

Police and Human Rights

**A Manual for Teachers,
Resource Persons and
Participants in
Human Rights Programmes**

Second Revised Edition

by Ralph Crawshaw

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TABLE OF CONTENTS

Foreword	vii
Acknowledgements	ix
Introduction and Guide to the Manual	1
Part one The Context	13
Chapter 1 The Professional Context	15
Section a Exercise 'Challenges and Professionalism'	15
Section b The Professional Ethics of Policing	19
Chapter 2 The International Context	33
Section a The Nature of Human Rights and Why They Are Protected under International Law	33
Section b Human Rights Treaties and other Instruments	41
Section c Supervision and Enforcement	61
Part two The Standards	75
Chapter 1 Respect For Human Rights: Police Powers	77
Section a The Right to Life and the Power to Use Force	77
Section b The Right to Liberty and Security of Person and the Powers to Arrest and Detain	93
Section c The Treatment of Detainees	109
Section d The Right to Private and Family Life and the Powers of Search and Surveillance	131
Chapter 2 Protection of Human Rights: Police Functions	139
Section a The Protection of Human Rights and the Prevention of Discrimination	139
Section b The Protection of Rights to Democratic Freedoms	155
Section c The Right to a Fair Trial and the Investigation of Crime	173

Chapter 3	Police Behaviour in Situations of Armed Conflict, Internal Disturbance and Tension, and Emergency and Disaster	199
Section a	Policing in Situations of Armed Conflict	199
Section b	Policing in Situations of Internal Disturbance and Tension	221
Section c	Policing in Situations of Emergency and Disaster	241
Chapter 4	Realisation of Human Rights Through Leadership and Enlightenment	257
Section a	Realisation of Human Rights by Police Leaders	257
Section b	Enlightenment by Police Teachers and Trainers	277
Part three	Workshops	287
Chapter 1	Police Leaders	289
Section a	Workshop for Police Leaders – Action, Needs and Recommendations	289
Section b	Workshop for Police Leaders – Strategic Review of Human Rights Policies and Practices	291
Chapter 2	Teachers and Trainers	295
Section a	Workshop for Teachers and Trainers – Production of a Teaching Manual	295
Section b	Workshop for Teachers and Trainers – Production of Teaching Notes	299
Section c	Workshop for Teachers and Trainers – Production of Case Studies or Discussion topics	301
Part four	Appendices	303
Appendix 1	Draft Basic Five Day Human Rights Programme for Police	305
Appendix 2	Recommended Reading and Sources	311
Appendix 3	Recommended Cases	315

FOREWORD

This publication is a human rights teaching manual for teachers and resource persons who are proficient in the craft and profession of policing as practitioners, or learned in that field as educators or academics.

It is also a reference manual for police officials participating in programmes based on the manual, and a continuing source of reference for them when they have completed a programme.

The teaching manual has been prepared for use as a valuable resource in an educational process which should enable and require police officials to consider how they are to carry out their functions in an effective, lawful and humane manner.

Programmes on which the manual is used should be based on the following principles:

- In democratic societies where the rule of law prevails, policing can be effective only with the consent and co-operation of the community.
- The consent and co-operation of the community is forthcoming only when policing is carried out effectively, lawfully and humanely, and with full respect for human rights.
- It is indefensible for police officials to break the law, including law to protect human rights, when seeking to enforce law.

Policing is one of the means by and through which governments either meet, or fail to meet, their obligations under international law to protect the human rights of people within the jurisdiction of states they govern.

This manual is offered as a contribution towards the realisable ideal of securing protection and promotion of human rights by and through policing.

The author of this teaching manual, Ralph Crawshaw, has delivered human rights programmes for police on behalf of the Raoul Wallenberg Institute in a number of countries. He is a former senior police officer, and is currently a Fellow of the Human Rights Centre at the University of Essex in England.

Leif Holmstrom

ACKNOWLEDGEMENTS

Whilst this teaching manual is based on the international standards for the protection of human rights, the form it has taken and the approach to human rights teaching it encourages, have been developed through the delivery of human rights programmes for police in many countries. For this reason it is important to acknowledge the contribution that police officials participating in such programmes have made to the production of this manual.

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Human Rights Centre
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INTRODUCTION AND GUIDE TO THE MANUAL

I The Manual

The format and content of the manual, and the recommendations and suggestions for conducting human rights programmes for police it contains, are based on best practice developed during such programmes implemented by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in a wide variety of countries throughout the world.

The contents of the manual can be used as a basis for lessons or presentations by teachers or resource persons. It is not a set of lesson notes as these are personal to the person creating and using them. Furthermore, the actual content of a lesson or presentation needs to be adapted to the specific circumstances of those participating in human rights programmes.

The principal objective of human rights programmes for police organised by the Raoul Wallenberg Institute is to influence the attitudes and thence the behaviour of police officials, so that they deliver effective policing which is at the same time lawful and humane.

However it is recognised that the achievement of this objective is dependent upon a number of factors in addition to the delivery of educational or training programmes. These other factors include, for example, the existence of the necessary political will to change police agencies; the realisation of cultural and organisational change within police agencies; and the enforcement of measures to secure the accountability of police to the law.

For this reason it is also important to recognise that other objectives of human rights programmes for police are to:

- make police officials aware of international human rights and humanitarian law standards;
- provide a forum for police officials to discuss human rights and policing issues;
- encourage and require police officials to consider policing from a human rights perspective; and
- provide a basis for continuing efforts within police agencies to deliver effective, lawful and humane policing.

II This Introduction and Guide to the Manual

This introduction and guide consists of notes on the:

- format of the teaching manual;
- format of sections in the manual;
- teaching methods for programmes based on the manual;
- types of programme for which the manual is relevant; and
- duration of programmes.

III Format of Teaching Manual

There are three parts to this manual:

Part One The Context

This part includes two chapters on essential introductory matters, essential because they convey information and messages important on their own account, and essential because they provide the conceptual framework necessary for understanding the ensuing parts of the manual and programmes based on them.

Chapter 1 The Professional Context

It is important to establish the professional context because police officials need to understand why they are being asked to consider policing from a human rights perspective, and to understand the link between lawful and humane exercise of power and professional competence.

This is why the exercise 'Challenges and Professionalism' is set out in the first section of the manual, and why it is proposed as the first substantive session of any programme, after the opening formalities.

The exercise should be suitable for use with most police audiences, but teachers and resource persons should consider whether it requires adapting or amending in particular situations.

Section b, dealing with the professional ethics of policing, is included in this chapter to emphasise the link, referred to above, between lawful and humane policing and professional competence. Teachers and resource persons can use its contents to inform discussion on the issues arising out of the exercise in section a, or they can base a separate session on the section.

Chapter 2 The International Context

It must be recognised that the primary legal bases for policing in any state are the national constitutions and laws of that state. However, the significance of international human rights and humanitarian law standards for police officials must equally be recognised, for policing is one of the means by which a state either meets or fails to meet its obligations under international law to secure respect for and observance of human rights.

By making senior police officials aware of the international context of their work, they can be encouraged to command, manage and supervise their subordinates in ways that enable or require them to carry out their duties strictly in accordance with the law and with proper respect for human rights. Indeed the provisions of some international human rights instruments are addressed directly to senior police officials. Furthermore, international human rights and humanitarian standards:

- reinforce national constitutional and legal provisions which protect human rights; and
- provide a valuable basis for discussing the relationship between policing and human rights.

As far as basic level police officials are concerned, international human rights and humanitarian standards can be used as teaching resources to encourage them to respect and protect human rights as they carry out their duties. Such officials do not necessarily need to be instructed in the international system for the protection of human rights, or the actual provisions of the instruments.

The extent to which this is done is a matter for the judgement of their educators and trainers. However, it should be remembered that some international instruments are addressed to all police officials. The Code of Conduct for Law Enforcement Officials is one such instrument. Furthermore, the Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials require the Code to be made available to all law enforcement officials in their own language.

The material in the three sections (sections a – c) of this chapter enables teachers and resource persons to provide participants with sufficient information on the:

- the nature of human rights and the reasons for their protection under international law;
- the nature and status of the various instruments which embody human rights standards; and
- the ways in which the standards may be enforced

so that discussion on the substantive matters covered in ensuing parts of the manual is meaningful.

Part Two The Standards

This part includes four chapters dealing with international human rights and humanitarian standards relevant to policing, and can be considered to be the essential core of the manual and of programmes derived from it.

Each section within the chapters deals with a discrete theme or topic, for example the treatment of detainees or policing in times of armed conflict. The provisions of instruments protecting children's rights are included in the various sections as appropriate. The protection of children and their rights is also specifically addressed in chapter 2 section a. of this part 'The Protection of Human Rights and the Prevention of Discrimination'.

Chapter 1 Respect for Human Rights: Police Powers

The four sections (sections a – d) in this chapter deal with rights and prohibitions fundamental to the protection of the physical and mental integrity of the person and to human dignity. They are enshrined in international law and in the domestic laws of states, and they constrain and limit powers to use force, to arrest, to detain, and to search and to carry out surveillance operations.

The balance between fundamental rights and essential police powers has been established in international law, which is the basis of the subject matter of this manual, and in domestic law. Police officials, whose role includes law enforcement, are legally bound to respect the law which protects human rights when exercising their powers. The delivery of effective, lawful and humane policing requires this.

Chapter 2 Protection of Human Rights: Police Functions

The three sections (sections a – c) in this chapter deal with human rights in relation to police functions. Clearly, in performing their functions police exercise the powers referred to in the preceding chapter, and the international standards considered in that chapter are also relevant to the subject matter of this chapter.

However, other standards are also relevant when considering the basic functions of policing. For example the protection of human rights and the prevention of discrimination are police functions in themselves, as is the protection of rights to democratic freedoms such as the right to peaceful assembly. When police investigate crime they need to be aware of, and to respect and protect, rights essential to secure a fair trial of those accused of crimes.

Chapter 3 Police Behaviour in Situations of Armed Conflict, Internal Disturbance and Tension, and Emergency and Disaster

Responding to situations of armed conflict and internal disturbance and tension are also police functions. In addition to international human rights law, the laws of war, otherwise known as the law of armed conflict or international humanitarian law, are also legally applicable in some of these situations and relevant in all of them. The first two sections (sections a and b) in this chapter deal with both branches of law, and

aspects of police responses to these situations. Policing in situations of emergency and disaster is dealt with in the third and final section of this chapter, which focuses on international human rights standards relevant to police behaviour in emergencies and disasters.

Chapter 4 Realisation of Human Rights through Leadership and Enlightenment

The two sections in this chapter deal with the realisation of human rights. Section a. concerns police leadership, and section b. concerns education and training of police. The sections are, respectively, intended to provide bases for sessions on programmes for police leaders and for teachers and trainers of police.

Effective, rational and informed leadership practices are necessary to ensure that human rights are realised during the actual practice of policing and, also to that end, it is a function of teachers and trainers of police to enlighten police officials on human rights.

Part Three Workshops

One of the objectives of human rights programmes for police, identified above, is to 'provide a basis for continuing efforts within police agencies to deliver effective, lawful and humane policing'.

The workshop element of programmes derived from this manual is designed largely to initiate the longer term continuing effort to secure respect for and protection of human rights by police expressed in this objective.

The two chapters in this part describe ideas for workshop elements to be incorporated into programmes derived from this manual. Chapter 1 contains two suggestions for workshop activities for police leaders, and chapter 2 contains three suggestions for workshop activity for teachers and trainers. Clearly, teachers and resource persons presenting programmes based on this manual can develop their own workshop topics appropriate to the participants undertaking the programme.

It is recommended that the workshop element of the programme follows the seminar element (that is to say sessions on the subject matters of parts one and two of the manual), so that the product of the workshop is informed by all of the sessions based on parts one and two of the manual.

It is also recommended that, wherever possible, guidance and assistance be provided (using resource persons with appropriate expertise) to continue the development and implementation of the workshop product within the police agency concerned.

In some cases, depending upon the workshop product and the agency, this could entail a long term and extensive programme of technical assistance to an agency, which would require substantial funding and careful selection of individuals, institutions or other police agencies able and willing to undertake such a task.

Appendices

There are two appendices:

- appendix 1 contains the draft of a basic five day programme based on the manual; and
- appendix 2 sets out recommended reading and resources.

Some of the material set out in appendix 2 has been used as a source for some of the content of this manual, and this is acknowledged in the appendix.

It is emphasised that this teaching manual has not been prepared as a set of teaching notes or lecture notes, but as a resource from which the teacher or resource person can prepare his or her own teaching material.

Lists and Tables

There is a list of cases, including some not cited in the manual, which might prove useful as teaching resources; a table of cases that are cited in the manual; and a table of instruments cited in the manual.

IV Format of Sections

The sections are formatted in such a way as to assist teachers or resource persons to prepare or develop:

- teaching notes;
- discussion topics; and
- other material for group activity by participants.

Each section (apart from section a. of chapter 1, part 1, and the sections in part 3) contains notes under the following sub-headings:

Introduction,

Key Points,

Commentary,

Essential Information for a Presentation, and

Points to Promote Discussion.

Introduction

This provides the teacher or resource person with a brief introduction to the section, focussing particularly on the contents of the commentary and essential information for a presentation

Key Points

These are the main points or principles of the subject matter of the section, concerning especially the human rights standards expressed therein, which are identified to:

- give them emphasis; and
- to aid understanding of the information provided in the section.

Commentary

This provides the teacher or resource person with information on the nature and scope of the rights, freedoms and prohibitions dealt with in the section, and on the police activities affecting, and affected by, those rights, freedoms and prohibitions. Where appropriate, guidance on teaching some aspects of the subject matter of the section is provided. Some policing issues connected with the topic are listed.

Essential Information for a Presentation

The material under this sub-heading includes substantive information to be conveyed to the participants generally in the form of:

- provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and regional human rights treaties;
- examples of comments and findings of treaty bodies; and
- accounts of provisions of non-treaty instruments.

This information is described as essential because international standards are the reference point for all programmes based on this manual. However, in order to meet all of the teaching objectives identified in this introduction and guide, teachers and resource persons should exploit fully, and develop, the material and methods proposed under the other sub-headings.

References to the relevant articles in the instruments are given so that teachers or resource persons can refer to the full texts in which the standards are expressed. These can be found, for example, in 'Essential Texts on Human Rights for the Police' (Crawshaw and Holmstrom), a volume in the same series as this teaching manual.

Examples of comments and findings of treaty bodies are provided as these are rich sources of teaching material. The purposes of the General Comments of the Human Rights Committee include making the experience of the Committee available for the

benefit of States Parties to the International Covenant on Civil and Political Rights in order to promote their further implementation of the Covenant. The General Comments provide authoritative interpretations of articles in the Covenant, and observations on actions required of State Parties in order that they may fulfil their obligations under the Covenant. Some of these are extremely important for police policy and practice.

The findings and observations of the Human Rights Committee, and other treaty bodies such as the Inter-American Court of Human Rights and the European Court of Human Rights, on cases they have considered are also of great significance for policing. Many refer to actual instances of human rights violations arising out of the exercise of police powers and the performance of police functions. They reinforce provisions that prohibit bad practice, and it is frequently possible to identify what good practice should be in specific situations.

Examples of such cases are provided in this manual in order to show how they may be useful for teaching purposes. However, it has been possible to include only a few. Teachers and resource persons should research the jurisprudence of treaty bodies in order to identify current and relevant material for use in teaching programmes. This can be found by accessing the internet web sites of the various bodies. Reviews and summaries of cases can also be found in 'Essential Cases on Human Rights for the Police' (Crawshaw and Holmstrom), a volume in the same series as this teaching manual.

Points to Promote Discussion

These are points arising out of the subject matter of the section that could be discussed with the participants. They can be used in a variety of ways, for example:

- as points for discussion with all of the participants in a plenary session;
- as topics for participants to discuss in smaller groups, with a spokesperson from each group subsequently reporting on the conclusions of the group when all of the groups reconvene in a plenary session; and
- as a basis for the development, by teachers and resource persons, of other case studies, discussion topics or role play exercises.

Ideally participants will raise their own points for clarification or discussion either during or after the presentation, and the teacher or resource person should respond fully to these.

V Teaching Methods

Participants, Teachers and Resource Persons

Teaching methods recommended for programmes derived from this manual are based on the following assumptions:

- participants in programmes have expertise in policing, and especially policing their own communities; and
- teachers or resource persons have expertise in policing, the education or training of police officials, and in the international standards relevant to policing.

This teaching manual is one of the means by which teachers or resource persons with expertise in policing can develop expertise in international human rights and humanitarian standards relevant to policing.

Participation and Interaction

It is a widely accepted principle of adult education that education and training programmes for adults are more likely to be effective if they are participatory and interactive. Human rights programmes for police are no exception to this principle.

This means that, whilst teachers and resource persons should adopt approaches appropriate to particular circumstances, it is recommended that presentations on the various topics take the following format:

- presentation by the teacher or resource person based on the material in the teaching manual;
- general discussion between participants and the teacher or resource person based on points arising from the presentation; and
- group activity by the participants.

Delivering Presentations

In delivering presentations, it is recommended that teachers or resource persons should:

- make maximum use of visual teaching aids;
- encourage participants to refer to the texts setting out provisions of international human rights instruments under consideration during the presentation;
- encourage participants to interject with questions or points during presentations as well as during discussion periods following presentations; and
- refer to examples of good police practice and bad police practice to illustrate particular police/human rights issues.

Such examples can be drawn from:

- presenters' personal experiences;
- reports of comments and findings of treaty bodies dealing with cases arising out of police action or inaction;

- police/human rights issues reported in the news media; and
- academic studies of policing from such fields of study as comparative policing and the sociology of policing.

Group Activities by Participants

Group work can include such activities as participants responding in groups to:

- discussion topics or cases studies;
- working group exercises;
- role play exercises;
- 'brain storming' exercises; and
- workshop activities.

Suggested topics for discussion are set out under the sub-heading 'Points to Promote Discussion' in the sections.

In addition to these, working group exercises have been included in sections a and b of chapter 3, part 2 and section a of chapter 4, part 2. As well as being used as exercises on the topics of those chapters, they can be used as examples to develop working group exercises on topics in other sections.

In conducting group activities by participants, it is recommended that teachers or resource persons should:

- ensure that sufficient time is allocated for this type of activity in the programme;
- ensure that all participants are fully involved in the group work; and
- develop activities appropriate to the culture and professional orientation of the participants.

VI Types of Programme

The Basic Programme

From the foregoing, it can be seen that this teaching manual has been developed as a teaching resource for human rights programmes for police consisting of:

- a seminar element in which international standards on human rights are presented and discussed; and

- a workshop element designed to provide a basis for continuing efforts within police agencies to deliver effective, lawful and humane policing.

Such programmes would consist of sessions:

- based on the subject matter of the various sections of this teaching manual;
- based on other themes considered to be especially appropriate to the participants, and relevant to a programme on human rights for police;
- devoted to workshop topics based on suggestions offered in part three of this teaching manual, or other appropriate topics.

A draft basic five day programme, which can be varied to meet the needs of different types of participants, is set out at appendix 1 to this manual.

Variations to the Basic Programme

Clearly both the duration and the content of the basic programme can be varied to meet the needs of different types of participants.

The programme can be extended so that any particular theme or themes can be dealt with in more detail, and it can be reduced, especially if the focus is to be on a limited number of themes. This may arise when participants have very specific policing functions, in which case the focus of the programme can be limited to human rights issues relating to those functions.

The programme may also be varied so that the workshop element predominates. This may arise when, for example, the officers forming the high command of a police agency are developing policy or strategy on a particular aspect of policing, and wish to take human rights considerations into account during their deliberations.

In such a case the workshop could provide the forum for the development of policy or strategy, and it could be preceded by a briefing on the relevant human rights matters. The resource person providing the briefing could facilitate the workshop activities. In any event, the teaching manual can be used as a resource for those conducting and participating in the programme.

Clearly it is essential that the content and the duration of all programmes should be based on an adequate assessment of the needs of a particular agency or the proposed participants in a programme.

VII Duration of Programmes

As far as the duration of programmes is concerned, this should be confined strictly to the actual time needed to deliver the programme because:

- activities on a programme that are not meaningful will undermine the credibility of the remainder of the programme; and
- organisers of programmes should respect the essential nature of policing, and remove police officials from their operational tasks only for the minimum amount of time necessary for the purposes of the programme.

This means that the time indicated for the duration of the programme by the needs assessment should be the actual duration of the programme, whether this be two days, three and a half days, five days and so on.

PART ONE

The Context

CHAPTER 1 2 3 4

The Professional Context

SECTION a b c d

Exercise 'Challenges and Professionalism'

1.1 Introduction to Topic

The purpose of this exercise is to establish a professional context in which to conduct human rights programmes for police. This is important because police officials need to understand why they are being asked to consider policing from a human rights perspective, and to understand the link between lawful and humane exercise of power and professional competence.

This exercise provides an opportunity for teachers or resource persons to make the point that policing is one of those activities where the ends cannot be separated from the means. No police operation or action can be judged independently of the means adopted to carry it out. Policing which is conducted unlawfully, unethically or inhumanely is a failure of policing, regardless of the results achieved.

This point, linking good behaviour with high professional standards and good technical policing ability, is one which should be reinforced throughout the programme. Good behaviour and technical policing skills are dependent upon each other. A police official who lacks technical policing skills is more likely to behave badly in order to 'get results'. For example, a police official who lacks investigative skills, or interviewing skills, is more likely to mistreat detainees in order to secure 'confessions' of crime. Equally, a police official who continues to rely on bad behaviour to 'get results' will not develop the necessary technical policing skills to become a competent professional official.

1.2 Conduct of Exercise

It is recommended that the first substantive session of a programme be devoted to this exercise, and that it be conducted in a 'plenary session' involving all of the participants, rather than splitting them into smaller groups which is the method suggested for other discussion topics in this manual.

Each participant should be given a copy of the discussion topic at 1.4 below, which sets the scenario for the exercise, and asked to read it and consider the two questions on the text.

The text under the sub-heading 'challenges' at 1.5, which summarises the challenges described in the discussion topic, could be projected on a screen, or written on a board, to remind participants of significant elements of the scenario.

The participants should then be invited to define the term 'professional' as required in question 1. Some individuals may respond by proposing a full definition, whilst others may propose various characteristics or qualities such as 'technical skill' or 'honesty' or 'objectivity' or 'respectful of the law'. Definitions and terms should be noted on a board until the teacher or resource person is satisfied that a satisfactory response has been provided.

The text under the sub-heading 'professionalism' at 1.5 can then be projected onto a screen, or written on a board, and a discussion can take place around the terms it uses and those proposed by the participants in their responses to question 1.

The teacher or resource person should emphasise those terms which refer to 'behaviour' or 'personal qualities', and point out to participants that, whilst technical skills are an essential element of any definition of 'professional', behavioural aspects are integral to the definition. Frequently, the 'behavioural' terms proposed by participants outnumber the 'technical skills' terms.

A discussion can then take place around question 2 of the discussion topic, especially focusing on the responsibilities of police leaders in relation to situations such as that described in the scenario.

Clearly the scenario should be amended, where necessary, so that it is appropriate to the situation of participants in any specific programme.

1.3 Further Discussion Points

The following are additional points or questions for use by the teacher or resource person to promote discussion around the scenario of the exercise:

- The challenges of policing can de-sensitize or even brutalise police. This is bad for the community, the police service, and the police officials themselves. This process is not an inevitable process. What can be done to prevent it?
- How do police officials cope with stress? What measures can be taken (formally and informally) to de-brief police officials, especially after traumatic events?
- Police leaders can require and help police officials to develop really professional qualities by challenging and confronting bad behaviour and attitudes, and by recognising and rewarding good behaviour and attitudes.

1.4 Challenges and Professionalism, Discussion Topic

You are the senior police officer responsible for the policing of an area which is generally regarded as being very challenging in policing terms. There is a high crime rate and there are high levels of violence within the community. Furthermore police officers under your command complain of heavy workloads, and some have been victims of serious assaults.

One of the units, consisting of twelve members, which operates from your station has the reputation of being fairly tough, and of consisting of individuals who are prepared to use unlawful methods, including excessive force, to achieve their objectives. Complaints from the public against members of the unit are greater in number than for other units under your command. You yourself are aware that members of the unit have a generally cynical and aggressive attitude towards members of the public.

You are concerned about the effect this is having on relations between the police and the community in your area. You are also concerned for the police officers themselves, and the effect their work and their attitude is having on their personalities. Furthermore, you feel that if you do not react to the situation, some may make themselves liable to disciplinary proceedings or even serious criminal charges.

You decide to discuss your concerns with the supervisor of the unit, and her response is that as the members of her unit have a tough job in a tough area, it is inevitable that they will be aggressive. She says that you cannot expect them to obey the rules if criminals don't.

You respond by saying that she and the members of her unit are not showing a professional attitude to their work, and the supervisor says that surely being professional amounts to no more than getting results, and showing the community who is the boss.

Question 1

How would you define the term "professional" as far as policing is concerned?

Question 2

How valid is the supervisor's argument that because her unit is policing a tough area, it is inevitable and even acceptable that her subordinates will act aggressively and possibly even unlawfully?

1.5 Challenges and Professionalism, Terms and Concepts

Challenges

- Crime rate;
- Levels of social disorder;
- Levels of violence in society;
- Threats to life and security of police.

Professionalism

- High level of knowledge and skill in the craft of policing;
- Knowledge of, and respect for, the law;
- Knowledge of, and respect for, human rights;
- Ability to retain objectivity and detachment and to minimise emotional involvement in situations.

In summary:

- Knowledge;
- Skills;
- Emotional maturity.

SECTION a b c d

The Professional Ethics of Policing

Introduction

The prime purpose of courses based on this teaching manual is to promote effective, lawful and humane policing.

The subject matter of every section of the manual is designed to meet that purpose. The subject matter of this section addresses the professional ethics of policing as a specific topic. It emphasises the absolute requirements on police to respect:

- the rule of law;
- human dignity; and
- human rights,

as a prelude to the ensuing sections which make the same emphasis in respect of police powers, police functions and police leadership.

Two important matters are considered in the commentary:

- the duty on police to respect and obey the law; and
- reasons for considering the notion of ethical policing.

Under the sub-heading 'Essential Information for a Presentation', standards embodied in two codes for police are outlined. A comparison is made between the two codes by considering four issues dealt with in one or both of them that seem particularly relevant to the notion of ethical policing.

Key Points

The key points to this topic are:

1. the absolute requirements on all police to:
 - respect and obey the law,
 - respect and protect human dignity and human rights, and
 - work to high ethical standards;
2. the responsibility of police leaders to promote the development of a culture within police organisations which is:
 - supportive of good behaviour by police; and
 - intolerant of bad behaviour.

Commentary

The primary source of reference for police behaviour is the law – the law of the states in which police function, and international law. However, as with other professions, it has been found necessary to consider the ethical obligations as well as the legal obligations of its practitioners. Some of the reasons for this necessity are considered here, and they are connected with the notion of ‘professionalism’ raised in the preceding section in the exercise ‘Challenges and Professionalism’.

The Duty on Police to Respect and Obey the Law

In a democratic state where the rule of law prevails no person or institution is above the law, and every person and every institution is accountable to the law. It is particularly incumbent on police officials, as law enforcement officials, to work entirely and always within the law.

As human rights are protected by law this means that the law protecting human rights must be respected and obeyed in the course of every police activity and in every area of policing.

In a democratic state the people, through the political processes and institutions of the state, have defined the powers they wish to accord to police and the limits on those powers.

Whilst police may contribute to debates on the extent and nature of those powers and limitations, there is no justification whatsoever for any police agency or any police official to operate outside them.

For police to argue that it is necessary or justifiable to break the law or ‘bend the rules’

in order to prevent or investigate crime, or maintain or restore public order is indefensible for the following reasons:

1. If police break law in order to enforce law, they are not reducing criminality, they are adding to it.
2. The police perspective on the nature and extent of police powers is only one of a number that needs to be taken into account in deciding what those powers are to be.
3. Once a decision on police powers has been taken and expressed in law, it is not for a police official to insist that a police view prevails by ignoring that law.
4. If individual police officials decide which laws they will ignore or which human rights they will violate on any particular occasion, the process of law enforcement becomes arbitrary and uncertain because of the huge number of individual decisions being taken by officials applying their own individual standards.
5. Some law breaking by police in the process of law enforcement involves very serious criminality and very serious human rights violations. For example torture is a grave crime, and some forms of mistreatment of detainees amount to serious criminal assaults.
6. The effect on individual victims of police law breaking can be disastrous in personal terms. It can lead to conviction and punishment of persons innocent of crimes. In such cases it can also mean that guilty people remain undetected and unpunished.
7. Law breaking and human rights violations by police in the process of law enforcement can have extremely adverse effects on the entire criminal justice system. When such wrongdoing is discovered it can lead to loss of confidence in the police, and in the law, the courts and the judiciary.
8. Human rights are inherent in every person and they are inalienable. They cannot be taken away from any person, especially by a police official.

Reasons for Considering the Notion of Ethical Policing

There are a number of reasons why it is important to consider the notion of ethical policing in the context of a programme on human rights for police:

- both human rights and ethics deal with behavioural aspects of policing;
- ethical theory and its practical application generally reinforce human rights and humanitarian law standards;
- international human rights instruments require, implicitly or explicitly, attention to be given to issues of police ethics (for example, principles 1 and 20 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials); and

- some such instruments are proclaimed as ethical codes or codes of conduct.

Furthermore it is important to acknowledge that situations do arise where police may be required to make ethical choices. For example the law may unclear in relation to some aspects of policing because it is badly drafted or because not all situations to which police have to respond can be neatly encompassed by law.

However, these situations can never be convincingly proposed as reasons for law breaking or human rights abuse.

Other reasons for considering the notion of ethical policing concern the nature of policing itself. The craft and profession of policing is extremely demanding, physically, emotionally and intellectually. Police officials are exposed to:

- the effects of serious criminality on victims;
- the frustrations of being unable to deliver the perpetrators of very serious crime to justice;
- personal danger and discomfort; and
- pressure, sometimes extreme, from the community, the news media, and from politicians to obtain results – especially in the case of really atrocious crimes, or where ‘law and order’ has become or been made an issue of party politics.

The combined effect of these, and other, factors is to confront individual police officials with various ethical or moral dilemmas. For example:

1. they know their powers and the limitations on their powers and yet they feel that in complying with them, in one particular instance or generally, a guilty person may go free;
2. they know that they should report the actions of colleagues who break the law or ‘bend the rules’, but there are many countervailing factors including feelings of empathy, possible peer group disapproval of making such a report, concern about effects of exposure on ‘morale’ in the agency or on public perceptions of the agency;
3. they feel that the exceptional circumstances of a particular case justify a departure from the law and from normal good practice, especially when there is pressure from outside the agency to achieve a successful result;
4. they know that they should retain a measure of professional detachment in relation to particular cases with which they are dealing, but many such cases demand such a degree of personal commitment from officials that to remain objective and detached is extremely difficult;
5. it almost certain that the sub-culture of the agency will be supportive of certain forms of law breaking and ‘rule bending’, and not supportive of the notion of human rights.

These are all reasons for considering the notion of ethical policing, and for encouraging the development and maintenance of high ethical standards within law enforcement agencies.

Police officials need support in order to cope with the various conflicting pressures they face.

They also need to understand, without any doubt whatsoever, that:

- neither the community;
- nor their colleagues;
- nor their senior officers;
- nor political leaders

expects or requires them to break the law or to violate human rights in order to do their job.

Support for, and insistence on, lawful and ethical policing needs to come from all of those sources. In this respect a particularly heavy responsibility rests upon senior police officials for setting and maintaining high ethical standards in police agencies and they need to consider:

- the example they set by their own behaviour;
- the ways in which they react to unlawful and unethical behaviour on the part of colleagues or subordinates;
- the ways in which they can protect subordinates from pressures external to police agencies to act unlawfully or unethically; and
- measures they can adopt to maintain high ethical standards within police agencies and the policing profession generally.

One such measure is the development of ethical codes or codes of conduct for police. International instruments that express two such codes are considered under 'Essential Information for a Presentation' below.

Key Policing Issues Connected with the Topic

These include the belief among some police officials that:

- as terrorists, criminals and other wrongdoers do not abide by the rules, police should not be expected do so;
- human rights are focused too much on the protection of criminals and not sufficiently on victims;

- it is not possible to police effectively and at the same time respect human rights;
- only police have a realistic perspective on crime, criminals and criminality, and on what may be permissible and necessary to respond to them;
- human rights are a series of obstacles to be overcome in the process of policing, and not an inalienable and inherent aspect of human dignity.

Essential Information for a Presentation

Two Codes for Police Outlined

Code of Conduct for Law Enforcement Officials

This code was adopted by resolution 34/169 of the U.N. General Assembly on 17 December 1979.

In adopting the Code of Conduct, the General Assembly recognised that the establishment of such a code is only one of several important measures for providing the citizenry served by law enforcement officials with protection of all their rights and interests.

The Code of Conduct has eight articles, each with an explanatory commentary:

Article 1 requires all law enforcement officials to fulfil the duty imposed on them by law. The term law enforcement official is defined in paragraph (a) of the commentary so as to include all officials who exercise police powers, especially those of arrest and detention.

Article 2 requires law enforcement officials to respect and protect human dignity and maintain and uphold human rights. The commentary, in paragraph (a), lists various international human rights instruments relevant 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, in paragraphs (a) and (b), refers to the principle of proportionality in the use of force and, in paragraph (c), stipulates that the use of firearms is considered an extreme measure.

Article 4 requires law enforcement officials to maintain confidentiality of matters of a confidential nature which come into their possession, unless performance of duty or the needs of justice strictly require otherwise. The commentary points out that, by the nature of their duties, law enforcement officials obtain confidential information, and that great care should be exercised in safeguarding and using it.

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

other ill-treatment. The commentary, in paragraph (b), sets out the definition of torture embodied in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 6 requires law enforcement officials to ensure the full protection of the health of persons detained in custody. In paragraph (a) of the commentary, it is stated that medical attention, which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

Article 7 prohibits law enforcement officials from committing any act of corruption. Paragraph (b) of the commentary states that corruption 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.

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. In paragraph (b) of the commentary it is stated that law enforcement officials shall report violations of the code within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. Law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of the code has occurred or is about to occur.

European Code of Police Ethics

The European Code of Police Ethics (Recommendation (2001)¹⁰ of the Committee of Ministers to Member States on the European Code of Police Ethics) was adopted by the Committee of Ministers of the Council of Europe in 2001 at the 765th meeting of the Ministers' Deputies.

It consists of 66 articles in VII parts, and is accompanied by a comprehensive Explanatory Memorandum which includes commentaries on each of the articles of the Code. This Code is, therefore, much more detailed and comprehensive than the Code of Conduct for Law Enforcement Officials, to which it refers in the Recommendation under which it was adopted.

The parts deal, respectively, with

- objectives of the police;
- legal basis of the police under the rule of law;
- the police and the criminal justice system;
- organisational structures of the police;
- guidelines for police action/intervention;

- accountability and control of the police; and
- research and international co-operation.

The Code applies to traditional public police forces or police services, or to other publicly authorised and/or controlled bodies with the primary objectives of maintaining law and order in civil society, and who are empowered by the state to use force and/or special powers for these purposes.

Teachers and resource persons, especially those conducting programmes in countries that are Member States of the Council of Europe, should refer to the full text of the Code and the Explanatory Memorandum. Articles of the Code that relate to the subject matter of other sections of this manual are included in those sections. All of the Code is of great importance and some articles have been set out below to indicate the nature and scope of the Code.

Article 1 states that the main purposes of the police in a democratic society governed by the rule of law are to:

- maintain public tranquillity and law and order in society;
- protect and respect the individual's fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights;
- prevent and combat crime;
- detect crime;
- provide assistance and service functions to the public.

In effect, it encompasses the main points of articles 1 and 2 of the U.N. Code of Conduct.

In part II (legal basis of the police under the rule of law):

Article 3 states that police operations must always be conducted in accordance with the national law and international standards accepted by the country.

Article 5 requires police personnel to be subject to the same legislation as ordinary citizens. Exceptions may be justified only for reasons of the proper performance of police work in a democratic society.

In part III (the police and the criminal justice system):

Article 6 states that there shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system, and that the police shall not have any controlling functions over these bodies.

Article 10 requires the police to respect the role of defence lawyers in the criminal jus-

tice process and, whenever appropriate, assist in ensuring the right of access to legal assistance is effective, in particular with regard to persons deprived of their liberty.

Article 11 states that the police shall not take the role of prison staff, except in cases of emergency.

In part IV (organisational structures of the police):

Article 13 states that the police, when performing police duties in civil society, shall be under the responsibility of civilian authorities.

Article 15 states that the police shall enjoy sufficient operational independence from other state bodies in carrying out its given police tasks, for which it should be fully accountable.

Article 16 requires that police personnel, at all levels, shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates.

Article 17 states that the police organisation shall provide for a clear chain of command within the police. It should always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel.

Article 21 requires effective measures to prevent and combat police corruption to be established in the police organisation at all levels.

Article 25 states that recruitment procedures shall be based on objective and non-discriminatory grounds, following the necessary screening of candidates. In addition, the policy shall aim at recruiting men and women from various sections of society, including ethnic minority groups, with the overall objective of making police personnel reflect the society they serve.

Article 26 states that police training, which shall be based on the fundamental values of democracy, the rule of law and the protection of human rights, shall be developed in accordance with the objectives of the police.

Article 30 states that police training shall take full account of the need to challenge and combat racism and xenophobia.

Article 31 states that police staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights.

In part V (guidelines for police action/intervention):

Article 35 requires the police, and all police operations, to respect everyone's right to life.

Article 36 prohibits the police from inflicting, instigating or tolerating any act of tor-

ture or inhuman or degrading treatment or punishment under any circumstances.

Article 37 states that the police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective.

Article 38 requires the police always to verify the lawfulness of their intended actions.

Article 39 states that police personnel shall carry out orders properly issued by their superiors, but they shall have a duty to refrain from carrying out orders which are clearly illegal and to report such orders, without fear of sanction.

Article 40 requires the police to carry out their tasks in a fair manner, guided, in particular, by the principles of impartiality and non-discrimination.

Article 41 states that the police shall interfere with individual's right to privacy only when strictly necessary and only to obtain a legitimate objective.

Article 43 states that the police, in carrying out their activities, shall always bear in mind everyone's fundamental rights, such as freedom of thought, conscience, religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions.

Article 46 requires police personnel to oppose all forms of corruption within the police. They must inform superiors and other appropriate bodies of corruption within the police.

Article 48 states that the police must follow the principles that everyone charged with a criminal offence shall be considered innocent until found guilty by a court, and that everyone charged with a criminal offence has certain rights, in particular the right to be informed promptly of the accusation against him/her, and to prepare his/her defence either in person, or through legal assistance of his/her own choosing.

Article 50 requires that guidelines for the proper conduct and integrity of police interviews shall be established, bearing in mind Article 48. They shall, in particular, provide for a fair interview during which those interviewed are made aware of the reasons for the interview as well as other relevant information. Systematic records of police interviews are to be kept.

Article 52 requires police to provide the necessary support, assistance and information to victims of crime, without discrimination.

Article 54 requires deprivation of liberty of persons to be as limited as possible and conducted with regard to the dignity, vulnerability and personal needs of each detainee. A custody record is to be kept systematically for each detainee.

In part VI (accountability and control of the police):

Article 59 states that the police shall be accountable to the state, the citizens and their representatives. They shall be subject to efficient external control.

Article 61 requires public authorities to ensure effective and impartial procedures for complaints against the police.

In part VII (research and international co-operation):

Article 64 requires Member States of the Council of Europe to promote and encourage research on the police, both by the police themselves and external institutions.

Article 65 states that international co-operation on police ethics and human rights aspects of the police shall be supported.

The Two Codes Compared

The purpose of this comparison is not to provide a detailed comparative analysis of the two codes. It is, rather, to focus on how four issues that seem particularly relevant to the notion of ethical policing, namely human dignity and human rights, acts of corruption, unlawful superior orders, and responsibility for actions of subordinates, are addressed in either or both of the codes.

Human Dignity and Human Rights

The Code of Conduct for Law Enforcement Officials makes a general requirement for these to be respected and protected (article 2). The commentary to the article points out that the human rights in question are identified and protected by national and international law. It then refers to a number of relevant international instruments which include the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The European Code of Police Ethics includes protecting and respecting the individual's fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights as one of the objectives of police (article 1). The explanatory commentary states that the respect for the individual's fundamental rights and freedoms as enshrined in the European Convention on Human Rights as an objective of the police is possibly the most significant token of a police service in a society governed by the rule of law. This objective implies not only a separate obligation to uphold these rights, but that there are limits as to how far the police may proceed in order to fulfil their other objectives.

It adds that the wording 'notably the European Convention on Human Rights' is chosen in order to indicate a specific and precise reference to a particular instrument, without excluding the importance of other relevant human rights texts in this respect.

The European Code of Police Ethics refers to the human rights of police officials. It states that police staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights (article 31). The explanatory commentary points out that the article is guided by the overall principle that police in an open democratic society should have the same rights as other

citizens, to the fullest possible extent. This is an important element of the rule of law and of making the police part of the society it serves.

Acts of Corruption

The Code of Conduct for Law Enforcement Officials prohibits law enforcement officials from committing any act of corruption and requires them rigorously to oppose and combat all such acts (article 7). The commentary to the article states that 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.

The European Code of Police Ethics requires effective measures to prevent and combat police corruption to be established in the police organisation at all levels (article 21). The explanatory commentary to this article points out that: the term 'police corruption' is often used to describe a great variety of activities, such as bribery, fabrication or destruction of evidence, favouritism, nepotism, etc. What seems to be a common understanding of police corruption is that it necessarily involves an abuse of position, an abuse of being a police official. Moreover, it is widely recognised that corruption should be regarded as a constant threat to the integrity of the police and its proper performance under the rule of law in all Member States.

The European Code of Police Ethics requires police personnel to oppose all forms of corruption within the police. They are to inform superiors and other appropriate bodies of corruption within the police (article 46). The explanatory commentary points out that the article places a positive obligation upon the police official to avoid corrupt behaviour as an individual and discourage it among colleagues. Police officials are required, in particular, to carry out their duties in accordance with the law, in an honest and impartial way and should not allow their private interests to conflict with their position in the police. To this end, police officials must always be on the alert for any actual or potential conflicts of interest and take steps to avoid such conflicts. They are required to report to their superiors or to other appropriate authorities if they become aware of corrupt behaviour within the police.

Unlawful Superior Orders

The Code of Conduct for Law Enforcement Officials makes a specific reference to unlawful superior orders only in connection with the prohibition of torture or other cruel, inhuman or degrading treatment or punishment. It states that a law enforcement official may not invoke superior orders as a justification of any of these acts (article 5).

The requirements in article 8 to respect the law and the Code and to oppose violations of them may be interpreted as a requirement to disobey unlawful orders, and the requirement for a law enforcement official to report his or her belief that a violation of the Code has occurred or is about to occur may have the same effect as disobeying unlawful orders. However the Code expresses no clearly and strongly stated obligation to disobey unlawful orders.

It should be noted that the question of unlawful orders, specifically in relation to the use of force and firearms, is addressed to some extent in another United Nations instrument, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. However, the instrument does not express a categorical requirement to disobey unlawful orders:

'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' (principle 25).

The European Code of Police Ethics states that, whilst police personnel shall carry out orders properly issued by their superiors, they shall have a duty to refrain from carrying out orders which are clearly illegal and to report such orders, without fear of sanction (article 39). The explanatory commentary states that since police personnel, in accordance with article 16, should be held personally liable for their own actions, there must be a possibility for them to refuse carrying out orders which are illegal (contrary to the law). The wording 'clearly illegal', has been chosen to avoid incurring police disobedience in situations where the legality of an order is unclear.

The commentary adds that, with full respect to the necessary hierarchical structures in the police, the overall idea with this article is to avoid the individual's responsibility for flagrant illegal activities and human rights violations being 'covered up' by hierarchical structures. The 'operational independence' of the police from other state bodies (article 15), works in the same direction. The duty with regard to illegal orders should also contain an obligation to report such orders. The reporting of illegal orders shall have no negative repercussion or sanctions on the reporting staff.

Responsibility for Actions of Subordinates

The Code of Conduct for Law Enforcement Officials does not address this matter. However it is addressed in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials:

'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' (principle 24).

The European Code does make specific reference to the responsibility of senior officials for the acts or omissions of their subordinates. However, it does so in the context of 'responsibility for orders'. Article 16 states that police personnel, at all levels, shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates. Article 17 requires that the police organisation shall provide for a clear chain of command within the police, and that it should always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel.

The term 'which superior is responsible for the acts or omissions of police personnel' seems to indicate a wider responsibility than that set out in article 16 (i.e. for orders), however the commentary to article 17 clarifies this point as follows:

'This Article, which is complementary to Article 16, concerns the responsibility for orders within the police. The fact that all police personnel are responsible for their own actions, does not exclude that superiors may also be held responsible, for having given the order. The superior may be held responsible side by side with the 'implementing' official, or alone in cases where the latter person followed orders in 'good faith'. (See also article 38.) Through an established *chain of command*, ultimate responsibility for police action can be traced in an effective way.'

Points to Promote Discussion

1. Police powers, and the limitations on those powers, are defined in law. As police, like all people living in states governed by the rule of law, are required to obey the law, why should it be considered necessary to produce codes of ethical behaviour for police?
2. Define the term 'act of corruption' in relation to policing. List some practices that amount to corruption.
3. Both the Code of Conduct for Law Enforcement Officials and the European Code of Police Ethics prohibit acts of corruption by police officials. In what areas of policing is the likelihood of corruption highest? In what ways may 'acts of corruption' be connected with abuse of human rights by police?
4. International human rights instruments prohibit 'superior orders' from being used as a defence by individuals charged with crimes arising out of acts or omissions committed in violation of their provisions.
 - a. Consider closely the Conduct for Law Enforcement Officials and identify any provisions that may provide guidance to a police official who has received unlawful orders from a person in authority over him or her.
 - b. Draft an additional article to the Code of Conduct for Law Enforcement Officials specifically addressing the issue of 'unlawful orders', and providing clear guidance to police officials in respect of unlawful orders.
5. Divide the participants into groups and ask them to consider the following question:

What steps could police leaders take to establish or strengthen a culture within a police organisation that is supportive of good behaviour by police, and intolerant of bad behaviour?

Conduct a discussion which compares and contrasts the conclusions of the groups.

CHAPTER 1 2 3 4

The International Context

SECTION a b c d

The Nature of Human Rights and Why They Are Protected under International Law

Introduction

This section provides an introduction to the concept of human rights and to provisions of the United Nations Charter requiring promotion of and universal respect for them.

In the commentary to this section the definition, characteristics and some different categories of human rights are considered. The history of their protection under international law and the principal reasons for that protection are outlined. The link between human rights, peace and social order is discussed.

Under the sub-heading 'Essential Information for a Presentation' there are accounts and summaries of relevant provisions of the United Nations Charter.

Some general obligations of states under the Charter for the protection of human rights are outlined, as are some implications of these for policing.

Key Points

The key points to this topic are that:

- human rights derive from the inherent dignity of the human person;
- human rights are universal, equal and inalienable;
- the different categories of rights are indivisible and interdependent; and
- the protection of human rights is a primary police function.

Commentary

Definition and Characteristics of Human Rights

Human rights, under the present regime for their protection, are considered to be inherent in our nature as human beings. They are based on the inherent dignity of the human person. Furthermore, it is asserted in the first sentence of the preamble to the Universal Declaration of Human Rights that 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.

It is, of course, vital to ensure that human dignity and human rights are recognised and respected in the processes of policing. It is also important to recognise that policing is one of the means by which human rights and human dignity can be protected, and freedom, justice and peace attained.

Human rights can best be understood as those rights that are fundamental to the human condition, and as fundamental principles of justice. They enable us to develop our qualities and to satisfy our needs as human beings. At a more basic level, they protect our lives and our mental and physical integrity.

The principles of justice they embody, and their underlying values, can be found in all of the world's great religions and ethical systems as well as in more local cultures and systems of belief. This is one of the reasons for claiming that human rights are universal. The universality of rights is central to the protection of human rights.

Human rights are also 'inherent', 'equal' and 'inalienable', which means that:

- every human being has them by virtue of his or her humanity;
- without distinction; and
- they cannot be taken or given away.

Categories of Human Rights

Because of the ways in which human rights have been perceived in theoretical terms, there are several categories of human rights. Sometimes these are referred to as 'generations' of human rights.

Initially human rights were considered to be claims for non-intervention by governments in the lives of citizens. This first category or generation of rights came to be known collectively as civil and political rights.

Subsequently, human rights were also regarded as claims for positive intervention by governments in order to correct social injustice. This second category of rights came to be known as economic, social and cultural rights.

These two categories of rights are considered to be 'indivisible' and 'interdependent'.

In other words the protection of one category of rights is dependent upon the protection of the other.

This concept is embodied in the Preambles to the two International Covenants – on Economic, Social and Cultural Rights, and on Civil and Political Rights. For example the third paragraph in the Preamble to the latter treaty states that, in accordance with the Universal Declaration of Human Rights:

‘the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.’

The rights in each of these categories of rights are individual rights, that is to say they inhere in individual people. A third category of rights, collective rights (for example the right to development) is now also recognised.

History and Reasons for the Protection of Human Rights under International Law

As a branch of international law, international human rights law has developed largely since the end of the Second World War although its origins can be traced to earlier historical periods. For example, since times of antiquity national legal systems have embodied provisions which we would now refer to as human rights.

During the nineteenth century international legal measures were adopted against the slave trade, and during the first part of the twentieth century measures for the protection of workers’ rights were introduced on the creation of the International Labour Organisation.

However, it was the gross violations of human rights that occurred just before and during the Second World War which:

- provided the catalyst for the development of international human rights law; and
- created the conceptual link between the protection of human rights and international peace and security.

The Links between Human Rights, Peace and Social Order

The cataclysmic events of the Second World War led to the well founded belief that gross and systematic violations of human rights can be, and often are, a cause of war.

This meant that when the United Nations Charter was adopted in 1945, it stipulated that two of the purposes of the newly formed United Nations were to:

- maintain international peace and security; and
- promote and encourage respect for human rights.

In order for the second purpose to be achieved, it was clearly necessary for there to be international norms protecting human rights, and a means for securing compliance with those norms.

Whilst the primary responsibility for protecting human rights may rest at the national level, it had been shown in the most tragic and horrific way that governments could not be trusted to respect the human dignity and human rights of people within the jurisdiction of the states they govern.

There needed to be a legal order external to that of the state by which:

- national constitutional and legal measures could be judged;
- the actions of states in relation to individuals and groups within their jurisdictions could be examined; and
- individuals could be protected, or provided with effective remedy and redress if measures of protection failed.

Such a legal order, comprising the international laws and mechanisms for the protection of human rights, developed slowly but inexorably following the adoption of the United Nations Charter.

The human rights and fundamental freedoms referred to in the Charter first found expression in the Universal Declaration of Human Rights which was adopted by the United Nations General Assembly on 10 December 1948 under resolution 217A (III). The 10th of December is now celebrated internationally as human rights day.

As indicated above, the first paragraph of the Preamble to the Universal Declaration states that:

'Whereas 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'

The link between world peace and the protection of human rights is repeated and reinforced in the Universal Declaration, the primary international human rights instrument.

Key Policing Issues Connected with the Topic

These include:

- the crucial role of police in the protection of human rights – human rights are protected by law, and police are law enforcement officials;

- police as violators or potential violators of human rights – human rights are not violated by abstract entities such as states, but by individual people exercising power on behalf of states;
- the ambivalence of some police about human rights – human rights being seen as impediments to effective policing; and
- definitions of what effective policing is – human rights violations committed by police are often criminal offences which means that police break the law in order to enforce the law. Is that effectiveness?

Essential Information for a Presentation

Relevant Provisions of the United Nations Charter

The provisions of the United Nations Charter relevant to the subject matter of this section can be found in:

1. The opening paragraphs of the preamble which set out the determination of the peoples of the United Nations:
 - to save succeeding generations from the scourge of war; and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women.
2. Article 1 of the Charter which sets out the purposes of the United Nations to include:
 - the maintenance of international peace and security;
 - the development of friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples; and
 - the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.
3. Article 55 which sets out further purposes of the United Nations. These include the promotion of universal respect for, and observance of, human rights and freedoms for all without distinction as to race, sex, language or religion.

Obligations of States and Implications for Policing

The United Nations Charter is a legally binding treaty, and all Member States of the United Nations are bound by its provisions. In particular, article 56 of the Charter obliges all Member States to take joint and separate action in co-operation with the Organisation (of the United Nations) for the achievement of the purposes set out in article 55.

One of those purposes is repeated above – the promotion of universal respect for, and observance of human rights and fundamental freedoms for all.

Whilst the Charter does refer to specific human rights concerning, for example, non-discrimination and self-determination, it does not embody a ‘bill of rights’. Nevertheless the general obligations on states concerning the requirement to secure respect for and observance of human rights and freedoms within their own national boundaries are clear. They are to ensure that their constitutions and legal systems embody measures designed to secure respect for and observance of human rights.

However, for those measures to be meaningful law must be implemented and human rights observed. That responsibility rests, in the first instance, on governments and it engages almost the entire range of governmental activity at one time or another. In addition to the basic political functions of law making and resource allocation, also involved are:

- the formulation of policies and practices; and
- the establishment of structures and systems throughout the machinery of government and within ancillary governmental organisations and agencies.

For example in relation to policing there must be structures and systems external to police agencies designed to ensure political accountability and judicial supervision of those agencies and of police officials, in order to secure observance of and respect for human rights in the process of policing. This in turn has implications for detailed aspects of command, management and administration of a police organisation.

The above observations refer to the general obligations on states under the United Nations Charter to promote respect for and observance of human rights. However, as neither a bill of human rights nor detailed means for securing respect for and observance of them are articulated in the Charter, the actual international legal obligations on states vary, largely, according to the number and types of human rights treaties to which they are parties.

Those provisions of human rights treaties relevant to policing are considered in the ensuing sections of this manual, along with the provisions of other types of international instrument concerned with human rights and policing.

Points to Promote Discussion

1. Why is the link between international peace and security and observance of and respect for human rights so significant?
2. The link between policing and human rights is clear. Is there any link between policing and international peace and security?
3. In what areas of policing are human rights most likely to be violated, and in what ways and why?

4. Why is it argued that the protection of economic, social and cultural rights (e.g. the right to work, the right to an adequate standard of living) is dependent on the protection of civil and political rights (e.g. the right to liberty of person, right to vote) and vice versa?
5. Pose the question 'The protection of human rights is a basic function of policing, what are the ways in which police perform that function.'

Conduct a Brain Storming Exercise with the participants to establish all of the various ways in which policing can actually protect human rights.

SECTION a b c d

Human Rights Treaties and other Instruments

Introduction

This section introduces international instruments that enshrine human rights or articulate standards designed to secure their protection, and instruments embodying international humanitarian law or the laws of war.

The various types of international instrument are described in the commentary. Those significant and relevant to policing, and whose provisions are cited in this manual, are listed and described under the sub-heading 'Essential Information for a Presentation'. The International Bill of Human Rights is considered first, followed by other global human rights treaties, regional human rights treaties, and then 'non-treaty' instruments. Finally, under the heading 'International Humanitarian Law', the four Geneva Conventions of 1949 and their Additional Protocols of 1977 are described.

Some treaties establish enforcement bodies to ensure compliance with their provisions, for example the Human Rights Committee established under the International Covenant on Civil and Political Rights. The functions and procedures of these bodies are described in the next section of this manual.

Key Points

The key points to this topic are that:

- all states are legally bound, to varying degrees, to secure respect for and observance of human rights;
- human rights treaties are legally binding on states parties to them;

- human rights instruments that are not treaties are not legally binding, but they generally reiterate legally binding provisions of treaties, and they set standards that enable and facilitate compliance with treaty provisions; and
- policing is an essential factor in a state's compliance or non-compliance with its international legal obligations to secure respect for and observance of human rights.

Commentary

Whilst this section focuses on human rights instruments having a bearing on the exercise of police powers and the performance of police functions, it should be noted that a huge variety of instruments designed to secure promotion of and respect for human rights in other spheres of human activity has been promulgated since the adoption of the United Nations Charter in 1945 and the Universal Declaration of Human Rights in 1948.

Charters, Covenants and Conventions

These instruments are legally binding agreements between sovereign states. They are also referred to as treaties.

Treaties may be either:

- bi-lateral – a treaty agreement between two states; or
- multi-lateral – treaties whose terms are adopted by a number of states.

The human rights treaties referred to in this teaching manual are multi-lateral treaties.

Before a treaty is finalised, its terms and conditions are discussed in an international forum such as the United Nations or one of the regional fora.

When the draft text is agreed, it is adopted by the forum.

States become legally bound by the terms of the treaty when they ratify the treaty. Ratification is one of the ways in which a state consents to be bound by the terms of a treaty. It is a device whereby the competent authorities of a state formally accept the provisions of a treaty.

Some other ways in which states consent to treaties are by:

- signature – where it is agreed that signature shall have that effect; and
- accession – the normal method by which a state becomes a party to a treaty it has not signed.

Multi-lateral treaties almost always contain a clause stipulating that they will enter into

force only when they have been ratified by a specified number of states. For example, the International Covenant on Civil and Political Rights was adopted and opened for signature, ratification and accession by U.N. General Assembly resolution 2200 A (XXI) of 16 December 1966. However, it did not enter into force until 23 March 1976 after 35 states had ratified or acceded to it as required by article 49 of the instrument.

Declarations and Resolutions

These are distinguished from treaties in that they are not legally binding, but they are usually prepared in a similar way to treaties i.e. discussed in an international forum and then adopted.

For example the Universal Declaration of Human Rights was adopted by resolution 217 A(111) of the U.N. General Assembly on 10 December 1948.

Some declarations or resolutions, or parts of them, may eventually become binding under international law if their provisions are shown to have become general practice accepted by states. If instruments, or some of their provisions, do attain this status they are said to have become part of customary international law.

Customary international law consists of those universally accepted norms or standards that have developed from state practice. It is binding on all states regardless of any treaty obligations a state has or has not entered into. The prohibition of torture is an example of an international human rights norm that has become a part of customary international law.

The Universal Declaration of Human Rights is not a treaty and, when it was adopted in 1948, it was not intended that it should impose legally binding obligations on states.

However, it is now suggested that, because of:

- state practice;
- the opinions of legal scholars; and
- the pronouncements of some courts,

the Declaration or parts of it, have become part of customary international law and hence binding on all states.

Codes and Principles

These are not legally binding. They are, however, texts adopted by international bodies such as the United Nations General Assembly to:

- reiterate and reinforce legally binding provisions of treaties;
- assist and encourage compliance with those provisions by establishing detailed and specific standards to that end;

- set technical standards for good practice in particular fields of activity that affect, or are affected by, human rights standards.

For example, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was adopted on 9 December 1988 by General Assembly resolution 43 /173. This instrument is considered in greater detail in sections b and c of chapter 1, part 2 herein. At this stage it is sufficient to say that the Body of Principles:

- reiterates the prohibition on torture and the right of detainees to human treatment;
- establishes detailed standards for the treatment of detainees which would ensure their humane treatment if complied with; and
- sets standards on a technical policing matter (e.g. interrogation of suspects in principle 21).

Key Policing Issues Connected with The Topic

These include:

- the extent to which police officials should be aware of the international human rights standards that regulate their work;
- the critical role that police play in enabling a state to meet its treaty obligations under international human rights law;
- the contribution that individual police agencies can make to the spread of effective, lawful and humane police practice in relation to different policing functions.

Essential Information for a Presentation

The International Bill of Human Rights

This consists of the Universal Declaration of Human Rights, and the two International Covenants – on economic, social and cultural rights and on civil and political rights.

The Universal Declaration of Human Rights

The United Nations Charter, adopted in 1945:

- declared that one of the purposes of the United Nations was promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion; and
- bound its members to take action to achieve that purpose (articles 55 and 56).

As the full range of human rights to be protected was not set out in the Charter, one of the first tasks of the newly formed body was to define those rights. It did so in the Universal Declaration of Human Rights which, as indicated above, was adopted by U.N. General Assembly resolution 217 A (III) of 10 December 1948.

The Declaration contains 30 Articles, and enshrines human rights and freedoms which it defines in its preamble as 'a common standard of achievement for all peoples and all nations'.

The preamble also enjoins 'every individual and every organ of society' to strive by teaching and education to promote respect for the rights and freedoms it sets out.

The Declaration includes civil and political rights as well as economic, social and cultural rights.

The first article emphasises that all human beings are born free and equal in dignity and rights.

The second article stipulates that everyone is entitled to all of the rights and freedoms 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.

There is also a reference to duties. Article 29 states that everyone has duties to the community 'in which alone the free and full development of his personality is possible'.

The Universal Declaration of Human Rights is the core document of the International Bill of Human Rights. It has enormous moral and political force and, as indicated above, it has also been argued that some, if not all, of its provisions have become part of customary international law.

The Two International Covenants

As the formal status of the Universal Declaration of Human Rights was the same as any other General Assembly resolution, that of a non-binding recommendation, it was understood that human rights would have to be protected by way of treaty obligations.

This understanding eventually led to the promulgation of two treaties, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

These treaties were adopted by U.N. General Assembly resolution 2200 A (XXI) of 16 December 1966. However, they did not enter into force until 3 January and 23 March 1976 respectively, by which time the requisite number of states had ratified them.

They are legally binding on states that have ratified or acceded to them.

Indivisibility and Interdependence

Whilst the two Covenants protect different categories of rights, they are meant to be considered together. The preamble of each instrument refers to the other instrument, asserting that enjoyment of one category of rights is dependent upon enjoyment of the other.

This is a reflection of a fundamental U.N. doctrine on human rights, reaffirmed in many resolutions of the General Assembly, that all human rights are 'indivisible and interdependent'.

Different Forms of Obligation

In addition to differences in the categories of rights each Covenant protects, there is a significant difference in the form of obligation each instrument imposes on its State Parties.

Article 2.1 of the Covenant on civil and political rights stipulates that each State Party undertakes to:

'respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant;'

whereas article 2.1 of the Covenant on economic, social and cultural rights stipulates that each State Party undertakes to:

'take steps...to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant.'

These different forms of obligation, expressed as:

'absolute and immediate in the case of the Covenant on civil and political rights; and

relative and progressive in the case of the Covenant on economic, social and cultural rights;'

reflect the differing relative costs entailed in ensuring or realising the rights in each treaty.

It is acknowledged that delivering economic, social and cultural rights, such as the right of everyone to an adequate standard of living or to education, requires states to allocate resources to those ends. States at low levels of economic development may not have those resources, or may not have them to a sufficient degree, to enable them to deliver the rights or to deliver them to the same extent as a more economically developed state.

There is some incongruity here in that, in order to secure civil and political rights, re-

sources have to be allocated to, for example, the establishment and maintenance of efficient criminal justice systems, penal systems and police agencies. Nevertheless the requirement to secure this category of rights remains absolute and immediate.

Identical Structures

Each Covenant is structured in the same way, with a preamble, and six parts.

Part I deals with the right of self-determination of peoples, in identical terms in each instrument.

Part II contains articles of general application to the remainder of the treaty, for example:

- the form of obligation the treaty imposes on States Parties; and
- the non-discrimination clause.

The concept of non-discrimination is central to the protection and promotion of human rights. The two International Covenants require States Parties to ensure that the rights they embody will be exercised:

‘without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’

Part III sets out the precise rights and freedoms protected by the treaty.

For example the Covenant on economic, social and cultural rights protects such rights as:

- the right to work, the right to social security, and the right to an adequate standard of living; whereas

the Covenant on civil and political rights protects such rights as:

- the right to life, the right to freedom of opinion and expression, and the right to take part in conduct of public affairs.

Part IV of each Covenant establishes means and methods to secure compliance with its provisions.

PARTS V AND VI deal with procedural matters.

Other Global Treaties

International Convention on the Elimination of all Forms of Racial Discrimination

This Convention was adopted and opened for signature by U.N. General Assembly resolution 2106 A (XX) of 21 December 1965. It entered into force in 1969.

It consists of 25 articles and, in addition to embodying provisions designed to eliminate discrimination on grounds of race, colour, descent, or national or ethnic origin, it established a Committee on the Elimination of Discrimination to give effect to those provisions.

Convention on the Elimination of all Forms of Discrimination against Women

This Convention was adopted and opened for signature, ratification and accession by U.N. General Assembly resolution 34/180 of 18 December 1979. It entered into force in 1981.

The Convention consists of 30 articles and, in addition to embodying provisions designed to eliminate discrimination against women in all its forms and manifestations, it established a Committee on the Elimination of Discrimination against Women to consider the progress made in the implementation of the Convention.

The means for implementing the Convention were enhanced by the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations in 1999. It entered into force in 2000.

The Protocol, which has 21 articles, expands the competence of the Committee in a number of ways, including enabling it to receive and consider communications submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party to the Optional Protocol, claiming to be victims of a violation of any of the Convention rights by that State Party.

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

This Convention was adopted and opened for signature, ratification and accession by General Assembly resolution 29/46 of 10 December 1984. It entered into force in 1987.

The Convention consists of 33 articles in three parts. It provides a definition of torture, and 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;

- to prevent torture from being perpetrated; and
- requiring prompt and impartial investigations where torture is suspected of having been committed.

Part II of the Convention contains provisions dealing with the implementation of the Convention, including the establishment of the Committee against Torture.

Part III deals with procedural matters.

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

This instrument was adopted by the U.N. General Assembly on 18 December 2002 and entered into force in 2006.

The objective of the Optional Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other ill-treatment.

It establishes a Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture to carry out its work within the framework of the Charter of the United Nations.

Convention on the Rights of the Child

This Convention was unanimously adopted by the U.N. General Assembly on 20 November 1989, and entered into force in 1990. It consists of 54 articles, and is divided into three parts.

Part I of the Convention embodies rights and freedoms that provide comprehensive protection for children. Articles of particular importance to police officials are those protecting:

- children's rights, including their rights as detainees;
- children from abuse or exploitation;
- children in special circumstances such as those living as refugees and those who have become victims of armed conflict.

Part II of the Convention sets out measures designed to secure compliance with its provisions, including the establishment of the Committee on the Rights of the Child. Part III of the deals with procedural matters.

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

This Optional Protocol was adopted by the U.N. General Assembly on 25 May 2000 and entered into force in 2002. It consists of 17 articles and its purpose is to enhance the means for protecting children from sexual and economic exploitation.

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts

This Optional Protocol was adopted by the U.N. General Assembly on 25 May 2000 and entered into force in 2002. It has 13 articles and reinforces the means for protecting children in the context of armed conflict.

Regional Treaties

Convention for the Protection of Human Rights and Fundamental Freedoms

This instrument, generally known as the European Convention on Human Rights, was signed on 4 November 1950 by Member States of the Council of Europe and entered into force in 1953. It embodies 59 articles in three sections.

Section I enshrines the rights and freedoms protected.

The obligation on High Contracting Parties to respect human rights is set out in article 1, which requires them to secure to everyone within their jurisdiction the rights and freedoms defined in section I.

Those rights are civil and political rights, for example the right to life, the prohibition of torture, the right to freedom of expression and the right to freedom of assembly and association.

Economic and social rights are protected under the European Social Charter that was signed in 1961 by Member States of the Council of Europe. It came into force in 1965. Under that Charter, the States Parties have resolved to make every effort in common to improve the standard of living and to promote the social well-being of their populations.

The rights and procedures established under the European Convention on Human Rights have been expanded and developed by a number of Protocols to the Convention. For example, the first Protocol and Protocols No. 4 and No. 7 secure certain rights and freedoms not embodied in the Convention, such as:

- protection of property,
- freedom of movement,
- procedural safeguards relating to expulsion of aliens,

- the right not to be tried or punished twice,
- the right of appeal in criminal matters and
- the right to compensation for wrongful conviction.

Protocol No. 6 proclaims that the death penalty shall be abolished; and Protocols No. 11 and No. 14 provide for institutional reform.

Protocol No. 12 to the Convention establishes a general prohibition of discrimination. Whereas article 14 of the Convention requires the rights and freedoms set forth in the Convention to be secured without discrimination on any ground such as sex, race, colour, language, religion, political opinion, national or social origin, association with a national minority, property, birth or other status, this Protocol requires the enjoyment of any right set forth by law to be secured without discrimination on any of those same grounds.

Section II of the Convention regulates the European Court of Human Rights, established to ensure observance of the engagements undertaken by the Parties to the Convention.

The miscellaneous provisions in section III deal with procedural matters.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

This Convention was signed in 1987 by Member States of the Council of Europe, and entered into force in 1989. It is based on the belief that the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive character based on visits. The Convention contains 23 articles divided into five chapters.

Chapter I contains the articles that establish the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. This Committee carries out the visits, referred to above, to places where people are detained in States Parties to the Convention.

Articles setting out criteria for selecting members of the Committee and the procedure for their appointment are contained in chapter II. Chapter III embodies provisions on the procedures and practices of the Committee.

Chapter IV contains provisions to facilitate the work of the Committee, and

Chapter V contains provisions concerning procedural matters.

American Convention on Human Rights

The American Convention on Human Rights was signed 22 November 1969 by Member States of the Organization of American States and entered into force in 1978. It contains 82 articles in three parts.

Part I sets out state obligations and rights protected.

Chapter I of part I embodies general obligations. Under article 1, States Parties undertake to

- respect the rights and freedoms recognized in the Convention, and
- ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition.

Chapter II of part I embodies civil and political rights, for example the right to life, the right to personal liberty, the right to participate in government and the right to equal protection of the law.

Chapter III of part I deals with economic, social and cultural rights. Under article 26, the States Parties undertake to adopt measures with a view to achieving progressively the full realization of such rights as set forth in the Charter of the Organization of American States, amended by the Protocol of Buenos Aires.

Chapter IV of part I deals with suspension of guarantees, interpretation and application of the Convention.

Chapter V of part I, on personal responsibilities, proclaims in article 32:

1. Every person has responsibilities to his family, his community, and mankind.
2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

Part II of the Convention deals with means of protection. These include the Inter-American Commission on Human Rights and the Inter-American Court of Human rights.

Part III contains general and transitory provisions in procedural matters.

In 1988, some States Parties to the Convention signed the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 'Protocol of San Salvador'. It came into force in 1999.

In 1990, the Protocol to the American Convention on Human Rights to Abolish the Death Penalty was approved. It came into effect in 1991. At present, eight States have ratified or acceded to this Protocol.

Inter-American Convention to Prevent and Punish Torture

This Convention was signed on 9 December 1985 by Member States of the Organization of American States, and entered into force in 1987.

The Convention embodies provisions that require States Parties to:

- outlaw torture and to take measures to prevent it;
- investigate allegations of torture, punish offenders, and compensate victims; and
- deny exceptional circumstances or superior orders as justifications of torture.

No enforcement body is established under this treaty, but it does stipulate that, after exhaustion of domestic remedies, a case may be submitted to the international fora whose competence has been recognized by the State in question.

African Charter on Human and Peoples' Rights

The African Charter was adopted on 27 June 1981 by the Assembly of Heads of State and Government of the Organization of African Unity. It entered into force in 1986. In 2002, the Organization of African Unity was replaced by the African Union, following the entry into force of the Constitutive Act of the African Union.

The African Charter embodies 68 articles, and is divided into three parts:

- rights and duties;
- measures of safeguard; and
- general provisions.

The first chapter of part I embodies 26 articles dealing with human and peoples' rights.

Article 1 requires the States Parties to the Charter to:

- recognize the rights, duties and freedoms enshrined in the Charter, and
- undertake to adopt legislative or other measures to give effect to them.

The chapter then sets out the rights of individuals, for example the entitlement to respect for life and integrity of person, the right to liberty and security of person, the right to assemble freely with others, the right to work, and the right to education. It also sets out the rights of peoples, for example to freely dispose of their wealth and natural resources, to economic, social and cultural development, and to national and international peace and security.

Furthermore, the chapter spells out the duties of States Parties in regard to the dissemination of rights and duties set forth in the Charter; and the duties to guarantee the independence of the Courts and to allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the Charter.

Chapter II of part I includes the duties an individual has towards his family and society, the State and other legally recognized communities as well as the international community.

The three articles in this chapter deal with duties such as the duty of the individual to:

- respect and consider his fellow beings without discrimination,
- preserve the harmonious development of the family, and
- serve his national community by placing his physical and intellectual abilities at its service.

Part II of the Charter establishes means and methods to ensure the promotion and protection of human and peoples' rights, including the establishment and organisation of the African Commission on Human and Peoples' Rights.

Part III contains general provisions concerning procedural matters.

A Protocol to the African Charter establishing an African Court on Human and Peoples' Rights entered into force on 25 January 2004. When it is established the Court will consider cases of human rights violations referred to it by the African Commission on Human and Peoples' Rights and States Parties to the Protocol and, where a State Party accepts such a jurisdiction, by individuals and non-governmental organisations. The Court will have authority to issue legally binding and enforceable decisions on cases brought before it.

Note: When programmes are organised for police officials in countries where a regional treaty is in force, the relevant provisions of that treaty should be referred to in relation to the different topics covered in the programme.

'Non-treaty' Instruments

Standard Minimum Rules for the Treatment of Prisoners

These rules were adopted by the First U.N. Congress on the Prevention of Crime and the Treatment of Offenders in 1955, then approved by the Economic and Social Council under resolutions 663 C(XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

The instrument consists of 96 articles, and sets out what is generally regarded as good practice in the treatment of prisoners and the management of institutions.

The Rules are more concerned with the treatment of prisoners in penal institutions than with detainees in police custody. However, rules 84 to 93 concern 'Persons under Arrest or Awaiting Trial' and are, therefore, of direct relevance to police officials.

Code of Conduct for Law Enforcement Officials

This code was adopted by U.N. General Assembly resolution 34/169 of 17 December 1979.

The General Assembly resolution recognises 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.

In adopting the Code, the General Assembly recommends to governments 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.

The Code of Conduct consists of eight articles, each with an explanatory Commentary, and it makes stipulations on such matters as:

- respect for human dignity and maintenance of human rights;
- use of force;
- the prohibition on torture; and
- acts of corruption.

In its resolution adopting the Code, the General Assembly states that it is conscious of the important task which law enforcement officials are performing diligently and with dignity, in compliance with the principles of human rights.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

This Declaration was proclaimed by U.N. General Assembly resolution 36/55 of 25 November 1981. It consists of 8 Articles designed to give effect to the right to freedom of thought, conscience or religion, and to prevent and eliminate discrimination on grounds of religion or belief.

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

These Rules were adopted by U.N. General Assembly resolution 40/33 of 19 December 1985.

The instrument consists of 30 rules, each with an explanatory commentary, and is divided into 6 parts.

Part Two, which deals with 'Investigation and Prosecution', includes rules on:

- notification to parents or guardians when juveniles are apprehended;

- consideration of the issue of release without delay by a judge or other competent body; and
- diversion of juvenile offenders from criminal justice processing.

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

These Principles were adopted by U.N. General Assembly resolution 43/173 of 9 December 1988. The General Assembly, through the resolution, urges that every effort be made so that the Body of Principles becomes generally known and respected.

The instrument is a very practical document, with considerable relevance and value to the work of police officials. In addition to setting standards on the treatment of detainees, it gives detailed guide-lines on how those standards may be met.

The instrument consists of 39 Principles. Principle 1 enshrines the basic requirement to treat persons detained or imprisoned in a humane manner. Principle 6 reiterates the prohibition on torture.

The Body of Principles includes requirements on such matters as:

- judicial supervision of arrest and detention;
- access to legal counsel and family;
- interrogation of detainees;
- record keeping in respect of arrested and detained persons; and
- inadmissibility of evidence obtained in contravention of the Principles.

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

These Principles were adopted by resolution 1989/65 of the U.N. Economic and Social Council on 24 May 1989.

The adopting resolution refers to:

- the right to life as proclaimed in article 3 of the Universal Declaration of Human Rights, and article 6 of the International Covenant on Civil and Political Rights; and
- U.N. General Assembly resolutions expressing concern at enforced or involuntary disappearances and condemning extra-legal killings.

The instrument consists of twenty Principles dealing with:

- the prevention of extra-legal killings;
- the investigation of such killings; and
- legal proceedings following investigations.

The Principles on prevention of extra-legal executions include requirements that:

- such executions should be prohibited by law; and
- strict control be exercised over officials responsible for arrest and detention, and over those authorised to use force and firearms.

The Principles on investigation of extra-legal executions:

- require thorough, prompt and impartial investigations of all suspected cases of extra -legal executions, and
- set out a series of other requirements designed to assist the investigative process.

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

The Basic Principles were adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

In adopting the Basic Principles the Congress invites member states of the United Nations to:

- take them into account and to respect them within the framework of their national legislation and practice; and
- bring them to the attention of law enforcement officials and other members of the executive branch of government, judges, lawyers, the legislature and the public in general.

The instrument consists of 26 Basic Principles covering such matters as:

- the adoption of national rules and regulations on the use of force and firearms by law enforcement officials;
- equipment to allow for a differentiated use of force;
- the occasions when firearms may be used against persons;
- use of force when policing unlawful assemblies;
- qualifications and training; and

- the personal responsibilities of law enforcement officials for their own acts or for the acts of subordinates.

In the preamble to the instrument it is recognised that:

- the work of law enforcement officials is a social service of great importance, and that there is a need to maintain or improve the working conditions and status of such officials; and
- 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.

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

These Rules were adopted by U.N. General Assembly resolution 45/113 of 2 April 1991. The instrument consists of a preamble and 87 rules, and is divided into five parts.

Part Three, 'Juveniles under Arrest or Awaiting Trial' has the most relevance to police officials. The two articles in that part stress the presumption of innocence and the special treatment which attaches to that status. The articles set out basic rules that should govern the conditions under which untried juveniles are to be detained.

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

These Principles were adopted by U.N. General Assembly resolution 40/34 of 29 November 1995.

The Declaration consists of 21 principles, and those relating to victims of crime cover such matters as access to justice and fair treatment, restitution, compensation, and assistance.

European Code of Police Ethics

The European Code of Police Ethics (Recommendation (2001)10 of the Committee of Ministers to Member States on the European Code of Police Ethics) was adopted by the Committee of Ministers of the Council of Europe in 2001 at the 765th meeting of the Ministers' Deputies.

In the Recommendation, the Committee of Ministers states that it is convinced that public confidence in the police is closely related to their attitude and behaviour towards the public, in particular their respect for the human dignity and fundamental rights and freedoms of the individual as enshrined, in particular, in the European Convention on Human Rights.

The Code consists of 66 articles in VII parts, and is accompanied by a comprehensive Explanatory Memorandum which includes commentaries on each of the articles of the Code.

The parts deal, respectively, with

- objectives of the police;
- legal basis of the police under the rule of law;
- police and the criminal justice system;
- organisational structures of the police;
- guidelines for police action/intervention;
- accountability and control of the police; and
- research and international co-operation.

The Four Geneva Conventions of 1949 and Their Additional Protocols of 1977

These instruments are:

- 1949 Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;
- 1949 Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;
- 1949 Geneva Convention III Relative to the Treatment of Prisoners of War;
- 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War;
- 1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts; and
- 1977 Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts.

The four Geneva Conventions were adopted on 12 August 1949 and entered into force on 21 October 1950. The two Optional Protocols were adopted on 8 June 1977 and entered into force on 7 December 1978.

The detailed provisions of the four Conventions are embodied in a total of 429 articles. The two Additional Protocols add another 130 articles between them.

Points to Promote Discussion

1. Divide the participants into groups and ask them to read all of the articles in the Universal Declaration of Human Rights, and to identify which 5 rights they consider to be the most important for people in their country at the present time.
2. Divide the participants into groups and ask them to read all of the articles in the Universal Declaration of Human Rights, and to identify which rights are most likely to be violated in the processes of policing and why.
3. Article 29.1 of the Universal Declaration of Human Rights states that everyone has duties to the community in which alone the free and full development of his personality is possible. What are the ways in which an individual citizen of a state can meet his or her obligations under this article?
4. The Universal Declaration of Human Rights includes a right to own property (article 17). Neither of the two International Covenants includes such a right. Is this a serious omission?
5. Essentially the three regional human rights treaties protect the same human rights as the International Covenant on Civil and Political Rights. What are the advantages in having regional treaties?

SECTION a b **c** d

Supervision and Enforcement

Introduction

The term 'supervision and enforcement' used in this chapter refers to those international means designed to secure compliance by states with their international legal obligations to respect and observe human rights. They also refer to international criminal tribunals before which individuals are held accountable for their crimes or omissions.

The relationship between international human rights law and the domestic laws of states is considered in the commentary, as is the right to effective remedy when violations of rights have occurred.

Under the sub-heading 'Essential Information for a Presentation', various bodies and procedures established by the United Nations Charter and by human rights treaties are listed and described. Reference is also made to international criminal tribunals.

Key Points

The key points to this topic are that:

- the first and most important means for securing respect for and observance of human rights are those established at national level under the domestic laws of states;
- some international procedures for supervision and enforcement of standards require exhaustion of national remedies before they can be invoked;
- international measures to secure compliance with international law are generally not as effective as national measures to secure compliance with domestic laws

of states, because means of enforcement and sanctions for non-compliance are fewer and less well developed;

- nevertheless, international standards and international means to secure compliance with them are of considerable importance in securing respect for and observance of human rights; the effectiveness of both is apparent; and international systems continue to develop.

Commentary

The setting of international standards on human rights and freedoms is only a first step in securing respect for and observance of human rights. Once standards have been agreed, it is necessary to establish international means of supervision and enforcement of those standards. It is in this context that the relationship between international law and the domestic law of states, and the right to effective remedy, need to be examined.

The Relationship between International Law and the Domestic Law of a State

This relationship depends on the type of legal system within the state.

In a state where the domestic legal system is monist, that is to say recognising only a single legal system of which both international law and domestic law are parts, international law can be self-executing, that is to say applied directly by judges in domestic courts if it is sufficiently clear and specific to be so applied.

In a state where the domestic legal system is dualist, that is to say regarding international law and domestic law as being essentially different and distinct, international law cannot be applied in domestic courts until it has undergone a process of transformation or incorporation into the domestic legal system.

In a state with a monist legal system, accession to a human rights treaty may create rights that are immediately enforceable for individuals within the courts of that state.

In a state with a dualist legal system, rights enshrined in such a treaty are not enforceable until the legislature has incorporated the provisions of the treaty into domestic law.

The Right to Effective Remedy

This right is essential for the protection of all other rights. It is embodied in the:

- Universal Declaration of Human Rights, which guarantees all persons the right to an effective remedy by the competent national tribunals for violations of fundamental rights granted by the constitution or the law (article 8);
- International Covenant on Civil and Political Rights, which requires each state

party to ensure that any person whose rights recognised in the Covenant are violated shall have an effective remedy (article 2.3);

- African Charter on Human and Peoples' Rights, which states that an individual's right to have his cause heard includes the right to an appeal to competent national organs against acts violating his fundamental rights as recognised by conventions, laws, regulations and customs in force (article 7.1);
- American Convention on Human Rights, which states that everyone has the right to recourse to a competent court or tribunal for protection against acts which violate his fundamental rights recognised by the constitution or laws of the state, or by the Convention (article 25.1); and
- European Convention on Human Rights, which states that everyone whose rights and freedoms set forth in the Convention are violated shall have an effective remedy before a national authority (article 13).

The International Covenant and the American and European Conventions all add a stipulation to the effect that the right is guaranteed even though the violation has been committed by persons acting in an official capacity or in the course of their official duties.

As can be seen from the above summaries;

- the Universal Declaration creates the right of remedy for violation of rights granted by the constitution or law;
- the International Covenant and the European Convention create the right of remedy for violation of rights they guarantee;
- the African Charter creates the right of remedy for violation of rights guaranteed by conventions, as well as by laws, regulations and customs; and
- the American Convention creates the right of remedy for violation of rights it guarantees as well as rights guaranteed by national constitutions or laws.

The right to effective remedy is crucially important in any system of enforcement or supervision of rights, for when there is no effective remedy:

- human rights violations remain uninvestigated, unpunished, and uncompensated;
- immunity and impunity from punishment enjoyed by human rights violators encourages continued and further violations; and
- the rule of law is undermined.

Key Policing Issues Connected with the Topic

These include:

- the fact that the acts or omissions of police officials can be considered and either endorsed or condemned by international fora or tribunals;
- the need for effective national systems and procedures to investigate allegations of human rights violations by police;
- the necessity of proper record keeping in relation to all areas of policing where this is required by law; full and accurate reporting by police officials in relation to operational policing matters; and proper security of those records and reports – to facilitate any subsequent enquiry into police conduct.

Essential Information for a Presentation

Charter Based Procedures

Security Council

This body has no specific jurisdiction over human rights matters but human rights violations which are so serious that they jeopardise international peace and security come within its jurisdiction under Chapter VII of the U.N. Charter.

General Assembly

This body does have original jurisdiction over human rights matters under a number of articles in the U.N. Charter. For example, article 13 requires the General Assembly to initiate studies and make recommendations for the purpose of assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Economic and Social Council

The Economic and Social Council is established under Chapter X of the U.N. Charter, and consists of 27 members elected by the General Assembly.

Under article 62 of the U.N. Charter this body may make recommendations for the purpose of promoting respect for, and observance of human rights.

Under article 64 it may make arrangements with Member States of the United Nations and with specialised agencies to obtain reports on the steps taken to give effect to its recommendations.

In 1946 it established the U.N. Commission on Human Rights which was formally abolished on 16 June 2006. The Commission was replaced by the Human Rights Council which was established by the General Assembly in its resolution 60/251 of 15 March 2006.

Human Rights Council

The Human Rights Council, composed of 47 Member States, is based in Geneva and holds no fewer than three sessions each year for a total period of no less than ten weeks. Additionally the Council can hold special sessions when necessary, at the request of a Member of the Council which must have the support of one third of the membership of the Council.

The resolution establishing the Council specified that members elected to the Council shall uphold the highest standards in the promotion and protection of human rights and will be subject to periodic review. Each member nation of the Council must be approved individually and directly by a majority of the members of the General Assembly, in a secret ballot. Council membership is limited to two consecutive terms, and any Council member may be suspended by a two-thirds vote of the Assembly.

Under the same resolution, all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, including the Sub-Commission on the Promotion and Protection of Human Rights were assumed by the Human Rights Council

These include:

- the procedure under ECOSOC resolution 1503, under which it is authorised to handle communications (complaints) from individuals and non-governmental organisations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms; and
- special procedures that is to say the mechanisms established to address either specific country situations or thematic issues globally. Special procedures can be either individuals (for example special rapporteurs) or working groups usually composed of five members.

For example:

In 1980, the Human Rights Commission established the Working Group on Enforced or Involuntary Disappearances with the mandate of studying and reporting on the phenomenon of forced disappearances.

The Working Group receives information on disappearances; transmits this to the government concerned for comment; and then reports publicly on the exchange of reports and comments.

It takes up individual cases and acts promptly on receiving information that a person has been detained by state officials and the authorities refuse to acknowledge the fact of detention.

There have now been appointed:

- a Special Rapporteur on Extra-Legal Executions (1982);

- a Special Rapporteur on Torture (1985);
- a Special Rapporteur on Religious Intolerance (1986); and
- a Working Group on Arbitrary Detention (1991).

Each has a similar mandate to that of the Working Group.

Sub-Commission on the Promotion and Protection of Human Rights

The Sub-Commission on the Promotion and Protection of Human Rights is a subsidiary body of the Human Rights Council. It is composed of 26 elected, human rights experts who act in their personal capacity.

The Sub-commission's primary functions are to:

- undertake studies on human rights issues;
- make recommendations concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities; and
- carry out other functions which may be entrusted to it.

International Criminal Tribunals

International Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda

Two international institutions have been established by Security Council resolutions when the Council invoked its mandatory powers to preserve peace under Chapter VII of the UN Charter. Their focus is on individuals, holding them to account for crimes arising out of conflicts, rather than on States.

The International Tribunal for the former Yugoslavia was established by Security Council resolution 827 of 25 May 1993, in response to the serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, and to the threat to international peace and security posed by those serious violations. This Tribunal functions in accordance with the provisions of the Statute of the International Tribunal for the former Yugoslavia. It is located in The Hague, The Netherlands. The Tribunal's mission is to bring to justice those allegedly responsible for violations of international humanitarian law; to render justice to the victims; to deter further crimes; to contribute to the restoration of peace by promoting reconciliation in the former Yugoslavia.

The International Criminal Tribunal for Rwanda was established by Security Council resolution 955 of 8 November 1994 for the prosecution of persons responsible for genocide and serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and 31 December 1994. The Tribunal is

governed by the Statute of the International Criminal Tribunal for Rwanda. It is located in Arusha in Tanzania. The purpose of the Tribunal is to contribute to the process of national reconciliation in Rwanda and to the maintenance of peace in the region. It may also deal with the prosecution of Rwandan citizens responsible for genocide and other such violations of international law committed in the territory of neighbouring States during the same period.

International Criminal Court

In 1998 the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court adopted the Rome Statute of the International Criminal Court. This Court has jurisdiction with respect to the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

The Statute entered into force on 1 July 2002, and the Chief Prosecutor took office in June 2003. This is the first ever permanent, treaty based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished.

The first bench of 18 judges was elected by an Assembly of State Parties in February 2003. The Court issued its first arrest warrants in July 2005.

Treaty Based Procedures

Human Rights Committee

This Committee is established under Part IV of the International Covenant on Civil and Political Rights. It is composed of 18 elected members of high moral character and recognized competence in the field of human rights who serve in a personal capacity for a period of four years.

The Committee has two main functions – supervision and applications.

Supervision

This is conducted through a reporting procedure whereby States parties to the Covenant submit periodic reports on the measures they have adopted which give effect to the rights recognised in the Covenant and on the progress made in the enjoyment of those rights.

The Committee invites official representatives from States parties to respond to its members' questions on the report. These are often based on the members' own sources of information, non-governmental organisations for example.

The Human Rights Committee has issued a series of General Comments on various articles of the Covenant which contain authoritative guidance on the scope of States parties' obligations under the Covenant.

Applications

These involve communications (complaints) from states and from individuals:

Under article 41 of the International Covenant, a party to the Covenant may declare that it recognises the competence of the Committee to consider complaints by other States parties.

In the event of such a complaint the Committee makes available its good offices with a view to securing a friendly solution to the matter.

Under an Optional Protocol to the Covenant, the Committee may consider communications from individuals who allege that they are victims of violations of their rights under the Covenant by a State party to the Covenant and the Optional Protocol.

When such complaints are made the Committee brings the matter of the individual complaint to the attention of the State concerned. It then considers the written explanation of the State and forwards its views to the State and the individual complainant.

Committee on the Elimination of Racial Discrimination

This Committee was established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee consists of 18 members elected by the States parties and serving in their personal capacity.

This Committee receives periodic reports from States parties to the Convention. It may also receive communications from states parties in relation to the conduct of other States parties, and from individuals or groups of individuals within their jurisdiction who are alleging violations of any of the Convention rights if the State party has recognised the competence of the Committee to do so.

Committee on the Elimination of Discrimination against Women

This Committee was established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women. The Committee consists of 23 experts of high moral standing and competence in the field covered by the Convention. They are elected by States parties but serve in their personal capacity.

Whereas the Convention established a system of State party reporting, there was no system for the communication of individual complaints until the UN General Assembly adopted the Optional Protocol to the Convention in October 1999. Under the Protocol, which entered into force in December 2000, State parties to the Protocol recognise the competence of the Committee to receive and consider communications submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State party, claiming to be victims of a violation of any of the Convention rights by that State party.

Committee against Torture

This Committee is established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It consists of 10 elected experts of high moral standing and recognized competence in the field of human rights who serve in their personal capacity for a term of four years.

States parties to the Convention are required to report periodically to the Committee on measures they have taken to give effect to the Convention.

There is also a procedure under the Convention whereby the Committee can invite a State party to co-operate in an examination of information provided to the Committee which appears to contain well founded indications that torture is being systematically practised within the territory of the state. A State may decline to take part in such an examination if, at the time of signature or ratification of the Convention, or of accession to it, it declares that it does not recognise the competence of the Committee to pursue this procedure.

Under article 21 of the Convention, a State party may at any time declare that it recognizes the competence of the Committee to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Convention. Furthermore, under article 22, a State party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention.

In 2002 the U.N. General Assembly adopted the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Any State that has ratified or acceded to the Convention may become a party to the Optional Protocol. It will enter into force when twenty States have ratified or acceded to it.

The purpose of the Optional Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. For that purpose, the States parties will elect a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture. Each State party also undertakes to maintain, designate or establish one or several independent national preventive mechanisms for the prevention of torture at the domestic level.

The Subcommittee is guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity, and the Optional Protocol requires the Subcommittee and the States parties to cooperate in the implementation of its provisions. Initially, the Subcommittee on Prevention will be composed of 10 members elected by the States parties and chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty. The members are to be independent and impartial and serve in their individual capacity.

Committee on the Rights of the Child

This Committee was established under article 43 of the Convention on the Rights of the Child. It consists of ten experts of high moral standing and recognised competence in the field covered by the Convention. The members of the Committee are elected by States parties but serve in their personal capacity. A system of State party reporting was established under the Convention, but there is no system for the communication of individual complaints. However, the Convention includes civil and political rights protected in the International Covenant on Civil and Political Rights and regional treaties and, where appropriate, the procedures under those treaties may be invoked.

African Commission on Human and Peoples' Rights

Article 30 of the African Charter on Human and Peoples' Rights, establishes the African Commission on Human and Peoples' Rights within the Organisation of African Unity, to promote human and people's rights and ensure their protection in Africa.

The African Charter on Human and Peoples' Rights was adopted in 1981 by the Eighteenth Assembly of Heads of State and Government of the Organisation of African Unity, and entered into force in 1986. There were two bodies responsible for ensuring the promotion and protection of human and peoples' rights, the Commission, and the Assembly of Heads of State and Government of the Organisation of African Unity (OAU). However, the OAU was replaced by the African Union in 2002, following the adoption of the Constitutive Act of the African Union in 2000.

A Protocol to the African Charter establishing an African Court on Human and Peoples' Rights entered into force in 2004. When it is established the Court will consider cases of human rights violations referred to it by the African Commission on Human and Peoples' Rights and states parties to the Protocol and, where a state party accepts such a jurisdiction, by individuals and non-governmental organisations. The Court will have authority to issue legally binding and enforceable decisions on case brought before it.

The Commission on Human and Peoples' Rights is composed of eleven members elected by secret ballot by the Assembly of the Heads of State and Government for a six year renewable term. Members, who serve in their personal capacity, are chosen from among African personalities reputed for their high morality, integrity, impartiality and competence in matters of human and peoples' rights.

The Commission has three major functions: the promotion of human and peoples' rights, the protection of human and peoples' rights, and the interpretation of the African Charter on Human and Peoples' Rights. The African Charter provides for inter-state complaints and individual communications, both procedures being mandatory to the state parties.

After studying the complaint and exhausting all means to reach an amicable solution to the matter, the Commission submits a report together with such recommendations as it deems useful to the Assembly of Heads of State and Government which takes the final decision.

The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights

The inter-American human rights system was established with the adoption of the American Declaration of the Rights and Duties of Man in Bogota, Colombia in 1948 at the Ninth International American Conference. The Charter of the Organisation of American States (OAS) was adopted at that same conference.

The Inter-American Commission on Human Rights was created in 1959. It has seven members elected in a personal capacity. The Commission is an autonomous organ of the OAS, and its mandate is found in the OAS Charter and the American Convention on Human Rights. The Commission has powers regarding all member states of the Organisation of American States, and not only regarding those which are parties to the Convention.

The American Convention on Human Rights was signed in 1969 at San Jose, Costa Rica by member states of the OAS, and entered into force in 1978.

The Inter-American Court of Human Rights was established by the American Convention on Human Rights, and consists of seven judges elected in an individual capacity who must be persons of high moral authority and recognised competence in the field of human rights. The jurisdiction of the Court comprises all cases concerning the interpretation and application of the provisions of the Convention that are submitted to it, provided that the States parties to the case recognise such jurisdiction.

Under the Convention any person, group of persons, or non-governmental organisation legally recognised in one or more of the OAS states, may submit petitions to the Commission alleging violations of the Convention by a state party. There is also a right of inter-state complaint (by way of communications to the Commission), but this is subject to a prior declaration regarding the competence of the Commission in this respect. This means that whereas the right of individual complaint is automatic, the right of inter-state complaint is not. For those States that are not parties to the Convention, the Commission applies the American Declaration.

European Court of Human Rights

The European Court of Human Rights, more formally known as the Convention for the Protection of Human Rights and Fundamental Freedoms, was established under article 19 of the European Convention on Human Rights to ensure the observance of the engagements undertaken by the High Contracting Parties to the Convention.

This Convention was signed by member states of the Council of Europe in 1950, and it entered into force in 1953. The Council of Europe was established by the Statute of the Council of Europe, signed in London in 1949. The policy-making and executive organ of the Council of Europe is the Committee of Ministers of the Council of Europe, which is comprised of all Foreign Ministers of member states of the Council.

The European Court of Human Rights consists of a number of judges equal to that of the High Contracting Parties to the Convention. The judges, who sit on the Court

in their individual capacity, must be of high moral character and must either possess the qualifications required for appointment to high judicial office or be juriconsults of recognised competence.

The jurisdiction of the Court extends to all matters concerning the interpretation and application of the Convention and its Protocols. Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and Protocols by another High Contracting Party. The Court may also receive applications from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols. This means that, unlike the Inter-American Court, there is compulsory jurisdiction in respect of both categories of complaints.

The Committee of Ministers of the Council of Europe monitors the enforcement of the Court's judgements.

Until November 1998, the task of ensuring observance of the provisions of the Convention was shared by two part-time bodies, the European Commission on Human Rights and the European Court of Human Rights. Protocol 11 to the European Convention introduced the full time Court, and the Commission was abolished.

Note: the International Covenant, the African Charter, and the American and European Conventions all contain provisions (Article 2 Protocol 1; Articles 56, 46 and 35 respectively) requiring exhaustion of domestic remedies by individual applicants before the treaty enforcement machinery can be invoked.

Points to Promote Discussion

1. What steps could be taken to increase the effectiveness of international means of supervising states' compliance with their human rights obligations under international law?
2. Why is the stipulation in some human rights treaties that the right to effective remedy is guaranteed even though the violation has been committed by a person acting under official authority so important?
3. The effectiveness of some of the international supervisory and enforcement mechanisms is dependent upon information provided by non-governmental organisations. What are your views on this?
4. When investigations are initiated into serious police misconduct, including serious human rights violations by police, records and reports that have previously been prepared on the incident or incidents under investigation disappear, are altered or are otherwise rendered useless for the purposes of the investigation.

Ask the participants in working groups to make recommendations to the ministry of the interior or the judiciary on ways of overcoming this problem.

5. The opening paragraphs of the preamble to the Statute of the International Criminal Court state that the States Parties to this Statute are:
- Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,
 - Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,
 - Recognizing that such grave crimes threaten the peace, security and well-being of the world,
 - Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,
 - Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,
 - Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.

Ask the participants to discuss the following questions on these paragraphs:

- a. What are the common bonds that unite all people?
- b. In what ways do grave crimes that deeply shock the conscience of humanity, threaten the peace, security and well-being of the world?
- c. Why, in addition to contributing to prevention, is it important to put an end to impunity for the perpetrators of these crimes?

PART TWO

The Standards

CHAPTER 1 2 3 4

Respect For Human Rights: Police Powers

SECTION a b c d

The Right to Life and the Power to Use Force

Introduction

This section examines the right to life in relation to the use of force by police although, clearly, other issues such as abortion and euthanasia also arise in connection with this right.

Relevant aspects of the nature and scope of the right to life are discussed in the commentary, as are some police functions and responsibilities in relation to the right to life, the right to life of police officials, and the power to use force.

The text under the sub-heading 'Essential Information for a Presentation' sets out the global and regional treaty provisions on the right to life, some examples of comments and findings of treaty bodies, and provisions of non-treaty instruments on the right to life and on the use of force.

Key Points

The key points to this topic are:

- the right to life is to be respected;
- arbitrary deprivation of life is prohibited;
- police are to respect and enforce the law that protects the right to life;
- before force is used, peaceful means are to be attempted first;
- force is only to be used when strictly necessary and to the extent required for the performance of police duties;

- police officials are to exercise restraint, and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; and
- the use of firearms is to be considered an extreme measure.

Commentary

The Right to Life

The right to life is a fundamental human right, if not the fundamental right. It is expressed in the Universal Declaration of Human Rights, and in global and regional human rights treaties, provisions of which are set out in 7.4 below.

There, it can be seen that treaty provisions require the right to life to be protected by law. For this purpose it is necessary for certain types of killings to be made unlawful. It is an important function of police to prevent and detect unlawful killings and, in this sense, police are an essential factor in a state's ability to meet its obligations under international law to protect the right to life. This is a positive aspect of the relationship between human rights and policing, police as protectors of a fundamental human right.

The right to life is elaborated and developed in the comments and findings of treaty bodies. It is considered to be a rule of general international law binding on all states. Under international humanitarian law, murder and other forms of unlawful killing are prohibited in times of international and non-international armed conflict.

In spite of the fundamental nature of this right, it is not given absolute protection under treaty law whereas, for example, the prohibitions of torture and of slavery are protected absolutely. However, it is among that small number of human rights from which no derogation by States Parties is allowed in time of public emergency.

As can be seen in 7.4 below, in its General Comment 6(16) on article 6 of the International Covenant on Civil and Political Rights which protects the right to life, the Human Rights Committee considers that States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. Police are an important element of a State's means to prevent mass violence and other forms of unlawful killings, and this point should be emphasised and discussed with participants on teaching programmes.

It is also important to discuss the right to life of police officials with participants. It is almost inevitable that defects in training, equipment, planning and command and control of police operations have led to loss of police lives. Deficiencies in these areas provide at least prima facie grounds for seeking legal remedy or redress through national legal institutions or, if this fails, through international human rights treaty bodies.

In addition to securing remedy or redress for families of police officials who have been killed, action of this nature may encourage governments to meet standards expressed in international instruments. These, described in 7.4 below, deal with such matters as national legislation and regulations on the use of force and firearms, selection and

training of police officials, protective equipment, stress counselling and responsibility of senior officials. The standards are valuable reference points for police officials and others seeking to protect the right to life generally as required by treaty provisions; to maintain or improve the well-being and safety of police officials; and to enhance the professionalism and effectiveness of police in the use of force.

Finally, participants on training programmes should be asked to consider tactics that can be adopted by police to enable them to respect the right to life when they exercise the power to use force, and positive measures they can take in all areas of policing to protect the right to life.

The Use of Force

Police are legally empowered to use force. Without this and other powers it would not be possible for police to perform their functions.

However, the following principles are fundamental to policing:

- peaceful means should be attempted before force is applied, and
- only minimum levels of force are to be applied in any event.

Taking into account:

- these principles and the centrality of force to policing;
- the nature of policing with its uncertainties and its dangers; and
- the importance of policing in a society

it is clear that only those qualified and able to use force effectively, lawfully and humanely should be allowed to have and retain the power to do so.

This requires:

- extremely rigorous selection and training processes;
- effective command, control and supervision of police officials by police leaders; and
- strict accountability of police to the law when the power is abused.

The application of unlawful force by police can:

- result in serious human rights violations including, ultimately, violations of the right to life;
- increase the difficulties and dangers of policing, already sufficiently difficult and dangerous in itself, because of the reactions it provokes;

- generate serious public disorder to which the police then have to respond, thereby exposing police unnecessarily to dangerous situations and make them vulnerable to revenge attacks;
- undermine confidence in and support for the police on the part of the community which is incompatible with effective policing.

On the other hand the lawful and expert application of force is an example of

- police respect for human rights;
- policing as a positive factor in the protection of human rights; and
- effective policing.

It is particularly important in relation to the subject matter of this section for teachers and resource persons to:

- be aware of local law and procedure on use of force and firearms;
- compare and contrast these with international standards; and
- consider with participants the practical application of good practice in this vital area of policing and police powers.

Key Policing Issues Connected with the Topic

These include:

- the equipping of police officials with the necessary professional skills to enable them to use force, effectively, lawfully and humanely;
- the development and availability of various means to allow for a differentiated, and hence proportionate, use of force;
- the effective command and control of police actions and operations involving the use of force;
- the circumstances under which police may use firearms against persons;
- the responsibility of senior officials for the actions of their subordinates;
- the prompt and thorough investigation of allegations of unlawful use of force by police;
- the personal safety of individual police officials, and their right to life;
- the immediate and long term consequences of unlawful use of force by police.

Essential Information for a Presentation

The Right to Life

Universal Declaration of Human Rights and International Covenant on Civil and Political Rights

Article 3 of the Universal Declaration of Human Rights protects the right to life, as well as two other rights relevant to the use of force by police – the rights to liberty and security of person.

Article 6.1 of the International Covenant on Civil and Political Rights states:

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.

The remaining paragraphs of the article (2 – 6) contain provisions on the death penalty and the crime of genocide.

Regional Human Rights Treaties

Article 4 of the African Charter on Human and Peoples' Rights states:

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 4.1 of the American Convention on Human Rights states:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

The remaining paragraphs of the article (2 – 6) contain provisions on the death penalty.

Article 2 of the European Convention on Human Rights states:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a. in defence of any person from unlawful violence;
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

- c. in action lawfully taken for the purpose of quelling a riot or insurrection.

Concerning the death penalty, referred to in paragraph 1 of the article, it should be noted that Protocol No. 6 to the Convention proclaims that the death penalty shall be abolished and that no one shall be condemned to such penalty or executed, but the death penalty may be applied in time of war. Protocol No. 13 extends the abolition of the death penalty to all circumstances. The second sentence of paragraph 1 is, therefore, now redundant.

Other Treaty Provisions

The Convention on the Rights of the Child contains a number of provisions that protect the right to life of children. For example:

‘article 6 requires States Parties to recognize that every child has the inherent right to life, and to ensure to the maximum extent possible the survival and development of the child;

article 24 sets out a number of measures to ensure the health of children and, in particular, paragraph 2(a) requires States Parties to take appropriate measures to diminish infant and child mortality; and

article 38 contains a number of provisions to protect children in times of armed conflict. These include requiring States Parties to undertake to respect and ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child, and taking all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.’

Under this Convention a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Examples of Comments and Findings of Treaty Bodies

Human Rights Committee

General Comment 6(16) on article 6 of the International Covenant on Civil and Political Rights includes the following comments on the right to life:

The right to life

‘is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation.’

The Committee considers that States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life.

The protection against arbitrary deprivation of life which is explicitly required

by the third sentence of Article 6(1) is of paramount importance. The Committee considers that State Parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killings by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of life by such authorities.

State Parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.

In the case *María Fanny Suárez de Guerrero v. Colombia*, the Human Rights Committee expressed views on the right to life and the use of force by police. The communication was submitted on behalf of the victim's husband and concerned the premeditated and calculated killing by police of seven unarmed people, among them Mrs. Suárez de Guerrero, in connection with a raid carried out at a house where a kidnapped person was believed to be held prisoner.

In this case, the Committee observed that there was no evidence that the action of the police was necessary in their own defence, or that of others, or that it was necessary to effect the arrest or prevent the escape of the persons concerned. It was the Committee's view that the action of the police resulting in the death of Mrs. Suárez de Guerrero was disproportionate to the requirements of law enforcement in the circumstances.

These are all important principles on the use of force, and especially on the use of lethal force, that police should follow.

Another significant observation made by the Committee in this case was that the victims were no more than suspects of a crime. Their killing by the police deprived them of all the protections of due process of law laid down by the Covenant. As one of the purposes of policing is to protect the rule of law, it is manifestly important that police actions should reinforce and not subvert the due process of law.

The Committee concluded that Mrs. Suárez de Guerrero was arbitrarily deprived of her life in violation of article 6, paragraph 1, of the Covenant. If the police action was justifiable under Colombian law, the right to life was not adequately protected by law as required by the same provision of the Covenant.

European Court of Human Rights

In the case *Stewart v. the United Kingdom*, the Commission on Human Rights, before declaring the application inadmissible, made some important statements on the interpretation of article 2 of the Convention, later referred to by the European Court of Human Rights. Having reviewed the wording of article 2, and the jurisprudence of both the Commission and the Court, it was the Commission's opinion that the text of this

article, read as a whole, indicated that paragraph 2 did not primarily define situations where it was permitted intentionally to kill an individual, but it defined the situations where it was permissible to use force which might result, as the unintended outcome of the use of force, in the deprivation of life.

The use of force, however, had to be no more than absolutely necessary for the achievement of one of the purposes set out in article 2, paragraph 2 (a), (b) or (c), of the Convention. In this respect, the Commission observed that the use of the term "absolutely necessary" in that paragraph indicated that a stricter and more compelling test of necessity had to be employed from that normally applicable when determining whether State action was necessary in a democratic society under paragraph 2 of articles 8 to 11. In particular, the force used had to be strictly proportionate to the achievement of the aims set out in article 2, paragraph 2 (a), (b) and (c). In assessing whether the use of force was strictly proportionate, regard had to be taken to the nature of the aim pursued, the dangers to life and limb inherent in the situation and the degree of the risk that the force employed might result in loss of life.

These observations on the wording of article 2 of the Convention were cited in the case *McCann and Others v. the United Kingdom*. This judgment concerns a complex anti-terrorist operation that required careful analysis of intelligence, detailed planning and cooperation between various authorities in different jurisdictions. In this operation, three terrorist suspects were killed, and the applicants, representing the estates of the victims, claimed that the killing of the suspects disclosed a violation of article 2. The Court, in finding a violation of the right to life, attributed that violation to defects in the control and organization of the operation and not to the actions of four soldiers who actually killed the terrorist suspects.

The Court considered that the use of force by agents of the State in pursuit of one of the aims delineated in article 2, paragraph 2, of the Convention might be justified where it was based on an honest belief, perceived, for good reasons, to be valid at the time, but which subsequently turned out to be mistaken. However, having carefully scrutinized the way in which the authorities interpreted the intelligence available to them, the briefing given to the four soldiers and the way in which events unfolded during the operation, it appeared to the Court that there had been a lack of appropriate care in the control and organization of the arrest operation. The Court was not persuaded that the killing of the three suspects constituted the use of force no more than absolutely necessary in defence of persons from unlawful violence within the meaning of article 2, paragraph 2 (a).

Non-Treaty Instrument

The Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions were promulgated in response to one form of deprivation of the right to life of particular concern, unlawful killings by state officials such as military or law enforcement personnel.

The provisions of this instrument are embodied in 20 principles under the sub-headings of 'Prevention', 'Investigation', and 'Legal proceedings'. Its first principle requires governments to prohibit by law all extra-legal, arbitrary and summary executions and

stipulates that 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.

Among its other provisions are those which require:

- strict control, including a clear chain of command, over officials responsible for arrest and detention, and those authorised to use force and firearms;
- governments to prohibit orders from superior officers or public authorities authorising or inciting other persons to carry out extra-legal, arbitrary or summary executions;
- all persons to defy such orders;
- training of law enforcement officials to emphasise these provisions;
- thorough, prompt and impartial investigations of all cases of extra-legal, arbitrary and summary executions;
- governments to bring to justice all persons identified by investigations as having participated in such killings.

Use of Force by Police

Three non-treaty instruments, two global and one regional, set out standards on the use of force. Compliance with the provisions of these instruments reinforces protection of the right to life and enhances the professionalism and effectiveness of police in the exercise of this power.

Non-Treaty Instruments

Code of Conduct for Law Enforcement Officials

The general requirement in article 2 of the Code for police officials to respect and protect human dignity and to maintain and uphold human rights, clearly includes a requirement to act lawfully and humanely in relation to the application of force.

However, the Code includes the specific provision that police may use force only when strictly necessary and to the extent required for the performance of their duty (article 3).

The main points to the Commentary to the article are that:

- while the provision implies that police may 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; and
- firearms should not be used except when a suspected offender offers armed re-

sistance or otherwise jeopardises the lives of others, and less extreme measures are not sufficient to restrain or apprehend the suspected offender.

Clearly this standard limits use of firearms to protection of the person (of a police official or any other person) and not for other reasons sometimes included in national legislation such as 'protection of property' or 'national security'.

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

The preamble to this instrument acknowledges:

- the importance of the social service rendered by law enforcement officials; and
- the vital role law enforcement officials play in the protection of the right to life, liberty and security of the person.

The preamble also points out that it is appropriate for consideration be given to the role of law enforcement officials in relation to:

- the administration of justice;
- the protection of the right to life, liberty and security of the person;
- their responsibility to maintain public safety and social peace; and
- the importance of their qualifications, training and conduct.

There are two references in the preamble to the personal safety of law enforcement officials, and it is emphasised that a threat to the life and safety of police officials must be seen as a threat to the stability of society as a whole.

Rules and Regulations

The instrument requires governments and law enforcement agencies to:

- adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials; and
- keep the ethical issues associated with the use of force and firearms constantly under review (principle 1).

The rules and regulations are to include guidelines:

- on circumstances when police may carry firearms as well as on permitted types of firearms and ammunition;
- to ensure that firearms are only used when appropriate and in a manner likely to decrease the risk of unnecessary harm;

- prohibiting the use of firearms and ammunition that cause unwarranted injury, or present an unwarranted risk;
- regulating control, storage and issue of firearms and ammunition, and including procedures to ensure officials are accountable for firearms and ammunition issued to them;
- requiring warnings to be given, if appropriate, when firearms are to be discharged; and
- establishing a system of reporting whenever police use firearms in the performance of their duty (principle 11).

Equipment

The instrument requires governments and law enforcement agencies to:

- develop a range of means as broad as possible and to equip officials with various types of weapons and ammunition, to allow for a differentiated use of force and firearms;
- develop non-lethal incapacitating weapons to restrain the application of means capable of causing death or injury;
- equip officials with self defensive equipment such as shields, helmets, bullet-proof vests and bullet proof means of transportation, in order to decrease the need to use weapons of any kind; (principle 2) and
- ensure that the development and deployment of non-lethal incapacitating weapons is carefully evaluated in order to minimise the risk of endangering uninvolved persons, and that the use of any such weapons is carefully controlled (principle 3).

Selection and Training

Governments and law enforcement agencies are required to ensure that all police officials:

- are selected by proper screening procedures;
- have appropriate moral, psychological and physical qualities;
- receive continuous and thorough professional training;
- are subject to periodic review of their fitness to perform their functions; (principle 18)
- are trained and tested in accordance with appropriate proficiency standards in the use of force; and

- if required to carry a firearm, only authorised to do so when specially trained (principle 19).

In the training of police officials, governments and law enforcement agencies are to give special attention to:

- issues of police ethics and human rights;
- alternatives to the use of force and firearms, including the peaceful settlement of conflicts, understanding of crowd behaviour, and methods of persuasion, negotiation and mediation with a view to limiting the use of force and firearms.

Training programmes and operational procedures are to be reviewed in the light of particular incidents (principle 20).

Misuse of Force and Firearms

Governments are to ensure that arbitrary or abusive use of force and firearms by police officials is punished as a criminal offence according to the law (principle 7).

Exceptional circumstances such as internal political instability or public emergency may not be invoked to justify a departure from the basic principles (principle 8).

Use of Firearms

Use of firearms is considered to be an extreme measure, and is strictly regulated. The instrument requires that police officials shall not use firearms against persons except:

- in self-defence or defence of others against imminent threat of death or serious injury;
- to prevent a particularly serious crime involving grave threat to life; or
- 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.

Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (principle 9).

An analysis of this provision reveals that, as with article 3 of the Code of Conduct for Law Enforcement Officials, it limits use of firearms to protection of the person. This is explicit in the first bullet point above. In the second bullet point, use of firearms is limited to situations where there is a 'grave threat to life'. In the third bullet point use of firearms is limited to arresting a person, or preventing the escape of a person, presenting such a danger – that is to say a 'grave threat to life'.

In the above-mentioned circumstances, police 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 police officials at risk;
OR
- would create a risk of death or serious harm to other persons;
OR
- would clearly be inappropriate or pointless in the circumstances of the incident (principle 10).

Policing Unlawful Assemblies

The instrument reiterates the right of everyone to freedom of peaceful assembly and association that is embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and stipulates that governments and law enforcement agencies shall recognise that force and firearms may be used only in accordance with principles 13 and 14 (principle 12):

- in dispersing unlawful but non-violent assemblies police officials shall avoid the use of force or, where that is not practicable, shall restrict the use of force to the minimum extent necessary; (principle 13)
- in dispersing violent assemblies police may use firearms only when less dangerous means are not practicable;
AND
- only to the minimum extent necessary;
AND
- only under the conditions stipulated in principle 9 (principle 14).

The reference to principle 9 is the most important part of principle 14. It reminds police officials that use of firearms against people in assemblies can only be justified if those individual persons against whom firearms are used present the threats referred to in principle 9. Indiscriminate shooting into a crowd is completely unjustified.

Policing Persons in Custody or Detention

In their relations with detainees police shall not:

- use force except when strictly necessary for the maintenance of security and order within the institution,
OR
- when personal safety is threatened (principle 15);
- use firearms except in self-defence or in defence of others against the immediate threat of death or serious injury,
OR

- when strictly necessary to prevent the escape of a detainee who presents the danger referred to in principle 9 (principle 16).

Stress Counselling

Governments and law enforcement agencies shall make stress counselling available to police officials who are involved in situations where force and firearms are used (principle 21).

Reporting and Review Procedures

Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents where:

- death or injury is caused through use of force and firearms by police officials; or
- police officials use firearms in the performance of their duty.

For incidents reported in accordance with these procedures, governments and law enforcement agencies shall ensure that:

- an effective review process is available; and
- independent administrative or prosecution authorities are able to exercise jurisdiction in appropriate circumstances.

In cases of death, serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control (principle 22).

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 death of such persons, this provision applies to their dependants (principle 23).

Responsibility of Law Enforcement Officials

Governments and law enforcement agencies shall ensure that superior police officials are held responsible if:

- they know or should have known that officials under their command are resorting to, or have resorted to unlawful use of force and firearms;
AND
- did not take all measures in their power to prevent, suppress or report such use (principle 24).

Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on police officials who, in compliance with the Code of Con-

duct for Law Enforcement Officials and these principles:

- refuse to carry out an order to use force and firearms, or
- who report unlawful use of force and firearms by other officials (principle 25).

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.

Responsibility in those situations also rests on the superior who gave the unlawful orders (principle 26).

European Code of Police Ethics

Article 37 of the Code states that the police may use force only:

- when strictly necessary; and
- only to the extent required to obtain a legitimate objective.

The Commentary to the article states that the article recognises the case-law of the European Court of Human Rights with regard to article 2 of the European Convention on Human Rights, but adds that it should be noted that the present rule is applicable to all kinds of situations where the police are entitled to use force.

As a starting point, the Commentary continues, there must always be a legal basis for police operations, including the use of force. Arbitrary use of force can never be accepted. Moreover, article 37 indicates that the use of force by the police must always be considered as an exceptional measure and, when there is need for it, no more force than is absolutely necessary may be used.

This implies that the force used should be proportionate to the legitimate aim to be achieved through the measure of force. There must, accordingly, be a proper balance between the using of force and the situation in which the force is used.

In practical terms, this means, for example, that

- no physical force should be used at all, unless strictly necessary;
- weapons should not be used, unless strictly necessary; and
- if lethal weapons are deemed necessary, they should not be used more than what is considered strictly necessary; shoot to warn before shoot to wound and do not wound more than is strictly necessary, etc.

Normally, the Commentary points out, national legislation and regulations should contain provisions on the use of force based on the principles of necessity and proportionality. However, the practical approach to the problem in a given situation is more difficult, as the use of force, according to the above principles, places a heavy burden on the police and emphasises the need for police personnel not only to be physically fit and equipped but also, to a large extent, to have well developed psychological skills. The Commentary concludes by emphasising the importance of recruiting suitable personnel to the police, and of training.

Points to Promote Discussion

1. Describe the principles of necessity and proportionality in your own words.
2. In the planning and conduct of an operation where firearms are to be used, what positive steps can be taken by police to protect the right to life?
3. The law must strictly control and limit the circumstances in which a person may be deprived of life by security and police forces. How does the law in your country prevent arbitrary killings by such forces? What other measures, in addition to the law, are necessary to prevent such killings?
4. When there is heightened tension within a community or between communities what strategies and tactics can police adopt to prevent mass violence and thus protect the right to life? What actions should police avoid?
5. Policing is difficult and dangerous. Whilst acknowledging that not all of its difficulties and dangers can be removed what can:
 - governments
 - police leaders
 - individual polices officialsdo to protect the right to life of police officials?

SECTION a b c d

The Right to Liberty and Security of Person and the Powers to Arrest and Detain

Introduction

This section focuses on the right to liberty and security of person and the prohibition of arbitrary arrest and detention, and on rights of arrested and detained people. Standards specifically protecting detainees from torture and other forms of ill-treatment, and requiring humane treatment of detainees, are covered in the next section.

Those detained by police as suspects of crime may be interviewed as part of the investigative process. The rights of detainees subjected to interrogation or interview by police are set out in section c of chapter 2, part 2 herein.

The commentary deals with relevant aspects of the nature and significance of the right to liberty and security of person and the prohibition of arbitrary arrest and detention. The nature and scope of powers to deprive people of their liberty are considered, and some important terms are defined.

Global and regional treaty provisions on these rights and prohibitions are set out under the sub-heading 'Essential Information for a Presentation', which also includes examples of comments and findings of treaty bodies, provisions of non-treaty instruments, and accounts of the rights of juveniles in relation to deprivation of liberty.

Key Points

The key points to this topic are:

- the right to liberty and security of person must be respected;

- nobody is to be arbitrarily arrested or detained;
- police may arrest or detain only when they have lawful powers to do so, and only when it is necessary to do so;
- the rights of arrested and detained people must be respected; and
- the specific rights of arrested and detained juveniles must be respected.

Commentary

The right to liberty and security of person is a fundamental human right. Liberty and security of person is a necessary condition for people to be able to function as autonomous human beings, to secure their basic human needs, and to develop and lead fulfilling lives personally and within their communities.

The powers to arrest and detain are essential to effective policing. Most jurisdictions allow police to deprive a person of his or her liberty:

- when a person is found committing an offence; or
- when there is reasonable suspicion that the person has committed an offence; or
- when it is reasonably considered necessary to prevent the person from committing an offence; or
- when it is necessary to maintain or restore public order.

Clearly the ultimate purpose of arrest and detention relating to crimes or offences is to bring an accused person before a court in order that the guilt or innocence of that person may be decided according to the law.

Police are also given powers of arrest and detention in some legal jurisdictions for such purposes as the protection of:

- juveniles;
- people of unsound mind; and
- alcoholics or drug addicts.

A person deprived of liberty requires special measures of protection because he or she is vulnerable to particular forms of abuse.

It is for these reasons that there are extensive provisions in the various international instruments prescribing the rights and freedoms of individuals at the moment of arrest and, subsequently, during any period of detention.

The term 'arrest' is not defined in the Universal Declaration of Human Rights, nor in any of the treaty provisions that prohibit arbitrary arrest or detention, 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.'

The exact meaning of the term, and the powers given to police to arrest, vary between the different legal jurisdictions. The meaning given to it in this section of the manual is the same as that in the Body of Principles as set out above. In other words the actual act of depriving a person of his or her liberty, and the first moments of deprivation of liberty which follow that act.

Detention is distinguished from arrest in this context because it is taken to mean that period of deprivation of liberty which follows the act of arrest and the initial moments of arrest.

Post-conviction detention, or imprisonment, is usually the concern of prison officials.

Definitions set out in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment make the same distinction:

'Detained person means any person deprived of personal liberty except as a result of conviction for an offence.

Imprisoned person means any person deprived of personal liberty as a result of conviction for an offence.'

To effect an arrest lawfully, effectively and humanely requires:

- knowledge – of powers of arrest and limitations on those powers, and of procedures to be complied with on and following arrest;
- ability – to exercise lawful discretion as to when it is appropriate to arrest and when it is appropriate not to do so, especially in relation to different categories of people such as juveniles and the elderly; and
- skills – in inter-personal communication, in the application of police tactics to effect arrests, and possibly in the lawful use of force.

The standards set out in 7.4 below are intended to:

- secure an appropriate balance between fundamental human rights, and powers essential to effective policing, and
- provide safeguards so that arrested and detained people are treated humanely. Such safeguards may also secure some of the necessary conditions for a fair trial in those cases where detainees subsequently appear before courts charged with criminal offences.

It may be helpful on some teaching programmes to provide participants with a summary of requirements expressed in international instruments on various aspects of this topic. For example, of the requirements to:

- inform the arrested person of the reasons for arrest at time of arrest;
- inform the arrested person promptly of any charges against him or her;
- inform the arrested person of his or her rights and how to avail himself or herself of them;
- to respect the legal status of juveniles and to inform parents or guardians of arrested juveniles immediately of the fact of arrest;
- record in respect of each arrested person:
 - a. the reason for arrest;
 - b. the times of arrest, arrival of the arrested person at a place of custody, and of his or her first appearance before a judicial or other authority unclear – b= time, c=place/time, d=...? ;
 - c. the identity of the police official(s) concerned; and
 - d. precise information concerning the place of custody.
- bring the arrested person promptly before a judicial or other authority with similar powers.

Other aspects of the topic can be summarised in a similar way, and participants could be asked to provide their own accounts or summaries.

Key Policing Issues Connected with the Topic

These include the need to ensure that police officials:

- know their powers to arrest and detain, and the limitations on those powers;
- are trained in the skills necessary to carry out arrests lawfully, effectively and humanely, and with due regard for the safety of the arrested or detained person and of the police officials concerned; and
- are properly supervised so that they effect only lawful and necessary arrests, and so that the rights of arrested persons are respected.

Essential Information for a Presentation

The Right to Liberty and Security of Person and the Prohibition of Arbitrary Arrest and Detention

Universal Declaration of Human Rights and International Covenant on Civil and Political Rights

Article 9 of the Universal Declaration of Human Rights states that no one shall be subjected to arbitrary arrest, detention or exile.

The prohibition is expressed in more detail in article 9.1 of the International Covenant on Civil and Political Rights, which stipulates that:

‘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 procedures as are established by law.’

Regional Human Rights Treaties

Article 6 of the African Charter on Human and Peoples’ Rights states:

‘Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.’

Article 7, of the American Convention on Human Rights (in paragraphs 1 -3) states:

1. ‘Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.’

Article 5(1) of the European Convention on Human Rights states:

‘Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- a. the lawful detention of a person after conviction by a competent court;
- b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation

prescribed by law;

- c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.'

Thus, in contrast to the other treaties, the European Convention provides protection from arbitrary arrest and detention by providing an exhaustive list of grounds under which a person may be deprived of his or her liberty 'in accordance with a procedure prescribed by law'.

Victims of unlawful arrest or detention are entitled to an enforceable right to compensation under Article 9(5) of the International Covenant on Civil and Political Rights and Article 5(5) of the European Convention on Human Rights.

Article 10 of the American Convention on Human Rights requires compensation for a person sentenced by a final judgement through a miscarriage of justice. (Unlawful arrest of a person may be a factor in a miscarriage of justice).

Examples of Comments and Findings of Treaty Bodies

Human Rights Committee

General Comment 8(16) on article 9 of the International Covenant on Civil and Political Rights includes the following comments on the right to liberty and security of person and the prohibition of arbitrary arrest and detention:

'Article 9 which deals with the right to liberty and security of persons has often been somewhat narrowly understood in reports by States parties, and they have therefore given incomplete information. The Committee points out that paragraph 1 is applicable to all deprivations of liberty, whether in criminals cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control etc.'

Cases on the right to liberty and security of person and the prohibition of arbitrary ar-

rest considered by the Human Rights Committee, and indeed by other treaty bodies, address such matters as what amounts to a deprivation of liberty, and the requirement for arrests to be lawful and continuing detention subsequent to arrest to be lawful.

The case *Delgado Páez v. Colombia*, concerned the right to security of person. The author of the case had received death threats and been attacked personally. He left Colombia and sought political asylum in another country. This is an important case in which the Committee reasoned that the concept of right to security did not apply only to situations of formal deprivation of liberty, even though it was expressed in an article addressing such situations. The Committee argued that States could not be allowed to ignore known threats to the life of persons within their jurisdiction, just because he or she was not arrested or detained. States parties to the Covenant had a duty to take reasonable and appropriate measures to protect people whose lives had been threatened. The Committee found that the State party had not taken, or had been unable to take, appropriate measures to ensure Mr. Delgado's right to security of his person under article 9(1) of the Covenant.

Working Group on Arbitrary Detention

Several cases considered by the Working Group on Arbitrary Detention are important in policing terms. For example, opinion No. 37/2000 (*Mexico*) concerned four people who were arrested in a violent manner without any arrest warrant from a competent body. It was also alleged that they were tortured whilst in detention. They were subsequently charged with terrorism and other crimes. The Working Group recalled that it could not render an opinion on the innocence of a person deprived of his liberty, but on the arbitrary nature of an arrest in which the principles of due process were not complied with by the authorities. In this case the Working Group considered that the right of the four detainees to the presumption of innocence was not respected inasmuch as they were forced to incriminate themselves under torture. Furthermore, during the first four weeks of their detention, the right to be assisted by counsel was not respected, and their subsequent trial was not conducted with the safeguards of impartiality. The violation of these principles of due process was so serious that the Working Group determined that the deprivation of the liberty of these people was arbitrary, constituting a breach of articles 9 and 10 of the Universal Declaration and articles 9 and 14 of the International Covenant on Civil and Political Rights.

Non-treaty Instrument

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment sets out the following provision on lawfulness of arrest and detention:

'Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorised for that purpose' (principle 2)

Rights of Arrested or Detained People

These rights provide safeguards so that arrested and detained people may be treated humanely. Such safeguards may also secure some of the necessary conditions for a fair

trial in those cases where detainees subsequently appear before courts charged with criminal offences.

International Covenant on Civil and Political Rights

Article 9 (in paragraphs 2 – 5) of the International Covenant on Civil and Political Rights states:

[...]

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 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.'

Regional Human Rights Treaties

Article 7 (in paragraphs 4 – 7) of the American Convention on Human Rights states:

[...]

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained 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 be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone

who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.'

Article 5 (in paragraphs 2 – 5) of the European Convention on Human Rights states:

'[...]

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.'

The African Charter on Human and Peoples' Rights contains no such provisions.

Examples of Comments and Findings of Treaty Bodies

Human Rights Committee

General Comment 8(16) on article 9 of the International Covenant on Civil and Political Rights includes the following comments on the rights expressed in paragraphs 2 – 5 of the article:

'Paragraph 3 of article 9 requires that in criminal cases any person arrested or detained has to be brought 'promptly' before a judge or other officer authorised by law to exercise judicial power. More precise time limits are fixed by law in most States parties and, in the view of the Committee, delays must not exceed a few days. Many States have given insufficient information about the actual practices in this respect.

Also if so-called preventive detention is used, for reasons of public security, it must be controlled by these same provisions, i.e. it must not be arbitrary, and must be based on grounds and procedures established by law (paragraph 1), information [of the reasons] must be given (paragraph 2) and court control [of the detention] must be available (paragraph 4) as well as compensation in the case of a breach (paragraph 5). And if, in addition, criminal charges are brought in such cases, the full protection of article 9(2) and (3), as well as article 14, must also be granted.'

Cases considered by the Committee deal with the various rights protected under paragraphs 2 – 5 of article 9. For example, in *Griffin v. Spain* the author of the complaint, a Canadian citizen, was arrested in Spain in connection with illegal drugs found in his camper vehicle. He claimed that there was no interpreter present at the time of his arrest and that he was not informed of the reasons for his arrest and of the charges against him. The Committee noted that the author was arrested and taken into custody after the police, in his presence, had searched the camper vehicle and discovered illegal drugs. Furthermore, the police refrained from taking his statement in the absence of an interpreter, and the following morning the drugs were weighed in the presence of the author. The author was then brought before an examining magistrate and, through an interpreter, informed of the charges against him. The Committee observed that, although no interpreter was present during the arrest, it was wholly unreasonable to argue that the author was unaware of the reasons for his arrest. In any event, he was promptly informed, in his own language, of the charges against him. Therefore, the Committee found no violation of article 9(2) of the Covenant.

Inter-American Court of Human Rights

The case *Suárez Rosero v. Ecuador* concerned a number of provisions in article 7 of the American Convention on Human Rights, and the provision on the right to judicial protection in article 25. Rafael Iván Suárez Rosero was arrested in connection with a drug-trafficking operation, and then held *incommunicado*. After a criminal court issued an order of preventive detention against him, he filed a writ of *habeas corpus* but this was denied. Mr. Suárez Rosero was eventually released some four years after his initial arrest. Later he was found guilty of illegal trafficking in narcotic drugs, fined and sentenced to a term of imprisonment. At no time had he been summoned to appear before a competent judicial authority to be informed of the charges brought against him.

The Inter-American Court of Human Rights, referring to article 7, paragraphs 2 and 3, of the Convention and to Ecuador's Political Constitution and Code of Criminal Procedure, noted that Mr. Suárez Rosero had not been apprehended *in flagrante delicto*. His arrest should therefore have been effected with a warrant issued by a competent judicial authority. However, the first judicial proceeding relating to his detention took place over a month after his arrest, in violation of procedures previously established by the domestic law of the State. For these reasons, the Court found that Mr. Suárez Rosero's arrest and subsequent detention were in violation of article 7, paragraphs 2 and 3, of the Convention.

The Court further noted that, according to the Political Constitution of Ecuador, the *in-*

communicado detention of a person might not exceed 24 hours. Nevertheless, Mr. Suárez Rosero was held *incommunicado* for a total of 35 days in excess of the maximum period established by the Constitution. The Court observed that *incommunicado* detention was an exceptional measure the purpose of which was to prevent any interference with the investigation of the facts. Such isolation had to be limited to the period of time expressly established by law. Even in that case, the State was obliged to ensure that the detainee enjoyed the minimum and non-derogable guarantees established in the Convention and, specifically, the right to question the lawfulness of the detention and the guarantee of access to effective defence during his incarceration.

The Court found that Mr. Suárez Rosero's *incommunicado* detention violated article 7(2) of the Convention. The Court further deemed that as he had not been brought before a competent judicial authority as required by article 7(5) that provision had also been violated.

With regard to article 7(6) of the Convention, the Court observed that the right it enshrined was not exercised with the mere formal existence of the remedies it governed as those remedies had to be effective. In an advisory opinion, the Court had held that in order for *habeas corpus* to achieve its purpose, to obtain a judicial determination of the lawfulness of a detention, it was necessary for the detained person to be brought before a competent judge or tribunal with jurisdiction over him. Here *habeas corpus* performed a vital role in ensuring that a person's life and physical integrity were respected, in preventing his disappearance or the keeping of his whereabouts secret and in protecting him against torture or other cruel, inhuman or degrading punishment or treatment.

The Court considered it proven that the writ of *habeas corpus* filed by Mr. Suárez Rosero was disposed of by the Supreme Court of Justice of Ecuador more than 14 months after it was filed. The application was ruled inadmissible on the ground that he had omitted certain information, whereas, under the domestic law of the State, such information was not a prerequisite for admissibility.

As to article 25 of the Convention, providing everyone with the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal, the Court, in a previous case, had ruled that this provision constituted one of the basic pillars not only of the American Convention on Human Rights, but of the very rule of law in a democratic society in the sense of the Convention. Article 25 was closely linked to the general obligation to respect the rights, contained in article 1, paragraph 1, of the Convention, in assigning protective functions to the domestic law of States parties. The purpose of *habeas corpus* was not only to ensure respect for the right to personal liberty and physical integrity, but also to prevent the person's disappearance or the keeping of his whereabouts secret and, ultimately, to ensure his right to life.

On the basis of this, and especially since Mr. Suárez Rosero had not had access to simple, prompt and effective recourse, the Court found that the State had violated articles 7(6) and 25 of the Convention.

Non-Treaty Instruments

Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment

The Body of Principles includes the following provisions to be applicable on arrest and during detention:

- 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 4);
- at the time of arrest persons to be informed of the reason for arrest, and to be informed promptly of charges against them (principle 10);
- a record to be made of reason for arrest; time of arrest, arrival at place of custody and first appearance before judicial or other authority, identity of law enforcement official concerned, and precise information concerning place of custody (principle 12);
- the person arrested to be provided with information on, and explanation of, his or her rights and how to avail himself or herself of them (principle 13);
- arrested or detained persons entitled to have members of family or other appropriate persons notified of their arrest or detention and of the place where they are detained. Foreign detainees to be informed of right to contact appropriate consular post or diplomatic mission. Parents or guardians of juveniles to be notified of fact of detention (principle 16);
- detained persons entitled to have the assistance of legal counsel, to be informed of that right promptly after arrest, and to be provided with reasonable facilities for exercising it (principle 17);
- a person arrested on a criminal charge to be brought before a judicial or other authority provided by law promptly after arrest. That authority to decide without delay upon the lawfulness and necessity of detention. No person to be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person to have the right to make a statement to such an authority on the treatment received by him in custody (principle 37).

Note: Principle 35 requires damage incurred because of acts or omissions by a public official contrary to rights contained in the Principles, to be compensated according to the applicable rules on liability provided by domestic law.

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

These principles contain a provision requiring governments to ensure a strict control, including a clear chain of command, over all officials responsible for arrest, detention, custody and imprisonment, as well as those authorised to use force and firearms, in order to prevent extra-legal killings (principle 2).

Measures of control and a clear chain of command are additional safeguards for the protection of arrested and detained people. They reinforce the obligation on police leaders to supervise subordinates effectively.

European Code of Police Ethics

The European Code contains the following provisions, in articles 54 – 58, setting out the rights of people deprived of their liberty:

‘54. Deprivation of liberty of persons shall be as limited as possible and conducted with regard to the dignity, vulnerability and personal needs of each detainee. A custody record shall be kept systematically for each detainee.

55. The police shall, to the extent possible according to domestic law, inform promptly persons deprived of their liberty of the reasons for the deprivation of their liberty and of any charge against them, and shall also without delay inform persons deprived of their liberty of the procedure applicable to their case.

56. The police shall provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody. Police cells shall be of a reasonable size, have adequate lighting and ventilation and be equipped with suitable means of rest.

57. Persons deprived of their liberty by the police shall have the right to have the deprivation of their liberty notified to a third party of their choice, to have access to legal assistance and to have a medical examination by a doctor, whenever possible, of their choice.

58. The police shall, to the extent possible, separate persons deprived of their liberty under suspicion of having committed a criminal offence from those deprived of their liberty for other reasons. There shall normally be a separation between men and women as well as between adults and juveniles.’

The Rights of Juveniles in Relation to Deprivation of Liberty

Juveniles deprived of their liberty have the same basic rights as adult detainees, but there are also special provisions for their protection.

Convention on the Rights of the Child

Under this Convention a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier (article 1).

Article 37(b) protects juveniles from arbitrary arrest or detention in the following way:

‘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;’

Article 37(d) provides the following safeguards for juveniles who have been deprived of their liberty:

‘Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.’

Non-Treaty Instrument

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

Under these rules 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 (rule 2.2).

They provide the following safeguards for juveniles who have been deprived of their liberty:

- the parents or guardians of juveniles arrested to be notified immediately of the fact of arrest;
- a judge or other competent official or body to consider, without delay, the issue of release; and
- 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 her or him, with due regard to the circumstances of the case (rule 10).

Points to Promote Discussion

1. Why is the right to liberty of person considered to be such an important right; a fundamental right?
2. The right to security of person means that police have a duty to take reasonable and appropriate measures to protect people whose lives have been threatened. What are the operational implications of this for police agencies?
3. What policing skills does a police official need in order to be able to carry out an arrest lawfully, effectively and humanely?
4. What purposes are served by recording facts relating to arrest such as reason for arrest, time of arrest, identity of police officials concerned and precise information concerning the place of custody?
5. Why is it important to ensure a strict control, including a clear chain of command, over all officials responsible for arrest, detention, custody and imprisonment, as well as those authorised to use force and firearms? In what ways can the actions of police officials be strictly controlled? Identify the features of a clear chain of command.

SECTION a b **c** d

The Treatment of Detainees

Introduction

This section focuses on international standards protecting detainees from torture and other forms of ill-treatment, and requiring humane treatment of detainees.

Standards on the right to liberty and security of person and the prohibition of arbitrary arrest and detention, and on rights of arrested and detained people are dealt with in the preceding section. Whilst such standards provide safeguards designed to secure the humane treatment of arrested and detained people, they do not address directly the prohibitions, requirements and rights covered in this section.

Those detained by police as suspects of crime may be interviewed as part of the investigative process. The rights of detainees subjected to interrogation or interview by police are set out in section c of chapter 2, part 2 herein.

The nature of the crime of torture and the absolute prohibition of torture are discussed in the commentary to this section, as are categories of detainee, and the importance of the power to detain for policing purposes. Two non-treaty instruments are distinguished and the vulnerability of detainees to mistreatment is emphasised.

The text under the sub-heading 'Essential Information for a Presentation' sets out the global and regional treaty provisions, gives examples of comments and findings of treaty bodies, and reproduces or summarises provisions of non-treaty instruments on:

- the prohibition of torture and ill-treatment;
- the right to humane treatment as a detainee.

A brief account of the functions of the United Nations Special Rapporteur on Torture is

given under the first of the above headings. Measures introduced specifically to secure humane treatment of women detainees are included under the second heading.

The section also sets out the international standards on:

- the rights of juvenile detainees; and
- the rights of detainees in penal institutions.

Reference is made to this latter category of detainee in order to provide:

- background information for teachers and resource persons; and
- reference material for use in those situations in which police officials may be deployed as prison officials.

Key Points

The key points to this topic are:

- the gravity of the crime of torture;
- the absolute prohibition of torture and ill-treatment;
- the distinctions between various categories of detainee;
- the prohibition of arbitrary arrest and detention and the rights of detainees on arrest that safeguard them from torture and ill treatment (see preceding section);
- the right to humane treatment as a detainee; and
- the right to be presumed innocent as an accused person.

Commentary

Torture and ill-treatment of detainees are very grave crimes and very serious human rights violations. They are cowardly acts, especially when committed against detainees, who are defenceless and vulnerable, and completely within the power of their captors. No official who abuses a detainee in this way can be considered to be a professional police official. In fact officials who torture and ill-treat people within their care and control should be prosecuted and punished.

There are no circumstances under which torture may be practised lawfully. Torture is a crime under international criminal law and the laws of states. The prohibition of torture is considered to express a general principle of international law binding on all states and is enshrined in human rights treaties as a *non-derogable provision*. This

means that it may not be practised even in time of public emergency threatening the life of the nation. Torture is prohibited under international humanitarian law in times of international and non-international armed conflict, as stated in the Geneva Conventions of 12 August 1949 and the Protocols Additional to the Geneva Conventions.

The prohibition of torture and ill-treatment applies to everyone, whether or not they are in detention. However, people in detention are the most usual victims of these crimes. Detainees, of whatever category, must be protected from torture and ill-treatment, and they have a right to humane treatment.

The distinction between people who are in detention following conviction for an offence and those who are unconvicted detainees is quite clear in the two principle non-treaty instruments dealing with the treatment of detainees, the Standard Minimum Rules for the Treatment of Prisoners, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

The Standard Minimum Rules refer to:

- 'untried prisoners' and 'convicted prisoners'; (rule 8) and
- 'prisoners under sentence' and 'prisoners under arrest or awaiting trial' (part 11 of the rules).

The Body of Principles, under the heading 'Use of Terms' refers to:

- 'detained person' – a person deprived of personal liberty except as a result of conviction for an offence; and
- 'imprisoned person' – a person deprived of personal liberty as a result of conviction for an offence.

The Standard Minimum Rules set standards for the treatment of prisoners and the management of penal and correctional institutions. For this reason they are more relevant to the work of prison officials. However they set good principle and practice for the treatment of prisoners, and they may be relevant to the work of police officials with specific responsibilities for the care and custody of detainees.

The Body of Principles concern people under any form of detention or imprisonment. However, the standards expressed in this instrument have particular relevance to the treatment of detainees in police custody suspected, but not convicted, of any offence. For this reason it is more relevant to the work of police officials than the Standard Minimum Rules.

The power to detain people is an essential police power. As with other powers, such as those to use force and to arrest people, it is a power which is necessary to enable police to carry out their functions, especially those of crime prevention and detection, and the maintenance of public order. For example it enables police to:

- detain people who might commit crime if they remained at liberty;

- carry out criminal investigations which might be impeded if those subject to the investigation remained at liberty; and
- prevent public disorder by lawfully detaining those intending to create unlawful disturbances.

However, as with the other police powers referred to, the power to detain may be abused, by detaining people when there is no power to do so, and by mistreating detainees.

Detainees are vulnerable to mistreatment because:

- their liberty is restricted and they are unable to protect themselves from mistreatment in the ways open to them when they are at liberty;
- they are not readily and permanently in contact with people able to prevent their mistreatment, such as lawyers and members of their family;
- if they are detained on suspicion of involvement in unlawful activity, those responsible for their detention may feel justified in mistreating them in order to further the investigation into that unlawful activity; and
- if they are suspected of being involved with others responsible for unlawful activity, they may be mistreated in order to intimidate those other people. This form of mistreatment occurs particularly in times of disturbance and tension in order to intimidate members of dissident or opposition groups.

Whilst all types of detainee are vulnerable to mistreatment, some of the examples given above indicate the particular vulnerability of detainees subject to investigation for suspected unlawful activity.

Police officials should be reminded that such people, not proved guilty according to law for the crimes of which they are suspected, are entitled to the presumption of innocence. That is their status under law, whatever a police official may think, and however strongly an investigator may believe in a suspect's guilt.

Such detainees are entitled, according to international and national standards, to special forms of treatment which distinguish them from convicted persons and which reflect their status as unconvicted persons. This entitlement and this status should reinforce the prohibition of torture and ill-treatment of detainees, which is to be fully respected in the case of all detainees in any event.

Unfortunately detainees, and especially unconvicted detainees in police custody, are mistreated:

- in all states – on some occasions; and
- in some states – routinely and systematically.

The extent to which detainees are treated humanely in police custody is a measure of the professionalism, competence and humanity of the law enforcement agency and officials concerned. It is also an indication of the nature of the state and society in which the agency functions.

The mistreatment of detainees is intolerable in a lawful and ethical police agency functioning within a democratic society governed by the rule of law.

For these reasons the standards considered in this section should be met in full in every police agency and by every police official.

It is recommended that teachers and resource persons discuss with participants reasons not to torture. For example:

- torture is morally wrong;
- torture is a very serious criminal offence under international law and the laws of states;
- information and evidence can and should be obtained by means other than torture;
- escalation of the practice is highly likely if not inevitable;
- torture has a malign effect on torturers, the organisation to which torturers belong, the legal system, the polity, and the society and culture within which, and in whose name, it is practiced;
- torture creates more criminals, terrorists and subversives;
- information obtained by torture is unreliable;
- by relying on torture, police officials and police agencies fail to develop good professional policing skills by which they can obtain more reliable information;
- a state derives a large part of its authority, and a government derives a large part of its legitimacy, from its moral and legal standing. These are diminished or forfeited through torture practiced in the name of the government or the state;
- torture leads to other forms of corruption by those required to deny its occurrence and protect the perpetrators.

Key Policing Issues Connected with the Topic

These include:

- the need for states to ensure that adequate resources are made available for the humane treatment of detainees;

- the requirement on police to ensure that resources allocated to them for the custody and care of detainees are used as effectively as possible, and that detainees are treated humanely in any event;
- the need to ensure adequate supervision of police officials in their treatment of detainees, whether as officials with the responsibility for custody of detainees, or as investigators who may have access to detainees in order to interrogate them or for other investigative purposes;
- the need to ensure that all detainees are protected from torture and ill-treatment, and especially those detainees in high profile cases who may be at risk of torture and other forms of ill-treatment because of pressure from within and without a police agency to 'get results';
- the need to ensure prompt and thorough investigations of allegations of mistreatment of detainees by police officials.

Essential Information for a Presentation

The Prohibition of Torture and Ill-treatment

Universal Declaration of Human Rights and International Covenant on Civil and Political Rights

Article 5 of the Universal Declaration of Human Rights prohibits torture and cruel inhuman or degrading treatment or punishment.

Article 7 of the International Covenant on Civil and Political Rights states:

'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.'

Regional Human Rights Treaties

Article 5 of the African Charter on Human and Peoples' Rights states;

'Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.'

Article 5, paragraphs 1 and 2, of the American Convention on Human Rights states;

1. 'Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading

punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.'

Article 3 of the European Convention on Human Rights states:

'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

There are also two regional treaties intended to prevent torture, the Inter American Convention to Prevent and Punish Torture and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The Inter-American Convention requires states to outlaw torture and to take measures to prevent it; to investigate allegations of torture, punish offenders, and compensate victims; and to deny exceptional circumstances or superior orders as justifications of torture. There are also measures which provide for universality of jurisdiction over cases in which people are accused of crimes of torture.

It contains provisions stipulating that, after exhaustion of domestic remedies, a case may be submitted to the international fora whose competence has been recognised by the State in question; and that State Parties undertake to inform the Inter-American Commission on Human Rights of any legislative, judicial, administrative or other measures they adopt in application of the Convention.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment established a Committee which, by means of visits, examines the treatment of detainees with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.

Each State Party to the Convention is required to permit visits to any place within its jurisdiction where people are detained by a public authority. There are two types of visits, periodic and ad-hoc. Periodic visits are carried out to all parties to the Convention on a regular basis. Ad-hoc visits are organised when they appear to the Committee to be required in the circumstances. The Committee is entitled to interview in private people deprived of their liberty, and to communicate freely with anyone whom it believes can supply relevant information. After each visit the Committee prepares a report on its findings, which includes, if necessary, recommendations and advice.

Relations between the Committee and the parties to the Convention are governed by two principles, cooperation and confidentiality. Cooperation means that the Committee may visit any place within its jurisdiction where people are deprived of their liberty by the State, unless there are exceptional circumstances which prevent them from doing so. The principle of confidentiality means that the question of publicity arises only if a State fails to cooperate with the Committee, or refuses to make improvements following the Committee's recommendations. The aim of the Convention is to assist States to strengthen the protection of detainees, not to condemn States.

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

Article 1(1) of the Convention defines torture in the following terms:

‘For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.’

It can be seen that the four main elements of torture according to this definition are:

- severe pain or suffering, physical or mental
- intentionally inflicted
- for a purpose
- public official

It should be noted that a public official, or person acting in an official capacity, can be implicated in the crime of torture in a number of ways, when pain or suffering is inflicted:

- by or at the instigation of a public official
- with the consent or acquiescence of a public official
- by or at the instigation of a person acting in an official capacity
- with the consent or acquiescence of a person acting in an official capacity

This means that public officials at all levels may be held responsible if they knowingly fail to prevent torture.

Article 2 of the Convention contains the following three provisions:

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.

States parties to the Convention are legally bound by its provisions, and these include provisions for bringing persons accused of torture to justice, regardless of:

- their nationality; or
- of where the crime is alleged to have been committed.

Other provisions of the Convention relevant to police officials are those requiring each State party to:

- ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel (article 10(1));
- include the prohibition in the rules or instructions issued in regard to the duties and functions of such persons (article 10(2));
- keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subject to any form of arrest, detention or imprisonment (article 11);
- 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 12);
- 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 examined by, its competent authorities (article 13);
- ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made (article 15).

The Convention also established a Committee to assist in the implementation of its provisions, an account of which can be found in section c of chapter 2, part 1 herein.

An Optional Protocol to the Convention, not yet in force, was adopted in 2002 to strengthen the protection against torture by introducing non-judicial means of a preventive nature, based on regular visits to places of detention.

Examples of Comments and Findings of Treaty Bodies

Human Rights Committee

General comment No. 20(44) on article 7 of the International Covenant on Civil and Political Rights includes the following comments on the prohibition of torture.

'The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual.'

'The text of article 7 allows of no limitation. The Committee reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to justify a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.'

'The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.'

'Enforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training.'

'It should be noted that keeping under systematic review interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, is an effective means of preventing cases of torture and ill-treatment. To guarantee the effective treatment of detained persons, provisions should be made for detainees to be held in places officially recognised as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings. Provisions should also be made against incommunicado detention. In that connection, State parties should ensure that any places of detention be free from any equipment liable to be used for inflicting torture or ill-treatment. The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.'

'It is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.'

'Those who violate article 7, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible. Consequently, those who have refused to obey orders must not be punished or subjected to any adverse treatment.'

Committee against Torture

In a case considered by the Committee against Torture, *Hajrizi Dzemajl et al v Serbia and Montenegro*, the complainants were 65 nationals of that country, all of Roma origin. The case arose because several hundred non-Roma people attacked a Roma settlement, which resulted in the levelling of the entire settlement and the burning or complete destruction of all of the properties belonging to the Roma residents. A number of police officials were present when this incident took place but they failed to intervene. Investigations into the incident were discontinued and no one was prosecuted for any offences. The State failed to enable the victims to obtain redress or to provide them with compensation. The complainants alleged violations of a number of articles of the Convention against torture.

The Committee considered that the burning and destruction of houses constituted acts of cruel, inhuman or degrading treatment or punishment, committed with the acquiescence of police officials, in violation of article 16(1) of the Convention. In an individual opinion, two members of the Committee expressed the view that the acts amounted to torture within the meaning of article 1(1) of the Convention. The Committee also found violations of articles 12 and 13 of the Convention.

European Court of Human Rights

In the case *Aksoy v. Turkey*, the applicant, Zeki Aksoy, a Turkish citizen, complained that he had been subject to treatment contrary to article 3 of the European Convention on Human Rights during his detention in police custody. The Court found that the victim had been subjected to ill-treatment of such a serious and cruel nature that it could only be described as torture, and held that there had been a violation of article 3. The Court said that article 3 enshrined one of the fundamental values of democratic society and that even in the most difficult of circumstances, such as the fight against organized terrorism and crime, the Convention prohibited in absolute terms torture or inhuman or degrading treatment or punishment. The Court observed that where an individual was taken into police custody in good health but found to be injured at the time of release, it was incumbent on the State to provide a plausible explanation as to the causing of the injury. Failing to do so raised a clear issue under article 3 of the Convention.

Non-Treaty Instruments

Code of Conduct for Law Enforcement Officials

The prohibition of torture is expressed in article 5 of the Code of Conduct for Law Enforcement Officials where it is stated that 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, or 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.

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

Principles 15 and 16 set out standards on the use of force in respect of persons in custody or detention.

Principle 15 reinforces the prohibition of torture and ill-treatment by prohibiting law enforcement officials from using force on detainees except when strictly necessary for:

- the maintenance of security and order within the institution, or
- when personal safety is threatened.

Principle 16 prohibits law enforcement officials, in their relations with persons in custody or detention, from using firearms except:

- in self-defence or in 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.

Note: The danger that relates to persons escaping, referred to in principle 9, is one involving 'a grave threat to life'.

Body of Principles for the Protection of all Persons Under any Form of Detention or Imprisonment

Principle 6 reinforces the prohibition of torture and ill-treatment in the following way:

'No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstances whatsoever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.'

European Code of Police Ethics

Article 36 of the European Code of Police Ethics states that the police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances. The Commentary to the article reads as follows:

'The prohibition of torture or inhuman or degrading treatment or punishment contained in this Article, derives from Article 3 of the European Convention on Human Rights. The European Court of Human Rights clearly and systematically affirms that article 3 of the European Convention enshrines one of the fundamental values of democratic societies and that the prohibition is absolute. That means that under no circumstances can it be admissible for the police to inflict, instigate or tolerate any form of torture for any reason. The word "tolerate" implies that the police should even have an obligation to do their utmost to hinder such treatment, which also follows from the overall objectives of the police, see articles 1 and 38.

In addition to the fact that torture, inhuman or degrading treatment or punishment is a serious offence against human dignity and a violation of human rights, such measures, when used for the purpose of obtaining a confession or similar information, may, and are even likely to, lead to incorrect information from the person who is subject to torture or similar methods. Thus, there is no rational justification for using such methods in a state governed by the rule of law.

It is clear that both physical and mental suffering are covered by the prohibition. For a more detailed analysis on what kind of behaviour that is covered by torture, inhuman or degrading treatment, reference is made to the case law of the European Court of Human Rights as well as to the principles developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). These bodies have provided a rich source of guidance for the police, which must govern police action and be used in the training of police personnel.

It goes without saying that a police service that uses torture or inhuman or degrading treatment or punishment against the public, are unlikely to earn respect or confidence from the public.'

Note: Article 1 of the European code of Police Ethics states that one of the purposes of the police in a democratic society governed by the rule of law is to protect and respect the individual's fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights;

Article 38 requires police to always verify the lawfulness of their intended actions.

The United Nations Special Rapporteur on Torture

At its forty-first session, the Commission on Human Rights, described in section c of chapter 2 part 1 of this manual, adopted resolution 1985/33 of 13 March 1985 in which it decided to appoint a special rapporteur to examine questions relevant to torture, requesting him to seek and receive credible and reliable information on such questions and to respond to that information without delay. The mandate has been renewed by the Commission in subsequent resolutions.

The Special Rapporteur submits annual reports on his activities and mandate, as well as his conclusions and recommendations, to the Commission on Human Rights and

the General Assembly. To this end, he establishes contact with governments and asks them for information on the legislative and administrative measures taken to prevent torture and to remedy its consequences whenever it occurs.

The requirement to respond effectively to credible and reliable information has led to the urgent appeals procedure in which Governments are requested to clarify the situation of individuals whose circumstances give grounds to fear that treatment falling within the Special Rapporteur's mandate might occur or be occurring. This procedure is essentially preventive in nature and purpose.

The Government concerned is requested to look into the matter and to take steps aimed at protecting the right to physical and mental integrity of the person concerned, in accordance with the international human rights standards.

The Special Rapporteur's mandate also permits him to undertake fact-finding visits to states where information suggests that torture may involve more than isolated and sporadic incidents, with a view to gaining more direct knowledge of the situation and practice relating to matters falling within his mandate and identifying measures to prevent the recurrence of such cases and to improve the situation.

The Right to Humane Treatment as a Detainee

The right to humane treatment is a positive right, supplementing the prohibitions of torture and ill-treatment.

International Covenant on Civil and Political Rights

Article 10 of the International Covenant on Civil and Political Rights requires:

- all persons deprived of their liberty to be treated humanely and with respect for the inherent dignity of the human person;
- accused persons to be segregated from convicted persons and subjected to separate treatment appropriate to their status as unconvicted persons; and
- accused juveniles to be separated from adult detainees.

Regional Human Rights Treaties

Paragraph 2 of article 5 of the American Convention on Human Rights, requiring persons deprived of their liberty to be treated with respect for the inherent dignity of the human person, is set out above.

Paragraphs 4 and 5 of the same article state, respectively:

'Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.’

The African Charter and the European Convention contain no similar provisions.

Examples of Comments and Findings of Treaty Bodies

Human Rights Committee

The Human Rights Committee, in its General Comments on article 10 of the International Covenant on Civil and Political Rights, has made the following comments relevant to this section:

‘Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of their liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.

Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available to a State party. This rule must be applied 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.’

African Commission on Human and Peoples’ Rights

The complainant in *John D. Ouko v. Kenya* claimed to be a Student’s Union leader who was forced to leave the country for his political opinions. He alleged that, prior to leaving the country, he was arrested and detained without trial for ten months in the basement cells of the Secret Service Department in Nairobi. The detention facility was a two by three metre cell with a 250-watt electric bulb, which was left on throughout the entire period of his detention. The complainant alleged he was denied bathroom facilities and was subjected to both physical and mental torture.

The African Commission on Human and Peoples’ Rights found these conditions contravened the right to dignity and freedom from inhuman and degrading treatment under article 5 of the African Charter on Human and Peoples’ Rights. It also observed that such conditions and treatment were contrary to the minimum standards contained in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, particularly Principles 1 and 6.

The Commission felt, however, that the conditions and treatment did not amount to torture for it observed that, although the complainant had claimed a violation of his right to freedom from torture, he had not substantiated this claim. It concluded that Kenya had violated article 5 and other articles of the Charter.

Non-Treaty Instruments

Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment

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.

European Code of Police Ethics

Article 56 requires the police to provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody. Police cells are to be of a reasonable size, have adequate lighting and ventilation and be equipped with suitable means of rest.

The Humane Treatment of Women Detainees

Two types of provision in international instruments embody further measures necessary for the treatment of women detainees, one concerns accommodation and the other discrimination.

Measures on accommodation are set out in rule 8 of the Standard Minimum Rules for the Treatment of Prisoners which requires:

- different categories of prisoners to be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record etc.; and
- men and women as far as possible to be kept in separate institutions, and in an institution which receives both men and women – the premises allocated to women to be kept entirely separate.

Note: whilst the Standard Minimum Rules are primarily concerned with penal and correctional institutions, the principle of accommodating women in separate accommodation to men should clearly be applied to detainees in police detention facilities where unconvicted people are held in custody.

Measures on discrimination are set out in Principle 5 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment which stipulates that:

- the principles are to be applied without distinction of any kind such as race, colour, sex, language etc.; and

- 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.

Note: In most states there are domestic laws or rules which require:

- women police or prison officials to supervise women detainees; and
- searches of detainees to be carried out by persons of the same sex as the detainee.

Participants should be reminded that those rules must be strictly complied with.

The Treatment of Juvenile Detainees

Juveniles in detention have the same basic rights as adult detainees, but there are also special provisions for their protection. These are largely embodied in the Convention on the rights of the Child, and a non-treaty instrument, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

Convention on the Rights of the Child

Article 37, in paragraphs (a) and (c) respectively, requires that:

‘No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;’

Non-Treaty Instrument

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

These rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms (rule 3).

Under the rules, a juvenile is every person under the age of 18 (rule 11).

Part III concerns ‘Juveniles under Arrest or Awaiting Trial’ and includes two rules, 17 and 18, which stress the presumption of innocence and the special treatment which

attaches to that status. They set out basic rights, and requirements on the conditions under which untried juveniles are to be detained.

These include:

- the right to legal counsel;
- opportunities to undertake work with remuneration;
- opportunities for education and training; and
- provision of material for leisure and education.

The Rights of Detainees in Penal Institutions

As indicated under sub-heading 3 above, 'Commentary', the principal instrument setting standards for the treatment of this category of detainee is the Standard Minimum Rules for the Treatment of Prisoners. Information on this instrument is included as background information for teachers and resource persons, and as reference material for use in those situations where police officials may have to act as prison officials.

However, it must be emphasised that:

- the skills, qualities and training needs of prison officials are different to those of police officials;
- it is entirely unsatisfactory for people trained as police officials to be deployed as prison officials in penal or correctional institutions; and
- human rights programmes for prison officials should be based on teaching manuals and other resources developed specifically for their unique needs.

The Standard Minimum Rules for the Treatment of Prisoners were adopted to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions, and consist of 95 rules in 2 parts;

- Part I covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted;
- Part II contains rules applicable only to special categories of prisoners;

A basic principle of non-discrimination for the application of the Rules is expressed in rule 6, requiring impartiality and no discrimination on any of the usual grounds such as race, sex, religion etc.

Part I of the Rules then makes stipulations on such matters as:

- separation of categories;

- accommodation;
- personal hygiene;
- clothing and bedding;
- food;
- exercise and sport;
- medical services;
- discipline and punishment;
- instruments of restraint;
- information to and complaints by prisoners;
- contact with the outside world;
- books;
- religion;
- retention of prisoners' property;
- notification of death, illness, transfer, etc.;
- removal of prisoners;
- institutional personnel; and
- inspection.

Part II of the Rules makes stipulations on;

- prisoners under sentence;
- insane and mentally abnormal prisoners;
- prisoners under arrest or awaiting trial;
- civil prisoners; and
- persons arrested or detained without charge.

Rules 84 to 93 under Part II concerning 'Prisoners under Arrest or Awaiting Trial' may be of interest to some police officials. They are summarised as follows:

- the presumption of innocence of unconvicted prisoners is repeated and
- such prisoners shall benefit by a special regime; (rule 84)
- untried prisoners shall be kept separate from convicted prisoners, and young untried prisoners shall be kept separate from adults; (rule 85)
- untried prisoners shall sleep singly in separate rooms – taking into account local custom in respect of the climate; (rule 86)
- within the limits compatible with good order of the institution, untried prisoners may have food procured at their own expense from outside, otherwise the administration shall provide food; (rule 87)
- an untried prisoner shall be allowed to wear his own clothing if it is clean and suitable, and if he wears prison dress it shall be different from that supplied to convicted prisoners; (rule 88)
- an untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work he shall be paid for it; (rule 89)
- an untried prisoner shall be allowed to procure at his own expense such books, newspapers, writing materials and other means of occupation as are compatible with the interests of justice and good order in the institution; (rule 90)
- an untried prisoner shall be allowed to be visited and treated by his own doctor and dentist – at his own expense; (rule 91)
- an untried prisoner shall be allowed to inform immediately his family of his detention, and shall be given reasonable facilities to communicate with his family and friends – subject only to such restrictions as are compatible with the interests of justice, and security and good order of the institution; (rule 92)
- for the purposes of his defence an untried prisoner shall be able to apply freely for legal aid where this is available, and to receive visits from his legal adviser. Interviews between the prisoner and his legal adviser maybe within the sight but not the hearing of a police or institution official (rule 93).

Points to Promote Discussion

1. The Convention against torture contains the following provisions:
 - 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.
 - An order from a superior officer or a public authority may not be invoked as a justification of torture.

- What are the reasons for making the prohibition of torture as total and absolute as this?
2. Provide a definition of mental torture, and give some examples.
 3. What is meant by the physical and mental integrity of the individual? Why is it important to respect and protect them?
 4. In what ways can the training of police officials take into account the prohibition of torture?
 5. Given that treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule, and that the application of this rule as a minimum cannot be dependent on the material resources available in a state, discuss all of the ways in which a police agency in a state with few material resources can ensure that detainees in the care of its officials are treated with humanity and with respect for their dignity – in spite of the lack of resources.

SECTION a b c d

The Right to Private and Family Life and the Powers of Search and Surveillance

Introduction

This section focuses on the right to protection against arbitrary or unlawful interference with privacy, family, home or correspondence in relation to the powers to search and to carry out surveillance operations.

The commentary considers the nature and significance of the right, as well as the importance of the powers to search and to carry out surveillance operations, and the need to develop technical policing skills in these areas.

Provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and regional treaties prohibiting arbitrary interference with privacy, family, home and correspondence are set out under the sub-heading 'Essential Information for a Presentation'. These are enhanced by examples of comments and findings of treaty bodies.

Relevant provisions of three non-treaty instruments are also included. These express standards on the safety and privacy of victims of crime; on the requirement on police to respect matters of a confidential nature coming into their possession; on principles to apply when interfering with privacy; and on the collection, storage, and use of personal data by the police.

Key Points

The key points to this topic are:

- the prohibition of arbitrary interference with privacy;

- the right to protection of the law against such interference; and
- the police role in protecting the right to privacy, especially that of specific categories of vulnerable people.

Commentary

The right of a person to have his or her private life respected, and protected from interference, is a precious freedom. It is a freedom necessary for the development of inter-personal relationships and for the development of the individual personality. It is important in many areas of human activity including family life and working or professional life. The recent expansion of technological means to intrude on privacy, for example electronic surveillance measures and computerised filing systems and data banks, means that there should be correspondingly greater vigilance in protecting the right.

At the same time it has to be recognised that the power to search people, buildings and other private property is a power essential to the prevention and detection of crime, and indeed to the performance of other police functions.

The power to carry out surveillance operations and to intercept mail, telephone and other forms of communication is particularly important in dealing with organised crime and crimes of terrorism.

Both of these powers require the exercise of technical policing skills. It is important that all police officials are proficient in these skills and that some police officials are trained to a very high level in them. Police expertise in search and surveillance is important for the gathering of evidence, and to ensure the safety of the public and the police. For example public safety may depend upon the ability of police to discover dangerous items such as explosive devices, which have been concealed, or to anticipate or to track the movements of people dealing in illicit drugs, explosives or firearms.

However it should be emphasised that such essential police powers must be exercised only when it is necessary to do so, and they must be exercised lawfully. Searching individuals and their property can be degrading to human dignity, and surveillance of individuals is, necessarily, exercised covertly and secretly. Furthermore, wrongful exercise of powers of search and surveillance can amount to harassment of individuals and groups, and can undermine public trust in the police.

For these reasons it is essential that there are legally enforceable safeguards regulating use of such powers; that police leaders ensure compliance with those safeguards; and that there is effective external supervision of police in this respect.

In exercising powers of search and surveillance it is all too easy to undermine democracy and the rule of law in the guise of defending them.

Key Policing Issues Connected with the Topic

These include the need:

- to ensure the police officials are sufficiently skilled in search and surveillance procedures and techniques to be able to exercise their powers, effectively, lawfully and humanely;
- to ensure that powers of search are not used oppressively so that individuals, and especially individuals of minority groups in society, do not feel that they are being unfairly targeted or harassed;
- to secure a balance between maintaining the confidentiality of surveillance operations, and regulating and monitoring those operations by democratically accountable means.

Essential Information for a Presentation

The Prohibition of Arbitrary Interference with Privacy

Universal Declaration of Human Rights and International Covenant on Civil and Political rights

Article 12 of the Universal Declaration of Human Rights states that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Furthermore, everyone has the right to the protection of the law against such interference or attacks.

Article 17 of the International Covenant on Civil and Political Rights is expressed in very similar terms:

1. 'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.'

Regional Human Rights Treaties

Article 11 of the American Convention on Human Rights states:

1. 'Everyone has the right to have his honour respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honour or reputation.

3. Everyone has the right to the protection of the law against such interference or attacks.'

Article 8 of the European Convention on Human Rights, allowing for limitations to be placed on the right under paragraph 2, states:

1. 'Everyone has the right to respect for his private and family life, his home and his correspondence.
2. 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.'

Other Treaty Provisions

Article 16 of the Convention on the Rights of the Child, makes the prohibition in almost identical terms to that of the Universal Declaration and the human rights treaties referred to above:

1. 'No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.'

Under this Convention a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Examples of Comments and Findings of Treaty Bodies

Human Rights Committee

General Comment No. 16 (32) on article 17 of the International Covenant on Civil and Political Rights includes the following comments on the right to private and family life:

'Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence, as well as against unlawful attacks on his honour and reputation.'

'The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.'

'The term "unlawful" means that no interference can take place except in cases envisaged by law. Interference authorised by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant.'

'The expression "arbitrary interference" is also relevant to the protection of the right provided for in article 17. In the Committee's view, the expression "arbitrary interference" can also extend to interference provided for under the law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.'

'Regarding the term "family", the objectives of the Covenant require that, for purposes of article 17, this term be given a broad interpretation to include all those comprising family as understood in the society of the State party concerned. The term "home" in English, "manzel" in Arabic, "zhuzhai" in Chinese, "domicile" in French, "zhilishche" in Russian, and "domicilio" in Spanish, as used in article 17 of the Covenant, is to be understood to indicate the place where a person resides or carries out his usual occupation.'

'As all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual's private life, the knowledge of which is essential in the interests of society as understood under the Covenant.'

'Compliance with article 17 requires that the integrity and confidentiality of correspondence should be guaranteed de jure and de facto. Correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire tapping and recording of conversations should be prohibited. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment. So far as personal and body searches are concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials or medical personnel acting at the request of the State, should only be examined by persons of the same sex.'

'The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorised by law to receive, process and use it, and is never used for purposes incompatible with the Covenant.'

In the case *Rafael Rojas García et al. v. Colombia*, the State party argued that a search carried out by a group of armed officials in plain clothes from the state prosecutor's office

was lawful under its criminal procedure code. The author of the complaint submitted that the group forcibly entered his house through the roof one night and carried out a room by room search of the premises terrifying members of his family. He claimed that he and his family were victims of violations of article 17, and other articles, of the International Covenant on Civil and Political Rights.

The Human Rights Committee considered that any interference in the home had to be lawful, as well as not arbitrary. Recalling the notion of arbitrariness as defined in its general comment No. 16 (32), and considering that the State party's arguments failed to justify the conduct described, the Committee found a violation of article 17, paragraph 1, of the Covenant.

Non-Treaty Instruments

The opening paragraph of article 6 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states: 'The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:' and it then sets out a number of measures in the ensuing paragraphs.

Paragraph 'd' states:

'Taking measures to minimise 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.'

Article 4 of the Code of Conduct for Law Enforcement Officials states:

'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 relate to the private lives or be potentially harmful to the interests and reputation of others. It requires great care to be exercised in safeguarding and using such information, and it asserts that any disclosure of such information for other purposes is wholly improper.

Clearly, failure to comply with provisions of this article could lead to violations of the right to privacy protected in treaty articles referred to above.

Article 41 of the European Code of Police Ethics states that the police shall only interfere with individual's right to privacy when strictly necessary and only to the extent required to obtain a legitimate objective.

The commentary to the article points out that an individual's right to privacy would include the rights covered by article 8 of the European Convention on Human Rights: private life, family life, home and correspondence. As a starting point, there must always be a legal basis for police operations including interference with peoples' privacy. Arbitrary interference can never be accepted. Moreover, the present rule indicates

that the interference in peoples' privacy must always be considered as an exceptional measure and, even when justified, should involve no more interference than is absolutely necessary.

Article 42 of the same Code stipulates that the collection, storage, and use of personal data by the police shall be carried out in accordance with international data protection principles and, in particular, be limited to the extent necessary for the performance of lawful, legitimate and specific purposes.

The commentary to the article points out that the use of new information technologies largely facilitates police action against different forms of criminality. The registration and the analysis of personal data, in particular, allows the police to crosscheck information and thus to expose networks the existence of which would remain obscure without resort to these tools. However, the uncontrolled use of personal data may constitute violations of the right to privacy of the individuals concerned. In order to avoid abuse at the stages of collection, storage and use of personal data, such police activities must be guided by principles for the protection of data. In this respect, the principles expressed in this article should be considered in the light of the Recommendation No. R (87) 15 of the Council of Europe regulating the use of personal data in the police sector.

Points to Promote Discussion

1. Why is privacy essential to the protection of human dignity?
2. In what ways can police protect the right to privacy?
3. What laws in your country protect people from attacks on their honour and reputation? Are they adequate for that purpose?
4. What measures can be taken by police leaders to ensure that information in the possession of police concerning a person's private life does not reach the hands of persons who are not authorised by law to receive, process and use it?
5. Article 4 of the Code of Conduct for Law Enforcement Officials prohibits disclosure of confidential information, but it does not specifically protect the right to privacy. Make an addition to the article that reinforces the prohibition of arbitrary interference with privacy. This should comply with the provisions of article 12 of the Universal Declaration of Human Rights, and take into account practical policing considerations.

CHAPTER 1 2 3 4

Protection of Human Rights: Police Functions

SECTION a b c d

The Protection of Human Rights and the Prevention of Discrimination

Introduction

This section examines various aspects of the protection of human rights, including the protection of children and their rights, as well as the prevention of discrimination. The prevention of discrimination is very important in itself and central to the protection of human rights.

In the commentary the importance of the police role in protecting human rights and protecting children and their rights is emphasised. Some of the ill-effects of discrimination are identified and obligations on police arising out of these are considered.

Under the sub-heading 'Essential information for a Presentation', concerning protection of human rights, provisions of treaty and non-treaty instruments that embody a general obligation to protect human rights are identified, as are specific human rights that can be protected by police. Provisions of treaty instruments that protect children and their rights are set out. Concerning prevention of discrimination, there are accounts of provisions giving an entitlement to human rights without discrimination, of international instruments designed to counter specific forms of discrimination, of the rights to equality before the law and to equal protection of the law, and of non-discrimination provisions relating to measures of derogation.

Key Points

The key points to this topic are that:

- all human beings are born free and equal in dignity and rights;

- policing is one of the means by which states meet their general obligation under international law to promote respect for and observance of human rights;
- policing is one of the means by which states meet their obligations under international law to protect specific human rights;
- policing is one of the means by which states meet their obligations under international law to protect children and their rights;
- everyone is entitled to their rights and freedoms without discrimination on such grounds as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;
- 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 unlawful discrimination;
- policing is an essential factor in protecting people against discrimination and enforcing laws designed to prevent discrimination.

Commentary

The Protection of Human Rights

The sections in the preceding chapter of this manual addressed the legal requirement on police to respect human rights in the exercise of their powers. Police may exercise only those powers granted to them under the law and may not exceed their powers. However, the obligations on police in relation to human rights go beyond the requirement to respect human rights. They also have a duty to protect human rights. In fact, the protection of human rights is a police function.

Police protect human rights in a general sense because, in their efforts to contain crime and disorder, they contribute to conditions that are necessary for the enjoyment of all human rights. Clearly human rights cannot be realised without social order, and social order, as characterised by tolerable levels of criminality and low levels of social tension or civil unrest, is dependent, in part, upon effective policing. In this sense policing, through the performance of all of its functions, can be seen as a positive factor in the protection of all human rights.

Police also protect specific human rights in specific ways, and this aspect of human rights protection is examined below under the sub-heading 'Essential Information for a Presentation'.

Prompt, effective and impartial investigation of allegations of human rights abuse is an important element of human rights protection. As some human rights abuses are extremely serious crimes (violations of the right to life, for example, or violations of the prohibition of torture) police may be required to investigate allegations of such

crimes. Where investigations of human rights abuses are carried out by other agencies, independent agencies formed to investigate police wrong doing for example, police should cooperate fully them, and facilitate the investigations.

The Protection of Children and Their Rights

Provisions of the Convention on the Rights of the Child and of an Optional Protocol to the Convention are set out under the sub-heading 'Essential Information for a Presentation' below.

These instruments seek to protect the rights of the child, and to protect children from various forms of exploitation and abuse. Some of their provisions are directly relevant to the powers and functions of police for example:

- protection from abuse whilst in the care of parents or guardians;
- economic exploitation;
- illicit use of narcotic drugs;
- sexual exploitation;
- abduction, sale or traffic; and
- all other forms of exploitation prejudicial to any aspects of the child's welfare.

These are all serious crimes that require prompt and effective action to counter them and high levels of technical expertise on the part of police officials.

All police officials should be aware of the provisions of these instruments. However, it is especially important that those officials tasked with the specialist function of protecting children and their rights should be familiar with them.

The Prevention of Discrimination

A person who experiences discrimination on such grounds as race, colour, sex, religion, opinion, or ethnic or social origin suffers a grave affront to their human dignity. Furthermore their enjoyment of human rights is diminished.

Policing is one of the means by which people can be protected against unlawful discrimination. Police powers must be exercised and police functions carried out with proper respect for the principle of non-discrimination. This principle must also be respected within police organisations.

Discrimination, in all of its forms, is a matter of continuing concern to the international community. It jeopardises relations between states, it is a cause of tension and disturbance within states, and it inhibits the development of states, groups and individuals.

For all of these reasons, but particularly to reduce social tension and to prevent social

disturbance and conflict, police should respond promptly and decisively to instances or situations of unlawful discrimination. As protectors and guarantors of human rights, police should strive to ensure that human rights of groups and individuals are not denied or diminished through unlawful discrimination.

It is important that police agencies should be commanded and managed so that the principle of non-discrimination is fully respected within those agencies, particularly in relation to racial and ethnic minorities, and in relation to women. Recruitment into police agencies, training and career opportunities, and relationships between police colleagues should be based on fair and non-discriminatory policies and practices, and on respect for human dignity.

If police officials behave properly towards their colleagues, they are more likely to behave properly towards the people they serve in the community.

Key Policing Issues Connected with the Topic

These include the need:

- for police officials to accept that the protection of human rights is a police function;
- for police officials to investigate allegations of human rights violations promptly, impartially and effectively, or to cooperate fully with those who are carrying out such investigations;
- to develop a human rights culture within police organisations;
- to develop the technical skills and abilities of police officials necessary to protect children and their rights;
- to influence the attitudes and the behaviour of police officials through training and by example so that they fully respect the principle of non-discrimination;
- for police officials to challenge colleagues who express discriminatory views or behave in discriminatory ways;
- to invoke disciplinary or legal procedures against police officials who violate disciplinary regulations or laws directed against discrimination.

Essential Information for a Presentation

The Protection of Human Rights

The General Obligation on Police to Protect Human Rights

Provisions of Treaties

The general obligation on states under the U. N. Charter to promote respect for and observance of human rights, and the specific obligations on individual states under the various human rights treaties to which they are parties, are referred to in section a, chapter 2 of part one of this teaching manual. The implications of these obligations for policing are also considered.

States must ensure that:

- their constitutional and legal arrangements are in accordance with their obligations under international law to promote respect for and observance of human rights; and
- the institutions of state perform in accordance with the national constitution and the law and, where appropriate in accordance with their specific functions, endeavour to secure compliance with the constitution and the law generally within the state.

States work through the various institutions of state (including police) to promote respect for and observance of human rights and, in that very general sense, it can be said that it is a function of police to protect human rights, especially as:

- police enforce law, and human rights are protected by law; and
- police maintain social order, and social order is necessary for the enjoyment of all human rights.

It should be noted that article 28 of the Universal Declaration of Human Rights enshrines the entitlement of everyone to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realised.

Provisions of Non-treaty Instruments

A general obligation to protect human rights is recognised in article 2 of the Code of Conduct for Law Enforcement Officials which requires law enforcement officials, in the performance of their duty, to respect and protect human dignity and maintain and uphold the human rights of all persons.

Similarly, the European Code of Police Ethics, in article 1, sets out the objectives of the police. These include protection of and respect for the individual's fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights.

The Protection of Specific Human Rights by Police

It is also possible to identify specific human rights protected by police. For example:

1. The right to life is to be protected by law (see section a chapter 1 of part two of this manual). This means that states must enact laws prohibiting murder and other forms of unlawful killing. The prevention and the investigation of such crimes are police tasks.
2. The right to own property and the prohibition of arbitrary deprivation of property is enshrined in article 17 of the Universal Declaration of Human Rights. (The right to peaceful enjoyment of possessions is also set out in article 1 of Protocol 1 to the European Convention on Human Rights). In preventing and detecting the crime of theft, police contribute to the protection of this right.
3. The right to safe and healthy working conditions is set out in article 7(b) of the International Covenant on Economic, Social and Cultural Rights. Where police attend and report on accidents at places of work, they are contributing to the effective prevention and investigation of offences under laws designed to secure safety at work. This is supportive of the right in the International Covenant.
4. The right to effective remedy by competent national tribunals for violations of human rights is enshrined in article 8 of the Universal Declaration of Human Rights (and in articles of human rights treaties). By carrying out, or co-operating with, prompt, effective and impartial investigations into allegations of human rights abuse, police contribute to the protection of this right and, indeed, of all human rights for without effective remedy there can be no meaningful protection of human rights.

Further examples of ways in which police protect specific human rights can be identified in respect of particular police organisations, depending upon the various responsibilities they may be given in different states.

It should also be noted that in responding to emergencies where people are in need of immediate aid police may:

- protect the right to life; and
- may be able to promote delivery of some economic and social rights by bringing to notice the plight of people deprived of such rights.

The Protection of Children and Their Rights

Convention on the Rights of the Child

For the purposes of this Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier (article 1).

The provisions directly relevant to the powers and functions of police, referred to in the commentary, are set out in articles 19, 32, 33, 34, 35, and 36:

'Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.'

'Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - a. Provide for a minimum age or minimum ages for admission to employment;
 - b. Provide for appropriate regulation of the hours and conditions of employment;
 - c. Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.'

'Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.'

'Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures 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 and materials.'

'Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.'

'Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.'

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

Some important terms are defined in article 2 of the Protocol which states:

'For the purposes of the present Protocol:

- a. Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- b. Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- c. Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.'

Measures that States parties shall undertake in order to guarantee the protection of children from such abuse and exploitation are extended by this Optional Protocol. For example, under article 3, States parties are required to prohibit:

- the sale of children,
- child prostitution and
- child pornography,

as defined in the instrument.

Under articles 5 and 6, crimes specified in the Optional Protocol are to be included as extraditable offences in any extradition treaty existing between States parties, and parties to such a treaty are required to afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of such offences.

Under article 7, States Parties must, subject to the provisions of their national law:

- a. Take measures to provide for the seizure and confiscation, as appropriate, of
 - i. goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;
 - ii. proceeds derived from such offences;
- b. Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);
- c. Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Under article 8, States Parties are to adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the Protocol at all stages of the criminal justice process, in particular by:

- a. Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
- b. Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
- c. Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- d. Providing appropriate support services to child victims throughout the legal process;
- e. Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

- f. Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- g. Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

Under the same article States Parties are to ensure that:

- uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim; and
- in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

Furthermore, States Parties must:

- take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the Protocol; and
- in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

The Prevention of Discrimination

Entitlement to Rights without Discrimination

The entitlement of everyone to all of the rights set forth in the Universal Declaration of Human Rights without discrimination of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status is embodied in article 2 of that instrument.

A similar provision is incorporated in article 2 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights in respect of the rights they recognise.

The regional human rights treaties also set out this entitlement in respect of the rights they embody (African Charter on Human and Peoples' Rights, article 2; American Convention on Human Rights, article 1; and the European Convention on Human Rights, article 14). Furthermore, Protocol No. 12 to the European Convention establishes a general prohibition of discrimination. Whereas article 14 of the Convention requires the rights and freedoms set forth in the Convention to be secured without discrimination the Protocol requires the enjoyment of any right set forth by law to be secured without discrimination on any of the same grounds as those in the Convention.

Article 2 of the Convention on the Rights of the Child sets out special measures to protect children from discrimination

In paragraph 1 States Parties are required to respect and ensure the rights set forth in the 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.

In paragraph 2 States Parties are 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.

Action against Specific Forms of Discrimination

International Convention on the Elimination of all Forms of Racial Discrimination

This Convention was adopted and opened for signature by U.N. General Assembly resolution 2106 A (XX) of 21 December 1965. It entered into force in 1969.

In the resolution the General Assembly affirms it is convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere.

It reaffirms that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations, and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same state.

The provisions of the Convention are binding on states which are party to it, and under Part II of the Convention a Committee on the Elimination of Racial Discrimination is established in order to give effect to those provisions.

Article 1 defines racial discrimination 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.'

Article 2 requires states parties to undertake to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, act in conformity with this obligation.

Each state party is to prohibit by all appropriate means, including legislation, racial discrimination by any persons, group or institution.

When the circumstances so warrant, states parties must take special and concrete measures in social, economic, cultural and other fields to ensure the adequate development and protection of certain racial groups, or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and freedoms.

Article 4 requires states parties to adopt measures to eradicate all incitement to, or acts of, racial discrimination and, specifically, to declare as offences punishable under law – dissemination of ideas based on racial superiority and hatred, and incitement to racial discrimination as well as acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin.

Article 5 reiterates the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law and to the enjoyment of a number of rights which include:

- the right to equal treatment before tribunals and all other organs administering justice, and
- 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.

Article 6 requires states parties to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other state institutions, against acts of racial discrimination.

Article 7 requires states parties to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination.

Convention on the Elimination of all Forms of Discrimination against Women

This Convention was adopted and opened for signature, ratification and accession by U.N. General Assembly resolution 34/180 of 18 December 1979. It entered into force in 1981.

In the resolution the General Assembly expresses its awareness that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women.

The provisions of the Convention are binding on states which are party to it and, under Part V, a Committee on the Elimination of Discrimination against Women is established to consider the progress made in the implementation of the Convention.

The means for implementing the Convention were enhanced by the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations in 1999. It entered into force in 2000.

The Protocol expands the competence of the Committee in a number of ways, including enabling it to receive and consider communications submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party to the Optional Protocol, claiming to be victims of a violation of any of the Convention rights by that State Party.

Article 1 defines discrimination against women 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.'

Article 2 requires states parties to embody the principle of equality of men and women in their national constitutions or other appropriate legislation, and to ensure through law and other appropriate means the practical realisation of this principle.

Article 5 requires states parties to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of the sexes or on stereotyped roles for men and women.

Article 6 requires states parties to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation or prostitution of women.

Article 7 requires states parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country, and to ensure a number of rights including the right to hold public office and perform all public functions at all levels of government.

Article 10 requires states parties to take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights with men in the field of education, and to ensure a number of rights including the right to same conditions for career and vocational guidance and professional and technical education.

States parties are also required to take steps to eliminate any stereotyped concept of the roles of men and women at all levels and in all forms of education.

Article 11 requires states parties to take all appropriate measures to eliminate discrimination against women in the field of employment, and to ensure a number rights including the right to free choice of profession and employment, the rights to promotion and to job security, and the right to receive vocational training.

Article 15 requires states parties to accord to women equality with men before the law.

Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief

This instrument was proclaimed by General Assembly resolution 36/55 of 25 November 1981.

In the resolution the General Assembly refers to the principles of non-discrimination and equality before the law and the right to freedom of thought conscience, religion and belief embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The General Assembly also expresses its concern about the manifestations of intolerance, and the existence of discrimination in matters of religion or belief still in evidence in some areas of the world.

Article 1 of the Declaration states that everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

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.

Article 3 states that discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity.

Article 4 requires states to take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

States are to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

Article 5 states that the parents or legal guardians of a child have the right to organise the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

Children are to be protected from any form of discrimination on the ground of religion or belief.

Article 6 sets out a number of freedoms included in the right to freedom of thought, conscience, religion or belief. These freedoms include the right to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes.

The Right to Equality before the Law and to Equal Protection of the Law

Particularly relevant to the police officials is the right to equality before the law and to equal protection of the law. Article 7 of the Universal Declaration of Human Rights 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.'

This entitlement is also set out in the International Covenant on Civil and Political Rights (article 26) the African Charter on Human and Peoples' Rights (article 3); and the American Convention on Human Rights (article 24).

Measures of Derogation

Measures of derogation allowed under some human rights treaties in times of emergency which threaten the life of the nation (for example article 4 of the International Covenant on Civil and Political Rights) require that such measures should not involve discrimination on such grounds as race, colour, sex, language, religion or social origin.

A more complete account of measures of derogation is given in section b chapter 3 of this part of the manual, Policing in Times of Disturbance and Tension.

Points to Promote Discussion

1. Why is it especially important that police in a democracy should protect human rights?
2. What can police do to secure and maintain the confidence, respect and co-operation of members of ethnic minority groups in the communities they serve?
3. What steps can be taken to enable women police officials to perform the full range of police functions?
4. Why is the right to freedom of religion or belief such an important human right?
5. Divide the participants into groups and ask them to discuss the following points:
 - I. Identify and discuss the political, social, economic and cultural elements in a democracy that are essential to the protection of human rights.
 - II. Discuss all of the ways in which police may contribute to the various elements for the protection of human rights identified in response to point number I.

- III. Taking into account your responses to the above two points, identify and discuss ways in which police in your country could become more effective in the protection of human rights.

When the participants reconvene having developed their responses to the three points, facilitate a debate between the groups on the issues which have arisen.

SECTION a b c d

The Protection of Rights to Democratic Freedoms

Introduction

The rights identified as rights to democratic freedoms, and considered in this section, are the rights to freedom of thought, conscience and religion; opinion and expression; assembly and association; and to participative and representative government.

In the commentary these rights are considered in the context of three concepts, democracy, human rights and the rule of law. The intrinsic importance of the rights to democratic freedoms, and their significance to policing, are then discussed. Reference is made to the role of police during elections.

The text under the sub-heading 'Essential Information for a Presentation' sets out the global and regional treaty provisions on the rights to democratic freedoms, some examples of comments and findings of treaty bodies, and provisions of non-treaty instruments on these rights.

Key Points

The key points to this topic are:

- the rights to freedom of thought, conscience and religion; opinion and expression; assembly and association; and to participative and representative government are intrinsically important, and they are essential to, and contribute to the practice of, democracy;
- police have a duty to take positive measures to protect the rights to freedom of thought, conscience and religion; opinion and expression; assembly and asso-

ciation; and to participative and representative government;

- democracy, human rights and the rule of law are dependent upon, and reinforce, each other; and
- police have a general duty to protect democracy, human rights and the rule of law.

Commentary

Democracy, Human Rights and the Rule of Law

Democracy

As democracy is practised in different ways in different states, teachers or resource persons may wish to explain to participants that the definition offered here is very broad, and drawn from provisions of human rights instruments expressing political rights or rights essential to democratic political processes.

The meaning proposed is grounded firmly in the context of programmes based on the manual, that is to say human rights.

Democracy is practised in a state where:

- government is accountable to the people through free and fair elections to public office;
- adults have equal rights to vote and stand for election;
- civil and political rights are respected; and
- a form of civil society can function where social associations, independent of the state, exist.

Human Rights

Human rights are those inalienable rights inherent in every human being, and enshrined in the Universal Declaration of Human Rights and other international instruments promulgated for the protection of human rights. They are based on the inherent dignity of the human person and are, to varying degrees, protected by the domestic laws of states.

States are legally bound under international law to protect and promote the human rights of people within their jurisdiction.

Reference may be made to section a, chapter 2 in part one of this manual for a more complete definition of the term 'human rights', and for an account of the characteristics of human rights and of different categories of human rights.

The Rule of Law

The rule of law is said to prevail in a state when all individuals and institutions are subject to the law and no person or institution is above the law.

Relationship between Democracy, Human Rights and the Rule of Law

Democracy, human rights and the rule of law are dependent upon, and reinforce, each other.

The dependency of human rights upon democracy is apparent because it is generally not the case that human rights are respected or observed in states that do not have democratic forms of government. Unaccountable government and a non-existent or weak civil society are inimical to human rights.

However it is clear also that democracy is dependent upon the protection and observance of human rights, all human rights. Furthermore the protection and observance of the human rights considered in this section are especially important. Described as rights to democratic freedoms they are essential to, and contribute to the practice of, democracy.

The dependency of the rule of law upon democracy is apparent, as unaccountable government is generally unable to provide the necessary conditions for the rule of law to prevail, and is unlikely to place itself under the law. Equally, democracy is dependent upon the rule of law for the proper functioning of the political system and its procedures, and for the lawful conduct of the social and economic life of the country, this being one of the necessary conditions for democracy to flourish.

The essential link between human rights and the rule of law, and the dependency of human rights on the rule of law are expressed in the third paragraph of the Preamble to the Universal Declaration of Human Rights which states:

[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 be protected by the rule of law.'

The word 'essential' is very strong. Human rights must not simply be expressed as good intentions. They must be enshrined in laws which are enforceable.

Furthermore, it should be recognised that some human rights reinforce and protect the rule of law. These are the rights:

- of everyone to recognition everywhere as a person before the law;
- of all to equality before the law and to equal protection of the law; and
- of everyone to a fair trial, which includes a fair and public hearing by an independent and impartial tribunal. The independence of the courts and of the judi-

ciary are necessary conditions for the rule of law to prevail.

These rights are embodied in the Universal Declaration of Human Rights, articles 6,7 and 10 respectively; in the International Covenant on Civil and Political Rights and regional treaties.

The Protection of Democracy, Human Rights and the Rule of Law

General Assembly resolution 34/169 of 17 December 1979, by which the Code of Conduct for Law Enforcement Officials was adopted, requires every law enforcement agency to be:

- representative of,
- responsive, and
- accountable

to the community as a whole.

In other words, it requires policing to be carried out in accordance with three principles essential for democratic policing. Indeed the three principles it expresses, representativeness, responsiveness and accountability, are essential for democracy to prevail within a political system. Police in a democracy clearly have an obligation to observe and respect these principles, and to protect the democratic system within which they function.

The fact that it is a function of police to protect human rights is considered in the preceding section of this chapter of the manual.

Police have a duty to protect the rule of law because one of the functions of police is law enforcement. Clearly an agency that enforces the law must respect and protect the rule of law. A police agency that fails to do so is undermining one of the very purposes for its existence.

The Rights to Democratic Freedoms and Their Significance to Policing

The rights to democratic freedoms have been identified in the introduction to this section as the rights to freedom of thought, conscience and religion; opinion and expression; assembly and association; and to participative and representative government.

Freedom of thought, conscience and religion are of fundamental importance to the individual and to his or her human dignity, and fundamental to the functioning of democracies. Freedom of opinion and expression are essential for an individual's development and human dignity. Freedom of opinion and expression and freedom of peaceful assembly and association are essential political rights, enabling participation in democratic political processes. Furthermore, their importance extends beyond the purely political sphere because the exercise of these rights can be necessary to secure

other human rights of all categories.

It is essential that police recognise the intrinsic importance of the rights to democratic freedoms and their wider significance, for police are one of the means by which a state may protect them. Police are also one of the means by which a state may seek to prevent or reduce social tension or disorder arising out of any failure on the part of the state to recognise the rights or to recognise them sufficiently.

All of these rights can be affected for good or for ill by policing. For example the readiness and the ability of police to investigate crimes committed against people because of their religion or belief can safeguard or impair the right to freedom of thought, conscience and religion; and the methods adopted by police in maintaining or restoring public order can reinforce or undermine the rights to freedom of opinion and expression as well as freedom of assembly and association.

Concerning the right to participative and representative government, this can be protected, or undermined, by the ways in which police protect, or fail to protect, rights to freedom of thought, conscience and religion, opinion and expression, and assembly and association. However, the role of police in protecting the right to participative and representative government becomes particularly significant when elections are held.

The Role of Police During Elections

It can be seen under the sub-heading 'Essential Information for a Presentation' below that international human rights treaties recognise the rights of citizens to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

The conditions necessary for these rights to be secured include:

- effective measures to ensure that all those entitled to vote are able to exercise that right;
- prohibition by law, which should be strictly enforced, of any abusive interference with registration of electors or voting as well as intimidation or coercion of voters;
- full protection of the rights to freedom of expression, assembly and association as these are essential conditions for the effective exercise of the right to vote;
- voters able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind;
- voters protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process.

Police functions during elections derive from their basic functions of maintaining or

restoring social order and preventing and investigating crime. In order to maintain conditions for elections to be free and fair police must:

- endeavour to ensure that a state of peace and order prevails throughout the country; and
- maintain their own strict independence, impartiality and neutrality.

In particular they must ensure:

- security for everyone, including voters, candidates, and election officials during the election campaign, on election day and whilst votes are being counted so that none are subjected to violence, threats or intimidation;
- security in and around polling and counting centres, and security of ballot boxes at all stages in the election process.

Key Policing Issues Connected with the Topic

These include:

- the need for police to maintain complete impartiality in relation to political parties and groupings;
- the balance to be achieved between securing proper accountability of police through the democratic political processes, and preventing improper political influence over operational policing matters;
- the point that as law enforcers, police must respect the rule of law absolutely, law breaking by police being a complete denial of the policing functions;
- the balance to be achieved between protecting the rule of law and protecting human rights. For example deciding whether an unlawful yet peaceful assembly should be allowed to continue in recognition of the right to freedom of peaceful assembly, or whether it ought to be dispersed in recognition of the rule of law;
- the possibility that, in spite of the existence of constitutional and legal arrangements that establish democratic practices and the rule of law in a state, police behaviour can actually change the nature of the regime so that it is less democratic and less respectful of the rule of law.

Essential Information for a Presentation

Right to Freedom of Thought Conscience and Religion

Universal Declaration of Human Rights and International Covenant on Civil and Political Rights

Article 18 of the Universal Declaration of Human Rights states that everyone has the right to freedom of thought, conscience and religion, and that this right includes freedom to change religion or belief, and freedom, either alone or in community with others and in public or private, to manifest religion or belief in teaching, practice, worship and observance.

Article 18 of the International Covenant on Civil and Political Rights states:

1. 'Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be 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.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.'

Regional Human Rights Treaties

Article 8 of the African Charter on Human and Peoples' Rights states:

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

Article 12 of the American Convention on Human Rights states:

1. 'Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.'

Article 9 of the European Convention on Human rights states:

1. '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 worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.'

Other Treaty Provisions

The right is expressed in article 14 of the Convention on the Rights of the Child in the following terms:

1. 'States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be 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.'

Examples of Comments and Findings of Treaty Bodies

Human Rights Committee

General Comment 22 (48) on article 18 of the International Covenant on Civil and Political Rights includes the following comments on the right to freedom of thought, conscience and religion:

'The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18(1) is far reaching and profound; it encompasses freedom of thought on all matters, personal conviction and commitment to religion or belief, whether manifested individually or in community with others.'

'The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4(2) of the Covenant.'

'Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess to any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.'

Right to Freedom of Opinion and Expression

Universal Declaration of Human Rights and International Covenant on Civil and Political Rights

Article 19 of the Universal Declaration of Human Rights states that everyone has the right to freedom of opinion and expression, and that this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 19

1. 'Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a. For respect of the rights or reputations of others;
 - b. For the protection of national security or of public order (ordre public), or of public health or morals.'

Regional Human Rights Treaties

Article 9 of the African Charter on Human and Peoples' Rights states:

1. 'Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law.'

Article 13 of the American Convention on Human Rights states:

1. 'Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. respect for the rights or reputations of others; or
 - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offences punishable by law.'

Article 10 of the European Convention on Human rights states:

1. 'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for

the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.’

Other Treaty Provisions

The right is expressed in article 13 of the Convention on the Rights of the Child in the following terms:

1. ‘The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a. For respect of the rights or reputations of others; or
 - b. For the protection of national security or of public order (ordre public), or of public health or morals.’

Examples of Comments and Findings of Treaty Bodies

Human Rights Committee

General Comment 10(19) on article 19 of the International Covenant on Civil and Political Rights includes the following comments on the right to freedom of opinion and expression:

‘Paragraph 1 requires protection of the “right to hold opinions without interference”. This is a right to which the Covenant permits no exception or restriction.

Paragraph 2 requires protection of the right to freedom of expression, which includes not only freedom to “impart information and ideas of all kinds” but also to “seek” and “receive” them “regardless of frontiers” and in whatever medium, “either orally, in writing or in print, in the form of art, or through any other media” of one’s choice.’

Inter-American Court of Human Rights

In the case *Ivcher Bronstein v. Peru*, the victim, a naturalised Peruvian citizen, was majority shareholder, director and president of Channel 2 of the Peruvian television network. The Inter-American Commission of Human Rights alleged he was arbitrarily deprived of his nationality title in order to remove him from the editorial control of the Channel and to restrict his freedom of expression. He had manifested this freedom by denouncing grave violations of human rights and acts of corruption in reports in a programme on Channel 2. As a result of these reports, he was subjected to threats and harassment by various State

authorities recommending him to change the editorial line. The Commission claimed violations by Peru of article 13 and a number of other articles of the Convention.

In its judgment, the Inter-American Court of Human Rights insisted that it was essential that journalists who worked in the media should enjoy protection and independence to exercise their functions comprehensively. They kept society informed, and it was an indispensable requirement to enable society to enjoy full freedom. Citing an earlier advisory opinion, the Court linked public order in a democratic society with the guarantee of the widest possible circulation of news, ideas and opinions, as well as the widest access to information by society as a whole. It pointed out that freedom of expression constituted the primary and basic element of the public order of a democratic society. This was not conceivable without free debate and the possibility of dissenting voices to be fully heard.

The Court concluded that the State had violated article 13, paragraphs 1 and 3, of the Convention with regard to Mr. Bronstein. It also found other violations of the Convention in this case.

Right to Freedom of Peaceful Assembly and Association

Universal Declaration of Human Rights and International Covenant on Civil and Political Rights

Article 20 of the Universal Declaration of Human Rights states that everyone has the right to freedom of peaceful assembly and association, and that no one may be compelled to belong to an association.

Article 21 of the International Covenant on Civil and Political Rights states:

‘The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.’

Article 22 of the International Covenant on Civil and Political Rights states:

1. ‘Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International

Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.'

Regional Human Rights Treaties

Article 10 of the African Charter on Human and Peoples' Rights states:

1. 'Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.'

Article 11 of the African Charter on Human and Peoples' Rights states:

'Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.'

Article 15 of the American Convention on Human Rights states:

'The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.'

Article 16 of the American Convention on Human Rights states:

1. 'Everyone has the right to associate freely for ideological, religious, political, economic, labour, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.'

Article 11 of the European Convention on Human rights states:

1. 'Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.'

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.'

Other Treaty Provisions

The right is expressed in article 15 of the Convention on the Rights of the Child in the following terms:

1. 'States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.'

Examples of Comments and Findings of Treaty Bodies

European Court of Human Rights

In *Plattform "Ärzte für das Leben" v. Austria* the European Court of Human Rights considered the positive obligation on states to protect the right of peaceful assembly. The applicant, an Austrian association of doctors campaigning against abortion, alleged violations of, among other provisions, article 11 of the Convention, as the association had not been sufficiently protected by police during two demonstrations. It also relied, under article 13, on the right to an effective remedy for violations of the Convention. The Commission declared the application admissible in respect of article 13, but the other complaints were declared inadmissible as being manifestly ill-founded.

In order to establish whether article 13 applied the Court had to decide whether there was an arguable claim that article 11 had been violated, notwithstanding that the Commission had dismissed it as manifestly ill-founded. In order to do this it had to give an interpretation of article 11. The Court held, in its interpretation, that article 11 sometimes did require positive measures to be taken to protect the right to peaceful assembly, and that in this case the Austrian authorities had not failed to take reasonable and appropriate measures to do so. Accordingly no arguable claim that article 11 was violated had been made out and article 13 did not apply.

The Court felt that, in determining this matter, it did not have to assess the expediency or effectiveness of the tactics adopted by the police. Police tactics were, however, considered by the Commission before it referred the case to the Court, and it is interesting to note its observations.

The fact that the police authorities did not actively intervene against the disturbances of the applicant association's demonstration had been explained by the Government as being based on considerations of proportionality. An immediate police intervention would almost inevitably have led to physical violence. In choosing between different methods of protecting a demonstration, limitation of preventive policing measures to the control of physical violence and the taking of repressive measures against any other kind of disturbance may in fact be indicated. This was particularly so if, as it was claimed in the present case, there is a likelihood of preventive policing measures themselves provoking an outburst of violence. The Austrian authorities thus could not be blamed for the fact that in view of this risk they applied considerations of proportionality and dispersed the counter-demonstrators only when this could be done without violent confrontation. By acting in this way, the authorities in fact aimed at preventing disorder on a larger scale than actually occurred, an aim which is clearly covered by the prevention of disorder clause in article 11 paragraph 2.

Right to Participative and Representative Government

Universal Declaration of Human Rights and International Covenant on Civil and Political Rights

Article 21 of the Universal Declaration of Human Rights states that everyone has the right to take part in the government of his country, directly or through freely chosen representatives; everyone has the right to equal access to public service in his country; the will of the people shall be the basis of the authority of government; and this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 25 of the International Covenant on Civil and Political Rights states:

'Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- a. To take part in the conduct of public affairs, directly or through freely chosen representatives;
- b. To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- c. To have access, on general terms of equality, to public service in his country.'

Regional Human Rights Treaties

Article 13 of the African Charter on Human and Peoples' Rights states:

1. 'Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in

accordance with the provisions of the law.

2. Every citizen shall have the right of equal access to the public service of the country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.'

Article 23 of the American Convention on Human Rights states:

1. 'Every citizen shall enjoy the following rights and opportunities:
 - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - c. to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.'

Article 3 of Protocol No. 1 to the European Convention on Human Rights states:

'The High Contracting Parties agree to undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of legislature.'

Non-Treaty Instruments

Code of Conduct for Law Enforcement Officials

General Assembly resolution 34/169 of 17 December 1979, under which the Code of Conduct was adopted, states 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.

Article 2 of the Code of Conduct states:

'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.'

European Code of Police Ethics

Article 43 of the Code states:

'The police, in carrying out their activities, shall always bear in mind everyone's fundamental rights, such as freedom of thought, conscience, religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions.

Commentary

The rights referred to in this article are a recapitulation of rights provided for in the European Convention on Human Rights (articles 9, 10 and 11 of the Convention, article 1 of its First Protocol and article 2 of Protocol No. 4 to the same Convention) which are essential for the effective functioning of an open democratic society, but which have not been dealt with elsewhere in the Recommendation.

The police play a major part in safeguarding these rights – without which democracy becomes an empty notion without any basis in reality. Either directly, through safeguarding democratic arrangements, or indirectly, through their general responsibility for upholding the rule of law.'

Points to Promote Discussion

1. In securing a balance between law enforcement and the enjoyment of a right essential for democratic political processes would it ever be good policing practice to allow a peaceful but unlawful assembly to be conducted? What factors would you take into account in making the decision?
2. In securing a balance between public order and the enjoyment of a right essential for democratic political processes would it ever be good policing practice to allow an individual or group the right to exercise their freedom of expression

when the opinions they express are likely to provoke public disorder? What factors would you take into account in making the decision?

3. What are the various ways in which police may protect the rights to freedom of thought, conscience and religion; freedom of opinion and expression; and freedom of peaceful assembly and association?
4. Divide the participants into groups and ask each group to consider what measures under the constitution and the law should be in place to ensure that police:
 - a. remain accountable to the community they serve through the democratic political processes; but, at the same time,
 - b. retain operational independence from political interference.

Ask the groups to debate the results of their separate deliberations in a plenary session.

5. Role Play Exercise

Divide participants into two groups to represent police and an ethnic minority group within the community.

The minority group suffers discrimination in such areas as housing and employment, and they feel that the police act in discriminatory ways against them. They claim that they are harassed on the streets by some of the younger police officers, and that they tend to get arrested more frequently than do members of the majority group in the community

The police have agreed to meet representatives of the group to discuss their grievances as far as policing is concerned.

The resource person should provide the minority group with a number of grievances they can raise which are relevant to the situation of the participants. Where appropriate this may include the group's belief that they experience discrimination on the grounds of their religion or beliefs, or that they are prevented from expressing their opinions because police refuse to allow them to demonstrate in public about their grievances.

Groups playing the two roles should meet separately first to discuss the approach they will take and the strategy they will adopt. They should then meet and conduct their discussions.

SECTION a b **c** d

The Right to a Fair Trial and the Investigation of Crime

Introduction

When police investigate crime they play a significant role in the administration of justice. This section deals with international standards protecting the right to a fair trial, and those directly addressing, or relevant to, the investigation of crime.

The prevention of crime is discussed in the commentary, as it is important for this to be taken into account when the investigation of crime is being considered. The commentary then examines the requirement on police to investigate crime (and interview people suspected of crime) effectively, lawfully and humanely; identifies provisions in articles protecting the right to a fair trial that are relevant to investigations of crime; and considers the investigation of crime committed by children, and the protection of victims of crime.

The text under the sub-heading 'Essential Information for a Presentation' sets out global and regional treaty provisions on the presumption of innocence, the right to a fair trial, the rights of people subject to interrogation, and the rights of children in relation to the investigation of crime. Some examples of comments and findings of treaty bodies, and provisions of non-treaty instruments on those themes and on the rights of victims of crime are also included.

Although the presumption of innocence is incorporated in treaty provisions protecting the right to a fair trial, it is dealt with separately here in order to emphasise its importance in the investigation of crime.

Key Points

These include:

- the importance of the police crime prevention role, and of police working with other agencies and bodies, and the wider community to prevent crime;
- the importance of lawful and ethical conduct by police in the investigation of crime;
- the right to presumption of innocence of accused persons;
- the right to a fair trial and the right to those minimum guarantees necessary to secure a fair trial;
- the requirements to protect the well-being of juveniles, to divert juvenile offenders away from the criminal justice system, and to take special measures to prevent delinquency by juveniles; and
- the rights of victims of crime to be treated with compassion and respect, and to compensation and redress.

Commentary

The Prevention of Crime

The prevention of crime is one of the prime police functions. It is clearly better to protect people from crime and its consequences than to attempt to detect crime once it has been committed. In any event, the detection rate of most police agencies in respect of the actual level of crime, as opposed to the reported level of crime, is very low indeed.

Crime is prevented through police performing all of their functions including investigating crime, providing assistance to individuals and communities in emergencies, and maintaining public order. However, really effective crime prevention is achieved only when efforts in these areas are combined with specific crime prevention policies and practices.

Moreover the success of such policies and practices is heavily dependent upon public support and co-operation. It is not possible for police, or indeed the entire criminal justice system, to provide a satisfactory response to criminality within a society. The causes of crime are too varied and complex. The whole range of, for example, social and economic causes requires responses from relevant agencies and bodies (both official and voluntary) and from the community as a whole.

Examples of official agencies are education services, social services, housing services, and recreational services local to the community in question. Examples of voluntary bodies are residents' associations, youth organisations and religious organisations.

The combined efforts of agencies and bodies of this type can be directed at such crime control and prevention activities as:

- informing and educating the public on crime prevention measures;
- identifying local crime patterns and taking necessary social measures to prevent those crimes or reduce opportunities to commit them;
- taking measures to divert potential offenders from criminal activity; and
- providing aid and assistance to victims of crime.

Clearly activities such as these require close cooperation between police, the relevant agencies and bodies, and the community. Police may be expected to:

- provide information on crime patterns and crime trends;
- make suggestions and recommendations based on their experience and understanding of criminality;
- coordinate or assist in the coordination of the work of such agencies and bodies; and
- ensure that police policies and practices in other areas of policing are not at variance with crime prevention policies and practices.

In essence this means that police:

- focus on enforcement aspects of crime prevention, and on preventing crime through the performance of all of their other functions;
- develop specific crime prevention policies and practices based on cooperation with relevant agencies and bodies, and on public support and co-operation; and
- encourage all of these elements to focus on the social aspects of crime prevention.

The Investigation of Crime

It is a function of police, whether acting autonomously or under the direction and control of a prosecutor or an investigator with judicial powers, to investigate crime for the purpose of gathering evidence to be considered by a court of trial. The investigation of crime through enquiry and evidence gathering is the first necessary step in a judicial process leading to the conviction and punishment of those found to be guilty of crime.

When the investigation is conducted effectively and lawfully that result may be achieved. When it is not conducted effectively and lawfully the result may be that in-

innocent people are convicted of crimes they did not commit, and the guilty go undetected and unpunished.

As far as police are concerned, the end result of an investigation of crime is the presentation of evidence so that a court may decide upon innocence or guilt of the accused. The police role is such that any decision a court arrives at, and any penalty it imposes, are not the concerns of police.

Police officials involved in some investigations may feel that a court has arrived at the wrong decision or imposed the wrong penalty. Given the commitment that some police officials bring to their work, their involvement in the investigative process which puts them in close contact with victims of crime and the effects of criminality, and the dangers and frustrations with which they are sometimes confronted when dealing with crime, these feelings are understandable.

However, given the police role, these feelings must remain strictly within the personal sphere, and they must not be allowed to affect the professional judgment of police. Above all they must not be allowed to affect the ways in which police:

- deal with people suspected of crime – the rights of suspects, and especially the rights of suspects in detention, must be respected; and
- conduct investigations into crime – which must be objective, ethical humane and, above all, lawful.

Law breaking for the purposes of law enforcement is intolerable because it:

- subverts the rule of law;
- violates human rights;
- leads to miscarriages of justice; and
- undermines the confidence of the public in the police and the entire criminal justice system.

Furthermore, if police adopt unlawful or unethical means to investigate crime, if they rely on bending the rules and taking short cuts, they will not develop the technical policing skills necessary for them to be able to carry out effective and lawful investigations into crime.

It is equally true that if police do not have technical policing skills, they are more likely to be tempted to commit criminal acts, use unethical means, and violate human rights when investigating crime. This means that governments and police leaders have an immense responsibility to ensure that police officials are:

- trained in the necessary skills;
- encouraged to develop those skills in the practice of their craft and profession;

- supervised and controlled so that they comply with the law and ethical standards, and respect human rights; and
- held accountable to the law or to police discipline regulations, as appropriate, for their acts or omissions which breach them.

All of this means that the most significant human right in relation to the investigation of crime is the right to a fair trial. This right is an immensely important right because it is one of the cornerstones of a democratic society governed by the rule of law. It is a right that police can protect, and it is a right that police can subvert, even before the trial process has commenced, if they adopt unlawful or unethical means to investigate crime.

The lengthy articles that protect the right to a fair trial in human rights treaties are set out in full under the subheading 'Essential Information for a Presentation'. There, it can be seen that many of the provisions of these articles concern the conduct of proceedings in courts and are not directly relevant to police. However, in many jurisdictions those provisions protecting the rights:

- to equality of all persons before courts and tribunals;
- to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- to be tried without undue delay;
- 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;
- not to be compelled to testify against himself or to confess guilt;

can affect, and be affected by, the investigation of crime by police.

Furthermore, before any of these rights can be realised, there must have been an opportunity for a person to have his or her case heard in the first place. In other words, there is a right to a hearing, a right of access to a tribunal, and this right is expressed at the beginning of the articles protecting the right to a fair trial.

Teachers and resource persons should ensure that provisions relevant to participants in courses they are conducting are fully discussed and understood. For example the right not to be compelled to testify against himself or to confess guilt means, among other things, that suspects should not be treated in ways that may coerce them into confessing to crimes.

An essential element of a fair trial is the presumption of innocence, and it is this pre-

sumption, together with the requirement to respect human rights and to obey the law, that should dictate the behaviour of police officials towards people suspected of crime with whom they are dealing.

Furthermore, lawful, ethical and humane behaviour towards people suspected of crime is especially important when police interview such people as part of the investigative process. Participants should be reminded that torture and other forms of ill-treatment are crimes in themselves, and can result in innocent people confessing to crimes that they have not committed.

Compliance with standards on effective, lawful and humane interviewing of people suspected of crime requires and encourages police officials to:

- gather all available evidence in a case before interviewing a suspect;
- plan an interview based on that evidence so that an effective interview can be conducted;
- treat an interview of a suspect as a means of gathering more information or evidence rather than as a means of securing a confession;
- analyse information obtained during the interview of the suspect, and carry out any further investigation into the case suggested by that analysis;
- check any information, admission or confession made by the suspect against available evidence;
- develop effective interviewing skills that are also lawful and ethical;
- develop all of the skills necessary in a professionally competent investigator of crime.

The Rights of Children in Relation to the Investigation of Crime

Important principles concerning the administration of juvenile justice are expressed in international human rights instruments. For example it can be seen below, under 'Essential Information for a Presentation' that the Convention on the Rights of the Child requires that the best interests of the child shall be the primary consideration in all actions concerning children undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Furthermore, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) state that the aims of juvenile justice are to emphasise 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.

National law, and the policies and practices of police agencies, should reflect these principles and the detailed rules that derive from them. Police officials investigating juvenile crime should have the necessary technical knowledge and skills, and sufficient

resources, to deal with juveniles in accordance with such national law and policies.

The Protection of Victims of Crime

Finally, police have an important role in protecting victims of crime and the rights of victims. Provisions based on two non-treaty instruments, the Victims' Declaration (a global instrument) and the European Code of Police Ethics (a regional instrument), considered below under the sub-heading 'Essential Information for a Presentation' are being introduced into the laws and practices of many states. The active involvement and co-operation of police officials and police agencies are essential for those provisions to be implemented.

The provision of aid and assistance to victims, including victims of crime, is a basic police function and an essential element of democratic policing.

Key Policing Issues Connected with the Topic

These include:

- securing the correct balance between preventive policing and investigative policing. How successful is investigative policing? Should more resources and effort be allocated to preventive policing?
- the need to establish or strengthen a climate within police agencies that supports the ideal of lawful and ethical investigations into crime, and rejects the notion that it is permissible to break the law for policing purposes, or to ignore procedural rules and guidelines introduced for the protection of suspects of crime;
- the need to develop and maintain the necessary technical policing skills, including interviewing suspects of crime and witnesses to crime, so that criminal investigations can be conducted effectively, lawfully and humanely; and
- the need to increase the provision of resources to under-resourced police agencies, and to encourage and require police leaders in such agencies to consider and develop all possible means, within the limitations of their resources, to deliver effective, lawful and humane policing.

Essential Information for a Presentation

Clearly, some standards considered in preceding sections of this manual are also relevant to the investigation of crime, especially those concerning:

- the professional ethics of policing (part one, chapter 1, section b);
- the right to life and the power to use force (part two, chapter 1, section a);
- the right to liberty and security of person and the powers to arrest and detain (part two, chapter 1, section b);

- the treatment of detainees (part two, chapter 1, section c); and
- the right to private and family life and the powers of search and surveillance (part two, chapter 1, section d).

These should be referred to by teachers or resource persons when necessary and appropriate.

One non-treaty instrument, the European Code of Police Ethics, contains provisions specifically referring to the investigation of crime by police:

‘Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime (article 47).

Commentary

In order to avoid arbitrary police investigations, a minimum requirement should be fulfilled before the police initiate any such investigation. There should at least be reasonable (and legitimate) suspicion of an offence or crime and the suspicion must be justified by some objective criteria.

Police investigations shall be objective and fair. They shall be sensitive and adaptable towards the special needs of persons, such as children, juveniles, women, minorities, including ethnic minorities, and vulnerable persons (article 49).

Commentary

Police work should always be guided by objectivity and fairness. This is particularly important in police investigations. The objectivity required implies that the police must carry out an investigation impartially, that is, they should base an investigation on all relevant circumstances, facts and evidence that work both for and against their suspicions. Objectivity is also a criterion for the fairness requirement, which, in addition, requires that the investigation procedure, including the means used, is such as to provide for an environment that lends itself to a “just” process – where the individual’s fundamental rights are respected.

The fairness requirement for police investigations also means that consideration must be taken of an individual’s right to participate fully. The investigation must, for example, be adapted to take account of the physical and mental capacities and cultural differences of those involved. Investigations concerning children, juveniles, women and individuals belonging to minority groups, including ethnic minorities are particularly important in this respect. The investigation should be thorough, with as limited a risk of damage to those subject to the investigation as possible. Upholding these measures sustains “fair police process”, which constitutes the preparatory basis for a “fair trial”.

The police shall provide interpretation/translation where necessary throughout the police investigation (article 53).

Commentary

This article complements article 5(2) of the European Convention on Human Rights, which gives everyone who is arrested the right to be informed of the reasons for the arrest, and the charge against them, in a language which they understand.

The Presumption of Innocence

Universal Declaration of Human Rights and the International Covenant on Civil and Political rights

The presumption of innocence is protected under article 11(1) of the Universal Declaration of Human Rights which states that 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 14(2) of the International Covenant on Civil and Political Rights states:

'Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.'

Regional Human Rights Treaties

Article 7 of the African Charter on Human and Peoples' Rights states that every individual shall have the right to have his cause heard which comprises, in paragraph b:

'The right to be presumed innocent until proved guilty by a competent court or tribunal.'

Article 8(2) of the American Convention on Human Rights states:

'Every person accused of a criminal offence has the right to be presumed innocent so long as his guilt has not been proven according to the law.'

Article 6(2) of the European Convention on Human Rights states:

'Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to the law.'

Examples of Comments and Findings of Treaty Bodies

The Human Rights Committee

General Comment 13 (21) on article 14 of the International Covenant on Civil and Political Rights includes the following comments on the presumption of innocence:

'By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt. No guilt can

be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is therefore a duty for all public authorities to refrain from prejudging the outcome of a trial.'

In the case *Gridin v. Russian Federation*, the Human Rights Committee found that, among other infringements, the presumption of innocence principle had been violated. The author of the complaint had been convicted of rape and multiple assaults. However, the Committee found that he had been a victim of a violation of article 14, paragraph 2, of the Covenant because of public statements, made before the trial by high-ranking law enforcement officials, portraying him as guilty. With reference to its pronouncement in general comment No. 13 (21) the Committee considered that the authorities had failed to exercise the restraint article 14, paragraph 2, required. The Committee also found violations of article 14, paragraph 3(b), because the victim had been denied access to legal counsel and then interrogated, and of article 14, paragraph 1, because of the way in which the trial had been conducted.

Non-Treaty Instrument

The European Code of Police Ethics contains the following provision:

'The police must follow the principles that everyone charged with a criminal offence should be considered innocent until found guilty by a court, and that everyone charged with a criminal offence has certain rights, in particular, the right to be informed promptly of the accusation against them, and to prepare his/her defence either in person, or through legal assistance of his/her own choosing (article 48).

Commentary

The principle of the presumption of innocence, contained in article 6 of the European Convention on Human Rights, is one of the most important rights of individuals in the criminal justice process. The police, often "the first link of the chain" in this process, have a particularly difficult task as they must, in an objective manner, investigate a case and no matter how overwhelming the evidence is against a suspect, must respect the presumption of innocence. With regard to the relation between the police and the public, in particular the media, the problem becomes even more accentuated (see also article 19).

The list of certain additional minimum rights of everyone charged with a criminal offence, also drawn from article 6 of the European Convention on Human Rights, is also extremely important for the police to bear in mind, as these rights should be provided for as soon as possible during the criminal justice process. Often, that is during the police investigation.'

The Right to a Fair Trial

Universal Declaration of Human Rights and the International Covenant on Civil and Political rights

The right to a fair trial is protected under article 10 of the Universal Declaration of Human Rights which states that 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 14 of the International Covenant on Civil and Political Rights states:

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.'

Regional Human Rights Treaties

Article 7 of the African Charter on Human and Peoples' Rights states:

1. 'Every individual shall have the right to have his cause heard. This comprises:
 - a. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
 - b. The right to be presumed innocent until proved guilty by a competent court or tribunal;
 - c. The right to defence, including the right to be defended by counsel of his choice;
 - d. The right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.'

Article 8 of the American Convention on Human Rights states:

1. 'Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labour, fiscal, or any other nature.
2. Every person accused of a criminal offence has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
 - a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
 - b. prior notification in detail to the accused of the charges against him;
 - c. adequate time and means for the preparation of his defence;
 - d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
 - e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
 - f. the right of the defence to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
 - g. the right not to be compelled to be a witness against himself or to plead guilty; and
 - h. the right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.'

Article 6 of the European Convention on Human Rights states:

1. 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - b. to have adequate time and facilities for the preparation of his defence;
 - c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.'

Examples of Comments and Findings of Treaty Bodies

The Human Rights Committee

General Comment 13 (21) on article 14 of the International Covenant on Civil and Political Rights includes the following comments on the right to a fair trial:

'Sub paragraph 3(e) states that the accused shall be entitled 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. This provision is designed to guarantee to the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.'

'Sub-paragraph 3(g) provides that the accused may not be compelled to testify against himself or to confess guilt. In considering this safeguard the provisions of article 7 and article 10, paragraph 1, should be borne in mind. In order to compel the accused to confess or to testify against himself frequently methods which violate these provisions are used. The law should require that evidence provided by means of such methods or any other form of compulsion is wholly unacceptable.'

Note: article 7 and article 10(1) of the International Covenant on Civil and Political Rights prohibit torture and enshrine the right to humane treatment for detainees respectively. They are considered in detail in chapter 1, section c of this part of the manual 'The Treatment of Detainees'. Standards on interviewing people suspected of crime are set out below.

The Inter-American Court of Human Rights

The *Blake* case (*Guatemala*) concerned the forced disappearance and killing of a journalist, Nicholas Blake, and a photographer, by agents of the State. Their remains were discovered seven years after their disappearance. The case raised issues under a number of articles of the American Convention on Human Rights, including article 4 on the right to life, article 7 on the right to personal liberty and article 8 on the right to a fair trial.

In respect of the right to a fair trial, the Inter-American Commission on Human Rights pointed out that the Guatemalan authorities had failed to fulfil the obligation to provide simple, prompt and effective judicial recourse to Mr. Blake's relatives. They had impeded the clarification of the cause of Mr. Blake's death and disappearance, and they had delayed the investigation of the facts and the institution of any judicial proceedings. In fact, the relatives were deprived of the right to an independent judicial process within a reasonable time, and they were consequently prevented from obtaining fair compensation. The Commission further stated that the violation of article 8 of the Convention went beyond the problem of reasonable time, inasmuch as justice was also obstructed by the State authorities. They deliberately concealed the information they had received.

The Court considered that article 8, paragraph 1, of the Convention had to be given a broad interpretation based on both the letter and the spirit of the provision. It had also to be appreciated in accordance with article 29(c) of the American Convention on Human Rights, which stated that none of its provisions should be interpreted as precluding other rights or guarantees inherent in the human personality or derived from representative, democratic form of government.

Citing article 1, paragraph 2, of the Declaration on the Protection of All Persons from Enforced Disappearance, the Court pronounced that article 8, paragraph 1, of the Convention also included the rights of the victim's relatives to judicial guarantees. Any act of forced disappearance placed the victim outside the protection of the law and caused grave suffering to him and to his family. Consequently, this provision of the Convention recognized the right of Mr. Blake's relatives to have his disappearance and death effectively investigated by the Guatemalan authorities; to have those responsi-

ble prosecuted for committing such unlawful acts; to have the relevant punishment, where appropriate, meted out; and to be compensated for the damages and injuries they sustained.

The Court declared, that Guatemala violated, to the detriment of the relatives of Mr. Blake, article 8, paragraph 1, in relation to article 1, paragraph 1, of the Convention. Likewise, it also declared that Guatemala violated the right to humane treatment enshrined in article 5 of the Convention. Furthermore, the Court declared that the State was obliged to use all the means at its disposal to investigate the acts denounced and punish those responsible for Mr. Blake's disappearance and death. The State was also obliged to pay a fair compensation to the relatives of Mr. Blake and reimburse them for the expenses incurred in their representations to the Guatemalan authorities in connection with this process.

The Rights of People Subject to Interrogation

Measures to protect the rights of persons subject to interrogation are set out in the following instruments:

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires states parties to the Convention 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 (article 10);
- keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing torture (article 11); and
- ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made (article 15).

The Inter-American Convention to prevent and Punish Torture states:

'No statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action taken against a person or persons accused of having elicited it through acts of torture, and only as evidence that the accused obtained such statement by such means (article 10).'

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment stipulates that:

- it is prohibited to take undue advantage of the situation of a detained person for the purposes of compelling him or her to confess, to incriminate themselves otherwise or to testify against any other person;
- no detained person while being interrogated is to be subjected to violence,

threats or methods of interrogation which impair his or her capacity of decision or judgement (principle 21);

- the duration of an interrogation of a detainee, the intervals between interrogations, the identity of officials conducting interrogations and other persons present, are to be recorded and certified in a form prescribed by law (principle 23);
- non-compliance with the Principles in obtaining evidence is to be taken into account in determining the admissibility of that evidence against a detainee (principle 27); and
- a detainee suspected of or charged with a criminal offence is to be presumed innocent until proved guilty before a court (principle 36).

The European Code of Police Ethics states:

‘Guidelines for the proper conduct and integrity of police interviews shall be established, bearing in mind Article 48. They shall, in particular, provide for a fair interview during which those interviewed are made aware of the reasons for the interview as well as other relevant information. Systematic records of police interviews shall be kept (article 50).

Commentary

This rule, which generally applies to police interviews, originates in statements with regard to the interrogation process in custody made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as contained in its 2nd General Report (1992):

“... the CPT considers that clear rules or guidelines should exist on the way in which police interviews are to be conducted. They should address *inter alia* the following matters: the informing of the detainee of the identity (name and/or number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; places in which interviews may take place; whether the detainee may be required to stand while being questioned; the interviewing of persons who are under the influence of drugs, alcohol, etc. It should also be required that a record be systematically kept of the time at which interviews start and end, of any request made by a detainee during an interview, and of the persons present during each interview.

The CPT would add that the electronic recording of police interviews is another useful safeguard against the ill-treatment of detainees (as well as having significant advantages for the police).”

The present Article, is applicable to all police interviews, regardless of whether those subject to the interview are in custody or not.’

The Rights of Children in Relation to the Investigation of Crime

Convention on the Rights of the Child

Those rights from the Convention relevant to the arrest and detention of children, and their treatment as detainees, are dealt with in chapter 1 sections b and c respectively of this part of the manual.

Under this Convention a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier (article 1).

Article 3(1) 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 the primary consideration.

Article 40 embodies rights, including the presumption of innocence and the right to a fair trial, to protect children accused of crime as follows:

1. 'States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - a. No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - b. Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

To be presumed innocent until proven guilty according to law;

To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

To have the free assistance of an interpreter if the child cannot understand or speak the language used;

To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
 - a. The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - b. Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.'

Non-Treaty Instrument

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) contain a number of provisions relevant to the subject matter of this section:

Part One – general principles contains 9 rules which include:

- rule 1 requiring member states to further the well-being of juveniles and setting out a number of positive measures to that end.
- rule 2 defining a juvenile 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.
- rule 5 setting out the aims of juvenile justice which are to emphasise 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.
- rule 6 concerning discretion, requiring appropriate scope for discretion to be allowed for at all stages of proceedings, including investigation, prosecution, adjudication and the follow up of dispositions.

Rule 7 states that 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 the proceedings.

Part Two – investigation and prosecution contains four rules:

- rule 10 requiring parents of a juvenile apprehended to be immediately notified, a judge or other competent body or official to consider the issue of release without delay, and contacts between a police agency and a juvenile to be managed in such a way as to respect the legal status of juvenile.
- rule 11 requiring consideration to be given, where appropriate, to dealing with juvenile offenders without resorting to formal trial.
- rule 12 requiring police officers who frequently or exclusively deal with juveniles, or who are engaged in the prevention of juvenile crime, to be especially instructed or trained. In large cities, special police units are to be established to deal with juvenile offenders and the prevention of juvenile crime.
- rule 13 requiring detention pending trial to be used only as a measure of last

resort and for the shortest possible period of time.

Part Three – adjudication and disposition contains 9 rules, most of which are not directly relevant to police officials. However:

- rule 20 seeks to avoid unnecessary delay and requires each case, from the outset, to be handled expeditiously; and
- rule 21 requires records of juvenile offenders to be kept strictly confidential. Access to such records is to be limited to persons directly concerned with the disposition of the case or other duly authorised persons.

The Rights of Victims of Crime

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

Victims are defined in article 1 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 in Member States, including those laws proscribing criminal abuse of power.’

The Declaration sets out provisions to secure access to justice and fair treatment:

- victims are to be treated with compassion and respect for their dignity. They are entitled to access to mechanisms of justice, and to prompt redress for the harm they have suffered (article 4);
- victims should be informed of their role and the scope, timing and progress of the proceedings and the disposition of cases (article 6(a));
- the views and concerns of victims are to be presented and considered at appropriate stages of the proceedings (article 6(b));
- victims should be provided with proper assistance throughout the legal process (article 6(c));
- the privacy and safety of victims and their families should be protected (article 6(d)).
- there should be informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, which should be used to facilitate conciliation and redress for victims where appropriate (article 7).

There are a series of measures on restitution for victims (articles 8 -11), and on com-

pensation (articles 12 and 13).

Police, justice, health, social service and other personnel concerned should receive training to sensitise them to the needs of victims, and guide lines to ensure proper and prompt aid (article 16).

European Code of Police Ethics

'The police shall be aware of the special needs of witnesses and shall be guided by rules for their protection and support during investigation, in particular, where intimidation of witnesses is at risk (article 51).

Commentary

Police personnel must be competent in handling the early stages of an investigation, in particular, contacts with those implicated by a crime. The proper protection of witnesses is necessary for their safety, which is a crucial condition for them to give evidence and thus for the outcome of the investigation. When intimidated witnesses are afraid of the possible consequences of giving evidence, investigative techniques must be flexible, and take this into account. The problem of intimidated witnesses is particularly critical in situations, such as those related to terrorism, to organised crime, to drug related crime and to violence within the family. Moreover, in cases where the witnesses are also victims of the crime, the handling of witnesses becomes even more complex.

This article underlines how important it is for the police to be aware of the special needs of witnesses in different situations, and their protection. Not only does this call for special training of police personnel, but also guidelines are necessary to determine the proper handling of witnesses by the police. In this respect reference is made to the extensive work already carried out by the Council of Europe, concerning witness and victim protection (Recommendations No. R (85) 4 on the violence in the family, No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, No. R (87) 21 on assistance to victims and prevention of victimisation, No. (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in children and young adults, No. R (96) 8 on crime policy in Europe in a time of change and recommendation No. R (97) 13 on intimidation of witnesses and the rights of the defence).

Police shall provide the necessary support, assistance and information to victims of crime, without discrimination (article 52).

Commentary

This Article summarises the police duties of providing assistance and information for victims of crime as stated in Recommendation No. R (85) 11 on the position of the victim in criminal law and procedure. In addition, the Article places an obligation on the police to provide the necessary support for victims, which implies that there is a readiness and capacity within the police to provide such support either directly or through other agencies and organisations.'

Points to Promote Discussion

1. In what ways can an unethical and unlawful police investigation subvert the right to a fair trial?
2. Why is the presumption of innocence such an important principle in respect of people accused of crime?
3. What personal qualities and what knowledge and skills does a police official require in order to be able to investigate crime effectively lawfully and humanely?
4. Divide the participants into small working groups and ask them to consider the following issue relating to investigators and the investigation of crime:

Investigators often complain that the number of cases they are required to investigate is so great that they are unable to adopt ethical and lawful means. They are forced to take short cuts, 'bend the rules' and even break the law, in order to cope with their case loads.

Police leaders have a responsibility to deal with this type of situation.

- a. What are the dangers or harmful effects of such a situation in terms of human rights, the investigation of crime, and police relations with the community?
- b. What managerial and supervisory action can be taken, within the limits of existing resources, in relation to the:
 - I. allocation of cases to investigators; and
 - II. management of case loads,to alleviate the situation, and to avoid the dangers or harmful effects identified in 1 above?

The participants should then reconvene for the responses of the groups to be compared and discussed.

5. Divide the participants into small groups and ask them to consider the following extracts from a paper presented by Dr. Gisli Gudjonsson at a Seminar on 'Interrogation, Confessions and Corroboration'.

The participants should respond to the discussion points following the extracts, and then reconvene for the answers of the different groups to be compared and for a general discussion to take place.

- a. 'Very few people confess to a crime for just one reason; it is usually a combination of factors that leads them to confess. However, the dominant rea-

son why people confess is because they think the police have got a case against them and there is no point in denying it.'

- b. 'This puts the police in a very powerful position to manipulate detainees' perceptions. If they can convince someone that they have evidence, such as fingerprints, they will often get a confession, even though in fact there was no evidence against them in the first place.'
- c. 'Apart from the perception of proof, another reason why people confess is because of internal pressure. What surprised me in my research was the number of people who said they felt the need to talk about what they had done. This is particularly so in sex crimes and in crimes of violence.'
- d. 'Thirdly, there is external pressure, where people say, "I was bullied into a confession. The police manipulated me, they coerced me, they put pressure on me." External pressure is not just interrogation, but it is all the things associated with confinement. Being locked up in a police station can be an extremely stressful experience, especially as time goes by.'
- e. 'Interrogation techniques have changed in recent years. There are three factors: police behaviour, custodial factors, and psychological/psychiatric factors.' ... 'Over the last 30 years, though, there has been a gradual change from blatant coercion to psychological manipulation, which is much more subtle.' ... 'This technique of changing people's perceptions and belief systems can result in the police persuading people they committed crimes of which they are completely innocent.' ... 'Such psychological manipulation can be extremely dangerous.'
- f. 'The police have a job to do, which is to investigate crimes. Generally speaking, the police want a confession, which is understandable because a confession is a very powerful piece of evidence. There is nothing wrong with that per se but it carries dangers.' [In some police forces now] '... the emphasis is more on fact finding, rather than on trying to get a confession. This is much better, because if the primary aim is to get a confession it can alter the whole scenario and miscarriages [of justice] can arise.'
- g. '... there are cases where it is possible to prove beyond a shadow of a doubt that someone who confessed to a crime did not in fact do it, and that is what we are researching at the moment.'

Discussion Points

1. What conclusions can you draw about the nature of confessions to police by people suspected of crime from the above extracts?
2. Considering the above extracts, what recommendations would you make about training of police in:

- a. the investigation of crime.
 - b. interviewing suspects.
3. Take the above extracts into account, and Principles 21 and 23 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and draw up a short ethical code designed to secure 'ethical interviewing' of suspects by police officials.

CHAPTER 1 2 3 4

Police Behaviour in Situations of Armed Conflict, Internal Disturbance and Tension, and Emergency and Disaster

SECTION a b c d

Policing in Situations of Armed Conflict

Introduction

This section is concerned with policing in situations of armed conflict, both international and non-international. It examines elements of international humanitarian law, also known as the international law of armed conflict or the laws of war, which are relevant to police in such situations.

There are two aspects to the laws of war, *jus ad bellum*, the rules governing resort to armed conflict, and *jus in bello* the rules governing the conduct of armed conflict. This manual deals with *jus in bello*.

The following section deals with situations that fall below the threshold of armed conflict, namely internal disturbances and tensions, to which international humanitarian law is not legally applicable. It is, however, relevant to such situations for the protection of victims and as a set of standards that amount to good police practice.

Reasons for police to have an understanding of international humanitarian law are set out in the commentary, which also deals with the principles and purposes of international humanitarian law, categories of conflict, and categories of person and the status of police in armed conflicts.

Some examples of provisions of international humanitarian law relevant to police are set out under the sub heading 'Essential Information for a Presentation'. Special measures for the protection of children in situations of armed conflict under the Convention on the Rights of the Child and an additional protocol to that Convention are also included.

Key Points

The key points to this topic are:

- international humanitarian law is legally applicable in times of armed conflict;
- the purposes of international humanitarian law are to regulate the conduct of hostilities and to protect victims of armed conflict;
- the most fundamental customary principle of international humanitarian law is that the right of belligerents to adopt means of injuring the enemy is not unlimited;
- two principles deriving from this fundamental principle are proportionality, limiting the use of force, and discrimination, concerning care in the selection of methods, weaponry and targets;
- wounded and sick victims are to be respected and protected;
- prisoners of war are to be treated humanely at all times; and
- parties to a conflict are to distinguish at all times between the civilian population and combatants and civilian objects and military objectives, and direct their operations against military objectives only.

Commentary

Before being introduced to the subject matter of this section, participants should already have been familiarised with international human rights law in sessions based on previous sections of the manual. This section is entirely devoted to international humanitarian law, whereas both branches of law are considered in the next section.

International Humanitarian Law and Its Relevance to Police

International humanitarian law is usually, and quite properly, seen as the concern of military. However, police become involved in armed conflicts and internal disturbances and tensions in a variety of ways and for a variety of reasons. It is, therefore, vitally important for, at least, senior police officials and educators and trainers of police to be aware of the principles and some of the provisions of international humanitarian law.

International humanitarian law consists of a great number of varied and detailed provisions, many being relevant to very specific situations. It is neither possible nor desirable to attempt to cover this branch of law comprehensively in the sort of basic human rights programme described in the Introduction and Guide to this teaching manual.

Rather, in such programmes, teachers and resource persons should aim to convince police officials of the significance of international humanitarian law to them:

- in times of armed conflict, when it is legally applicable, and
- in times of internal disturbance and tension, when it is not legally applicable but hugely relevant for reasons that are explained in the next section.

They should then enlighten them on the principles of this branch of law and those few specific provisions that are included under the sub heading 'Essential Information for a Presentation' as examples.

In the event of police officials becoming involved in an armed conflict they would need to be briefed and instructed in the rules of the laws of war that are relevant to the situation in which they are deployed. This process will be easier and more effective if they have undergone the sort of introduction to international humanitarian law provided in this and the next section.

The extent to which and the ways in which a state may become involved in an international armed conflict affects the nature of any police involvement and the various possibilities are numerous. For example:

- a state may be fighting a war far away from its borders, with few implications for its police;
- an international armed conflict may be taking place within the territory of a state;
- a state may have been invaded and occupied by another state's military forces; or
- a state may be involved in an armed conflict in a neighbouring state.

All of these, and other, possibilities have many and different implications for policing and the behaviour of police.

As far as non-international armed conflicts, or civil wars, are concerned, police are one of the means by which states respond to these. It is a fundamental function of police to maintain or restore order, whatever the scale of the disorder. Whilst the restoration of order and overcoming rebel forces may be the prime responsibility of a state's military forces in high intensity non-international armed conflicts, the police will have a key role to play. For example:

- an act of insurgency is a criminal offence;
- rebel groups commit other crimes in the process of an insurrection;
- police are one of the means by which intelligence about insurgents may be gathered; and
- officials in armed police agencies may be sufficiently trained and equipped to undertake armed engagements with insurgents.

Police officials, therefore, need to be aware of principles and provisions of international humanitarian law and human rights law in times of armed conflict as a matter of good professional practice, and in order that they may:

- behave correctly
- benefit from the forms of protection to which they are entitled,
- promote the protection of others, and
- enforce or encourage correct behaviour on the part of others when this is possible and appropriate.

Furthermore, in some situations, police will be in a good position to search for, preserve and record evidence that could be used in trials of individuals charged with war crimes and other crimes arising out of their actions during armed conflict.

Teachers and resource persons should remind police officials that lawful and humane behaviour in times of armed conflict is required of them because:

- their functions include law enforcement;
- unlawful and inhumane behaviour on the part of police officials is a complete negation of the very purposes and functions of policing; and
- unlawful and inhumane behaviour by police can make already extremely difficult and dangerous situations even more difficult and dangerous to deal with.

Furthermore, in times of non-international armed conflict or civil war, the process of post conflict reconciliation will be more manageable if police have behaved lawfully and humanely during the actual conflict.

International Humanitarian Law

International humanitarian law and international human rights law are each branches of public international law.

The fact that they are distinct systems of law is evidenced by their different historical developments and fields of application, but they are both concerned with securing:

- minimum standards of behaviour and treatment in various situations; and
- the rights of individuals and the protection of individuals.

Development, Principles and Purposes

Although this branch of international law in its present form developed relatively recently, it has its origins in antiquity when, for example, military leaders would sometimes order captured enemy fighters to be spared and the enemy civilian population

to be treated humanely.

Practices of this kind gradually developed into a body of customary international law which parties to a conflict are legally bound to respect.

The most fundamental customary principle is that the right of belligerents to adopt means of injuring the enemy is not unlimited.

This principle affects, for example, the use of weapons, prohibiting belligerents from using weapons that give rise to unnecessary suffering or superfluous injury.

The principles of:

- proportionality (which is intended to limit the use of force by, for example, requiring proportionate responses to an adversary's actions); and
- discrimination (which is about care in the selection of methods, weaponry and targets)

derive from this more basic principle.

The law of armed conflict now consists of two sets of treaty law:

- 'Hague Law'; and
- 'Geneva Law'

plus a number of customary rules based on the above described principles.

The two strands of treaty law are distinguished in that:

- 'Hague Law' governs the conduct of hostilities – the permissible means and methods of warfare; whereas
- 'Geneva Law' is concerned with the protection of victims of war.

In fact the distinction is not now quite so marked as the two strands are merging to some extent through later treaty provisions – for example the two Protocols of 1977 additional to the Geneva Conventions of 1949.

An example of 'Hague Law' is the 1907 Hague Convention IV and Regulations Respecting the Laws and Customs of War on Land.

'Geneva Law' is largely embodied in the four Geneva Conventions of 1949 and their Additional Protocols of 1977:

- Geneva Convention I – for the protection of wounded and sick members of armed forces in the field.

- Geneva Convention II – for the protection of wounded, sick and shipwrecked members of armed forces at sea.
- Geneva Convention III – for the protection of prisoners of war.
- Geneva Convention IV – for the protection of civilian persons in time of war.
- Protocol I Additional to the Geneva Conventions of 1949 – relating to the protection of victims of international armed conflicts.
- Protocol II Additional to the Geneva Conventions of 1949 – relating to the protection of victims of non-international armed conflicts.

Note: reference should be made to the sections in chapter 2 of this teaching manual – ‘The International Context’ for an account of the development, principles and purposes of international human rights law.

International Human Rights Law and International Humanitarian Law

The overriding purpose of international human rights law is to secure the lawful rights and freedoms of individuals. In order to achieve this purpose:

- it imposes obligations on governments in relation to individuals and groups within the jurisdiction of the states they govern; and
- it limits and controls the exercise of power by states in relation to individuals and groups.

Human rights law applies in all places and at all times, in times of peace and in times of conflict.

Its scope and effectiveness may be diminished through measures taken by governments during periods of national emergency to derogate from some obligations under human rights treaties, but:

- it remains applicable, and, in any event,
- provisions protecting some human rights (such as the right to life, and the prohibition on torture) are non-derogable.

The purposes of international humanitarian law are to:

- regulate the conduct of hostilities, and
- protect the victims of armed conflicts.

It imposes obligations on parties to armed conflicts, and it comes into force only when armed conflict occurs.

Note: measures of derogation in times of emergency are dealt with in the next section of this manual. Teachers and resource persons should refer to the information on derogation measures in the commentary to that section and under the sub-heading 'Essential Information for a Presentation' in order to decide when and how to include that information in a session based on this section. It should be noted that General Comments of the Human Rights Committee, set out in the next section, include references to armed conflict and international humanitarian law.

Categories of Conflict

Armed Conflicts

International humanitarian law recognises two types of armed conflict:

- international armed conflicts, that is to say inter-state wars, and wars of national liberation against colonial domination or alien occupation (see article 2 common to the Geneva Conventions of 1949 and 1977 Geneva Protocol I, article 1, paragraphs 3 and 4); and
- non-international armed conflicts or civil wars.

Most of the provisions of international humanitarian law are designed to regulate international armed conflicts. For example:

- all four of the Geneva Conventions listed above (except article 3 common to all of them); and
- 1977 Geneva Protocol I,

regulate international armed conflicts,

whereas only:

- article 3 common to the Geneva Conventions; and
- 1977 Geneva Protocol II

regulate non-international armed conflicts.

International humanitarian law recognises two types of non-international armed conflict:

- high intensity non-international armed conflict, in which rebel forces have control of territory and are able to carry out sustained and concerted military operations, and
- low intensity non-international armed conflict,

The former are regulated by article 3 common to the Geneva Conventions of 1949 and

by 1977 Geneva Protocol II. The latter are regulated only by article 3 common to the Geneva Conventions.

Situations of Internal Disturbance and Tension

This category of conflict is dealt with in the next section to this manual.

Categories of Person

Combatants and Non-Combatants

The principle distinction is between those who have combatant status and those who do not, and it can be summarised as follows.

Combatants

Members of armed forces of a party to an international armed conflict (other than medical or religious personnel) are combatants. Such armed forces must be:

- organised,
- placed under a command responsible to that party for the conduct of its subordinates, and
- subject to an internal disciplinary system that enforces compliance with the rules of international law applicable in armed conflict (see 1977 Geneva Protocol I, article 43).

Compliance with these rules implies, in particular, that combatants are obliged to distinguish themselves from the civilian population by:

- a uniform or
- some other distinctive sign,

at least while they are engaged in an attack or in a military operation preparatory to an attack.

However, recognising that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his combatant status provided that, in such situations, he carries his arms openly:

- during each military engagement, and
- during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate (see 1977 Geneva Protocol I, article 44).

Those with combatant status:

- have a right to participate in hostilities and hence to commit acts, such as killings, which would otherwise be unlawful;
- are entitled to be treated as prisoners of war if captured by the enemy;
- must obey the rules of war applicable to their status; and
- receive some protection during hostilities through measures designed to regulate methods and means of warfare.

Civilians

Those who do not have combatant status are characterised as civilians, and in cases of doubt whether a person is a civilian, that person is considered to be a civilian (see 1977 Geneva Protocol I article 50). Those with civilian status:

- have no right to participate in hostilities;
- have no entitlement to treatment as prisoners of war;
- must obey the rules of war applicable to their status;
- receive special forms of protection (e.g. those set out in the fourth Geneva Convention of 1949).

As indicated above, combatant status is only applicable to fighters in international armed conflicts.

Fighters in non-international armed conflicts are either:

- members of armed forces, police forces or other security forces of a state, all of whom are legally empowered to use lawful force in confronting armed opposition groups; or
- members of armed opposition groups whose use of force in their act of insurrection is unlawful.

Furthermore, there is no prisoner of war status in non-international armed conflicts. Captured fighters who have been engaged in insurrection can be dealt with as criminals under, and according to, the law.

Status of Police

It is clear that the civilian status of civil police agencies is recognised under international humanitarian law, and that the definition of combatant does not include police officials who are members of those agencies.

Furthermore, 1977 Geneva Protocol I contains a significant provision which requires a party to a conflict to notify the other parties to the conflict whenever it incorporates a

paramilitary or armed law enforcement agency into its armed forces (article 43(3)).

This means that in order for a police official to be accorded combatant status, he or she must be a member of an armed law enforcement agency that is formally assimilated into the armed forces of a party to a conflict. Such an act of incorporation not only alters the status of members of such an agency, it also underlines the civilian status of police officials who are members of agencies to which those provisions are not applied.

A number of other provisions in Hague and Geneva Conventions reinforce the non-combatant status of police.

Key Policing Issues Connected with the Topic

These include:

- the need to educate police leaders and teachers and trainers of police in the purposes and principles of international humanitarian law, and some of its relevant provisions;
- the need to educate all police officials serving in situations of armed conflict in the provisions of international humanitarian law relevant to the situations they face; and
- the need to ensure that all police officials are trained, equipped, briefed, deployed and commanded and controlled so that they serve effectively in times of armed conflict in accordance with international humanitarian law and international human rights law.

Essential Information for a Presentation

Examples of Rules of Behaviour in International Armed Conflict

Rules on Methods and Means of Warfare

As indicated above, 'Hague Law' governs the conduct of hostilities, the permissible means and methods of warfare. However many of the Hague Regulations have been developed or superseded by the Geneva Conventions and their additional Protocols. Examples hereunder are taken from 1977 Geneva Protocol I.

Basic rules on means and methods of warfare are set out in the three paragraphs of article 35 of that instrument:

- paragraph 1 stipulates that in any armed conflict, the right of parties to the conflict to choose methods and means of warfare is not unlimited;

- paragraph 2 prohibits the employment of weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering; and
- paragraph 3 prohibits the employment of methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

Ensuing articles then set out other, more specific, rules on means and methods of warfare. For example:

- the prohibition on killing, injuring or capturing an adversary through perfidy (article 37);
- the prohibition on misuse of emblems – red cross, red crescent, white flag (article 38); and
- the prohibition on refusing quarter (article 40).

Protection of Wounded, Sick and Shipwrecked

Article 8 of 1977 Geneva Protocol I defines:

- 'wounded' and 'sick' as military or civilian persons in need of medical care and who refrain from any act of hostility, and
- 'shipwrecked' as military or civilian persons in a perilous situation at sea or on any other waters following a misfortune which has befallen them and who refrain from any act of hostility.

Article 10 of 1977 Geneva Protocol I stipulates the general rule that wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected.

Article 15 of 1949 Geneva Convention I requires, particularly after an engagement, parties to the conflict to search for and collect wounded and sick, to protect them against pillage and ill-treatment and to ensure their adequate care.

Article 17 of 1977 Geneva Protocol I:

- requires the civilian population to respect the wounded, sick and shipwrecked, even if they belong to the adverse party, and to commit no act of violence against them;
- requires the civilian population and aid societies (such as the Red Cross or Red Crescent), even on their own initiative, to be permitted to collect and care for the wounded, sick and shipwrecked;
- forbids harm against or prosecution, conviction or punishment of persons for such humanitarian acts;

- permits parties to a conflict to appeal to the civilian population and aid societies to collect and care for the wounded, sick and shipwrecked, and to search for the dead and report their location; and
- requires parties to a conflict to grant protection and facilities to those who respond to such appeals.

Prisoners of War

1949 Geneva Convention III concerns the protection of prisoners of war.

Police officials need to be aware of provisions of this Convention especially as it contains provisions on:

- escape and capture of prisoners of war,
- criminal offences committed by and against prisoners of war, and
- judicial proceedings against prisoners of war.

Article 12 of Geneva Convention III states that:

- prisoners of war are in the hands of the enemy power, but
- not of the individuals or military units who have captured them.

Irrespective of the individual responsibilities that may exist, the detaining power is responsible for the treatment given.

Furthermore article 39 of the Convention stipulates that a prisoner of war camp must be under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the detaining power.

Article 13 requires all prisoners of war to be humanely treated at all times. Any unlawful act or omission by the detaining power causing:

- death or
- seriously endangering the health of a prisoner of war in its custody

is prohibited, and will be regarded as a serious breach of the Convention.

Prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Particularly relevant to police officials are the provisions of the following articles of 1949 Geneva Convention III:

- article 82 – prisoners of war shall be subject to the laws, regulations and orders in force in the armed forces of the detaining power;
- article 83 – in deciding whether an offence committed by a prisoner of war should be subject to disciplinary or judicial punishment, the detaining power shall ensure that the competent authorities exercise the greatest leniency and adopt, wherever possible, disciplinary rather than judicial measures;
- article 84 – a prisoner of war may be tried only by a military court, unless the existing laws of the detaining power expressly permit the civil courts to try a member of its own armed forces in respect of the particular offence alleged to have been committed by the prisoner of war;
- article 92 – prisoners of war who escape and are recaptured are liable to disciplinary punishment only, and on recapture they are to be handed over without delay to the military authority;
- article 93 – offences committed by prisoners of war with the sole intention of facilitating their escape and which do not entail any violence against life or limb, such as offences against public property, theft without intention of self-enrichment, the drawing up or use of false papers, or the wearing of civilian clothes, shall occasion disciplinary punishment only;
- article 103 – judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit so that his trial shall take place as soon as possible; and
- article 121 – every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any other death the cause of which is unknown, is to be immediately followed by an official enquiry by the detaining power.

Civilians

Most of the provisions protecting civilians are contained in 1949 Geneva Convention IV and 1977 Geneva Protocol I.

1949 Geneva Convention IV

Part II provides limited protection to the whole of populations in countries in conflict against certain consequences of war by, for example:

- creating the possibility of establishing hospital and safety zones and localities, and neutralised zones, each for the protection of certain categories of people such as wounded and sick, children, and civilian persons who take no part in hostilities (articles 14 and 15); and
- requiring parties to the conflict to take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as

a result of war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances (article 24).

Part III, which embodies most of the provisions, protects civilians who find themselves in the hands of a party to the conflict or occupying power of which they are not nationals.

Section I of this part contains provisions common to the territories of the parties to the conflict and to occupied territories. For example:

- protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity (article 27);
- no physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties (article 31);
- no protected person may be punished for an offence he or she has not personally committed. Collective penalties and all measures of intimidation or of terrorism are prohibited. Pillage is prohibited (article 33); and
- the taking of hostages is prohibited (article 34)

Sections II and IV contain provisions, respectively, for the protection of aliens in the territory of a party to the conflict and for the treatment of internees.

Section III contains provisions concerning occupied territories. For example:

- individual or mass forcible transfers as well as deportations of protected persons from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, are prohibited regardless of their motive (article 49);
- the occupying power may not compel protected persons to serve in its armed or auxiliary forces (article 51); and
- the occupying power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience (article 54).

1977 Geneva Protocol I

Part IV of the Protocol expresses measures for the protection of civilians in three Sections.

Section I sets out measures for general protection against the effects of hostilities in 6 Chapters in accordance with a basic rule that the parties to the conflict shall at all times distinguish between the civilian population and combatants and civilian objects and military objectives, and direct their operations only against military objectives (article 48). Measures to secure compliance with this basic rule include:

- the civilian population and individual civilians shall enjoy general protection against dangers arising from military operations;
- the civilian population as such as well as individual civilians shall not be the object of attack (article 51); and
- civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities (article 51(3)).

Section II contains measures for relief in favour of the civilian population, and

Section III contains measures for the treatment of persons in the power of a party to the conflict.

Examples of Rules of Behaviour in Non-international Armed Conflict

Non-international armed conflict, or civil war, generally refers to those situations in which insurgents or armed opposition groups within a state take up arms against the government.

The question of combatant status does not arise in such conflicts. Insurgents do not have prisoner of war status when captured, and they are liable under the criminal law of the state concerned for their act of insurgency and any other crimes arising out of it.

Rules on this category of conflict are embodied in article 3 Common to the Geneva Conventions of 1949 and 1977 Geneva Protocol II.

Article 3 Common to the Geneva Conventions of 1949

This is the only article within the Conventions designed for the protection of victims of non-international armed conflicts.

The article extends basic humanitarian protection to the categories of people it protects by:

- applying principles on which the Geneva Conventions are based
- to armed conflicts not of an international character
- occurring in the territory of one of the high contracting parties.

In such cases each party to the conflict is bound to apply the provisions of the article as a minimum.

The first paragraph of the article defines those protected by the article, and sets out two fundamental principles:

- humane treatment and
- non-discrimination.

Persons protected by this article are 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.

Such persons shall in all circumstances be treated humanely and without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any similar criteria.

The remainder of the first paragraph sets out a number of acts that are prohibited at any time and in any place whatsoever in respect of protected persons. Prohibited acts include:

- murder,
- torture,
- hostage taking,
- outrages upon personal dignity, and
- passing sentences and carrying out executions without previous judgement by a properly constituted court which afforded all the necessary judicial guarantees.

The second paragraph of Common Article 3 requires that wounded and sick shall be collected and cared for.

1977 Geneva Protocol II

This treaty supplements the provisions of Common Article 3. It provides more extensive protection to persons affected by, or victims of, the armed conflicts to which it applies.

The preamble to the Protocol acknowledges that:

- the humanitarian principles enshrined in Common Article 3 constitute the foundation of respect for the human person in cases of armed conflict not of an international character, and

- international instruments relating to human rights offer a basic protection to the human person.

In contrast to Common Article 3, which regulates the whole range of non-international armed conflicts, the Protocol regulates only those higher intensity armed conflicts:

- which take place in the territory of a High Contracting Party
- between its armed forces and
- dissident armed forces or other organised 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 the Protocol (article 1(1)).

The Protocol does not apply to 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 (article 1(2)).

Those protected are all persons affected by a conflict as defined in the Protocol. Falling within this category are:

- all persons who do not take a direct part in hostilities, or who have ceased to do so, whether or not their liberty has been restricted;
- wounded, sick and shipwrecked persons;
- the civilian population.

Guarantees and Protection

All those 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, are entitled to:

- respect for their person, honour and convictions and religious practices;
- humane treatment without any adverse distinction (article 4(1)).

As with the Common Article, a number of acts against protected persons are prohibited under the Protocol. These include:

- violence to life,
- torture,
- hostage taking, and
- acts of terrorism and outrages upon personal dignity (article 4(2)).

Other articles include specific and detailed provisions for:

- the protection of children (article 4(3));
- securing humane treatment for detainees (article 5);
- enabling basic minimum standards on the conduct of judicial proceedings to be met (article 6);
- the protection of wounded sick and shipwrecked persons (article 7),
- the protection of medical personnel, units and transports (articles 9 and 11); and
- the protection of the civilian population, stipulating that individual civilians and the civilian population shall enjoy general protection against the dangers arising from military operations unless and for such time as they take a direct part in hostilities (article 13).

The only protection for those actually engaged in hostilities is a prohibition on ordering that there shall be no survivors (article 4(1)).

Protection of Children in Armed Conflict

The various measures for the protection of children in international and non-international armed conflicts referred to above are reinforced and augmented by provisions of the Convention on the Rights of the Child and an optional protocol to that instrument.

Convention on the Rights of the Child

Article 38 requires states parties to:

- undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child;
- take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities;

- refrain from recruiting any person who has not attained the age of fifteen years into their armed forces; and
- take all feasible measures to ensure protection and care of children who are affected by armed conflict.

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

This instrument raises the age of possible recruitment of persons into armed forces and their participation in hostilities in relation to what is stipulated in article 38 of the Convention. For example:

- members of armed forces under the age of 18 years shall not take a direct part in hostilities nor be compulsorily recruited into the armed forces of a state party; and
- armed groups distinct from the armed forces of a state shall not under any circumstances recruit or use in hostilities persons under that age.

Points to Promote Discussion

1. Identify and discuss the principles and provisions of international human rights law that are most relevant in times of armed conflict.
2. In terms of carrying out their functions, what are the advantages of police officials retaining their civilian status, as opposed to acquiring combatant status, when their country is under armed attack or is occupied by enemy forces?
3. A situation of civil war exists in a country. Identify and discuss all of the reasons why police should obey the relevant principles and provisions of international humanitarian law and human rights law in responding to that situation.

Working Group Exercise

Participants should be divided into a number of working groups to consider this exercise. Each group should appoint a spokesperson who will report the views of the group back to the plenary session. The groups should be provided with copies Parts I – II (articles 1 – 27) of the International Covenant on Civil and Political Rights, article 3 common to the Geneva Conventions of 1949, and 1977 Geneva Protocol II.

Scenario

A state of non-international armed conflict (civil war) exists in a country. Members of an ethnic group, who form the majority of the population in one part of the country, but a minority in the country as a whole, are seeking to create an independent nation state. They control, militarily, that part of the territory of the country in which they form

the majority. The government has declared a state of emergency which has resulted in police and security forces being given extended powers of arrest and detention.

The secessionist movement is represented by a legitimate political party seeking to achieve the objective of independence by peaceful means, and an armed opposition group which believes that the objective can be achieved only by force.

Serious acts of terrorism are committed by the armed group, targeting the police and other security forces, as well as civilians. The group is also capable of sustained and concerted military operations that prevent the armed forces of the country from regaining the territory controlled by the ethnic minority group.

One tactic adopted by the police and other security forces in response to this situation is to 'cordon and search' villages and other small communities in order to detect and arrest terrorist suspects, to obtain intelligence and to find arms and ammunition used by the armed group.

This tactic is becoming increasingly criticised and the following is an account of such an operation as reported in a newspaper sympathetic to the secessionists' cause. It came out under the headline 'Police Brutalise and Abuse Villagers'. The account has been repeated in other national news media, and in foreign news media.

'Police and para-military forces raided Blue village two days ago in search of suspected terrorists. They cordoned off the village and forced all the men into the market square in the centre of the village. The women and children were taken to their homes and kept under police guard.

The young men were then paraded in front of informers who identified five of them as terrorists. The police took the five young men who had been identified to one of the houses and interrogated them under torture.

All of the buildings in the village were searched and many of the dwelling houses were seriously damaged. Villagers complained that police took some of their possessions and that women had been abused.

The young men, who had been detained and tortured, were taken away by the police and they remain in police custody.

Actions such as these show only too clearly why the secessionists seek independence from a brutal and corrupt regime.'

Tasks of Working Groups

1. To discuss whether 'cordon and search' operations are a legitimate police tactic in response to the situation described, and how they may be justified in a democratic society governed by the rule of law.
2. To identify which provisions of the International Covenant on Civil and Political Rights are most likely to be violated in the course of such operations and why.

3. To identify which provisions of article 3 common to the Geneva Conventions of 1949, and 1977 Geneva Protocol II are most likely to be violated in the course of such operations, and why.
4. To draft guidelines for police leaders setting out the grounds on which they may carry out a 'cordon and search' operation in a specific situation. The guidelines should set out the conditions which must exist in a specific situation to justify carrying out such an operation.
5. To draft guide-lines for police carrying out 'cordon and search' operations to ensure that they are conducted effectively, lawfully and humanely (taking into account relevant provisions of the International Covenant on Civil and Political Rights, article 3 common to the Geneva Conventions of 1949, and 1977 Geneva Protocol II).

General Discussion

The observations and views of the different working groups can be compared and contrasted in a general discussion.

SECTION a **b** c d

Policing in Situations of Internal Disturbance and Tension

Introduction

This section deals with international standards relevant to forms of internal conflict referred to variously as civil unrest, social disorder or public disorder. It is concerned with acts of violence that occur within those contexts and periods of tension which generally precede or follow them. The standards are those of international human rights law and international humanitarian law.

The term used here, internal disturbance and tension, is taken from 1977 Geneva Protocol II which excludes the application of the Protocol to such situations as not being armed conflicts. However, whilst international humanitarian law is not legally applicable in conflicts that fall below the threshold of armed conflict, it is relevant to such situations for the protection of victims and as a set of standards that amount to good police practice.

Definitions and characteristics of internal disturbance and tension are set out in the commentary, and the relevance of international humanitarian law to those situations is discussed. The purposes and possible applications of the Declaration of Minimum Humanitarian Standards, an instrument embodying standards relevant to situations of internal disturbance and tension, are considered, as are measures of derogation and factors significant to police behaviour in such situations.

Under the sub heading Essential Information for a Presentation principles and provisions of international humanitarian law most relevant to policing in situations of internal disturbance and tension are identified, as are those of international human rights law. Provisions of the Declaration of Minimum Humanitarian Standards are summarised, and measures in human rights treaties that allow states parties to derogate from some of their obligations under the treaties in times of national emergency are set out.

Key Points

The Key Points to this topic are:

- the requirement for non-violent means to be attempted before force is applied;
- the principles of necessity and of proportionality in the use of force;
- the requirements to respect the right to life and the prohibitions of torture and ill-treatment and of arbitrary arrest and detention;
- the prohibition of attacks on persons not taking part in acts of violence; and
- the requirements for wounded and sick victims of disturbances to be collected and cared for, and for missing persons to be searched for.

Commentary

Before being introduced to the subject matter of this section, participants should already have been familiarised with international human rights law in sessions based on previous sections of the manual.

It is also recommended that if the subject matter of the preceding section (Policing in Times of Armed Conflict) is not included in a teaching programme, teachers or resource persons provide an introduction to international humanitarian law based on the commentary in that section when making presentations on this topic.

Situations of Internal Disturbance and Tension

As can be seen in the foregoing section, three categories of internal conflict are apparent under the terms and conditions of article 3 Common to the Geneva Conventions of 1949 and 1977 Geneva Protocol II:

- high-intensity internal armed conflicts in which rebel forces have control of territory. The Protocol regulates this type of conflict, supplementing the provisions of Common Article 3 which also apply;
- internal armed conflicts which fall below the threshold of Protocol II and to which only the provisions of the Common Article apply; and
- situations of internal disturbance and tension, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

The distinction between the three categories of internal conflict is not always clear in practice. However, the International Committee of the Red Cross has proposed definitions of internal disturbances and of tensions not amounting to armed conflict that may assist in making the distinction.

It has also identified a number of characteristics of disturbances and tensions, some or all of which may be present in any particular situation.

Disturbances are described as:

'situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterised 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 organised 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.'

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 tension include:

- introduction of various forms of detention – large scale and long term;
- torture and ill-treatment of detainees;
- suppression of fundamental judicial guarantees;
- forced disappearances and other acts of violence such as hostage taking;
- repressive measures against families and associates of detainees; and
- the spreading of terror among the civilian population.

Note: The above definitions and characteristics were published in the International Review of the Red Cross, Jan – Feb 1988. No 262.

Relevance of Principles and Provisions of International Humanitarian Law to Situations of Internal Disturbance and Tension

As indicated in the previous section and in section a, chapter 2, part 1 of this manual, the overriding purpose of international human rights law is to secure the lawful rights and freedoms of individuals. It applies in all places and at all times, in times of peace and in times of conflict.

The purposes of international humanitarian law are to regulate the conduct of hostilities and protect the victims of armed conflicts. It imposes obligations on parties to armed conflicts, and it comes into force only when armed conflict occurs.

International humanitarian law is, therefore, not legally applicable in the situations dealt with in this section – internal disturbance and tension. However, the principles of that branch of law, and some of its provisions, are relevant to such situations, and are included here because:

- the intensity and seriousness of some internal disturbances are such that they can be almost indistinguishable from armed conflict;
- in the case of disturbances that are at the threshold of armed conflict, the principles and provisions of international humanitarian law can, in some circumstances, provide better protection for victims than those of international human rights law, because they focus on the material situation of victims;
- it is good police practice to apply humanitarian principles to all situations of internal disturbance and tension.

Furthermore, whilst international human rights law is legally applicable in all situations, including armed conflict and internal disturbance and tension, its effect can be limited through measure of derogation taken in times of emergency that threaten the life of the nation. Derogation provisions of global and regional human rights treaties are set out below under the sub-heading ‘Essential Information for a Presentation’.

When measures of derogation are taken it is clearly of vital importance for police to:

- respect the hard core of non-derogable rights; and
- ensure that all of their actions under any extended powers are strictly lawful and humane.

The relevance of international humanitarian law to internal disturbances and tensions, and the fact that human rights can be limited in such situations, are among the reasons that have prompted the drafting of texts expressing the standards of both international humanitarian law and international human rights law to be applied in such situations.

Declaration of Minimum Humanitarian Standards

This Declaration is one such text, which was drafted by a group of experts who met at the Abo Akademi University, Turku/Abo, Finland in 1990.

The purpose of the authors of this text was not to propose the enactment of a new body of law specific to situations of internal disturbance and tension but to re-emphasise existing fundamental rules drawn from treaty law, custom and general legal principles applicable in such situations.

It embodies imperative rules based on non-derogable rights and prohibitions set out in treaties such as the:

- International Covenant on Civil and Political Rights;

- Geneva Conventions of 1949 (particularly Common Article 3); and
- 1977 Geneva Protocol II.

This text could, eventually, be authoritatively adopted – by resolution of the UN General Assembly, for example.

It could also form the basis of:

- national laws or regulations governing conduct during internal disturbances and tensions; and
- guidelines and codes of conduct for police and other security forces in those situations.

Some of its provisions are summarised below under the sub-heading ‘Essential information for a Presentation’.

Measures of Derogation in Times of Public Emergency

The necessity of limiting human rights to secure the survival of the nation in times of public emergency is acknowledged and allowed for under human rights treaties. Derogation provisions of human rights treaties are set out below under the sub-heading ‘Essential Information for a Presentation’ where it can be seen that such provisions, in addition to regulating measures of derogation, list some rights such as the right to life and the prohibitions of torture and ill-treatment as non-derogable.

Teachers and resource persons should remind police officials that not every situation of conflict, disorder or tension is of sufficient gravity to justify derogation from the provisions of human rights treaties, and when conditions for derogation are not met the entire range of human rights applies and states remain bound by their treaty obligations to respect those rights.

Furthermore, limitation of some rights may still occur through a wider application of the limitation clauses that are attached to some articles of human rights treaties. For example the right to peaceful assembly, protected under article 21 of the International Covenant on Civil and Political Rights and articles of regional human rights treaties, may be lawfully restricted in the interests of national security or public order. This right, and other rights to democratic freedoms, is dealt with in section b, of chapter 2, part 2 herein.

It is also important for teachers and resource persons to emphasise that measures of derogation can seriously limit human rights protection, their effect extending beyond those rights subject to derogation and affecting non-derogable rights. For example safeguards designed to secure judicial supervision of detainees following arrest or detention on criminal charges may be diminished following derogation from article 9 of the International Covenant on Civil and Political Rights and similar provisions of regional human rights treaties. Torture or ill treatment of detainees, and even unlawful killings, can occur as a consequence of the limitation of this form of supervision.

In respect of the prohibition of torture and the prohibition of arbitrary killing (which are non-derogable) police officials should be reminded that article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that 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. The Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (principle 1), contains similar provisions in respect of extra-judicial killings. Provisions of these instruments are set out in sections c and a respectively of chapter 2, part 1 herein.

Police Behaviour in Situations of Internal Disturbance and Tension

The most basic functions of police are to maintain order, and to restore order when conflict or disorder occurs.

Police are required to perform these functions lawfully and humanely because unlawful or inhumane actions by police are very serious forms of disorder.

Furthermore it is important to recognise that:

- unlawful or inhumane actions by police alienate the community or significant sections of the community, making the already difficult policing tasks even more difficult to perform;
- policing in situations of internal disturbance and tension places heavy and conflicting demands on police agencies and officials, and exposes police officials to substantial risk of personal injury; and
- in contrast to the situation in armed conflicts, in which military personnel with combatant status engage with other combatants (who are their enemies) in order to overcome them, the situation in internal disturbances is that civilian police officials confront other civilians (who are not their enemies) in order to restore order.

To meet these challenges police leaders need:

- equipment for the protection of police and to enable police to apply force proportionately when it is necessary to do so;
- thorough training in the development and application of strategy and tactics appropriate to the situations they may face;
- the ability to gather and accurately interpret intelligence;
- the ability to formulate effective strategies and tactics in respect of specific policing operations;
- the ability to deliver clear and thorough briefings on the situations they face in

specific operations, and on the strategies and tactics to be adopted to deal with them;

- the ability effectively to command and control police officials during the conduct of operations;
- the ability to conduct thorough and honest de-briefings at the conclusion of operations; and
- the ability and opportunity to apply lessons learned from operations and de-briefings to any future operations where appropriate.

Furthermore, police leaders need to be aware of the standards of international humanitarian law and international human rights law relevant to policing in situations of disturbance and tension. These are set out below under the sub-heading 'Essential Information for a Presentation'.

Planning and preparation for police operations in situations of internal disturbance and tension should be informed by these standards, and operations carried out in conformity with them.

Key Policing Issues Connected with the Topic

These include:

- securing the correct balance between the maintenance of order and the protection of such rights as the right to freedom of peaceful assembly and association;
- securing the correct balance between the maintenance of order and law enforcement in those cases where strict enforcement of a particular law may escalate a situation of internal tension to one of internal disturbance;
- ensuring that force is used only when necessary to maintain or restore order, and then only to the extent necessary;
- ensuring that police officials are trained, equipped, briefed, deployed and commanded and controlled so that they meet the objectives of effective, lawful and humane policing and so that their own personal safety is taken fully into account.

Essential Information for a Presentation

Principles and Provisions of International Humanitarian Law Most Relevant to Policing in Situations of Internal Disturbance and Tension

These summaries of principles and provisions are drawn from 'Geneva Law' generally:

- prohibitions on hostage taking, pillage, collective punishments, and acts of terrorism;
- requirements to search for and collect wounded and sick persons;
- requirements for wounded and sick persons to receive care and attention;
- prohibition of attacks against persons not taking part in acts of violence;
- special measures to protect children, and to safeguard them from being recruited into armed groups or from taking part in violence; and
- requirements to respect and protect medical and religious personnel, and to assist them in the performance of their duties.

Summary and Account of Relevant Principles and Provisions of International Human Rights Law

Human Rights Most Vulnerable in Situations of Internal Disturbances and Tension

These are:

- the rights to life and security of person – violations arise from unlawful and excessive use of force. The circumstances when lethal force, or potentially lethal force, can be used are strictly defined and limited;
- the prohibition of torture and ill-treatment – violations occur during detention and interrogation for the purposes of securing confessions, obtaining intelligence, or creating a climate of fear. The prohibition is total and absolute;
- the prohibition of arbitrary arrest and detention – violations occur especially when powers of arrest are extended under emergency regulations. Arrests must always be lawful and necessary, and the procedures to be followed on arrest are to be strictly complied with; and
- the right to humane treatment as a detainee – violations occur for the same reasons as those listed under the prohibition of torture. Confessions or intelligence obtained by these means are unreliable. The danger of miscarriages of justice arising out of false confessions is high. Inhumane treatment of detainees is a

complete denial of human dignity.

Note: all of the human rights mentioned above have been dealt with in detail in chapter 1, part 2 of this manual – 'Respect for Human Rights: Police Powers'. Reference should be made to the sections in that chapter where necessary.

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

The following provisions of the Basic Principles are particularly relevant to policing in situations of internal disturbances and tension:

- equipment to enable differentiated use of force and firearms, and defensive equipment to be available (principle 2);
- assistance and medical aid to be rendered to injured persons (principle 5);
- exceptional circumstances such as internal political instability or other public emergency no justification for violation of these basic principles (principle 8);
- firearms to be used only in defence against imminent threat of death or serious injury (principle 9);
- in view of the right to participate in lawful and peaceful assemblies, force and firearms to be used only in accordance with principles 13 and 14 (principle 12);
- in dispersing unlawful but non-violent assemblies use of force to be avoided or, where this is not practicable, force to be restricted to the minimum extent necessary (principle 13);
- in dispersing violent assemblies, firearms to be used only when less dangerous means not practicable, and then only in accordance with basic principle 9 (principle 14);
- police training to cover alternatives to the use of force and firearms, including peaceful settlement of conflicts, the understanding of crowd behaviour, methods of persuasion, negotiation and mediation, as well as technical means, with a view to limiting the use of force and firearms (principle 20);
- senior officers to be responsible for actions of subordinates, and no defence of superior orders for unlawful use of force or firearms leading to death or serious injury. (Principles 24 and 26)

Note: the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are dealt with in full in section a, of chapter 1, part 2 of this Manual.

Declaration of Minimum Humanitarian Standards

The provisions of this text are summarised as follows:

- the Declaration affirms minimum humanitarian standards applicable in all situations, including internal violence, disturbances, tensions, and public emergency (article 1);
- they are non-derogable and must be respected whether or not a state of emergency has been proclaimed (article 1);
- the standards are to be respected by, and applied to all persons, groups and authorities, irrespective of their legal status and without any adverse discrimination (article 2);
- everyone has the right to recognition everywhere as a person before the law (article 3);
- all persons, even if their liberty has been restricted, are entitled to respect for their person, honour and convictions, freedom of thought, conscience and religious practices (article 3);
- everyone is to be treated humanely, without any adverse distinction in all circumstances (article 3);
- the following acts are prohibited (article 3):
 - violence to life, murder, torture, mutilation, rape, cruel, inhuman or degrading treatment or punishment and other outrages upon personal dignity;
 - collective punishments;
 - hostage taking;
 - involuntary disappearances of individuals;
 - pillage;
 - deliberate deprivation of access to necessary food, drinking water and medicine;
 - threats or incitement to commit any of the foregoing acts.
- persons deprived of their liberty are to be held in recognized places of detention, and accurate information on their detention and whereabouts is to be made promptly available to family members and counsel or other persons having a legitimate interest in the information (article 4);
- persons deprived of their liberty are to be allowed to communicate with the

outside world including counsel (article 4);

- the right to an effective remedy, including *habeas corpus*, is to be guaranteed and everyone who is deprived of his or her liberty by arrest or detention is to be entitled to take proceedings by which the lawfulness of the detention can be decided speedily by a court and his or her release ordered if the detention is not lawful (article 4);
- persons deprived of their liberty to be treated humanely, provided with adequate food and drinking water, decent accommodation and clothing, and be afforded safeguards as regards health, hygiene, and working and social conditions (article 5);
- attacks against persons not taking part in acts of violence are prohibited in all circumstances (article 5);
- force is to be used only when unavoidable and be in proportion to the seriousness of the offence or the objective to be achieved (article 5);
- weapons or other material or methods prohibited in international armed conflicts are not to be employed in any circumstances (article 5);
- acts or threats of violence the primary purpose of which is to spread terror among the population are prohibited (article 6);
- ordering the displacement of the population or parts thereof, unless their safety or imperative security reasons so demand, is prohibited (article 7);
- every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life (article 8);
- no sentence shall be passed and no penalty shall be executed on a person found guilty of an offence without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by the community of nations. In particular (article 9):
 - the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him or her, shall provide for a trial within a reasonable time, and shall afford the accused before and during his or her trial all necessary rights and means of defence;
 - no one shall be convicted of an offence except on the basis of individual penal responsibility;
 - anyone charged with an offence is presumed innocent until proved guilty according to law;
 - anyone charged with an offence shall have the right to be tried in his or her presence;

- no one shall be compelled to testify against himself or herself or to confess guilt;
 - no one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure;
 - 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 applicable law, at the time when it was committed.
- every child has the right to the measures of protection required by his or her condition as a minor (article 10);
 - children under the age of fifteen years shall not be recruited in or allowed to join armed forces or armed groups or allowed to take part in acts of violence (article 10);
 - all efforts are to be made not to allow persons below the age of 18 to take part in acts of violence (article 10);
 - lawful procedures are to be in place to protect persons subject to assigned residence, internment or administrative detention, for imperative reasons of security (article 11);
 - wounded and sick, whether or not they have taken part in acts of violence, are to be protected and treated humanely and receive appropriate medical care (article 12);
 - every possible measure is to be taken, without delay, to search for and collect and care for wounded, sick and missing persons and to search for the dead, prevent their being despoiled or mutilated, and to dispose of them with respect (article 13);
 - medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian missions (article 14);
 - under no circumstances shall any person be punished for having carried out medical activities compatible with the principles of medical ethics, regardless of the person benefiting therefrom (article 14);
 - humanitarian organisations shall be granted all the facilities necessary to enable them to carry out their humanitarian activities in situations of internal violence, disturbances, tensions or public emergency (article 15);
 - in observing these standards, all efforts shall be made to protect the rights of groups, minorities and peoples, including their dignity and identity (article 16).

Measures of Derogation Expressed in Human Rights Treaties

The provisions on derogation are summarised as follows:

International Covenant on Civil and Political Rights

Article 4 states that during an officially proclaimed emergency which threatens the life of the nation states parties may take measures derogating from their obligations under the Covenant. Such measures must:

- be strictly required by the exigencies of the situation;
- not be inconsistent with other obligations under international law; and
- not be discriminatory on grounds of race, colour, sex, language, religion or social origin.

Other states parties to the Covenant, through the intermediary of the Secretary General of the United Nations, are to be advised of the details of the derogation and, eventually, of its termination.

No derogation is allowed from obligations under articles of the Covenant that:

- protect the right to life (article 6);
- prohibit torture and ill-treatment (article 7);
- prohibit slavery or servitude (article 8, paragraphs 1 and 2);
- prohibit imprisonment merely on the ground of inability to fulfil a contractual obligation (article 11);
- prohibit retrospective conviction or punishment for a criminal offence (article 15);
- protect the right of everyone to recognition everywhere as a person before the law (article 16); and
- accord to everyone the right to freedom of thought, conscience and religion (article 18).

General Comments of the Human Rights Committee

The Human Rights Committee in its General Comment No. 29 (72) on article 4 of that treaty has made the following comments relevant to this, and the previous, section:

'Article 4 of the Covenant is of paramount importance for the system of protection of human rights under the Covenant. On the one hand, it allows for a State party unilaterally temporarily to derogate from a part of its obligations under the Covenant. On the other hand, article 4 subjects both this very measure of

derogation, as well as its material consequences, to a specific regime of safeguards. The restoration of a state of normalcy where full respect of the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant.'

'Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature. Before a State moves to invoke article 4, two fundamental conditions must be met: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency.'

'Not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation as required by article 4, paragraph 1. During armed conflict, whether international or non-international, rules of international humanitarian law become applicable and help, in addition to the provisions of article 4 and article 5, paragraph 1, of the Covenant, to prevent the abuse of a State's emergency powers. The Covenant requires that even during an armed conflict measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation.'

'If States purport to invoke the right to derogate from the Covenant during, for instance, a natural catastrophe, a mass demonstration including instances of violence, or a major industrial accident, they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the Covenant are strictly required by the exigencies of the situation. In the opinion of the Committee, the possibility of restricting certain Covenant rights under the terms of, for instance, freedom of movement (art.12) or freedom of assembly (art. 21) is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation.'

'Safeguards related to derogation, as embodied in article 4 of the Covenant, are based on the principles of legality and the rule of law inherent in the Covenant as a whole. As certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant.'

American Convention on Human Rights

Article 27 states that in time of war, public danger, or other emergency that threatens 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 with the International Covenant on Civil and Political Rights, such measures must not be:

- inconsistent with other international legal obligations, nor
- discriminatory on any of the usual grounds.

Any state party taking measures of derogation must immediately inform the other state parties, through the Secretary General of the Organisation of American States, of:

- the provisions suspended;
- the reasons for the suspension; and
- the date set for termination of the suspension.

No derogation is allowed from obligations under articles of the Convention that:

- protect the right to juridical personality (article 3);
- protect the right to life (article 4);
- protect the right to humane treatment and prohibit torture (article 5);
- prohibit slavery (article 6);
- prohibit *Ex Post Facto* Laws (article 9);
- protect the right to freedom of conscience and religion (article 12);
- protect the rights of the family (article 17);
- protect the right to a name (article 18);
- protect the rights of the child (article 19);
- protect the right to nationality (article 20); and
- protect the right to participate in government (article 23).

European Convention on Human Rights

Article 15 states that in time of war or other public emergency threatening the life of the nation any high contracting party may take measures derogating from its obligations:

- to the extent strictly required by the exigencies of the situation; and
- provided that the measures are not inconsistent with other international legal obligations.

There is no reference to non-discrimination.

States taking measures of derogation under this treaty must keep the Secretary General of the Council of Europe fully informed of:

- the measures it has taken;
- the reasons for doing so; and
- when the measures have ceased to operate.

No derogation is allowed from obligations under articles of the Convention that:

- protect the right to life (article 2);
- prohibit torture or ill-treatment (article 3);
- prohibit slavery or servitude (article 4); and
- prohibit retrospective conviction or punishment for a criminal offence (article 7).

Note: the African Charter on Human and Peoples' Rights contains no specific article entitling a state to derogate from any of its obligations. However, many of the articles contain 'claw back' clauses that entitle a state to restrict the rights to the extent permitted by domestic law.

Points to Promote Discussion

1. In what ways can police monitor the degree of social tension in a community so that they can evaluate the possibility of disturbances occurring?
2. In times of high social tension:
 - a. what steps can police take to prevent disturbances occurring?
 - b. what can police do to ensure that their actions are not the immediate

cause of disturbances occurring?

3. What are the merits or demerits of the following statements as examples of good policing practice?
 - a. Treat a disorderly or potentially disorderly crowd of people as a group of thinking individuals.
 - b. Police officials deployed in crowd control situations should establish contact on an individual basis with people in crowds.
 - c. Whenever possible allow time for the people in a crowd to respond as individuals to the situation they face – including to any requirements you make of them for the purpose of maintaining or restoring order.
4. When police officials are deployed in large numbers to restore order during a disturbance, in what ways can police leaders retain control over the actions of individual police officials?
5. When dealing with a large scale disturbance in which some members of an assembled crowd are committing serious criminal and public order offences, what measures can police adopt to secure the arrest of those people?

Working Group Exercise

Divide the participants into groups, provide them with copies of Parts I – III (articles 1 – 27) of the International Covenant on Civil and Political Rights, article 3 common to the Geneva Conventions of 1949, and 1977 Geneva Protocol II. Ask them to consider separately the following exercise.

Scenario

A situation of high tension exists within a country where members of a religious minority group feel they are subjected to social and economic discrimination. A state of emergency has been declared and the State, which is a party to the International Covenant on Civil and Political Rights, has derogated from articles 9, 14, 19 and 21 of the Covenant. This means that:

- police have been given wide powers of arrest and detention;
- detainees are held in secret places of detention and do not have the right to communicate with family members and legal representatives;
- detainees no longer have the right to challenge legality of detention before a court;
- limitations on press freedom have been imposed so that reports on the situation are confined to accounts issued by the government press office; and

- gatherings of more than six people in public places are banned.

Some minor acts of terrorism have occurred in the form of 'letter bombs' being posted to politicians representing the majority population within the country.

There have been riots and other disturbances by members of the minority group, and police have dispersed rioters by discharging firearms into the crowds causing fatalities. Furthermore, they have attacked bystanders and others not participating in the disturbances

Police have also carried out operations in which large numbers of young men of the minority group have been arrested and detained. Many of the arrests are, in fact, arbitrary arrests. Some of those detained have been subjected to torture and ill treatment in order to intimidate other members of the minority religious group, and to secure intelligence about activist members of that group.

Subsequently, lawyers representing arrested and detained members of the religious minority group, and journalists who attempted to publicise the situation and criticised police action have also been arrested and subjected to mistreatment and other forms of intimidation.

A police spokesperson has attempted to justify action against the religious minority group, and against the lawyers and journalists, on grounds of 'national security', referring to the derogation measures the State has taken. He claimed that robust action is necessary to bring the situation under control.

Tasks of the Working Groups:

1. To identify which articles of the International Covenant on Civil and Political Rights are most likely to be violated by police in this situation and why.
2. To identify which provisions of article 3 common to the Geneva Conventions of 1949, and 1977 Geneva Protocol II are relevant in terms of regulating police behaviour in this situation (even though the provisions are not legally applicable). Why would it be good practice for police to comply with them?
3. To discuss the likely effects of the measures of derogation from articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights taken by the State under the state of emergency declared in this case. How may the measures help to resolve the situation? How may they hinder a resolution of the situation?
4. To identify the likely negative effects of the police action against the members of the religious minority group – in respect of maintaining order, and securing a long term solution to the problems causing the state of tension.
5. To identify the likely negative effects of the police action against the lawyers and journalists – in respect of other important opinion formers in the country, the public perception of the regime and the police, and the maintenance of order in the country.

6. To draft a short code of conduct to set standards for police behaviour in responding to this situation of disturbance and tension (taking into account relevant provisions of the International Covenant on Civil and Political Rights, article 3 common to the Geneva Conventions of 1949, and 1977 Geneva Protocol II).

The observations and views of the different working groups should then be compared and contrasted in a general discussion facilitated by the resource person or teacher.

SECTION a b **c** d

Policing in Situations of Emergency and Disaster

Introduction

This section focuses on international standards relevant to police behaviour in situations of emergency and disaster. These situations include small scale personal emergencies that befall individuals and small groups of people, as well as larger scale public emergencies and disasters.

Reasons for considering the policing of emergencies and disasters in human rights terms are considered in the commentary, as are emergencies and disasters and police responses to them; the exercise of coercive powers by police in situations of emergency and disaster; and rights that can be protected by police in such situations.

Under the sub-heading 'Essential Information for a Presentation' provisions of international instruments embodying rights that can be protected by police in situations of emergency and disaster are set out. The entitlement to general conditions in which human rights can be realised and the duty of service to the community are described.

Key Points

The key points to this topic are:

- respect for the inherent dignity of the human person;
- protection of victims and vulnerable people;
- respect for human rights in the exercise of police powers; and

- protection of human rights that are vulnerable in situations of emergency and disaster

Commentary

Reasons for Considering the Policing of Emergencies and Disasters in Human Rights Terms

As can be seen from other sections of this manual, in human rights instruments police officials are referred to almost exclusively as law enforcement officials. However, apart from the work of those officials in specialised crime investigation agencies, the enforcement of criminal law is only one of a number of functions carried out by police. A very important aspect of police work is that of responding to various types of emergency or disaster.

It is appropriate that human rights instruments should focus on the law enforcement function of police for it is in that area, when police exercise their powers to use force, arrest and detain people, and carry out search and surveillance activities, that human rights violations are most likely to occur.

Nevertheless, there are human rights dimensions to the area of policing covered in this section which ought to be identified and considered because:

- most general operational police officials respond routinely and frequently to calls for emergency assistance;
- the links between this area of policing and the protection of human rights are not sufficiently explored; and
- the provision of aid and assistance in emergencies by police can result in a considerable and very positive contribution to the protection of human rights.

Emergencies and Disasters and Police Responses to Them

Emergencies are conditions or situations requiring an immediate response. They can be small scale and personal or large scale involving many people.

Personal emergencies can arise through some individual tragedy or accident either in the home or a public place.

Large scale emergencies can arise because of natural disasters such as floods or earthquakes, or because of man-made disasters such as aircraft or train crashes, or accidents at industrial locations.

Police respond to personal and large scale emergencies and disasters under their duty of service to the community, a function referred to in the Code of Conduct for Law Enforcement Officials and the European Code of Police Ethics. Relevant provisions of these texts

are set out below under the sub-heading 'Essential Information for a Presentation'.

Police respond to the need for immediate aid in personal or small scale emergencies by, for example:

- providing a rapid response to the emergency;
- bringing a short term but essential, and possibly life saving, remedy or corrective to the situation; and
- making a referral to the appropriate agency for any long term remedy or corrective that is required.

Police respond to the need for immediate aid in public or large scale emergencies and disasters by, for example:

- taking combined action with other emergency services to save life;
- co-ordinating the work of other emergency services at the scene of the emergency or disaster;
- protecting and preserving the scene for rescue work, and for investigations into the causes of the emergency or disaster;
- carrying out or assisting the investigation into causes of the emergency or disaster;
- identifying the remains of deceased victims of the emergency or disaster; and
- restoring normality to the situation as soon as possible.

Police may also provide longer term assistance to victims of large scale emergencies and disasters by protecting them when they are housed in camps or other temporary accommodation.

This aspect of police work is significant because of:

- its importance to the community and to individual members of the community – in most societies a police agency is the only agency trained, equipped and available on a permanent basis to respond, at least initially, to every kind of emergency;
- the amount of police time and resources devoted to responding to emergencies – this can exceed the time and resources devoted to law enforcement and order maintenance functions in some circumstances;
- the very positive nature of this service function in terms of police relationships with the community – police are appreciated for carrying out essential humanitarian tasks at a time when individuals are in urgent need of assistance.

However, it should be noted that:

- in order to respond effectively to emergencies or disasters police may have to exercise coercive powers;
- a number of human rights, not normally associated with policing are vulnerable in times of emergency or disaster; and
- the positive effect on police/community relations is dependent upon an effective, efficient and humane response to emergencies.

The Exercise of Coercive Powers by Police in Situations of Emergency or Disaster

It may be necessary for police to exercise powers to:

- use force;
- deprive people of their liberty; and
- carry out search and surveillance activities

in responding to situations of emergency or disaster.

The exercise of these powers is limited by a number of fundamental rights and prohibitions. In summary, these are:

- the rights to life, liberty and security of person;
- the prohibition of arbitrary arrest and detention;
- the prohibition of torture;
- the right to humane treatment as a detainee; and
- the right to private and family life.

They are considered in sections a, b, c and d of chapter 1 part 2 of this manual where the requirement on police to respect them all when they exercise their coercive powers is emphasised.

In other words police may exercise such powers only when they may lawfully do so and they may not exceed their powers.

Teachers and resource persons should:

- remind participants of these requirements, referring to the relevant sections where necessary; and

- point out that where the lawful exercise of coercive powers is necessary for the purposes of providing an effective response to an emergency or disaster it is especially important that they should be exercised lawfully and humanely.

Even when the circumstances of a large-scale emergency or disaster threaten the life of the nation, and a state derogates from some of its obligations under human rights treaties those fundamental rights remain protected.

Note: measures of derogation in times of emergency are dealt with in the preceding section of this manual. Teachers and resource persons should refer to the information on derogation measures in the commentary to that section and under the sub-heading 'Essential Information for a Presentation' there in order to decide when and how to include that information in a session based on this section. It should be noted, especially in the context of this section, that paragraph 5 of General Comment No. 29 (72) adopted by the Human Rights Committee, includes the following:

'If States purport to invoke the right to derogate from the Covenant during, for instance, a natural catastrophe, a mass demonstration including instances of violence, or a major industrial accident, they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all measures derogating from the Covenant are strictly required by the exigencies of the situation.'

Rights that Can Be Protected by Police in Situations of Emergency or Disaster

The circumstances of an emergency or disaster may increase the vulnerability of all categories of rights. However the rights considered hereunder are identified as being especially vulnerable in those situations as well as being susceptible to protection by or through police activity. These are the rights to:

- life
- private and family life
- own property
- protection of the family
- an adequate standard of living
- enjoyment of the highest attainable standards of health

Information on provisions of instruments protecting these rights is set out below under the sub-heading 'Essential Information for a Presentation'.

Right to Life

Policing is one of the important means by which the right to life may be protected. In addition to protecting the right by;

- preventing and investigating unlawful killings and
- preventing or suppressing disturbances which threaten life,

police also do so when they provide aid and assistance in emergencies or disasters by, for example, putting into effect immediate life saving measures, or co-ordinating or assisting the work of rescue services.

Right to Private and Family Life

In providing aid and assistance to individuals:

- in personal emergencies arising through individual tragedy or accident; or
- in large scale emergencies or disasters

police may become aware of highly personal matters, the privacy of which should be protected.

Right to Own Property

It is possible that, in situations of emergency or disaster, it may be in the interests of the community, society or the public for this right to be limited, for example by requisitioning:

- vehicles for emergency transport; or
- buildings for emergency accommodation.

However, such limitations on the right to property must always be effected according to the law.

There is also another sense in which this right is relevant to policing in situations of emergency or disaster – the property of individuals may be vulnerable to theft in the event of looting.

Protection of property by police and effective enforcement of the law of theft are essential for the protection of this right.

Right to Protection of the Family

Police can be supportive of family life, and of the special rights of children, in a variety of ways. For example:

- in small scale emergencies by providing an initial response to an individual accident, distressing situation or tragedy and then referring the case to the appropriate medical, social or welfare authorities;
- in large scale emergencies or disasters by assisting members of families to remain together, or by helping agencies expert in tracing missing persons to reunite families when the circumstances of the emergency have caused members of families to be parted from each other; and
- in small scale and large scale emergencies by providing special care and assistance to children.

Right to an Adequate Standard of Living

Police can contribute to the delivery of this right in situations of emergency or disaster by, for example:

- identifying individuals or groups of people in need of particular forms of assistance such as food, clothing, housing and medical care and necessary social services;
- advising the appropriate authorities of the needs of such individuals or groups; and
- facilitating the necessary communications and transport links so that assistance can be provided.

Whilst the purpose of provisions protecting this right is to secure it on a permanent and long term basis by, for example, improving methods of production, conservation and distribution of food, it may be necessary to make direct and specific provision of basic needs such as food in situations of emergency or disaster where no other possibility exists.

Right to Enjoyment of the Highest Attainable Standards of Health

This right can take on additional importance in times of emergency or disaster, and police can be a positive force in implementing the necessary steps to secure the right by, for example:

- facilitating movement of medical supplies and personnel; and
- enforcing any lawful measures to control population movements deemed necessary for the prevention or control of disease.

Key Policing Issues Connected with the Topic

These include:

- the development, constant up-dating, and rehearsal of contingency plans to deal with large-scale emergencies;
- training and rehearsal of personnel to secure proper implementation of plans;
- training of personnel to enhance awareness of wider issues connected with police action in times of emergency – for example human rights issues, and the special needs and sensitivities of victims of small and large scale emergencies; and
- medical and welfare support services, including post-trauma stress counselling, to be available for police officials exposed to excessively stressful situations when dealing with emergencies.

Essential Information for a Presentation

Rights that Can Be Protected by Police in Situations of Emergency and Disaster

Right to Life

This right is protected under article 3 of the Universal Declaration of Human Rights, and articles in the international Covenant on Civil and Political Rights and regional human rights treaties. Reference should be made to section a of chapter 1, part 2 herein for a full account of these.

Right to Private and Family Life

Arbitrary interference with an individual's privacy, family, home or correspondence is prohibited under article 12 of the Universal Declaration of Human Rights, and articles of the International Covenant on Civil and Political Rights and regional human rights treaties. Reference should be made to section d of chapter 1 part 2 herein for a full account of these.

Right to Own Property

The right to own property is protected under the Universal Declaration of Human Rights and regional treaties.

Universal Declaration of Human Rights

Article 17 states:

1. 'Everyone has the right to own property alone as well as in association with others.'
2. 'No one shall be arbitrarily deprived of property.'

African Charter on Human and Peoples' Rights

Article 14 states:

'The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.'

American Convention on Human Rights

Article 21 states:

1. 'Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.'
2. 'No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.'
3. 'Usury and any other form of exploitation of man, by man shall be prohibited by law.'

Protocol No 1. to the European Convention on Human Rights

Article 1 states:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law and by the general principles of international law.'

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'

Right to Protection of the Family

The right to protection of the family is protected under the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights, and the Convention on the Rights of the Child

Universal Declaration of Human Rights and International Covenant on Civil and Political Rights

Article 16(3) of the Declaration and article 23(1) of the Covenant state:

‘The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.’

African Charter on Human and Peoples’ Rights

Article 18(1) states:

‘The family shall be the natural unit and basis of society. It shall be protected by the State, which shall take care of its physical health and moral.’

American Convention on Human Rights

Article 17(1) states:

‘The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.’

Convention on the Rights of the Child

Article 20(1) states:

‘A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.’

The Right to an Adequate Standard of Living

The right to a standard of living adequate for health and well-being is protected under the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.

Universal Declaration of Human Rights

Article 25 states:

1. ‘Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.’

International Covenant on Economic, Social and Cultural Rights

Article 11(1) states:

‘The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.’

The Right to Enjoyment of Highest Attainable Standards of Health

This right, enshrined in the International Covenant on Economic, Social and Cultural Rights, and the African Charter on Human and Peoples’ Rights.

International Covenant on Economic, Social and Cultural Rights

Article 12(1) states:

‘The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.’

Article 12(2) requires States Parties to take a number of steps to achieve the full realisation of this right. These include, in paragraph (c), those necessary for:

‘The prevention, treatment and control of epidemic, endemic, occupational and other diseases.’

African Charter on Human and Peoples’ Rights

Article 16 states:

1. ‘Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.’

Other Relevant Standards

The Entitlement to General Conditions in which Rights Can Be Realised

Article 28 of the Universal Declaration of Human Rights states that everyone is entitled to a social and international order in which the rights and freedoms embodied in the Declaration can be fully realised.

Policing is an essential element in securing that social and international order necessary for the delivery and enjoyment of all categories of rights.

When that order breaks down or is disrupted owing to situations of emergency or disaster policing can contribute to:

- the realisation of some fundamental human rights, and some rights which are vulnerable in times of emergency (as indicated above); and
- the restoration of order, to which everyone is entitled, in order that the full range of rights may be realised.

The Duty of Police of Service to the Community

Code of Conduct for Law Enforcement Officials

Article 1 of the U.N. Code of Conduct for Law Enforcement Officials requires law enforcement officials at all times to fulfil the duty imposed on them by law by:

- serving the community; and
- protecting all persons against illegal acts,
- consistent with the high degree of responsibility required by their profession.

Paragraph (c) of the Commentary to article 1, states that service to the community includes:

- 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.

Whilst this account of service to the community is directly applicable to policing in times of emergency the other policing duty referred to here, namely that of protecting all persons against illegal acts, remains a paramount police function in such times.

European Code of Police Ethics

Article 1 states that the main purposes of the police in a democratic society governed by the rule of law are:

- to maintain public tranquillity, and law and order in society;
- to protect and respect the individual's fundamental rights and freedoms as enshrined notably in the European Convention on Human Rights;

- to prevent and combat crime;
- to detect crime; and
- to provide assistance and service functions to the public.

Concerning the last point, the Commentary includes the observation that assistance by the police is generally related to specific situations where the police should have an obligation to act, such as offering direct assistance to any person in danger or assisting persons in establishing contact with other authorities or social services.

Points to Promote Discussion

1. In what ways can the development, up-dating, and rehearsal of contingency plans for dealing with large scale emergencies and disasters take into account the need to protect human rights of victims or other people affected by those situations?
2. What are the special needs and sensitivities of victims of large scale emergencies and disasters, and how do they differ (if at all) from the needs and sensitivities of victims of disturbances and tension or those of victims of crime?
3. What measures can police leaders take to prevent stress disorders occurring in police officials confronting extremely stressful situations, or to alleviate them once they have occurred?
4. Give some examples of ways in which police can help to promote the rights to protection of family life; to food; and to health in situations of large scale emergency.

Role Play Exercise

Purpose of the Exercise

To encourage examination and analysis of relevant international human rights standards.

To sensitise participants to the practical implications of the international standards relating to aid and assistance in emergencies.

To enhance the development of skills required to transform those standards into practise.

Description

The Red City council has decided to prepare a strategic plan for aid and assistance in emergencies, and to call on the joint efforts of police, fire brigade and para-medics to

a meeting at City Hall, to discuss the structure for such a plan as well as to discuss the division of authority and responsibilities.

Assignments

For the purpose of this role play, there will be four different groups:

Group 1: Representatives of Red City Council;

Group 2: Representatives of the Red City police department;

Group 3: Representatives of the Red City fire brigade;

Group 4: Representatives of the Red City para-medics.

The objective of the role play is to draft an outline strategic plan for aid and assistance in emergencies. The Groups will seek to find solutions for the questions set out below.

Each of the groups is to prepare their arguments based on the relevant international standards they relate to this topic.

Each group will take into account the special interests and needs of the agency they represent.

Key questions:

1. What will be understood by the term 'emergencies' for the purpose of this strategic plan?
2. Considering the implications of the international standards as they relate to aid and assistance in emergencies, how do they affect the plan and how may they be expressed in the plan?
3. How will the problem of co-ordination between the various services be resolved?
4. Which authority will decide to put the strategic plan into action when situations as defined under 1. above occur?
5. What will be the main role and responsibilities of each of the participating bodies in case of an emergency?
6. How can officials of the various organisations be prepared for their future collaboration in case of an emergency?

Role Play and Mediation

When the groups have prepared their arguments, the role play can begin.

The mediator should concentrate on the key questions and facilitate the discussion along the lines of those questions

Where appropriate the mediator should question the proposed options or solutions of the various groups in order to facilitate the discussion.

The outline of a strategic plan for aid and assistance in emergencies should be kept in mind as the central objective of the role play exercise

Feedback

When the role play is completed, the mediator will summarise:

- the main findings of the discussion; and
- the outline of the strategic plan as they have been formulated.

Subsequently, he or she will ask the participants for their views and evaluations of this particular exercise.

Finally, the mediator will point out those instruments and provisions that deserve closer consideration, and discuss with the participants the various ways of implementing them.

CHAPTER 1 2 3 4

Realisation of Human Rights Through Leadership and Enlightenment

SECTION a b c d

Realisation of Human Rights by Police Leaders

Introduction

This section is concerned with the implications of human rights for police leaders. Whilst all sections of the manual are relevant for considering these implications, this section provides a specific basis for reflection and discussion on what police leaders have to do in order to secure respect for and protection of human rights, on how human rights can be realised by police leaders.

Responsibilities of police leaders for management of police agencies, and supervision and command and control of police officials are considered in the commentary, as is their responsibility for securing accountability of police officials for their acts or omissions. Types of police agency, the occupational culture of police agencies and the management of change are also examined in the commentary.

International standards embodying requirements to supervise and to command and control police officials, and to investigate reports and complaints of human rights violations by police are set out under the sub-heading 'Essential Information for a Presentation'.

Key Points

The key points to this topic are that:

- a police agency, of whatever type, can function legitimately only when it is functioning in accordance with the law, including the law which protects human rights;
- the occupational culture of police agencies can be inimical to securing respect for and protection of human rights, and to effective policing;

- police leaders have a duty to manage change within police agencies; and
- international human rights standards oblige police leaders to supervise, to command and control, and to ensure accountability of subordinates.

Commentary

Police leaders are those police officials who have responsibility for subordinates, at any level, in a police agency. They may be at the:

- basic supervisory level,
- first level of management,
- operational command level, or at the
- executive/strategic level.

Whatever their level within the hierarchy they have, or should have, clearly defined roles in relation to the management and administration of the agency, and in relation to the

- supervision, and
- command and control

of subordinate officials.

Furthermore, police leaders are required to ensure the accountability of police officials for their acts or omissions.

Management, Supervision and Command and Control

Management

As managers police leaders have to ensure, according to their various and clearly defined roles within an organisational hierarchy, the efficient functioning of police agencies. They have to administer, organise and regulate police agencies so that human and material resources are used in the most efficient and effective way possible to secure the lawful aims and objectives of the agency.

Supervision

As supervisors police leaders have to oversee and direct the routine activities of police officials on a day to day basis in order to ensure that they are carried out in accordance with the policies and established good practices of the agency. In particular they have to oversee the exercise of police powers and direct the performance of police functions so that policing is carried out effectively, lawfully and humanely.

Command and Control

As commanders police leaders are required to command and control the actions of police officials during the conduct of specific police operations. They have to exercise authority as leaders over the actions and behaviour of police officials in those operations, especially when they involve the deployment of large numbers of officials.

Standards of Care for Police Officials Deployed in Operations

Good practise in the conduct of police operations also requires police leaders to exercise their duty of care for the well-being and human rights of police officials under their command and control.

Interpretation of intelligence, briefing, command and control during operations, and debriefing of officials at their conclusion should have this duty of care as one of their objectives.

Clearly duty of care for the well-being of police officials and concern for the human rights of police officials also includes provision of:

- proper equipment (especially defensive equipment);
- medical and welfare support services; and
- post-trauma stress counselling, for police officials exposed to excessively stressful situations,

when police officials are deployed in specific police operations.

International Standards

There are international standards requiring, implicitly or explicitly, proper supervision, command and control of police officials. These are set out below under the sub-heading 'Essential Information for a Presentation'.

As can be seen below, provisions of instruments embodying these standards impose obligations on police leaders to introduce and maintain systems for:

- recording
- reporting and
- reviewing

matters connected with the exercise of police powers and respect for human rights.

The provisions require police leaders to supervise the routine activities of subordinates in the:

- exercise of their powers; and
- performance of their duties

on a day to day basis.

Such direct measures of supervision are necessary to:

- prevent abuse of power and abuse of human rights; and
- secure effective policing.

Accountability of Police Officials for Their Acts or Omissions

It is the duty of police leaders to contribute to the effective functioning of all systems and mechanisms established to:

- ensure scrutiny of police actions;
- secure internal discipline and external control and supervision of police; and
- receive and process complaints against police.

Obligations on States

The international means developed to secure compliance by states with their international legal obligations to respect and observe human rights are considered in section c, chapter 2, part 1 of this manual. In that section it is emphasised that:

- the first and most important means of securing respect for and protection of human rights are those established at national level under the domestic laws of states; and
- some international procedures for supervision and enforcement of human rights standards require exhaustion of domestic remedies before they can be invoked.

Furthermore the right to effective national remedy for human rights violations, as embodied in the Universal Declaration of Human Rights and various human rights treaties, is described.

Investigations into Reports and Allegations of Human Rights Violations

The various obligations on states to ensure respect for and observance of human rights, and the right to effective remedy mean that states are obliged to investigate reports and allegations of human rights violations.

In order to meet this obligation properly, investigations into reports and complaints of

human rights violations by police must be accessible, effective and prompt.

- Accessible means not only accessible in a physical sense, but also in the sense that people feel they can initiate procedures without fear of reprisal, or fear that their complaints will not be properly examined.
- Effective means not only effective in pursuing the allegations of the complainant but also in protecting police officials from malicious allegations.
- Promptness is necessary for the benefit of the complainant and the official subject to the complaint.

Clearly the responsibilities of police leaders are to:

- ensure that these conditions are met; and
- ensure the proper functioning of all complaints and investigative procedures.

Complaints investigative procedures may be initiated, supervised or conducted by such bodies as human rights commissions, ombudsmen or investigatory bodies established solely to deal with complaints against police. There may be specialised police units established to investigate such complaints.

Whatever the system or systems adopted in any particular country, it is important that there should be:

- proper record keeping in relation to all areas of policing where this is required by law;
- full and accurate reporting by police officials in relation to operational policing matters; and
- proper security of those records and reports to facilitate any subsequent enquiry into police conduct.

Police leaders have a critical role in securing prompt, impartial and effective investigation of allegations and reports of human rights violations by police. The fulfilment of this role is one of the means by which human rights may be realised through police leadership.

International Instruments

Provisions of five international human rights instruments specifically requiring investigation of allegations and reports of human rights violations are identified below under the sub-heading 'Essential Information for a Presentation'.

The provisions of these instruments place requirements on a variety of officials and authorities, for example:

police officials; appropriate authorities; competent authorities; superior authorities; prosecutorial authorities; and judicial authorities.

The requirements on those officials and authorities concern such matters as:

review processes; investigations; institution of criminal proceedings; prevention of ill-treatment or intimidation; redress; and compensation.

In some cases police leaders are the officials or authorities referred to and in other cases cooperation and assistance on the part of police leaders is necessary to ensure that other officials or authorities can meet their obligations.

In any event proper action on the part of police leaders is critical to secure compliance with requirements in respect of reports, complaints and investigation of human rights violations.

Types of Police Agency

Whilst police agencies tend to be more or less 'civil' in character or more or less 'military' in character, even the former types of agency have either emerged from, or are based on, military models of organisation. Almost without exception police management structures are hierarchical: differentiated according to military or quasi-military style ranks, uniforms and badges, and characterised by military style conventions and formalities.

However police agencies, especially those with a more pronounced civil character, are increasingly influenced by theory and practice of management developed for non-police organisations – for example organisations in the commercial or business world. These influences affect:

- management structures (by removing some tiers, and civilianising some designations), and
- management practices (by introducing notions of strategic planning, managing change, and measuring performance).

Whatever the model of organisation, or the theory of management on which its structures are based and from which its style of management is derived, police leaders have the same responsibility – to deliver effective, lawful and humane policing. In order to do this, they have to secure respect for and protection of human rights by and through policing.

Whether they are operating through strictly hierarchical military style structures or through less hierarchical and more informal civilian style structures, police leaders are responsible for agencies with law enforcement functions.

An agency with law enforcement functions can secure and retain legitimacy only when it operates in accordance with the law, including the law which protects human rights.

Occupational Culture of Police Agencies

Various studies have shown that the nature of police organisations and the nature of police work have given rise to an occupational culture. To varying degrees features of this occupational culture are identifiable in most, if not all, police agencies, regardless of the political and social systems within which they function, and regardless of whether or not they are largely civil or largely military in character.

The occupational culture consists of a range of informal assumptions, values and accepted practices that tend to circumvent or defy legal rules and formal instructions.

Its features include:

- a sense of mission,
- orientation towards action,
- pessimism concerning the social environment,
- an atmosphere of constant suspicion,
- an isolated social life,
- a strong code of solidarity,
- political conservatism,
- racial prejudice and sexism,
- stereotyping of people as either rough or respectable, and
- a code of silence, and a readiness to conceal police misconduct.

Whilst some of these cultural features provide a sense of solidarity and support for police officials, some are:

- inimical to the development of a human rights culture within police organisations, and
- inimical to effective policing.

This means that in order to deliver effective, lawful and humane policing, police leaders need to manage change within police organisations for the purposes of:

- bringing about change in the occupational culture of policing, and
- enabling police organisations to respond to changes within the societies they serve.

Clearly the degree to which change needs to be implemented in any police agency depends upon:

- the extent to which, and the intensity with which, features inimical to human rights and to effective policing are embedded within the organisational culture of the agency; and
- the scale and intensity of social change to which the agency is having to respond at any period of time.

However, no committed police leader in any police agency can ignore the requirement to manage change.

The Management of Change

Clearly there are many aspects to the administration and management of complex organisations such as police agencies, and one aspect, that of the management of change, is considered here.

In the first instance permanent pressure, from outside and inside police organisations, is required to change police culture. For example pressure:

- through reform of laws and regulations governing police;
- from external and internal monitoring systems;
- from performance reviews;
- through reward and accountability systems; and
- through empowerment of citizens to influence policies.

The requirements of the professional ethics of policing, good policing in a democracy, and of human rights are sources of such pressure. These must be reinforced by:

- the persistent exercise of political will by those to whom the police are accountable; and
- persistent determination to manage change by police leaders.

To that end police leaders need to undertake a strategic planning initiative in order to create the necessary congruence between:

- the political and legal environment; and
- the professional and managerial concerns of the police organisation,

so that the policing which is delivered reflects democratic and legal imperatives. This initiative should:

- establish the nature of the police organisation and its basic purpose;
- establish the normative and behavioural basis for the organisation, and clearly state the values and standards to which it is committed;
- define the key areas of policing to which it is dedicated;
- establish broad priorities for the application of resources; and
- set criteria for the measurement of performance.

Having conducted the strategic planning initiative, police leaders then need to manage the process of change. In the first instance this means that:

- the roles of each of the hierarchical levels in the organisation must be defined; and
- the ways in which individuals in those roles are to be personally accountable for their roles must be identified,

in order that the requirements of the strategic planning initiative can be fulfilled.

Police leaders must then ensure that:

- standards are set;
- performance indicators are identified; and
- results are measured

in respect of each of the elements of the strategic planning initiative.

The need to respect and protect human rights should inform:

- all elements of the strategic planning initiative; and
- all aspects of the management of the change process.

The standards expressed in international human rights instruments are valuable sources of reference for:

- strategic planning initiatives; and
- all of the steps taken in managing the change process.

Note: This is, necessarily, a very brief account of some of the processes involved in the management of change. It has been provided so that the need for human rights to inform those processes can be asserted. Reference should be made to texts indicated as source material in appendix 2 – ‘Recommended Reading and Resources’ for a more complete account of the management of change.

Key Policing Issues Connected with the Topic

These include:

- whether the necessary political will exists within states to bring about changes to the organisation and culture of police agencies;
- whether police leaders are sufficiently enlightened and determined to bring about changes to the organisation and culture of police agencies;
- the need to determine the most appropriate legal and constitutional arrangements for ensuring that police leaders retain control over operational policing matters (and avoid undue political interference in such matters) whilst remaining accountable to the law, and to the community through the democratic political processes.

Essential Information for a Presentation

International Human Rights Standards Requiring Supervision of Police Officials by Police Leaders

Sections a, b and c of chapter 1, part 2 of this manual (the right to life and the power to use force, the right to liberty and security of person and the powers to arrest and detain, and the treatment of detainees respectively) are relevant to the topic dealt with under this sub-heading.

Use of Force

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

- the storage and issue of firearms to be regulated (principle 11(d));
- a system of reporting to be established – to be followed whenever firearms are used by police in the performance of duty; (principle 11 (f)); and
- reporting and review procedures to be established – to be invoked when death or injury is caused by police use of force and firearms (principle 22).

The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions require:

- strict control, including a clear chain of command,
- over all officials responsible for apprehensions, arrest, detention, custody and imprisonment,

- as well as those officials authorised by law to use force and firearms (principle 2).

Arrest

In addition to the provisions on arrest in the Principles on extra-legal killings (set out above) there are other relevant provisions in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. These require:

- a record to be made of the circumstances of arrest – time of arrest, time of arrival at place of custody, identity of officials concerned (principle 12);
- the person arrested to be provided with information on his or her rights (principle 13); and
- anyone arrested on a criminal charge to be brought promptly before a judge or other judicial authority (37).

Detention

In addition to the provisions on detention in the Principles on extra-legal killings (set out above) there are other relevant provisions in the Convention against torture (article 11).

These require states to keep under systematic review:

- interrogation methods and practices; and
- the arrangements for the custody and treatment of detainees,
- in order to prevent torture or other ill-treatment.

Furthermore, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment requires the circumstances of interrogation (duration, intervals between interrogations, identity of persons present) to be recorded (principle 23).

International Human Rights Standards Requiring Command and Control of Police Officials by Police Leaders

It is clear that the general obligation on states, and thence on senior officials of state agencies, to secure respect for and protection of human rights requires senior officials to exercise command and control of officials during the conduct of specific operations.

Standards Expressed in Instruments

The requirement on police leaders to maintain command and control of police officials during the conduct of specific police operations is implicit in all of the requirements

to:

- secure respect for and protection of human rights (for example the right to life, the prohibition of torture, and the prohibition of arbitrary arrest and detention); and
- comply with provisions of instruments addressed to and setting standards for police (for example the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials).

Clearly an essential element in securing:

- respect for and protection of human rights; and
- compliance with standards necessary for their respect and protection,

is effective command and control by police leaders of police officials deployed in specific police operations. This is a fundamental responsibility of police leaders.

Standards Expressed by Treaty Bodies

The requirement on police leaders to maintain command and control of police officials during the conduct of specific police operations is explicit in the findings and decisions of treaty bodies.

For example:

The killing of three members of a terrorist organisation by members of the British armed forces in Gibraltar, led to a case, *McCann and others v. the United Kingdom*, (See *Publications of the European Court of Human Rights, Series A: Judgements and Decisions*, vol. 324 (1996), application No. 18984/91, judgement of 27 September 1995) alleging a breach of article 2 of the European Convention on Human Rights, which safeguards the right to life.

The terrorists planned to detonate an explosive device during the course of a military ceremony and, on learning of the plan, the authorities mounted an operation to arrest the terrorists before they could put it into operation. However the three terrorists were shot and killed by soldiers deployed in the arrest operation. The briefing given to the soldiers prior to the operation included information that the terrorists were armed and had the immediate capability of detonating an explosive device by remote control. This information was incorrect.

In considering the actions of the soldiers the Court accepted that they honestly believed, in the light of the information they were given, that it was necessary to shoot the suspects in order to prevent them from detonating a bomb and causing loss of life. The Court considered that the use of force by agents of the state, in pursuit of one of the aims delineated in article 2, paragraph 2 of the European Convention on Human rights, might be justified where it is based on an honest belief, perceived, for good reason, to be valid at the time, but which subsequently turns out to be mistaken. It

decided that the actions of the soldiers themselves did not constitute a violation of article 2 of the Convention.

However, in deciding that there had been a violation of the right to life on other grounds, the European Court of Human Rights made the following pronouncement:

'in determining whether the use of force was compatible with Article 2, the Court had to scrutinize not only whether force was used by the soldiers strictly in proportion to the aim of protecting persons against unlawful violence, but also whether the anti-terrorist operation was planned and controlled by the authorities so as to minimize, to the greatest extent possible, recourse to lethal force.'

Because of shortcomings it found in such matters as the:

- evaluation of information; and
- planning and control of the operation,

the Court was not persuaded that the killing of the three terrorists constituted the use of force which was no more than absolutely necessary in defence of person from unlawful violence within the meaning of article 2 of the Convention. Accordingly, it found that there had been a violation of the right to life.

Whilst this is an example of a case from the European system for the protection of human rights, police officials in all countries can learn from its conclusions because:

- other treaty bodies and, indeed, domestic courts could use the same reasoning and come to the same conclusions as the European Court of Human Rights – either independently or by following its decision; and
- it set standards of good police practise and, in professional policing terms, the source of those standards is immaterial.

That good practise concerns the:

- careful interpretation and evaluation of information and intelligence;
- meticulous briefing of police officials deployed in operations;
- adequacy of means of maintaining control of subordinates during operations; and
- thorough de-briefing of police officials after operations.

International Human Rights Standards Requiring Investigation of Reports and Complaints of Human Rights Violations by Police

General Requirements on Scrutiny, Discipline and Complaints

The U.N. General Assembly resolution (34/169 of 17 December 1979) by which the Code of Conduct for Law Enforcement Officials was adopted states that the actions of law enforcement officials should be:

- open to public scrutiny,
- whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizen's committee or
- any combination thereof, or
- any other reviewing agency.

On 24 May 1989, under resolution 1989/61, the U.N. Economic and Social Council adopted Guide-lines for the effective implementation of the Code of Conduct for Law Enforcement Officials.

Guide-line 1.B.3 refers to discipline and supervision. It requires:

- effective mechanisms to be established to ensure
- the internal discipline and
- external control as well as
- the supervision

of law enforcement officials.

Guide-line 1.B.4 refers to complaints by members of the public. It requires:

- provisions to be made
- for the receipt and processing of complaints against law enforcement officials
- made by members of the public, and
- the existence of those provisions to be made known to the public.

Specific Requirements in Respect of Reports, Complaints and Investigation of Human Rights Violations

There are five instruments relevant to police leaders which contain such requirements as follows:

Code of Conduct for Law Enforcement Officials

Article 8 of the Code, which requires police officials to respect the law and the Code, states that:

- police officials who believe that a violation of the 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.

'Appropriate authorities or organs vested with reviewing or remedial power' are defined in paragraph (c) of the Commentary to the article as:

- any authority or organ existing under national law,
- whether internal to the law enforcement agency or independent thereof,
- with statutory, customary or other powers,
- to review grievances and complaints arising out of violations within the purview of the Code.

Paragraph (d) to the Commentary states that in some countries the mass media may be regarded as performing complaint review functions similar to those described in paragraph (c),

and

that police officials may 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 Code of Conduct

they bring violations to the attention of public opinion through the mass media.

Note: Article 4 of the Code of Conduct for Law Enforcement Officials 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.

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

Article 12 states that 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 that 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 impartially examined by,
- its competent authorities.

It further requires that steps are to be taken to ensure that the complainant and all witnesses are protected against ill-treatment or intimidation as a consequence of the complaint or any evidence given.

Article 14 states that each state party shall ensure in its legal system:

- that the victim of an act of torture receives redress and
- has an enforceable right to fair and adequate compensation,
- including the means for as full rehabilitation as possible.

It also requires that in the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

Article 4 of the Convention requires acts of torture, attempts to commit torture and complicity in torture to be offences under criminal law.

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

Principle 9 states that:

- there shall be thorough, prompt and impartial investigation

- of all suspected cases of extra-legal, arbitrary and summary executions,
- including cases where complaints by relatives or other reliable reports
- suggest unnatural death in the above circumstances.

Governments are to maintain investigative offices and procedures to undertake such inquiries.

The purpose of investigation shall be to determine:

- the cause, the manner and time of death,
- the person responsible, and
- any pattern or practice which may have brought about the 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.

Article 10 requires investigative authorities to have the necessary powers to:

- obtain information, and
- carry out inquiries.

Their powers are to include powers to compel witnesses, including officials, to testify.

Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment

Principle 7(2) 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 with reviewing or remedial powers.

Principle 7(3) requires any person to have the right to make such a report.

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.

The principle also requires detainees to be given the right to communicate in confidence with persons who make such visits.

Clearly, this provision under principle 29 could result in complaints, and investigation of those complaints.

Principle 33 states that a detainee or his counsel shall have the right:

- to make a request or complaint concerning his treatment
- to authorities responsible for administering the place of detention, or
- to authorities with reviewing or remedial powers.

A member of the detainee's family, or any other person with knowledge of the situation, shall be able to exercise that right in those cases where neither the detainee nor his counsel has the possibility to do so.

Confidentiality concerning the request or complaint is to be maintained at the request of the complainant.

Every request or complaint is to be promptly dealt with and, if it is delayed or rejected, a complainant is to have the right to bring it before a judicial or other authority.

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 Principles.

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

Principle 22 requires:

- an effective review process for incidents reported pursuant to principles 6 and 11(f); and
- independent administrative or prosecutorial authorities to 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 or judicial control.

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.

Note: Principle 6 requires police officials to report incidents where death or injury is caused by force or firearms promptly to their superiors.

Principle 11(f) requires rules and guide-lines on the use of firearms by law enforcement officials to include guide-lines that provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Points to Promote Discussion

1. What steps can be taken to ensure the correct behaviour of those subordinate police officials who work largely alone and unsupervised?
2. What personal qualities are essential in a police leader? How can these qualities be developed?
3. What are the principle features of the occupational culture of police agencies? Identify those features which may be conducive to securing respect for and protection of human rights, and those which may be inimical to human rights.
4. What are the various ways in which police leaders can create a general climate within their organisation which is favourable to the protection and observance of human rights?
5. Who should be the members of a citizen's committee formed to meet the requirement that actions of police officials should be open to public scrutiny? What are the various possible mechanisms for internal discipline and external control of a law enforcement agency?

Working Group Exercise

Instead of the teacher or resource person delivering a presentation on this topic (realisation of human rights by police leaders), he or she could divide the participants into working groups and ask them to consider the implications for police leaders arising out of all of the topics covered in the programme.

It is useful for the teacher or resource person to advise the participants at the beginning of the programme of his or her intentions in this respect, and to ask them to consider the question throughout the programme. The notes in this section can be used as a 'check list' when the participants give their replies.

SECTION a b c d

Enlightenment by Police Teachers and Trainers

Introduction

This section concerns enlightenment of police in human rights and humanitarian standards by teachers and trainers of police through education and training. The purpose of such enlightenment is to affect the attitudes and thence the behaviour of police officials so that they deliver effective, lawful and humane policing.

In the commentary the requirement to respect the law and human rights, and what police do and how they should do it are considered, as are the inter-dependence of the behavioural and technical aspects of policing, and human rights education.

Implicit requirements under international law to educate and train police in human rights, and explicit requirements of human rights instruments to educate and train police are set out under the sub-heading 'Essential Information for a Presentation'.

Key Points

The key points to this topic are that:

- highly skilled and motivated teachers and trainers of police, able to enlighten police on human rights, are essential for the fulfilment of the requirement to promote respect for human rights by teaching and education;
- the technical and the behavioural aspects of policing are dependent upon each other because if police are deficient in one of them, the other will be adversely affected;
- there is a general obligation on governments and police leaders to ensure that police officials are sufficiently educated and trained to carry out their duties effectively, lawfully and humanely; and

- there are precise obligations on governments and police leaders to ensure that police officials deployed in specific situations are properly trained to meet those situations.

Commentary

Teachers and trainers of police educate, instruct, inform and train police officials through educational and training processes:

- educational processes which provide information, and which affect attitudes of police; and
- training processes which provide information, and which impart technical skills to police.

Both of these processes are necessary to enable police to deliver effective, lawful and humane policing.

Training programmes for teachers and trainers of police based on this teaching manual should include:

- an in-depth study of the subject matter of all of the preceding sections of the manual in order to provide them with sufficient information to deliver programmes based on its content; and
- sessions on the subject matter of this section in order to provide them with the opportunity for reflection and discussion on the ways in which they may enlighten police officials on human rights.

The last preambular paragraph of the Universal Declaration of Human Rights states that the General Assembly of the United Nations proclaims the Universal Declaration as a common standard of achievement for all peoples and all nations. Furthermore, it requires every individual and every organ in society to strive by teaching and education to promote respect for these rights and freedoms.

Highly skilled and motivated teachers and trainers of police, able to enlighten police on human rights, are essential for the fulfilment of this requirement.

Under the sub-heading 'Essential Information for a Presentation' it can be seen that there are both implicit and explicit requirements to educate and train police in human rights and in police procedures or technical skills necessary for the protection of human rights.

The range and the very specific nature of these requirements are an indication of the extent to which human rights must be incorporated into the curricula of police academies.

Police officials who are not educated and trained on the basis of the requirements to

respect and protect human rights cannot be considered to have been properly trained, and neither can they be considered to be complete professionals.

The Requirement to Respect the Law and Human Rights

Fundamental tasks of teachers and trainers of police are to ensure that:

- police officials have a complete understanding of their powers, and the limitations on those powers, set out in their national constitutions and laws; and that
- police officials understand without any doubt whatsoever that they are to comply with the constitution and laws of their country.

The requirement to comply with laws expressing limitations on police powers, and with laws enshrining human rights can be reinforced by emphasising to police officials that:

- human rights are fundamental principles of justice and fundamental to the human condition;
- these fundamental principles, and their underlying values, can be found in all of the world's great religions and ethical systems as well as in more local cultures and systems of belief; and
- human rights are universal, inherent in every human being, equal, and inalienable.

These qualities of human rights mean that:

- every human being has them by virtue of his or her humanity;
- without distinction; and
- they cannot be taken or given away.

Police officials need to understand clearly that:

- human rights are not a series of obstacles
- to be overcome, ignored or evaded
- in order for them to be able to carry out their duties,

and that:

- respect for and protection of human rights
- are essential elements of effective lawful and humane policing
- in a democracy governed by the rule of law.

The principles on which human rights are based:

- respect for human dignity, and
- universality, inalienability and equality of rights

are not prohibitions or limitations. They are great humanitarian and civilising precepts supported by the rule of law.

They provide a very positive basis for the relationship between those who exercise state power and those on behalf of whom it is exercised – individuals and groups within society.

In order to assist teachers and trainers of police to develop or reinforce this understanding, accounts of:

- the professional ethics of policing;
- the reasons for the development of law (both international and national) protecting human rights;
- the protection of human rights and the prevention of discrimination and
- the protection of rights to democratic freedoms,

can be found in section b of chapter 1 and section a of chapter 2, part 1 of this manual, and sections a and b of chapter 2, part 2 respectively of this manual. Principle elements from these sections should be included in the educational and training programmes of all police officials.

In particular police leaders should have a good understanding of the professional context and the international context (considered in part one of this teaching manual) within which they carry out their functions of:

- managing and administering police agencies; and
- supervising, commanding and controlling police officials.

Furthermore, the material in all of the preceding sections in part two of this teaching manual can be used not only:

- to teach international human rights and humanitarian law standards relevant to policing, but also
- to reinforce national human rights standards.

What Police Do and How They Should Do It

What Police Do

The specific functions of individual police officials vary from agency to agency and country to country, but most police officials perform one or more of the functions considered in chapters 2 and 3 of part 2 of the manual.

However, whilst police functions can be seen as distinct forms of activity, there is also a sense in which they amount to a single, seamless policing function. For example:

- by maintaining social order and providing assistance in times of emergency, police serve the community in ways which might prevent some forms of criminality or alleviate some of the social or economic conditions which are at the root of criminality or disorder;
- police involvement with and assistance to the community may also promote public cooperation in the investigation of crime; and
- the investigation of some crimes may, in turn, prevent other forms of criminality or serve to reduce social tension or militate against outbreaks of disorder.

It is important for teachers and trainers of police officials to have regard to

these inter-relationships between various police functions, especially when discussing the professional ethics of policing and the various aspects of policing considered in part 2 of this manual.

How They Should Do It

There are two aspects to how police should perform their functions;

- the technical and
- the behavioural.

The technical aspect concerns their knowledge and skills – the extent to which police officials:

- have the knowledge; and
- are equipped with those skills and aptitudes,

necessary to perform their various tasks effectively and efficiently.

The behavioural aspect concerns their knowledge and attitudes – the extent to which police officials have:

- the knowledge; and
- developed those attitudes and moral convictions,

necessary to perform their various tasks lawfully and humanely.

Educators and trainers of police are concerned with both aspects – the technical and the behavioural.

They have to:

- train police officials in order to develop or reinforce the skills appropriate to policing in a democracy governed by the rule of law – for example to communicate with people, to interview witnesses and suspects, to adopt the most appropriate tactics in specific situations; and to
- educate police officials in order to develop or reinforce the attitudes and convictions appropriate to policing in a democracy governed by the rule of law – for example to respect the law, human dignity and human rights, to be tolerant and humane, to be impartial and politically neutral.

The Inter-dependence of the Technical and Behavioural Aspects

The technical and the behavioural aspects of policing are dependent upon each other because if police are deficient in one of them, the other will be adversely affected.

For example:

- if police lack a technical policing skill – for example the ability to interview people suspected of crime, they are more likely to resort to unlawful or unethical means to investigate crime, perhaps to torture or otherwise mistreat suspects; and
- if police continue to rely on unlawful or unethical means to investigate crime, they will be unlikely to develop good, professional, technical policing skills.

This same logic is equally applicable to other technical policing skills and other police functions.

It is important for educators and trainers of police to understand the inter-dependence of the technical and the behavioural aspects of policing so that:

- they are each given sufficient attention; and
- appropriate links are made between them,

in educational and training programmes.

For example educators and trainers of police must be able to identify:

- which technical policing skills need to be taught to police officials at different stages in their careers, and the best means and methods for doing so; and
- how best to develop or reinforce the attitudes and moral convictions appropriate to policing in a democracy governed by the rule of law.

Human Rights Education

Education in human rights is of critical importance to the behavioural element of policing at all stages in the education and training of police, and at all stages in the careers of police officials. For example in programmes:

- for newly appointed police officials, who need to be encouraged and inspired to resist all of the various pressures and temptations from different sources (including the occupational culture of police agencies) to ignore rules of good behaviour and best practice they have been taught in their recruit training programmes;
- for police officials with leadership responsibilities, who need the aptitudes and attitudes required to administer and manage police agencies, and to supervise, command and control police officials so that rules of good behaviour and best practice are followed; and
- for police officials in highly specialised roles, who need to develop highly technical and specialised skills, and to be able to apply these lawfully and humanely to serve the ends of good policing in a democracy.

All of the international human rights standards, from the:

- great over-arching principles, to the
- legally binding provisions of treaties, to the
- rules and guidelines embodied in codes and sets of principles

are positive expressions of good behaviour and best practice essential for effective, lawful and humane policing.

All of these must form a core element of all education and training programmes of all police officials.

Key Law Enforcement Issues Connected with the Topic

These include:

- whether the necessary determination exists within states and police agencies to introduce and sustain meaningful human rights education and training in all police education and training programmes;

- whether teachers and trainers of police are sufficiently enlightened, informed and skilled to deliver meaningful human rights education and training to police officials;
- how to encourage and inspire newly appointed police officials to resist all of the various pressures and temptations from various sources (including the occupational culture of police agencies) to ignore rules of good behaviour and best practice they have been taught;
- how to convince all police officials that respect for and protection of human rights are essential elements of effective lawful and humane policing in a democracy governed by the rule of law.

Essential Information for a Presentation

Implicit Requirements to Educate and Train

An implicit requirement to educate and train police in human rights derives from the general requirement on states to promote universal respect for and observance of human rights and fundamental freedoms as expressed in the Charter of the United Nations.

Clearly a state will be unable to meet its obligations under the U.N. Charter to promote respect for and observance of human rights if its police officials are not:

- sufficiently educated in human rights so that they have the knowledge and attitudes necessary to perform their various tasks lawfully and humanely; and
- sufficiently trained in those technical policing skills and aptitudes necessary to perform their various tasks effectively and efficiently.

Furthermore, when states become parties to human rights treaties they undertake, typically, to:

- ensure to everyone within their jurisdiction the rights and freedoms recognised in the treaties; and
- adopt such legislative and other measures to give effect to the rights recognised in the treaties.

In addition to all of the other steps and measures they take, states must ensure education and training of police sufficient to meet these undertakings.

Note: See, for example:

- articles 55 and 56 of the U.N. Charter; and
- article 2 of the International Covenant on Civil and Political Rights.

These provisions are described in sections a and b of chapter 2 part 1 respectively of this teaching manual.

Explicit Requirements to Educate and Train

The following human rights instruments contain explicit requirements to educate and train police in human rights, or in police procedures or technical skills necessary for the protection of human rights.

Guide-lines for the effective implementation of the Code of Conduct for Law Enforcement Officials require governments to:

- '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 of Conduct and other basic texts on human rights' (guideline 4).

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

- continuous and thorough professional training for all law enforcement officials (principle 18);
- law enforcement officials to be provided with training in accordance with appropriate proficiency standards in the use of force (principle 19);
- police officials who carry firearms to be authorised to do so only upon completion of special training in their use (principle 19);
- 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); and
- training programmes to be reviewed in the light of particular incidents. (principle 20)

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions require:

- governments to prohibit orders from superior officers or public authorities authorising or inciting other persons to carry out any extra-legal, arbitrary or summary executions;
- all persons to have the right and duty to defy such orders; and
- training of law enforcement officials to emphasise the above two provisions (principle 3).

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires that:

- education and information regarding the prohibition against torture are fully included in the training of law enforcement officials (article 10).

U.N. 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).

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

- police and other personnel concerned with victims to receive training to sensitise them to the needs of victims, and guide-lines to ensure proper and prompt aid (principle 16).

Points to Promote Discussion

1. What should police leaders know about the international system for the protection of human rights?
2. Should the topic of human rights be incorporated into all elements of the curriculum of a police academy; should it be taught as a separate subject; or should it be incorporated into other elements of the curriculum and be taught as a separate subject?
3. Why is important for police officials to understand that human rights are not a series of obstacles to be overcome, ignored or evaded in order for them to be able to carry out their duties?
4. What skills are required to investigate crime? In what ways may deficiencies in any of these skills lead to violations of human rights?
5. What skills does a first line supervisor of police officials require in order to lead, supervise and control his or her subordinates? In what ways will high levels of these skills contribute to securing protection of and respect for human rights?

PART THREE

Workshops

CHAPTER 1 2 3 4

Police Leaders

SECTION a b c d

Workshop for Police Leaders – Action, Needs and Recommendations

Purposes of the Workshop

The purposes of this Workshop, to be conducted at the conclusion of a seminar on human rights and policing for police leaders, are:

- to facilitate discussion and debate between participants, in the context of the seminar, so that they can develop ideas which can be put into practice in the short to medium term, with few or no resource implications, on their own initiatives, when they return to their places of duty; and
- to enable participants collectively to discuss and to identify, realistically, additional resources they require, and measures which need to be taken by others in order to facilitate their work.

Terms of Reference

Participants should be divided into four working groups, each of which is to produce two lists setting out draft proposals and recommendations in accordance with the following terms of reference:

1. To identify all the measures which the participants can put into immediate effect to improve the quality of service officers under their command provide to the community, the overriding objective being to secure effective policing whilst protecting and respecting human rights.
2. To identify any additional resources participants require, and any measures which they believe should be taken by government, the high command of the

police agency in which they serve, or any other body or organisation, to enable the participants to improve the quality of service officers under their command provide to the community.

Method of Work

The participants should work in their groups for sufficient time to allow them to discuss the terms of reference and to compile their lists. Each group should appoint a spokesperson to coordinate the discussions. The groups may require one or two hours to complete their tasks. Participants should be encouraged to be imaginative and to think creatively.

The participants should then be reconvened in a plenary session, and the teacher or resource person should work with the groups to compile two lists meeting the terms of reference for the entire workshop. In other words, to combine the two lists from each group into two lists for the workshop.

This can be done by asking the spokesperson for one group to read out an item from one of the lists his or her group has compiled, and then agreeing a form of words with the workshop group as a whole to express the item. It is highly likely that other groups will have similarly worded items on their lists and, from these and through discussion with the group as a whole, an agreed form of words can be arrived at.

The process can then be repeated by asking the spokesperson for another group to read out an item from his or her list, and conducting another discussion with the workshop group as a whole to reach agreement on that item.

The final outcome of this process should be two lists, agreed by the entire workshop, which respond to the two points in the terms of reference.

Follow-up of Workshop Activity

Ideally, the participants should be able to put into effect the measures identified in item 1 on their own initiatives, because they are short to medium term measures having few or no resource implications.

Clearly, responses to the needs and recommendations identified in item 2 require the agreement and cooperation of the high command of the police agency concerned.

It may be possible, prior the seminar, to come to an agreement with the high command of the agency that the lists compiled by the participants in the workshop be submitted as draft proposals for consideration by the high command. Follow-up action could then be encouraged.

SECTION a b c d

Workshop for Police Leaders – Strategic Review of Human Rights Policies and Practices

Purposes of the Workshop

The purposes of this Workshop, to be conducted at the conclusion of a seminar on human rights and policing for police leaders, are:

- to enable participants to review and analyse human rights strategies, policies and practices of the police agency within which they serve; and
- to make proposals and recommendations for changes in strategies, policies and practices in order to enhance respect for and protection of human rights.

Terms of Reference

Participants should be divided into four working groups, each of which is to:

- review current strategies and policies of the police agency within which they serve, and analyse the extent to which they promote respect for and protection of human rights in all of the processes of policing;
- review current policing practices in the police agency within which they serve, and analyse the extent to which human rights are actually respected and protected in all of the processes of policing; and
- make specific proposals and recommendations, based on their analyses and reviews, for changes in strategies, policies and practices in order to enhance respect for and protection of human rights by police officials in those agencies.

Note: it may be appropriate for some groups of participants to focus on one aspect of policing, for example the investigation of crime or responses to social disorder, rather than on all of the processes of policing as indicated in these terms of reference.

Method of Work

1. As regards strategies and policies of police agencies, participants may need to research documents in which these are expressed before attending the seminar/workshop.
2. As regards practices, again participants may need to carry out research before attending the seminar/workshop. They should refer to sources which indicate the extent to which police officials actually comply in practice with provisions of constitutions and laws, regulations and guidelines, and strategies and policies designed to secure respect for and protection of human rights. Some sources may be:

- official sources such as documentation on which police officials are required to record their actions in particular circumstances (e.g. records of arrest or detention, or records detailing exercise of powers to 'stop and search'); and records of complaints against police officials and results of investigations into these;

and some sources may be

- unofficial such as reports in the news media, or reports of non-governmental organisations such as Amnesty International.

The primary purpose of research into practice is to establish the extent of compliance by police officials with all of the various obligations, whether they be legal or administrative, to respect and protect human rights.

3. As regards reviews and analyses – participants in, their working groups, should:
 - review and analyse the information they have obtained from research into strategies and policies, and into the actual practices of police officials; and
 - come to some conclusions about the extent to which human rights are actually respected and protected in the processes of policing.
4. As regards proposals and recommendations, the groups should:
 - make specific proposals and recommendations, based on their reviews and analyses, for changes in strategies, policies and practices in order to enhance respect for and protection of human rights by police officials in those agencies.

5. The participants should then be reconvened in a plenary session, and the teacher or resource person should work with the groups to compile a list of proposals and recommendations meeting the terms of reference for the entire workshop.

This can be done by asking the spokesperson for one group to read out a proposal or recommendation from the list his or her group has compiled, and then agreeing a form of words with the workshop group as a whole to express the item. It is highly likely that other groups will have similarly worded items on their lists and, from these and through discussion with the group as a whole, an agreed form of words can be arrived at.

The process can then be repeated by asking the spokesperson for another group to read out a proposal or recommendation from his or her list, and conducting another discussion with the workshop group as a whole to reach agreement on that item.

The final outcome of this process should be a list of proposals and recommendations, agreed by the entire workshop, which responds to the terms of reference.

The conclusions of the reviews and analyses agreed by the whole group, and the finally agreed proposals and recommendations, should be submitted in a report for consideration by the high command of the police agency concerned.

Follow-up of Workshop Activity

If they are accepted and adopted, the proposals and recommendations can be used by the high command of the agency:

1. to make any changes in strategies, policies and practices they consider necessary; and
2. as a means of monitoring the performance of the agency in meeting:
 - one of the primary obligations of a police agency – that of respecting human rights, and
 - a significant function of a police agency – that of protecting human rights.

CHAPTER 1 2 3 4

Teachers and Trainers

SECTION a b c d

Workshop for Teachers and Trainers – Production of a Teaching Manual

This task could not be completed within the time allocated for the Workshop Element in the Draft Basic Five Day Programme shown at Appendix 1. It may be necessary to add another four days to the Seminar/Workshop Programme to allow for up to five days for this workshop task.

Terms of Reference for Workshop

The terms of reference are:

- To produce a human rights teaching manual for use in the police academy/academies of the police agency within which the participants serve.

Method for Workshop

The proposed method is as follows:

1. A number of small groups should be created from the Seminar/Workshop participants.
2. The groups should consider separately the content and format of the draft manual, taking into account:
 - how the teaching manual could be incorporated into the curriculum of the academy;
 - how it can best reflect the teaching methods adopted in the academy;

- what the content and format of each chapter should be;
 - which instruments and other sources expressing international standards should be incorporated into the manual; and
 - which provisions of national law, rules and guidelines should be incorporated into the manual.
3. The participants should then be reconvened in plenary session and, through the spokespersons for each group and with the assistance of the teacher/resource person, should agree on the content and format of the draft manual.
 4. Each group should then be allocated a number chapters or parts of the draft manual to complete.
 5. Participants should work in their groups producing the drafts of the chapters or parts they have been allocated.
 6. As the drafts of the chapters or parts are produced, the teacher/resource person should carry out an initial editorial process, checking especially for accuracy in respect of international standards or sources.
 7. Amendments or corrections proposed by the teacher/resource person should then be considered for incorporation in the draft by each working group before they return to work in a plenary session.
 8. When the first drafts of all of the chapters or parts have been produced by the groups, and checked by the teacher/resource person, the participants should be reconvened in a plenary session.
 9. The spokesperson for each group should express the views of the group on the process which has been completed, and the teacher/resource person should summarise what has been achieved and the tasks which remain to be completed.
 10. The participants should appoint a small editorial board from among their number who should be responsible for carrying out a thorough editorial process, including checking the accuracy of the draft.
 11. When the draft has been completed and approved by the editorial board, it should be taken into use for a trial period. Any amendments or improvements agreed following that process should be incorporated into the final version of the teaching manual.

Advantages of Producing a Teaching Manual in this Way

Clearly the actual method adopted depends upon a number of factors such as the particular skills of the participants, and the resources and time available. However, there

are a number of advantages in facilitating the production of a teaching manual by police academy staff within the context of a human rights seminar/workshop. These include the facts that:

1. the teaching manual will be informed by the seminar/workshop process which the participants have experienced;
2. the teaching manual will be produced explicitly to meet the needs of the academy in question;
3. the teaching staff members will have a strong sense of ownership of the manual, and a sense of pride in their product; and
4. updating and amending the manual should be facilitated because it has been produced locally, and is readily available for that purpose.

SECTION a b c d

Workshop for Teachers and Trainers – Production of Teaching Notes

This task could be completed within the time allocated for the Workshop Element in the Draft Basic Five Day Programme shown at Appendix 1.

Terms of Reference for Workshop

The terms of reference are:

- To produce sets of teaching notes on topics in the curriculum of the police academy/academies of the police agency within which the participants serve, using source material from this teaching manual as a basis for the human rights element of the topics.

Method for Workshop

Divide the participants into a number of small working groups.

Each working group should produce a set of teaching notes for a different topic in the curriculum.

The teacher/resource person conducting the workshop should check the drafts of the lesson notes as they are produced in order to ensure accuracy in relation to the international standards referred to therein.

The notes can then be compiled into a small volume, and made available for use by any teacher dealing with the topics to which they refer.

SECTION a b **c** d

Workshop for Teachers and Trainers – Production of Case Studies or Discussion topics

This task could be completed within the time allocated for the Workshop Element in the Draft Basic Five Day Programme shown at Appendix 1.

Terms of Reference for Workshop

The terms of reference are:

- To produce a series of case studies or discussion topics on human rights/policing themes, relevant to the situation in the country concerned, to be used in courses of the police academy/academies of the police agency within which the participants serve.

Method for Workshop

Divide the participants into a number of small working groups.

Each working group should produce different case studies or discussion topics on different human rights/policing themes.

The teacher/resource person conducting the workshop should check the drafts of the case studies or discussion topics as they are produced in order to ensure accuracy in relation to the international standards referred to therein.

These case studies or discussion topics can then be compiled into a small volume, and made available for use by any teacher dealing with the themes to which they refer.

An Example

For example the working groups could develop scenarios for internal disturbances based on actual situations that are relevant to the students they will teach, and in which human rights and humanitarian issues are emphasised.

Questions posed in relation to the scenario could ask those dealing with the case study to comment on professional policing issues, as well as on human rights and humanitarian issues.

Scenarios for case studies of this type can be developed from:

- police reports supplied by the participants' own agency;
- the reports of commissions of enquiry into particular events;
- publications based on research into particular events;
- media reports which are sufficiently detailed; or
- reports and accounts prepared by human rights non-governmental organisations.

PART FOUR

Appendices

APPENDIX 1 2 3

Draft Basic Five Day Human Rights Programme for Police

As indicated in the introduction and guide to the manual, the principal objective of human rights programmes for police organised by the Raoul Wallenberg Institute is to affect the attitudes and thence the behaviour of police officials, so that they deliver effective policing which is at the same time lawful and humane.

This draft is offered as guidance to teachers or resource persons who have the same principle objective concerning the attitudes and behaviour of police officials, and who are seeking to base human rights programmes for police on the teaching manual.

The draft programme consists of a seminar element and a workshop element. The seminar element is designed to provide participants with:

- an understanding of the international system for the protection of human rights;
- a framework for reflecting upon and discussing human rights and policing in general and in specific terms;
- an opportunity to consider best practice in policing, in the context of the requirements to respect and protect human rights; and
- an opportunity to compare international standards for the protection of human rights with the law and practice of their own country.

The workshop element is designed to provide participants with:

- an opportunity to produce a substantive piece of work which may be of assistance to them as police officials, and to the police agency within which they serve, to enhance the delivery of effective, lawful and humane policing.

Their work, the product of the workshop, would be based on:

- reflection on and discussion of the topics dealt with in the seminar element;
- the collective professional experience of participants in the seminar/workshop; and

- the terms of reference of the workshop topic they are considering.

The terms of reference for workshop topics for police leaders and for teachers and trainers of police are set out in part 3, chapters 1 and 2 of this teaching manual.

In addition to using these topics for their workshops, adapted as they wish, it is recommended also that teachers or resource persons devise their own topics in order to develop a workshop product of specific relevance to the participants of the programmes they are running.

As indicated above, this draft programme is offered as guidance. Teachers and resource persons need to consider the specific needs of the participants in any seminar/workshop they are presenting, and adapt the programme accordingly.

Police and Human Rights – Draft Basic Programme

A. Seminar Element

Day One

Morning Session

1. Introductory formalities
2. The professional context:
 - exercise challenges and professionalism
 - the professional ethics of policing – presentation by teacher/resource person, and discussion

Afternoon Session

3. The international context:
 - introduction to the international system for the protection of human rights – presentation by teacher/resource person, and discussion
 - consideration of discussion topics on each of above themes by groups
 - presentation of discussion topics by groups in plenary session

Day Two

Morning Session

4. Respect for human rights: police powers:
 - the right to life and the power to use force – presentation by teacher/resource person, and discussion
 - the right to liberty and security of person and the powers to arrest and detain – presentation by teacher/resource person, and discussion

- the treatment of detainees – presentation by teacher/resource person, and discussion
- the right to private and family life and the powers of search and surveillance – presentation by teacher/resource person, and discussion

Afternoon Session

- consideration of discussion topics on each of above themes by groups
- presentation of discussion topics by groups in plenary session

Day Three

Morning Session

5. Protection of human rights: police functions:
 - the protection of human rights and the prevention of discrimination – presentation by teacher/resource person, and discussion
 - the protection of rights to democratic freedoms – presentation by teacher/resource person, and discussion
 - the right to a fair trial and the investigation of crime – presentation by teacher/resource person, and discussion

Afternoon Session

- consideration of discussion topics on each of above themes by groups
- presentation of discussion topics by groups in plenary session

Day Four

Morning Session

6. Police behaviour in situations of armed conflict, internal disturbance and tension, and emergency and disaster:
 - policing in situations of armed conflict – presentation by teacher/resource person, and discussion
 - policing in situations of internal disturbance and tension – presentation by teacher/resource person, and discussion
 - policing in situations of emergency and disaster – presentation by teacher/resource person, and discussion

Afternoon Session

- consideration of discussion topics on each of above themes by groups
- presentation of discussion topics by groups in plenary session

B. Workshop Element

1. Participants, in their working groups, produce draft proposals and recommendations in accordance with the tasks identified in one of the workshop topics in part 3, chapters 1 and 2 of this teaching manual (or in accordance with the tasks identified in a workshop topic devised by the teacher/resource person):
 - teacher/resource person briefs the participants on the workshop topic and the conduct of the workshop
 - participants commence work on workshop topic

Day Five

Morning Session

- participants continue work on workshop topic
- a spokesperson for each working group presents the proposals and recommendations of the group to the participants in plenary session
- a discussion by all of the participants on each group's presentation is facilitated by the teacher/resource person, and the final product of the workshop is completed

Afternoon Session

C. Evaluation and Closure

1. Evaluation and discussion – participants are asked to comment on the seminar/workshop either by completing an evaluation questionnaire or in plenary discussion (or both).
2. Closing formalities.

APPENDIX 1 2 3

Recommended Reading and Sources

Human Rights

Camille Giffard. *The Torture Reporting Handbook*. Human Rights Centre, University of Essex 2000

Michael Freeman. *Human Rights, An interdisciplinary approach*. Polity Press, Cambridge 2002

Kate Thompson and Camille Giffard. *Reporting Killings as Human Rights Violations*. Human Rights Centre, University of Essex 2002

Combating Torture: a manual for action. Amnesty International Publications, London 2003

Conor Foley. *Combating Torture Handbook: a Manual for Judges and Prosecutors*. Human Rights Centre, University of Essex 2003

International Human Rights Law

A.H. Robertson and J.G. Merrills. *Human Rights in Europe*. Manchester University Press, Manchester 1993.

Gudmunder Alfredsson and Asbjorn Eide. *The Universal Declaration of Human Rights*. Martinus Nijhoff Publishers. The Hague 1999

Nigel Rodley. *The Treatment of Prisoners under International Law*. Second Edition. Clarendon Press, Oxford 1999[#]

International Humanitarian Law

Frits Kalshoven. *Constraints on the Waging of War*. International Committee of the Red Cross, Geneva 1987

Adam Roberts and Richard Guelff. *Documents on the Laws of War*. Third Edition. Oxford University Press, Oxford 2000[#]

New Draft Declaration of Minimum Humanitarian Standards, International Review of the Red Cross. Number 282, May – June 1991[#]

Leslie C Green. *The Contemporary Law of Armed Conflict*. Second Edition. Manchester University Press, Manchester 2000[#]

United Nations Publications

Professional Training Series No. 5. *Human Rights and Law Enforcement, A Manual on Human Rights for the Police*. United Nations, New York and Geneva, 1997[#]

Professional Training Series No. 5/Add.2. *Human Rights and Law Enforcement, A Trainer's Guide on Human Rights for the Police*. United Nations, New York and Geneva, 2002

General Comments or Recommendations adopted by Human Rights Treaty Bodies. Volume 1 Human Rights Committee. 4th Edition. Published by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund 2003[#]

Human Rights and Policing

Policing in a Democratic society – Is your Police Service a Human Rights Champion? Austrian Ministry of the Interior, Vienna 2000 (Developed by a Working Group on Police and Human Rights established by the Council of Europe's Directorate General of Human Rights)

Ralph Crawshaw and Leif Holmstrom. *Essential Cases on Human Rights for the Police*. Martinus Nijhoff Publishers, The Hague 2006[#]

Ralph Crawshaw, Stuart Cullen and Tom Williamson. *Human Rights and Policing – Standards for Good Behaviour and a Strategy for Change*. Second Edition, Martinus Nijhoff Publishers, The Hague 2007[#]

Ralph Crawshaw and Leif Holmstrom. *Essential Texts on Human Rights for the Police*. Second Edition. Martinus Nijhoff Publishers, The Hague 2006

Policing General

T.M. Williamson, "Investigative Interviewing" in D. Morgan and G.M Stephenson (eds) *Suspicion and Silence: the Right to Silence in Criminal Investigations*. Blackstone Press, London 1994[#]

Janet B.L. Chan. *Changing Police Culture, Policing in a Multicultural Society*. Cambridge University Press, Cambridge 1997[#]

John Alderson. *Principled Policing: Protecting the Public with Integrity*. Waterside Press, Winchester 1998

John Kleinig. *The Ethics of Policing*. Cambridge University Press, Cambridge 1999[#]

Andrew J Goldsmith and Colleen Lewis (Eds). *Civilian Oversight of Policing*. Hart Publishing Oxford – Portland Oregon 2000

Bob Denmark. *Ethical Investigation: A Practical Guide for Police Officers*. Foreign and Commonwealth Office of the United Kingdom 2005

Anneke Osse. *Understanding Policing*. Amnesty International, ~Amsterdam 2006

[#] Note: the texts marked thus were used as sources for this Teaching Manual.

A P P E N D I X 1 2 3

Recommended Cases

Right To Life

Human Rights Committee

Maria Fanny Suarez de Guerrero v. Colombia

Inter-American Court of Human Rights

Velasquez Rodriguez case (Honduras)

European Court of Human Rights

McCann and Others v. the United Kingdom

Ergi v. Turkey

Osman v. the United Kingdom

Nachova and others v. Bulgaria

Stewart v. the United Kingdom

Prohibition Of Torture And Ill-treatment

Human Rights Committee

Elena Quinteros and M.C Almeida de Quinteros v. Uruguay

Committee against Torture

Radivoje Ristic v. Yugoslavia

Hajrizi Dzemajl at al. v. Serbia and Montenegro

African Commission on Human and Peoples' Rights

John D. Ouko v. Kenya

Inter-American Court of Human Rights

Villagran Morales et al case (Guatemala)

European Court of Human Rights

Aksoy v. Turkey

Selmouni v. France

Right to Liberty and Security of Person

Human Rights Committee

W. Delgado Paez v. Colombia

Leehong v. Jamaica

Gerald J. Griffin v. Spain

Michael and Brian Hill v. Spain

V.P. Domukovsky et al v. Georgia

Working Group on Arbitrary Detention

Opinion No. 37/2000 (Mexico)

Inter-American Court of Human Rights

Suarez Rosero case (Ecuador)

European Court of Human Rights

McVeigh, O'Neill and Evans v. the United Kingdom

Fox, Campbell and Hartley case (the United Kingdom)

Prohibition of Arbitrary Interference with Privacy

Human Rights Committee

Rojas Garcia v. Colombia

European Court of Human Rights

Klass and Others case (Germany)

A. v. France

Halford v. the United Kingdom

Right to a Fair Trial***Human Rights Committee***

Gridin v. Russian Federation

G. Peart and A. Peart v. Jamaica

Inter-American Court of Human Rights

Blake case (Guatemala)

European Court of Human Rights

Barbera, Messegue and Jabardo case (Spain)

S. v. Switzerland

Right to Freedom of Opinion and Expression***Inter-American Court of Human Rights***

Ivcher Bronstein case (Peru)

European Court of Human Rights

Thorgeir Thorgeirson v. Iceland

Ozgur Gundem v. Turkey

Right to Freedom of Peaceful Assembly***European Court of Human Rights***

Plattform 'Arzte fur das Leben' v. Austria

