the body to enable it to carry out its functions;

(d) the need to retain the confidence of the public and the police in the system.

Outline your recommendations in respect of the matters under (a) to (d) above.

#### *Exercise 4*

A governmental committee consisting of members of the Government, officials from the Ministry of the Interior and lawyers has been formed to make detailed recommendations on a revised system for dealing with complaints and allegations of criminal activity and human rights violations by police. It has published an interim report containing the following proposals:

(a) all complaints against police and allegations of criminal activity or human rights violations by them are to be made at police stations or police offices in person or in writing;

(b) all complaints or allegations received in that way are to be recorded;

(c) records of complaints and allegations against police are to be available for inspection at any time by judges, magistrates, lawyers acting for people who have made complaints or allegations, and officials of the Ministry of the Interior;

(d) all such complaints or allegations are to be promptly and thoroughly investigated by specialized police officials;

(e) all such investigations are to be supervised by a judicial committee.

The governmental committee has invited responses on these broad proposals from various interested bodies:

(a) seeking their views on the likely effects and effectiveness of a scheme based on the proposals;

(b) asking for specific recommendations to give effect to the proposals.

Give the responses under these two points of:

(a) the chief officer of police;

(b) a national human rights non-governmental organization.

### 3. *Topics for discussion*

1. Paragraph (d) of the commentary to article 8 of the Code of Conduct for Law Enforcement Officials states that, in some countries, the mass media may be regarded as performing complaint-review functions in respect of grievances or complaints against law enforcement officials. Under what circumstances would it be

acceptable for a police official to report violations of the Code of Conduct to a newspaper?

2. What steps can be taken within police organizations to ensure that police officials report violations of human rights by colleagues?

3. What can be done to reassure the public that, when police investigate unlawful actions, including human rights violations, by other police officials, the investigations are thorough and rigorous?

4. What are the various ways in which members of the public can be made aware of systems adopted to investigate human rights violations by police? How can such systems be made accessible to members of the public so that there are no obstacles to complaints of human rights violations?

5. Should police investigate unlawful activity, including human rights violations, by police, or should a completely independent agency carry out investigations into allegations of police criminality?

6. Under what circumstances and to what extent should police officials with supervisory responsibilities be held responsible for human rights violations by their subordinates?

7. If there are effective systems to investigate human rights violations by police, will this cause police to be overcautious and less willing to act decisively to prevent and detect crime? If this is a danger, what steps can be taken by commanders and managers of law enforcement agencies to avoid this possibility without undermining the effectiveness of investigation systems?

8. In a State where the Government lacks legitimacy with the people, or where it is overdependent on the security forces for its survival, it may be unwilling or unable to initiate effective investigations into human rights violations by law enforcement officials. In view of such cases, would you recommend the formation of a permanent international investigatory body, empowered to carry out investigations of human rights violations within States and to bring alleged perpetrators of those violations before an international criminal court? Give reasons for your conclusions. What factors would limit the effectiveness of such a body?

9. You receive reliable information that a police official under your command tortured a person in detention who then admitted involvement in a bank robbery during which a security guard was killed. The confession led to the recovery of stolen property and the arrest of the other robbers. What would you do?

10. In many countries, special squads of police officials are formed to investigate corruption and other criminal activity by police officials. How do you ensure that such special squads remain uncorrupted? Who watches the watchers?



# **ANNEXES**



## ANNEX I

### PRINCIPAL INTERNATIONAL INSTRUMENTS RELATING TO LAW ENFORCEMENT

#### 1. Universal Declaration of Human Rights<sup>a</sup>

*(Extracts)*

...

*Article 3*

Everyone has the right to life, liberty and security of person.

*Article 10*

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

...

*Article 5*

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

*Article 11*

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

...

*Article 9*

No one shall be subjected to arbitrary arrest, detention or exile.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

<sup>a</sup> Adopted by General Assembly resolution 217 A (III) of 10 December 1948.

...

#### 2. International Covenant on Civil and Political Rights<sup>b</sup>

*(Extracts)*

...

*Article 6*

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

<sup>b</sup> Adopted by General Assembly resolution 2200 A (XXI) of 16 December 1966.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way

from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

#### Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

...

#### Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

...

#### Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

...

#### Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him,

or of his 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 press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.



1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the com-

mission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

### 3. Code of Conduct for Law Enforcement Officials

(Annexed to General Assembly resolution 34/169 of 17 December 1979)

*The General Assembly,*

*Considering* that the purposes proclaimed in the Charter of the United Nations include the achievement of international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

*Recalling*, in particular, the Universal Declaration of Human Rights and the International Covenants on Human Rights,

*Recalling also* the 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 in its resolution 3452 (XXX) of 9 December 1975,

*Mindful* that the nature of the functions of law enforcement in the defence of public order and the manner in which those functions are exercised have a direct impact on the quality of life of individuals as well as of society as a whole,

*Conscious* of the important task which law enforcement officials are performing diligently and with dignity, in compliance with the principles of human rights,

*Aware*, nevertheless, of the potential for abuse which the exercise of such duties entails,

*Recognizing* that the establishment of a code of conduct for law enforcement officials is only one of several important measures for providing the citizenry served by law enforcement officials with protection of all their rights and interests,

*Aware* that there are additional important principles and prerequisites for the humane performance of law enforcement functions, namely:

(a) That, like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole,

(b) That the effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws,

(c) That every law enforcement official is part of the criminal justice system, the aim of which is to prevent and control crime, and that the conduct of every functionary within the system has an impact on the entire system,

(d) That every law enforcement agency, in fulfilment of the first premise of every profession, should be held to the duty of disciplining itself in complete conformity with the

principles and standards herein provided and that the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency,

(e) That standards as such lack practical value unless their content and meaning, through education and training and through monitoring, become part of the creed of every law enforcement official,

*Adopts* the Code of Conduct for Law Enforcement Officials set forth in the annex to the present resolution and decides to transmit it to Governments with the recommendation that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials.

#### ANNEX

#### Code of Conduct for Law Enforcement Officials

##### 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.

##### Commentary:

(a) 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.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

### 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.

#### Commentary:

(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

### Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

#### Commentary:

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

### Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the per-

formance of duty or the needs of justice strictly require otherwise.

#### Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

### 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.

#### Commentary:

(a) This prohibition derives from the 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, according to which:

“[Such an act 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].”

(b) The Declaration defines torture as follows:

“... torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.”

(c) The term “cruel, inhuman or degrading treatment or punishment” has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

### 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.

#### Commentary:

(a) “Medical attention”, which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

#### Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

##### Commentary:

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their own agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

#### 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.

### 4. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>c</sup>

*Whereas* the work of law enforcement officials\* is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

*Whereas* a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

<sup>c</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990.

\* In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, 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. In countries where police powers are exercised by military

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.

##### Commentary:

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the cooperation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

*Whereas* law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

*Whereas* the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

*Whereas* article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use

authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

force only when strictly necessary and to the extent required for the performance of their duty,

*Whereas* the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

*Whereas* the Seventh Congress, in its resolution 14, *inter alia*, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

*Whereas* the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, *inter alia*, welcomed this recommendation made by the Council,

*Whereas* it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

#### *General provisions*

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bulletproof vests and bulletproof means of transportation, in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

#### *Special provisions*

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

#### *Policing unlawful assemblies*

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embod-

ied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

#### *Policing persons in custody or detention*

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

#### *Qualifications, training and counselling*

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

#### *Reporting and review procedures*

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall 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.

26. 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.

## **5. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>d</sup>**

### **SCOPE OF THE BODY OF PRINCIPLES**

These principles apply for the protection of all persons under any form of detention or imprisonment.

<sup>d</sup> Adopted by General Assembly resolution 43/173 of 9 December 1988.

### **USE OF TERMS**

For the purposes of the Body of Principles:

(a) "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;

(b) "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence;

(c) "Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence;

(d) "Detention" means the condition of detained persons as defined above;

(e) "Imprisonment" means the condition of imprisoned persons as defined above;

(f) The words "a judicial or other authority" means a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

#### *Principle 1*

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

#### *Principle 2*

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

#### *Principle 3*

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

#### *Principle 4*

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

#### *Principle 5*

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

#### *Principle 6*

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.\* No circumstance whatever may be

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\* The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible pro-

invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

#### *Principle 7*

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

2. Officials who have reason to believe that a violation of this Body of Principles 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 powers.

3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

#### *Principle 8*

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

#### *Principle 9*

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

#### *Principle 10*

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

#### *Principle 11*

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

#### *Principle 12*

1. There shall be duly recorded:

(a) The reasons for the arrest;

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tection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

(b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;

(c) The identity of the law enforcement officials concerned;

(d) Precise information concerning the place of custody.

2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

#### *Principle 13*

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

#### *Principle 14*

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

#### *Principle 15*

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

#### *Principle 16*

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.

4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a

reasonable period where exceptional needs of the investigation so require.

#### *Principle 17*

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

#### *Principle 18*

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

#### *Principle 19*

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

#### *Principle 20*

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

#### *Principle 21*

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

*Principle 22*

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.

*Principle 23*

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.

*Principle 24*

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

*Principle 25*

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

*Principle 26*

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefor shall be in accordance with relevant rules of domestic law.

*Principle 27*

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

*Principle 28*

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

*Principle 29*

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

*Principle 30*

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

*Principle 31*

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.

*Principle 32*

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

*Principle 33*

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.

3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected, or in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any



complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

#### *Principle 34*

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

#### *Principle 35*

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules on liability provided by domestic law.

2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

#### *Principle 36*

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of

the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

#### *Principle 37*

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

#### *Principle 38*

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

#### *Principle 39*

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

#### *General clause*

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.

## **6. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>c</sup>**

### **A. VICTIMS OF CRIME**

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immedi-

ate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

#### *Access to justice and fair treatment*

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

<sup>c</sup> Adopted by General Assembly resolution 40/34 of 29 November 1985.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

#### *Restitution*

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the displacement of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

#### *Compensation*

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

#### *Assistance*

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

#### B. VICTIMS OF ABUSE OF POWER

18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.

21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

## 7. Declaration on the Protection of All Persons from Enforced Disappearance<sup>f</sup>

*The General Assembly,*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations and other international instruments, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Bearing in mind* the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

*Deeply concerned* that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law,

*Considering* that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity,

*Recalling* its resolution 33/173 of 20 December 1978, in which it expressed concern about the reports from various parts of the world relating to enforced or involuntary disappearances, as well as about the anguish and sorrow caused by those disappearances, and called upon Governments to hold law enforcement and security forces legally responsible for excesses which might lead to enforced or involuntary disappearances of persons,

*Recalling also* the protection afforded to victims of armed conflicts by the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, of 1977,

*Having regard* in particular to the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which protect the right to life, the right to liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law,

*Having regard also* to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that States parties shall take effective measures to prevent and punish acts of torture,

*Bearing in mind* the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Standard Minimum Rules for the Treatment of Prisoners,

*Affirming* that, in order to prevent enforced disappearances, it is necessary to ensure strict compliance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment contained in the annex to its resolution 43/173 of 9 December 1988, and with the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, set forth in the annex to Economic and Social Council resolution 1989/65 of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989,

*Bearing in mind* that, while the acts which comprise enforced disappearance constitute a violation of the prohibitions found in the aforementioned international instruments, it is none the less important to devise an instrument which characterizes all acts of enforced disappearance of persons as very serious offences and sets forth standards designed to punish and prevent their commission,

1. *Proclaims* the present Declaration on the Protection of All Persons from Enforced Disappearance as a body of principles for all States;

2. *Urges* that all efforts be made so that the Declaration becomes generally known and respected:

### *Article 1*

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

### *Article 2*

1. No State shall practise, permit or tolerate enforced disappearances.

2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.

### *Article 3*

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

<sup>f</sup> Adopted by General Assembly resolution 47/133 of 18 December 1992.

#### Article 4

1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.

2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance.

#### Article 5

In addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law.

#### Article 6

1. No order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it.

2. Each State shall ensure that orders or instructions directing, authorizing or encouraging any enforced disappearance are prohibited.

3. Training of law enforcement officials shall emphasize the provisions in paragraphs 1 and 2 of the present article.

#### Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

#### Article 8

1. No State shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

#### Article 9

1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.

2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.

3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.

#### Article 10

1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.

2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

#### Article 11

All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.

#### Article 12

1. Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.

2. Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.

#### Article 13

1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attend-

ance of witnesses and production of relevant documents and to make immediate on-site visits.

3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.

5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

#### *Article 14*

Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.

#### *Article 15*

The fact that there are grounds to believe that a person has participated in acts of an extremely serious nature such as those referred to in article 4, paragraph 1, above, regardless of the motives, shall be taken into account when the competent authorities of the State decide whether or not to grant asylum.

#### *Article 16*

1. Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, above shall be suspended from any official duties during the investigation referred to in article 13 above.

2. They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.

3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.

4. The persons presumed responsible for such acts shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial.

#### *Article 17*

1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators con-

tinue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.

2. When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.

3. Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

#### *Article 18*

1. Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.

2. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.

#### *Article 19*

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation.

#### *Article 20*

1. States shall prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, and shall devote their efforts to the search for and identification of such children and to the restitution of the children to their families of origin.

2. Considering the need to protect the best interests of children referred to in the preceding paragraph, there shall be an opportunity, in States which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance. Such adoption should, however, continued to be in force if consent is given, at the time of the review, by the child's closest relatives.

3. The abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such.

4. For these purposes, States shall, where appropriate, conclude bilateral and multilateral agreements.

#### *Article 21*

The provisions of the present Declaration are without prejudice to the provisions enunciated in the Universal Declaration of Human Rights or in any other international instrument, and shall not be construed as restricting or derogating from any of those provisions.

## 8. Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions<sup>5</sup>

### PREVENTION

1. Governments shall prohibit by law all extralegal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of, such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

2. In order to prevent extralegal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command, over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.

3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extralegal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extralegal, arbitrary or summary executions, including those who receive death threats.

5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extralegal, arbitrary or summary execution in that country.

6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extralegal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to in-

vestigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extralegal, arbitrary and summary executions are reasonably suspected to occur, shall cooperate fully in international investigations on the subject.

### INVESTIGATION

9. There shall be a thorough, prompt and impartial investigation of all suspected cases of extralegal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved, and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the de-

<sup>5</sup> Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989.

ceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extralegal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used

to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

#### LEGAL PROCEEDINGS

18. Governments shall ensure that persons identified by the investigation as having participated in extralegal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extralegal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extralegal, arbitrary or summary executions.

20. The families and dependants of victims of extralegal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

## 9. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)<sup>h</sup>

### PART ONE

#### GENERAL PRINCIPLES

##### 1. *Fundamental perspectives*

- 1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.
- 1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

- 1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.
- 1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.
- 1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.
- 1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving

<sup>h</sup> Adopted by General Assembly resolution 40/33 of 29 November 1985.

and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

#### Commentary

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, *inter alia*, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

#### 2. Scope of the Rules and definitions used

- 2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.
- 2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:
  - (a) A *juvenile* is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;
  - (b) An *offence* is any behaviour (act or omission) that is punishable by law under the respective legal systems;
  - (c) A *juvenile offender* is a child or young person who is alleged to have committed or who has been found to have committed an offence.
- 2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:
  - (a) To meet the varying needs of juvenile offenders, while protecting their basic rights;
  - (b) To meet the needs of society;
  - (c) To implement the following rules thoroughly and fairly.

#### Commentary

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child.

Rule 2.2 defines “juvenile” and “offence” as the components of the notion of the “juvenile offender”, who is the main subject of these Standard Minimum Rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of “juvenile”, ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.

Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically.

#### 3. Extension of the Rules

- 3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.
- 3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.
- 3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

#### Commentary

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:

(a) The so-called “status offences” prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);

(b) Juvenile welfare and care proceedings (rule 3.2);

(c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.



#### 4. *Age of criminal responsibility*

- 4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

##### *Commentary*

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

#### 5. *Aims of juvenile justice*

- 5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

##### *Commentary*

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is "the principle of proportionality". This principle is well known as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reaction (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to a wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice systems. Here, too, the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime.

The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

#### 6. *Scope of discretion*

- 6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.
- 6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.
- 6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

##### *Commentary*

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

#### 7. *Rights of juveniles*

- 7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

##### *Commentary*

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments. (See also rule 14.) The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human Rights and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights.

Rules 14 *seq.* of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases, in

particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

## 8. *Protection of privacy*

- 8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labeling.
- 8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

### *Commentary*

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labeling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 21.)

## 9. *Saving clause*

- 9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

### *Commentary*

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards—such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the Declaration of the Rights of the Child and the draft convention on the rights of the child. It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application. (See also rule 27.)

## PART TWO

### INVESTIGATION AND PROSECUTION

## 10. *Initial contact*

- 10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian

shall be notified within the shortest possible time thereafter.

- 10.2 A judge or other competent official or body shall, without delay, consider the issue of release.
- 10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

### *Commentary*

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners.

The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights, article 9, paragraph 3.)

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

## 11. *Diversion*

- 11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.
- 11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.
- 11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.
- 11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

## Commentary

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

As stated in rule 11.2, diversion may be used at any point of decision-making—by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a “competent authority upon application”. (The “competent authority” may be different from that referred to in rule 14.)

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.).

## 12. *Specialization within the police*

- 12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

### Commentary

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

## 13. *Detention pending trial*

- 13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.
- 13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.
- 13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.
- 13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- 13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance—social, educational, vocational, psychological, medical and physical—that they may require in view of their age, sex and personality.

### Commentary

The danger to juveniles of “criminal contamination” while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially article 9 and article 10, paragraphs 2 (b) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example, of arrest, etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards, specified that the Rules, *inter alia*,

should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

### PART THREE

## ADJUDICATION AND DISPOSITION

### 14. *Competent authority to adjudicate*

- 14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.
- 14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

#### *Commentary*

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority" is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict-resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.)

### 15. *Legal counsel, parents and guardians*

- 15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.
- 15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

#### *Commentary*

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed

as general psychological and emotional assistance to the juvenile—a function extending throughout the procedure.

The competent authority's search for an adequate disposition of the case may profit, in particular, from the cooperation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile; hence, the possibility of their exclusion must be provided for.

### 16. *Social inquiry reports*

- 16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

#### *Commentary*

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

### 17. *Guiding principles in adjudication and disposition*

- 17.1 The disposition of the competent authority shall be guided by the following principles:
- (a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
  - (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
  - (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
  - (d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.
- 17.2 Capital punishment shall not be imposed for any crime committed by juveniles.
- 17.3 Juveniles shall not be subject to corporal punishment.
- 17.4 The competent authority shall have the power to discontinue the proceedings at any time.

## Commentary

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

- (a) Rehabilitation versus just desert;
- (b) Assistance versus repression and punishment;
- (c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;
- (d) General deterrence versus individual incapacitation.

The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting-point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 (b) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the draft convention on the rights of the child.

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may

become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

## 18. Various disposition measures

- 18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:
- (a) Care, guidance and supervision orders;
  - (b) Probation;
  - (c) Community service orders;
  - (d) Financial penalties, compensation and restitution;
  - (e) Intermediate treatment and other treatment orders;
  - (f) Orders to participate in group counselling and similar activities;
  - (g) Orders concerning foster care, living communities or other educational settings;
  - (h) Other relevant orders.
- 18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

## Commentary

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising opinions that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

## 19. Least possible use of institutionalization

- 19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

### *Commentary*

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity (“last resort”) and in time (“minimum necessary period”). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to “open” over “closed” institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

#### 20. *Avoidance of unnecessary delay*

- 20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

### *Commentary*

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

#### 21. *Records*

- 21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.
- 21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

### *Commentary*

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) “Other duly authorized persons” would generally include, among others, researchers.

#### 22. *Need for professionalism and training*

- 22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction

shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

- 22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

### *Commentary*

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards, etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the-job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

## PART FOUR

### NON-INSTITUTIONAL TREATMENT

#### 23. *Effective implementation of disposition*

- 23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.
- 23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

*Commentary*

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a *juge de l'exécution des peines* has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

24. *Provision of needed assistance*

- 24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

*Commentary*

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

25. *Mobilization of volunteers and other community services*

- 25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

*Commentary*

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Cooperation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the cooperation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.

PART FIVE

INSTITUTIONAL TREATMENT

26. *Objectives of institutional treatment*

- 26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection,

education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

- 26.2 Juveniles in institutions shall receive care, protection and all necessary assistance—social, educational, vocational, psychological, medical and physical—that they may require because of their age, sex and personality and in the interest of their wholesome development.
- 26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- 26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.
- 26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.
- 26.6 Interministerial and interdepartmental cooperation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

*Commentary*

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, and violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, *inter alia*, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Interministerial and interdepartmental cooperation (rule 26.6) are of particular importance

the interest of generally enhancing the quality of institutional treatment and training.

27. *Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations*

- 27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.
- 27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

*Commentary*

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a worldwide impact. Although there are still countries where implementation is more an aspiration than a fact, these Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of sexes, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

28. *Frequent and early recourse to conditional release*

- 28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.
- 28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

*Commentary*

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the "appropriate" rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in halfway houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

29. *Semi-institutional arrangements*

- 29.1 Efforts shall be made to provide semi-institutional arrangements, such as halfway houses, educational homes, daytime training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

*Commentary*

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

PART SIX

RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

30. *Research as a basis for planning, policy formulation and evaluation*

- 30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.
- 30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.
- 30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.
- 30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.



*Commentary*

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the lifestyles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a coordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

## ANNEX II

### MODEL COURSE OUTLINE

UNITED NATIONS

HIGH COMMISSIONER/  
CENTRE FOR HUMAN RIGHTS

**Human Rights in Law Enforcement**

*Training Course for Police Trainers*

#### PROGRAMME OF WORK

**Day One**

*a.m.*

**7.30-8.30**

*Registration of participants; document distribution*

**8.30-9**

*Opening address by representative of police  
Opening address by representative of training group*

**9-9.30**

*Introduction of training team and participants*

**9.30-9.45**

**Coffee break**

**9.45-10**

*Course introduction and overview*

**10-11**

*Sources, systems and standards for human rights in law enforcement*

Presentations: 40 minutes

Questions and answers: 20 minutes

*a.m. p.m.*

**11-1**

*Civil policing in the democratic order: ethics and the rule of law*

Presentations: 40 minutes

Working groups: 40 minutes

Plenary reports by groups: 40 minutes

*p.m.*

**1-2**

**Lunch break**

**2-3.30**

*Human rights, police and non-discrimination*

Presentation: 20 minutes

Moderated group discussion: 70 minutes

**Day Two**

*a.m.*

**8.30-11**

*Human rights and police investigations*

Presentation: 40 minutes

Questions and answers: 20 minutes

Working groups: 40 minutes

Plenary reports: 50 minutes

11-11.15 **Coffee break**

*a.m. p.m.*

11.15-1 ***Protecting the rights of refugees***  
Presentation: 20 minutes  
Working groups: 40 minutes  
Plenary reports: 45 minutes

*p.m.*

1-2 **Lunch break**

2-3.30 ***Police and juvenile justice***  
Presentation: 30 minutes  
Group discussion: preventing juvenile crime: 60 minutes

**Day Three**

*a.m.*

8.30-11 ***Human rights during arrest and detention***  
Presentation: 40 minutes  
Questions and answers: 20 minutes  
Working groups: 40 minutes  
Plenary reports: 50 minutes

11-11.15 **Coffee break**

*a.m. p.m.*

11.15-1 ***Community policing***  
Presentation: 30 minutes  
Brainstorming session: 75 minutes

*p.m.*

1-2 **Lunch break**

2-3.30 ***The rights of women in the administration of justice***  
Presentation: 30 minutes  
Group discussion: protecting the rights of women: 60 minutes

**Day Four**

*a.m.*

8.30-11 ***The use of force and firearms***  
Presentation: 40 minutes  
Questions and answers: 20 minutes  
Working groups: 40 minutes  
Plenary reports: 50 minutes

11-11.15 **Coffee break**

*a.m. p.m.*

11.15-1 ***Investigating police violations***  
Presentation: 20 minutes  
Working groups: 40 minutes  
Plenary reports: 45 minutes

*p.m.*

1-2 **Lunch break**

2-3.30 ***Protection and redress for victims***  
Presentation: 30 minutes  
Group discussion: justice for victims: 60 minutes

**Day Five**

*a.m.*

**8.30-11**

***Civil disorder and armed conflict***

Presentation: 40 minutes  
Questions and answers: 20 minutes  
Working groups: 40 minutes  
Plenary reports: 50 minutes

**11-11.15**

**Coffee break**

*a.m. p.m.*

**11.15-1**

***Incorporating human rights into police training curricula***

Presentation: 30 minutes  
Working groups: 45 minutes  
Plenary reports: 30 minutes

*p.m.*

**1-2**

**Lunch break**

**2-4**

***Preparing human rights lesson plans***

Instructions: 15 minutes  
Supervised drafting groups: 90 minutes  
Review in plenary: 45 minutes

**Day Six**

*a.m.*

**8.30-11**

***Delivering human rights lessons***

Instructions: 15 minutes  
Delivery of lessons by trainees: 135 minutes

**11-11.15**

**Coffee break**

*a.m. p.m.*

**11.15-1**

***Delivery of lessons (continued): 95 minutes***

*p.m.*

**1-2**

**Lunch break**

**2-3**

**Final examination**

**3-3.15**

**Coffee break**

**3.15-4**

**Review of examinations**

**Day Seven**

*a.m.*

**9-10**

***Course evaluation***

Presentation: 5 minutes  
Completion of evaluation forms: 30 minutes  
Group discussion: 25 minutes

**10-10.15**

**Coffee break**

**10.15-11.15**

***Closing ceremony***

Presentation of certificates  
Closing address by representative of government  
Closing address by representative of HC/CHR or training group

UNITED NATIONS

HIGH COMMISSIONER/  
CENTRE FOR HUMAN RIGHTS

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*Workshop for Police Commanders*

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**9.45-10**

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Working groups: 40 minutes

Plenary reports by groups: 40 minutes

*p.m.*

**1-2**

**Lunch break**

**2-3.30**

*Human rights, police and non-discrimination*

Presentation: 20 minutes

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**Day Two**

*a.m.*

**8.30-11**

*Human rights and police investigations*

Presentation: 40 minutes

Questions and answers: 20 minutes

Working groups: 40 minutes

Plenary reports: 50 minutes

**11-11.15**

**Coffee break**

*a.m. p.m.*

**11.15-1**

*Protecting the rights of refugees*

Presentation: 20 minutes

Working groups: 40 minutes

Plenary reports: 45 minutes

*p.m.*

1-2

**Lunch break**

2-3.30

***Police and juvenile justice***

Presentation: 30 minutes

Group discussion: preventing juvenile crime: 60 minutes

**Day Three**

*a.m.*

8.30-11

***Human rights during arrest and detention***

Presentation: 40 minutes

Questions and answers: 20 minutes

Working groups: 40 minutes

Plenary reports: 50 minutes

11-11.15

**Coffee break**

*a.m. p.m.*

11.15-1

***Community policing***

Presentation: 30 minutes

Brainstorming session: 75 minutes

*p.m.*

1-2

**Lunch break**

2-3.30

***The rights of women in the administration of justice***

Presentation: 30 minutes

Group discussion: protecting the rights of women: 60 minutes

**Day Four**

*a.m.*

8.30-11

***The use of force and firearms***

Presentation: 40 minutes

Questions and answers: 20 minutes

Working groups: 40 minutes

Plenary reports: 50 minutes

11-11.15

**Coffee break**

*a.m. p.m.*

11.15-1

***Investigating police violations***

Presentation: 20 minutes

Working groups: 40 minutes

Plenary reports: 45 minutes

*p.m.*

1-2

**Lunch break**

2-3.30

***Protection and redress for victims***

Presentation: 30 minutes

Group discussion: justice for victims: 60 minutes

**Day Five**

*a.m.*

8.30-11

***Civil disorder and armed conflict***

Presentation: 40 minutes

Questions and answers: 20 minutes

Working groups: 40 minutes

Plenary reports: 50 minutes

<b>11-11.15</b>	<b>Coffee break</b>
<i>a.m. p.m.</i>	
<b>11.15-1</b>	<b><i>Special considerations for command and management</i></b> Presentation: 30 minutes Working groups: 45 minutes Plenary reports: 30 minutes
<i>p.m.</i>	
<b>1-2</b>	<b>Lunch break</b>
<b>2-4</b>	<b><i>Preparing standing orders for human rights</i></b> Instructions: 15 minutes Supervised drafting groups: 90 minutes Review in plenary: 45 minutes
<b>Day Six</b>	
<i>a.m.</i>	
<b>8.30-11</b>	<b><i>Plenary workshop to review and adopt standing orders</i></b> Instructions: 15 minutes Discussion: 135 minutes
<b>11-11.15</b>	<b>Coffee break</b>
<i>a.m. p.m.</i>	
<b>11.15-1</b>	<b><i>Completion and adoption of standing orders</i></b> Discussion: 90 minutes Adoption of standing orders: 15 minutes
<i>p.m.</i>	
<b>1-2</b>	<b>Lunch break</b>
<b>2-3</b>	<b>Final discussion</b>
<b>3-3.15</b>	<b>Coffee break</b>
<b>3.15-4</b>	<b>Review</b>
<b>Day Seven</b>	
<i>a.m.</i>	
<b>9-10</b>	<b><i>Course evaluation</i></b> Presentation: 5 minutes Completion of evaluation forms: 30 minutes Group discussion: 25 minutes
<b>10-10.15</b>	<b>Coffee break</b>
<b>10.15-11.15</b>	<b><i>Closing ceremony</i></b> Presentation of certificates Closing address by representative of government Closing address by representative of HC/CHR or training group

## ANNEX III

### PRE-COURSE QUESTIONNAIRE

*In order that this course may more effectively meet your needs, we would appreciate your completing this brief questionnaire.*

1. What is your educational background (fields of study, certificates/degrees obtained)?
2. To what duties are you assigned?
3. Have you had any previous human rights training? If yes, please give details.
4. What is the greatest challenge facing you as a police officer?
5. In your opinion, which human rights issues are the most important to be addressed in a course of this kind?
6. Are you aware of any international standards specifically applicable to the work of police officials?
7. If yes, can you name any of the instruments/treaties which contain these standards?
8. What are the rights of arrested persons?
9. Are there circumstances under which torture is permissible?
10. When is a police official allowed to use his or her firearm?
11. A law enforcement official becomes aware of the fact that a colleague has committed a serious human rights violation. What action should he or she take?
12. Should juvenile offenders be treated differently from adult offenders? Explain.
13. Should violence within the family be a matter for action by the police?
14. Is there any other matter which you would like to bring to the attention of the training team or have discussed in the course?



## ANNEX IV

### POST-COURSE EXAMINATION

*Please circle the correct answer for each question.*

1. *The various covenants and conventions discussed in this course may be best described as:*
  - A. not legally binding, but an ideal to work towards;
  - B. not legally binding, but strongly persuasive;
  - C. legally binding on Governments but not on police;
  - D. fully legally binding.
  
2. *The various declarations, bodies of principles and codes of conduct discussed in this course have been developed:*
  - A. to complicate the work of police officials;
  - B. to provide authoritative guidance for the implementation of international standards at the national level by police forces and others;
  - C. to provide a theoretical framework for the study of human rights;
  - D. to provide a basis for lawyers to challenge the conduct of police officials.
  
3. *One of the purposes of the Code of Conduct for Law Enforcement Officials is to ensure that national law enforcement agencies are:*
  - A. ready to seek the consent of all persons in every situation;
  - B. representative of, and responsive and accountable to, the community as a whole;
  - C. socially and politically autonomous;
  - D. above the law.
  
4. *When providing security at polling places, national law enforcement officials should:*
  - A. facilitate polling access for voters expressing support for candidates who advocate law and order;
  - B. bar polling access for voters expressing support for subversive candidates;
  - C. demonstrate neutrality and maintain the security of all voters;
  - D. try to persuade voters not to support obviously subversive candidates, but to support candidates who advocate law and order.
  
5. *If a police official discovers that a colleague has accepted a bribe, he or she should:*
  - A. not take any action if it is a first offence;
  - B. speak quietly to the offending colleague without taking official action;
  - C. take official action in the same way as for the commission of any other crime;
  - D. consult colleagues and organize an unofficial group response.
  
6. *During an investigation of terrorist activities, a police official is ordered by his superior to break into the premises of a suspect without a warrant. The correct response on the part of the police official would be to:*
  - A. follow the superior's order and take no further action;
  - B. follow the superior's order and file a complaint afterwards;
  - C. refuse to carry out the order and report the incident;
  - D. refuse to carry out the order and take no further action.

7. *According to article 7 of the Universal Declaration of Human Rights, all persons are entitled to equal protection of the law without discrimination. Exceptions to this rule may be made:*
- if a person fails to adopt the dominant social, cultural and religious norms;
  - if a person belongs to a group which threatens national security;
  - if a person belongs to an ethnic group that is perceived to be responsible for high levels of certain crimes;
  - under no circumstances.
8. *Every person suspected of a criminal offence has the right to be presumed innocent until:*
- a credible witness has provided the police with substantial evidence against the person in question;
  - the person admits to the crime under police interrogation;
  - the person is proved guilty according to the law in a public trial;
  - police officials are convinced that the person is guilty.
9. *Which of the following rights is not included in international provisions on arrest procedures?*
- the right to be informed of the reason for arrest at the time of arrest;
  - the right to be promptly informed of the charges being laid;
  - the right to be informed of one's rights and of the way to avail oneself of them;
  - the right to be informed of the identity of all witnesses, including confidential informants.
10. *Persons in detention may be subject to mild forms of torture:*
- under no circumstances;
  - when there are exceptional circumstances such as great internal political instability;
  - when it is performed following superior orders;
  - in order to obtain information vital to preventing an imminent terrorist act against civilians.
11. *In which of the following situations is the use of firearms against persons expressly permitted under principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials?*
- in self-defence or defence of others against imminent threat of death or serious injury;
  - in defence of national security;
  - to prevent the escape of someone committing a crime;
  - when arresting a person who is resisting police authority.
12. *According to the international standards relating to juvenile justice, the purpose of the criminal justice system in dealing with young offenders is:*
- to satisfy society's need for retribution;
  - to deter other children from committing crimes;
  - to facilitate the child's reform and successful reintegration into society;
  - to attempt to influence all parents to exercise proper control over their children.
13. *Police officials should regard incidents of domestic violence as:*
- minor disturbances of neighbourhood peace;
  - equivalent to other kinds of criminal assault;
  - private matters to be resolved within the family;
  - non-police matters to be referred to social services.

14. *Which of the following statements is correct?*
- A. every person has the right to live in any country he or she wishes;
  - B. every person has the right to seek and to enjoy in other countries asylum from persecution;
  - C. every person has the right to seek and to enjoy in other countries asylum from economic hardship;
  - D. every person has the right to seek and to enjoy in other countries asylum from political unrest.
15. *Under relevant international human rights provisions, which of the following entitlements is not stipulated for victims of crime?*
- A. the right to receive immediate monetary compensation for pain and suffering;
  - B. the right to be treated with compassion and respect;
  - C. the right to information on legal proceedings in which they are involved;
  - D. the right to protection of their safety.
16. *Law enforcement officials who have reason to believe that a colleague has committed a human rights violation should:*
- A. remain silent in order to preserve collegial loyalty;
  - B. report the violation in every case to the mass media;
  - C. report the violation within the chain of command or, if this is not effective, to a competent outside authority;
  - D. refuse to cooperate with inquiries and investigations into the violation.
17. *Which of the following statements on detention of women is correct?*
- A. measures designed solely to protect the rights and special status of women should be regarded as unacceptable discrimination;
  - B. guidelines requiring women police officials to supervise women detainees need not be complied with if there are not enough women police officials available;
  - C. searches of detainees must always be carried out by persons of the same gender;
  - D. men and women may be detained together in exceptional circumstances.
18. *Under the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which of the following is not recognized as a right of detainees and prisoners?*
- A. the right to consult legal counsel;
  - B. the right to unrestricted communication with the outside world;
  - C. the right to receive medical supervision;
  - D. the right to receive supervision by a judicial or other authority.
19. *Under the four Geneva Conventions of 1949 and the Additional Protocols thereto:*
- A. police officials always have the status of combatants in cases of international armed conflict;
  - B. police officials always have the status of civilians in cases of international armed conflict;
  - C. an occupying power may apply sanctions against police officials of the occupied territories if they do not fulfil their functions for reasons of conscience;
  - D. during armed conflict, hostage-taking is forbidden.

## ANNEX V

### POST-COURSE EVALUATION

*In order that we may know your impressions and assessment of the course you have just completed and respond to your concerns in our ongoing development and improvement of training activities, we would appreciate your answering a few brief questions as set out below. Thank you, in advance, for your cooperation.*

1. How satisfied are you with the presentation of international standards in this course?
  - A. very satisfied
  - B. satisfied
  - C. unsatisfiedPlease comment:
  
2. How satisfied are you with the degree to which the means for practical implementation of those standards in your work was addressed?
  - A. very satisfied
  - B. satisfied
  - C. unsatisfiedPlease comment:
  
3. How satisfied are you with regard to the structure of the course?
  - A. very satisfied
  - B. satisfied
  - C. unsatisfiedPlease comment:
  
4. How satisfied are you with regard to the expert presentations?
  - A. very satisfied
  - B. satisfied
  - C. unsatisfiedPlease comment:
  
5. How satisfied are you with regard to the working groups and other practical exercises conducted during the course?
  - A. very satisfied
  - B. satisfied
  - C. unsatisfiedPlease comment:
  
6. How satisfied are you with the plenary discussions held during the course?
  - A. very satisfied
  - B. satisfied
  - C. unsatisfiedPlease comment:

7. How satisfied are you with the materials provided to you during the course?

- A. very satisfied
- B. satisfied
- C. unsatisfied

Please comment:

8. Have you, during this course, acquired the necessary knowledge and skills

- A. to apply human rights standards in your work?
- B. to pass on the information received to your colleagues?

Please comment:

9. In your opinion, what is the best method of training police officials in human rights?

10. What additional comments would you like to offer?

