

PART FIVE

MATTERS OF COMMAND, MANAGEMENT AND CONTROL

CHAPTER XX

HUMAN RIGHTS IN POLICE COMMAND, MANAGEMENT AND ORGANIZATION

Chapter Objectives

To give users of the manual an understanding of the particular human rights requirements and responsibilities of command and management officials, including human rights implications of recruitment, hiring, assignments, supervision, discipline and strategic planning

Essential Principles

Law enforcement officials shall at all times fulfil the duty imposed on them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

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

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

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

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

Clear, complete and accurate records shall be maintained on matters of investigations, arrests, detention, the use of force and firearms, victim assistance, and all matters of police activity.

Training and clear guidelines shall be made available on all matters of police activities affecting human rights.

Police agencies shall make available a range of means for the differentiated use of force, and shall train officers in their use.

All incidents of the use of force or firearms shall be followed by reporting and review by superior officials.

Superior officials shall be held responsible for the actions of police under their

command if the superior knew or should have known of abuses but failed to take action.

Officials who refuse unlawful superior orders shall be given immunity.

Confidential information is to be handled securely.

All police candidates shall be of appropriate mental and physical character.

All police are to be subject to continuous and effective reporting and review procedures.

Police shall develop strategies for law enforcement which are effective, lawful and respectful of human rights.

***Strategy Note:
Community policing***

Establish a partnership between police and law-abiding members of the community.

Adopt a community-relations policy and plan of action.

Recruit from all sectors of the community.

Train officers to deal with diversity.

Establish community outreach and public information programmes.

Liaise regularly with all groups in the community.

Build contacts with the community through non-enforcement activities.

Assign officers to a permanent neighbourhood beat.

Increase community participation in policing activities and community-based public-safety programmes.

Involve the community in identifying problems and concerns.

Use a creative problem-solving approach to develop responses to specific community problems, including non-traditional tactics and strategies.

Coordinate policies, strategies and activities with other government agencies, and with non-governmental organizations.

A. INTERNATIONAL STANDARDS ON POLICE COMMAND, MANAGEMENT AND ORGANIZATION- INFORMATION FOR PRESENTATIONS

1. INTRODUCTION

878. A basic function of government is to maintain peace and security within the borders of the State. As police are one of the means by which Governments fulfil this function, a law enforcement agency is a significant organ in the governance of a State.

879. Another basic function of government is to ensure that the State meets its obligations under international law to promote and protect the human rights of people within its jurisdiction. Police are also one of the means by which Governments fulfil this function.

880. The above points are made to emphasize the importance of policing in the government of a State, and hence the importance of securing good command and management of police agencies.

881. International legal obligations are translated into national legal obligations by the constitutional and legal arrangements of States. In this way, human rights are protected by domestic law. However, effective protection of human rights engages almost the entire range of government activity, including the activities of law-making, resource allocation, formulation of policies and practices, and the establishment of structures and systems throughout the machinery of government and within ancillary governmental organizations and agencies.

882. In relation to policing, the promotion and protection of human rights requires close attention to be paid to detailed aspects of command, management and administration of a police organization, as well as to the actual processes of law enforcement and order maintenance. This is achieved, in the first instance, by making police accountable and through supervision. Police are to be accountable to government, and hence to the public they serve, through democratic political process; and policing activities are to be subjected to judicial and legal supervision.

883. The extent to which policing is carried out with due respect for human rights is, therefore, dependent on the political and legal systems and the actors within those systems. It is also crucially dependent on officials responsible for the command and management of police organizations.

884. This Chapter discusses the implications of the legal imperative to protect and promote human rights for those officials with responsibilities for the command and management of police agencies.

2. GENERAL ASPECTS OF HUMAN RIGHTS AND POLICE COMMAND, MANAGEMENT AND ORGANIZATION

(a) Fundamental principles

885. The following principles are fundamental to the promotion and protection of human rights by and through policing:

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

886. Police agencies are to be commanded and managed in accordance with these principles, and in accordance with the following principle expressed in General Assembly resolution 34/169 of 17 December 1979 (preamble), by which the Code of Conduct for Law Enforcement Officials was adopted:

... every law enforcement agency should be representative of and responsive and accountable to the community as a whole...

887. Finally, police agencies should be commanded and managed in accordance with the principle of responsibility. This requires police officials to be personally responsible under the law for their own acts or omissions.

(b) Specific provisions on human rights implications for police command, management and control

888. In order for policing to be carried out in accordance with international human rights and humanitarian standards, the above principles must be taken into account when :

- (a) the purposes and objectives;
- (b) the ethical standards;
- (c) the strategic plans and policies

of a police organization are being established or reviewed. These aspects of command and management are considered under separate headings below.

889. In addition to the above considerations, some human rights instruments contain provisions which have more specific implications for command and management of police organizations. These are considered under the headings: "Systems for command, management and control", "Recruitment"; and "Training".

(c) Purposes and objectives of a police organization

890. Taking into account:

- (a) the importance of policing in the government of a State;

(b) the right to participatory and representative government as set out in the Universal Declaration of Human Rights (art. 21); the International Covenant on Civil and Political Rights (art. 25); the African Charter on Human and Peoples' Rights (art. 13); the American Convention on Human Rights (art. 23); and Protocol No. 1 to the European Convention on Human Rights - (art. 3);

(c) all the fundamental principles set out above, particularly the principle that police should be responsive and accountable to the community as a whole (see para. 886),

the purposes and objectives of every police organization should be clearly and publicly stated and should include the promotion and protection of human rights.

891. The purposes and objectives of a police organization can be stated in general terms as:

- (a) the prevention and detection of crime;
- (b) the maintenance of public order;
- (c) the rendering of humanitarian assistance in emergencies to those in need of immediate aid;
- (d) the promotion and protection of human rights.

892. Officials responsible for the command and management of law enforcement agencies should prepare and publish statements of purposes and objectives which are relevant to the particular circumstances of their agency. For example, some agencies may focus on only one aspect of general police functions, such as the detection of crime, and many agencies will be confronted with situations which need to be specifically identified in statements of purposes and objectives.

893. Whatever the specific functions of a police organization and whatever the particular situation, the promotion and protection of human rights should always be included in any such statement. Furthermore, in order to facilitate participatory and representative government, and responsive and accountable policing, statements of purposes and objectives should be made public.

(d) Professional ethics

894. All citizens of a State, including law enforcement officials, are subject to the law of the State. It is essential for the promotion and protection of human rights that police officials be personally accountable to the law for their own acts or omissions.

895. In addition to being accountable to the law, many law enforcement officials are subject to the constraints and sanctions of codes, such as discipline codes, which are applicable within law enforcement agencies and only to members of those agencies.

The existence of such codes does not mean that police officials should not be accountable to the law of the State. Accountability to that law is of prime importance.

896. However, in carrying out their duties, police officials:

- (a) have to resolve moral dilemmas;
- (b) are confronted with situations in which they may feel justified in breaking the law in order to achieve results;
- (c) are subjected to corrupting influences.

For these reasons, it is very important that the general ethical standards of law enforcement agencies be of the highest level, and that they be clearly understood and accepted by all officials.

897. When professional ethical standards are high, police officials are better able to resolve their moral dilemmas, and to resist temptations to act unlawfully and corruptly. This means that establishing and maintaining a high standard of professional ethics within a police organization is one of the prime tasks of police commanders and managers. This can be done in a variety of ways, including:

- (a) example, and good management and command practice;
- (b) ensuring that all police officials are accountable to the law and to any internal discipline codes;
- (c) setting out ethical standards in a code of practice.

898. Such a code of ethical standards:

- (a) should not contain sanctions - those are provided by the law and by discipline codes;
- (b) should state ethical values and relate them to the stated purposes and objectives of the organization;
- (c) should provide ethical guidelines by clearly addressing the specific moral dilemmas and temptations faced by police.

899. Taking into account all the fundamental principles set out above, particularly the principles of respect for human dignity and respect for human rights, and the principle that police should be responsive and accountable to the community as a whole (see paras. 885-886):

- (a) the requirement to promote and protect human rights should be explicitly stated in the code;

(b) the code of ethical standards should be made public.

900. The standards expressed in a statement of ethical values or a code of practice must be accepted by, and have credibility for, all those at whom they are directed. This can be achieved in various ways including:

- (a) involving all members of the police organization in the preparation or revision of the code through a process of consultation;
- (b) requiring familiarity with, and formal acceptance of, the code as a condition for recruitment into the organization;
- (c) presentations on the code and its purposes during training programmes.

901. It should be noted that texts expressing human rights and humanitarian standards, particularly those which relate directly to law enforcement, are rich sources of reference for the drafting of ethical codes.

(e) Strategic planning and policy-making

902. Strategic planning and policy-making involve the formulation of long-term plans and broad policy to meet the purposes and objectives of the police organization. Taking into account the principles of:

- (a) respect for, and obedience to, the law;
- (b) respect for the inherent dignity of the human person;
- (c) respect for human rights,

it is essential for such plans and policy to comply with the stated ethical standards of the organization - which have been developed in accordance with those and other fundamental principles.

903. The process of strategic planning and policy-making requires consideration of such matters as:

- (a) the current political, economic and social circumstances of the country;
- (b) existing and forecast levels and patterns of criminality;
- (c) existing and forecast levels and patterns of public disorder;
- (d) governmental policy and guidelines on all matters affecting policing;
- (e) anticipated constitutional and legislative changes affecting law

enforcement;

(f) technological innovations applicable to policing;

(g) perceived concerns and expectations of the public.

904. In addition to ensuring that such plans and policy accord with the ethical values of the organization, the requirement to promote and protect human rights means that commanders and managers of police organizations should ensure that human rights considerations figure in statements of strategy and policy. For example:

(a) Strategy and policy on the prevention and detection of crime might include references to such matters as ethical standards on police investigations derived from international human rights standards.

(b) There might be a long-term plan to improve interviewing skills throughout the organization.

(c) Strategy and policy on dealing with civil disorder might include specific references to the principles of necessity and proportionality in the use of force.

(d) There might be a long-term plan to improve technical skills in dealing with civil disorder in an effective and humane manner.

905. Where it is possible to follow the good-management practice of involving all members of the organization in the planning and policy-making process by consultative means, this should be done:

(a) to increase awareness of strategic plans and policy;

(b) to ensure greater acceptance of strategic plans and policy;

(c) to enhance the possibility of fulfilling such plans and policy.

906. In accordance with the principle of accountability, consideration should be given to making strategic plans and policy public. Such matters do not touch on tactical policing matters, and operational policing activities are therefore not endangered.

907. In recent years, police agencies around the world have begun to adopt so-called "community-policing strategies", designed to strengthen the partnership between the police and their community. Some ideas associated with such strategies are set out in the "Strategy Note" at the beginning of this chapter.

(f) Systems for command, management and control

908. The requirement to establish, maintain and review systems for command,

management and control of law enforcement agencies stems from specific provisions of a variety of human rights instruments. This requirement is both explicit and implicit, as can be shown by various examples from preceding chapters of this manual.

(i) Responsive and accountable policing

909. Responsive policing and accountable policing have been identified as fundamental principles for the command and management of police organizations - these principles, being derived from General Assembly resolution 34/169 by which the Code of Conduct for Law Enforcement Officials was adopted (see para. 886 above).

910. As indicated in chapter IX of this manual (Policing in democracies):

RESPONSIVE POLICING may be achieved by:

- (a) considering the ways in which the public require the broad policing objectives of crime prevention and detection, and public-order maintenance to be attained;
- (b) considering the specific needs and expectations of the public at any one time and in any one locality.

ACCOUNTABLE POLICING may be achieved by:

- (a) *formal* means - through the law and through democratic political processes;
- (b) *informal* means - at a local level through police/citizen liaison groups for example.

This means that police commanders and managers should establish and maintain systems within law enforcement agencies:

- (a) to enable police to be legally and politically accountable - for example, through the establishment of proper reporting and recording systems open to external scrutiny;
- (b) to enable communication between the police and the community at a local level.

(ii) Human rights and police investigations

911. Among the matters considered in chapter XI of this manual (Police investigations) are the right to a fair trial and the management of confidential informants.

912. The ways in which evidence is gathered by police and presented to the prosecuting authorities and the courts are crucial to protection of the right to a fair trial. This means that effective internal monitoring and supervisory systems must be in place to ensure that the conduct of police investigators in this respect is entirely

proper.

913. One of the minimum guarantees necessary for a fair trial is the entitlement to trial without undue delay. This implies the need for supervisory systems within police organizations to ensure that investigations into crime are carried out and concluded as quickly and efficiently as possible.

914. The correct management of confidential informants is extremely important for police effectiveness and for the protection of human rights. The importance of a clear policy, and strict regulatory procedures and rules based on that policy, is emphasized in chapter XI. Some points to be taken into account when formulating such regulatory procedures and rules are also set out in that chapter.

915. Officials with command and managerial responsibilities in law enforcement agencies must establish systems for the management of confidential informants which:

(a) exploit such sources of intelligence on criminal activity to the full;

(b) limit the possibilities of police corruption and human rights abuse to the absolute minimum.

(iii) Human rights on arrest

916. Procedures to be followed on arrest are considered in chapter XII of this manual (Arrest). These include the requirements that:

(a) a record be made of the circumstances of arrest (time of arrest, time of arrival at place of custody, identity of official concerned, etc;

(b) the person arrested be provided with information on his or her rights;

(c) anyone arrested on a criminal charge be brought promptly before a judge or other judicial authority.

In each case, systems should be established and maintained in order that the procedures may be followed.

(iv) Human rights during detention

917. Among the matters considered in chapter XIII of this manual (Detention) are measures to prevent torture and ill-treatment of detainees. The Declaration Against Torture requires States to keep under systematic review interrogation methods and practices, as well as arrangements for the custody and treatment of detainees (art. 6). It is not possible to comply with this double requirement without establishing command, management and supervisory systems specifically for the purpose.

918. Whilst external systems need to be in place to monitor police agencies, monitoring systems internal to police agencies also need to be established. These systems may produce a number of benefits in addition to the prevention of torture and ill-treatment. They could:

- (a) lead to enhancement of effectiveness in ethical interviewing techniques;
- (b) generally promote the notion of ethical policing within the organization.

919. Other matters discussed in chapter XIII are general requirements on humane treatment of detainees, and one of these is that the circumstances of interrogation (duration, intervals between interrogations, identities of officials, etc.) are to be recorded. This is another requirement which is dependent on efficient and effective systems within law enforcement agencies.

(v) Human rights and use of force by police

920. The use of firearms by police is considered in chapter XIV of this manual (Use of force and firearms). There it is pointed out that the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require:

- (a) the storage and issuing of firearms to be regulated;
- (b) a system of reporting to be established - to be followed whenever firearms are used by police;
- (c) reporting and review procedures to be established - to be invoked when death or injury is caused by police use of force or firearms.

921. Another matter considered in chapter XIV is the use of force and extralegal killings. The Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions require strict control to be exercised over officials responsible for arrest and detention, and over those authorized to use force and firearms.

922. The requirements of both these instruments can be met only if the necessary systems are established, maintained and reviewed within law enforcement agencies.

923. Other examples of the need for systems and structures deriving from specific provisions of human rights instruments can be found. In most law enforcement agencies, some or all such systems exist. Nevertheless, abuses of human rights arising out of failures of systems continue to occur, and this indicates that police commanders and managers need constantly to review systems to ensure that they are effective.

(g) Recruitment

924. Policy and practice on recruitment into law enforcement agencies should take into account the following considerations, referred to in preceding chapters of this manual:

(i) Human rights, police and non-discrimination

925. Among the matters discussed in chapter X of this manual (Police and non-discrimination) is the right of equal access to public service. This right is protected in global and regional treaties and means that every citizen who is properly qualified, and wishes to do so, should have the opportunity to have access to, and to participate in, the public service of policing. There should be no exclusion based solely on such grounds as race, colour, sex or religion. The only considerations to be taken into account for recruitment purposes should be the applicants' personal qualities and qualifications, and the number of vacancies available to be filled in an agency.

(ii) Human rights and policing in democracies

926. Among the matters discussed in chapter IX of this manual (Policing in democracies) is representative policing. This is required under General Assembly resolution 34/169 of 17 December 1979 (preamble), by which the Code of Conduct for Law Enforcement Officials was adopted. The actual requirement is that every law enforcement agency should be representative of the community as a whole, and it means that police commanders and managers need to ensure that the ranks of their agency are sufficiently representative of the community it serves.

927. Minority groups must be adequately represented within police agencies, and they must be able to develop their careers within those agencies.

(h) Training

928. Police officials with command and management functions have a clear responsibility to ensure that officials in their agencies are properly trained to carry out all their duties.

929. Taking into account the fundamental principles of:

- (a) respect for, and obedience to, the law;
- (b) respect for the inherent dignity of the human person;
- (c) respect for human rights,

it is essential that all police officials are aware of the provisions of their domestic law designed to safeguard human rights, as well as of international standards. This point is expressed in the Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials, adopted by Economic and Social Council resolution 1989/61 of 24 May 1989, which state (part I.A, para. 4):

Governments shall adopt the necessary measures

to instruct, in basic training and all subsequent training and refresher courses, law enforcement officials in the provisions of national legislation connected with the Code as well as other basic texts on the issue of human rights.

930. The requirement to promote and protect human rights also means that police should be trained in the practical application of human rights and humanitarian standards, i.e. that they should be given guidance on how to police effectively in accordance with those standards.

931. Some texts expressing international standards make specific references to training as indicated below.

(i) Use of force

932. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require:

(a) "continuous and thorough professional training" for all law enforcement officials (principle 18);

(b) law enforcement officials to be provided with training "in accordance with appropriate proficiency standards in the use of force" (principle 19);

(c) police officials who carry firearms to be authorized to do so "only upon completion of special training in their use" (principle 19);

(d) in the training of law enforcement officials, special attention to be given "to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms" (principle 20);

(e) training programmes to be reviewed in the light of particular incidents (principle 20).

933. The Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions require (principle 3):

(a) Governments to prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any extralegal, arbitrary or summary executions;

(b) all persons to have the right and the duty to defy such order;

(c) training of law enforcement officials to emphasize the above provisions.

(ii) Treatment of detainees

934. The Declaration against Torture requires the training of law enforcement officials to take full account of the prohibition against torture and other ill-treatment (art. 5).

935. The Convention against Torture requires that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel (art. 10).

(iii) Armed conflict and civil disorder

936. Each of the four Geneva Conventions of 1949 contains an article requiring States parties to disseminate the text of the Convention and to include the study of the Convention in military and civil training programmes. Clearly, these provisions have great relevance to the training of those police officials who may have combatant status in international armed conflicts.

937. The Fourth Geneva Convention, relating to the protection of civilians, makes an additional requirement that police who assume responsibilities in respect of protected persons in time of war be "specially instructed" in the provisions of the Convention (art. 144).

(iv) Protection of juveniles

938. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice require police officials "who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime" to be specially instructed and trained (rule 12).

(v) Protection and redress for victims

939. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power requires police and other personnel concerned with victims to receive training to sensitize them to the needs of victims, and guide-lines to ensure proper and prompt aid (para. 16).

940. All the above specific references to training are made in relation to important areas of policing activity. They should be taken into account when training policies are formulated, and be reflected in the actual practice of training.

3. CONCLUDING REMARKS

941. The aspects of command and management considered in this chapter are some of those necessary for performance of the operational policing functions of a law enforcement agency. Each aspect requires the application of a variety of command and

management skills by police leaders. It is the responsibility of Governments to ensure that those skills are sufficiently developed. As with other areas of policing considered in this manual, there is considerable expertise available in various Member States of the United Nations which may be called upon when required.

942. The requirement on police commanders and managers is to take fully into account the implications of the legal imperative to promote and protect human rights, so that policing is carried out effectively and in accordance with human rights and humanitarian standards. This applies to planned and coordinated policing operations carried out under the direct control of police commanders or supervisors, as well as to the unsupervised actions of individual police officials undertaking their routine policing activities. In the former case:

(a) the requirement to promote and protect human rights by and through policing must be recognized in the planning, preparation and execution of police operations;

(b) briefing of police officials for operations, and debriefing following operations, must make specific reference to human rights issues arising out of the operation.

In the latter case, individual police officials need to accept fully, and without reservation, the necessity and desirability of respecting human rights during the course of their unsupervised policing activities. This acceptance depends on selection and training methods, the general ethical standards of the law enforcement agency, and other aspects of command and management discussed in this chapter.

943. Policing can be judged in a variety of ways and against a variety of measures. One of the ways in which it should be judged is the extent to which it meets the general objective of safeguarding human rights. The standards of international human rights and humanitarian law provide some of the measures.

B. INTERNATIONAL STANDARDS ON POLICE COMMAND, MANAGEMENT AND ORGANIZATION- PRACTICAL APPLICATION

1. PRACTICAL STEPS FOR IMPLEMENTING INTERNATIONAL STANDARDS

NOTE: Review closely the practical recommendations for command and supervisory officials made at the end of each chapter of this manual, in addition to the recommendations made below.

General Rule for Police Commanders and Supervisors

Police leadership is not a desk job. Remain in close contact with the realities of operational policing; with the feelings and concerns of the community which you serve; and with those you are charged to command.

Command and Supervisory Officials

Develop a voluntary ethical code of conduct for law enforcement officials.

Issue clear and binding standing orders on respect for human rights in all areas of police work.

Provide for entry-level and continuous in-service training for all officials emphasizing the human rights aspects of police work contained in this manual.

Develop careful screening processes for new recruits, and periodic assessments of all officers, to determine appropriate character for law enforcement duties.

Develop community-policing strategies, as indicated in the "Strategic Note" at the beginning of this chapter.

Establish and enforce strict guidelines for record-keeping and reporting.

Establish an accessible mechanism for receipt of complaints by members of the community, and fully investigate and redress all such complaint.

Develop a plan to ensure that the composition of your police agency is representative of the entire community, including fair and non-discriminatory recruitment and management policies.

Solicit technical assistance from international and bilateral programmes, to develop techniques and technical policing skills and capacities for proper and effective law enforcement.

Establish, and announce, an appropriate range of penalties for police violations, from suspension, pay docking and termination, to criminal penalties for serious violations.

Strictly regulate the control, storage and issuing of weapons and ammunition.

Carry out periodic, unannounced spot checks on detention facilities, police stations and substations, and inspect weapons and ammunition being carried by police to ensure that they comply with official regulations.

Establish close cooperative relationships with other law enforcement agencies, judges and prosecutors, medical facilities, social service agencies, emergency services, the media, and community organizations.

Develop specialized units to professionalize police attention to juveniles, victims, crowd situations, women's detention facilities, border control, etc.

2. HYPOTHETICAL EXERCISES

Exercise 1

For the purposes of discussion, imagine that it has been agreed that three middle managers from industry and from commerce are to "exchange jobs" with three middle-ranking police officers for the purposes of broadening the managerial experience of all of them.

One police officer is to be attached to a large public relations organization, another to the editorial office of a national newspaper, and the third to the personnel office of a multinational oil company.

1. Prepare a text which sets out the terms of reference for the three police officers. These should include the broad objectives of the attachments; the particular skills the police managers may have which could prove useful in each of the three organizations; and, more importantly, what managerial and organizational skills the three police officials could develop by their attachment to each specific organization.
2. Select suitable posts within a law enforcement agency for each of the three non-police managers and prepare a text which sets out their terms of reference. These should include stipulations designed to ensure the personal safety of each person. Indicate in respect of each person what in particular they would learn from their individual attachment. Identify a particular aspect of the police organization which you would want each person to examine in order that he or she may make recommendations on it.

3. TOPICS FOR DISCUSSION

1. What are the arguments for and against appointing a professional public relations expert to work within a police organization?
2. For the purposes of preparing an ethical code for a police agency, identify three moral dilemmas faced by police officials in the performance of their duties and suggest responses to them.
3. Devise a scheme for involving all members of a large police organization in the

preparation of a code of ethics for that organization. What consultative techniques would you use?

4. In this chapter of the manual, the following aspects of police organization and management were considered: purposes and objectives of a police organization; professional ethics; strategic planning and policy-making; systems for command, management and control; recruitment; and training. Identify some other aspects of organization and management affected by the obligation to safeguard human rights and state how they are affected.

5. Identify four ways in which a police commander can become aware of public needs and expectations.

6. Identify six command and managerial skills important in a senior police officer and say how you think an individual police officer may develop these.

7. What is the difference between "command" and "management"? What is "leadership" and is this a quality of a commander or a manager?

8. Identify some of the ways in which a senior police officer can become aware of those police officials under his or her command who generally respect human rights, and those who tend to violate human rights.

9. In what ways is it possible to acknowledge and reward police officials who carry out their duties with due respect for human rights?

10. A proposal has been made that police buildings in which people suspected of crime are detained may be visited at any time by a committee of people who can have immediate access to any detainee. The committee would consist of a lawyer, an elected politician and a doctor. In what ways would such a scheme assist in safeguarding human rights? Set out the arguments for and against such a scheme.

CHAPTER XXI

INVESTIGATING

POLICE VIOLATIONS

Chapter Objectives

To give users of the manual an understanding of the importance of strict measures for preventing human rights violations by police, of prompt, thorough and effective investigations of such acts when they are committed, and of effective sanctions for guilty parties.

Essential Principles

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

Law enforcement agencies shall be accountable to the community as a whole.

Effective mechanisms shall be established to ensure internal discipline and external control, as well as the effective supervision of law enforcement officials.

Law enforcement officials who have reason to believe that a human rights violation has occurred, or is about to occur, shall report the matter.

Procedures shall be established for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of those procedures shall be publicized.

Investigations into police violations of human rights shall be prompt, competent, thorough and impartial.

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

Crime scenes shall be carefully processed.

Superior officers shall be held responsible for abuses if they knew, or should have known, of their occurrence and did not take action.

Police are to receive immunity from prosecution or discipline for refusing unlawful superior orders.

Obedience to superior orders shall not be a defence for violations committed by police.

A. INTERNATIONAL STANDARDS ON INVESTIGATING HUMAN RIGHTS VIOLATIONS BY POLICE - INFORMATION FOR PRESENTATIONS

1. INTRODUCTION

944. The legal obligation on States to promote and protect the human rights of people within their jurisdiction means that there is a general requirement to investigate allegations of human rights abuse. Human rights are not protected when there is a failure to investigate abuse of those rights.

945. This general requirement is reinforced by international measures of supervision and implementation. For example, procedures and bodies have been established under some human rights treaties to supervise implementation of the provisions of those treaties. When such procedures are invoked, a State may be called upon to explain an alleged failure on its part to meet the provisions of a treaty. In order to make such an explanation, an investigation into a human rights violation may be required.

946. More specifically, some human rights instruments contain provisions which place direct requirements on States to investigate complaints of violations of the standards they embody, and some instruments require States to establish mechanisms and procedures which could lead to investigations and reviews. These more specific requirements are detailed in subsection 2 (b) below. They are a feature of instruments with special relevance to human rights and law enforcement, and it is important for police officials to be aware of them.

947. On the other hand, police officials do not require a detailed understanding of international procedures and bodies established to supervise the promotion and protection of human rights by States. It is, however, important for police officials to be aware that such procedures and bodies exist. For this reason, they are briefly referred to in subsection 2 (d) below.

948. Subsection 2 (c) below refers to investigations which could arise from reports of enforced or involuntary disappearances.

2. GENERAL ASPECTS OF INVESTIGATING HUMAN RIGHTS VIOLATIONS BY POLICE

(a) Fundamental principles

949. The principle of accountability is paramount in the investigation of human rights violations - accountability of law enforcement agencies to the community through

democratic political processes, and accountability of individual law enforcement officials to the law. Without accountability there can be no meaningful investigation.

950. The second fundamental principle derives from the first, and it requires investigations to be thorough, prompt and impartial.

(b) Specific provisions on complaint, review and investigation

951. It is an indication of the importance attached by the international community to certain human rights standards relevant to law enforcement that provisions on complaint, review and investigation should be embodied in instruments expressing those standards. These provisions are set out below under the headings of the various instruments.

(i) Code of Conduct for Law Enforcement Officials

952. General Assembly resolution 34/169 of 17 December 1979, by which the Code of Conduct was adopted, states (preamble):

...the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency.

953. Article 8 of the Code of Conduct states:

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Paragraph (c) of the commentary to article 8 states:

The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

Paragraph (d) of the commentary states:

In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of Article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

TRAINERS' NOTE:

Article 4 of the Code of Conduct requires matters of a confidential nature in the possession of police officials to be kept confidential "unless the performance of duty or the needs of justice strictly require otherwise".

954. By its resolution 1989/61 of 24 May 1989, the Economic and Social Council adopted the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials.

Part I.B, paragraph 3, of the Guidelines states:

Discipline and supervision. Effective mechanisms shall be established to ensure the internal discipline and external control as well as the supervision of law enforcement officials.

Part I.B, paragraph 4, states:

Complaints by members of the public. Particular provisions shall be made, within the mechanisms mentioned under paragraph 3 above, for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of these provisions shall be made known to the public.

955. The combined effect of these provisions is that there should be:

(a) public scrutiny of the actions of individual law enforcement officials by effective and independent bodies external to law enforcement agencies;

(b) effective disciplinary mechanisms within law enforcement agencies;

(c) accessibility of these bodies and mechanisms to members of the public and to law enforcement officials wishing to report violations or initiate inquiries.

These are all provisions which can result in investigation of human rights violations by police.

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

956. Under the Declaration against Torture, individuals alleging torture are to have the right of complaint, and suspected cases of torture are to be investigated regardless of whether or not there has been a complaint. Criminal law is to be invoked against alleged offenders.

957. Article 8 of the Declaration states:

Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.

Article 9 states:

Wherever there is reasonable ground to believe that an act of torture as defined in article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

Article 10 states:

If an investigation under article 8 or article 9 establishes that an act of torture as defined in article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

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

958. The provisions of the Declaration against Torture are expanded in the Convention

and a requirement to pay compensation to victims is added.

959. Article 12 of the Convention states:

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13 states:

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14 states:

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

960. Article 4 of the Convention requires acts of torture, attempts to commit torture, and complicity or participation in torture to be offences under criminal law.

961. Both the Declaration and the Convention contain provisions requiring investigations which would apply to allegations of torture or ill-treatment made against law enforcement officials, or where such officials are otherwise suspected of being involved in acts of torture.

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

962. This instrument contains detailed provisions on investigations into extralegal killings, many of which provisions are extendable, by analogy, to other types of human rights violations.

963. Principle 9 states:

There shall be thorough, prompt and impartial investigation of all suspected cases of extralegal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

964. Principle 10 requires investigative authorities to have the necessary powers to obtain information, and the necessary resources to carry out inquiries. Their powers are to include power to compel witnesses, including officials, to testify.

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

965. Principle 7, paragraph 2, of this instrument requires law enforcement officials who believe that a violation of the Body of Principles has occurred or is about to occur to report the matter to their superior authorities or other appropriate authorities having review or remedial powers. Principle 7, paragraph 3, requires any other person to have the right to make such a report.

966. Principle 29 states that places of detention shall be visited by qualified and experienced persons appointed by a competent authority which is distinct from the detaining authority. This is to ensure observance of the relevant laws and regulations, and the principle requires detainees to be given the right to communicate in confidence with persons who make such visits.

967. Principle 33 requires:

(a) a detainee or his counsel to have the right to make a request or complaint concerning his treatment to the authorities responsible for administering the place of detention, and to authorities with review or remedial powers;

(b) a member of the detainee's family, or any other person with knowledge of the situation, to be able to exercise the above right in those cases where neither the detainee nor his counsel has the possibility to do so;

(c) confidentiality concerning the request or complaint to be maintained at the request of the complainant;

(d) every request or complaint to be promptly dealt with and, if it is delayed or rejected, a complainant to have the right to bring it before a judicial or other authority.

968. The provisions of each of the above principles could result in investigations of human rights violations by law enforcement officials.

969. Principle 35 requires compensation to be made in respect of damage incurred because of acts or omissions by a public official contrary to the rights contained in the Body of Principles.

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

970. Principles 22 and 23 of this instruments are relevant to this chapter.

971. Principle 22 refers to principle 6 (which concerns reports by law enforcement officials to superiors in respect of death or injury caused by the use of force and firearms by police) and to principle 11(f) (which requires a system of reporting to be provided for situations in which law enforcement officials use firearms in the performance of their duty). Principle 22 requires an effective review process for incidents reported pursuant to principles 6 and 11(f). It also requires that independent administrative or prosecutorial authorities be in a position to exercise jurisdiction in appropriate circumstances. In cases of death or serious injury, a detailed report is to be sent to the competent authorities responsible for administrative and judicial control.

972. Principle 23 requires persons affected by the use of force and firearms, or their legal representatives, to have access to an independent process, including a judicial process.

973. It is clear that the procedures required by these provisions could result in investigations of human rights violations by police.

(c) Enforced or involuntary disappearances

974. Reference should be made to chapter XII of this manual (Arrest) where enforced or involuntary disappearances are considered (see paras. 372 ff. above). There, reference is made to the Working Group on Enforced or Involuntary Disappearances established by the Commission on Human Rights in 1980.

975. The objective of the Working Group is to assist families in determining the fate and whereabouts of their missing relatives. To that end, the Working Group attempts to establish a channel of communication between families and the Government concerned in order to ensure that cases brought to the Working Groups' attention are investigated and the whereabouts of missing persons clarified.

976. Clearly, investigations into cases of disappeared persons involve examination of a variety of human rights violations, which may include breaches of the rights to:

- (a) life;
- (b) liberty and security of the person;
- (c) humane treatment as a detainee.

977. When law enforcement officials are responsible for enforced or involuntary disappearances, and hence for human rights violations, communications between the Working Group and Governments may lead to investigation of human rights violations by such officials.

978. The function of the Working Group is fulfilled in any particular case when the fate and whereabouts of the missing person have been established as a result of investigations by the Government - irrespective of whether that person is alive or dead. The Working Group operates on the principle that Governments must assume responsibility for human rights violations within their territory. That responsibility includes a requirement to investigate allegations of human rights violations by police officials.

(d) International procedures and bodies established to secure compliance with human rights standards

979. As indicated in the introduction to this chapter, not all police officials require a detailed understanding of this aspect of the topic. Nevertheless, it is important for police to be aware of the existence of international mechanisms which monitor police behaviour. Users of the manual are therefore referred to chapter VII (Sources, systems and standards for human rights in law enforcement) for an overview of relevant mechanisms and bodies.

3. CONCLUDING REMARKS

980. The task of promoting and protecting human rights is primarily a national one. It is the responsibility of each State through democratic institutions, adequate legislation and an independent judiciary to achieve respect for, and observance of, human rights. This task and this responsibility include a requirement to investigate human rights violations.

981. Because of the nature of policing, and of the human rights which are vulnerable to policing activity, it is highly likely that human rights violations by police will be offences punishable under criminal law.

982. When police officials are suspected or accused of committing criminal acts, including criminal acts which are human rights violations, they should be subject to the investigatory processes normally adopted in the State concerned. Similarly, criminal charges against police officials should be heard before the normal criminal courts.

983. This means that an independent judiciary and a properly functioning legal system

provide the basic structure for the protection of human rights at the national level. However, in many countries, institutions which complement the functions of the judiciary and courts in this respect have been created, and these may provide additional means for the investigation of human rights violations by police. These institutions fall into three broad categories:

(a) human rights commissions- established to ensure that laws and regulations protecting human rights are properly applied. These are usually empowered (by legislation or decree) to receive and investigate complaints from individuals or groups; to review the Government's human rights policies; and to improve general awareness of human rights within the community;

(b) ombudsman offices - established to protect the rights of individuals who complain that they are victims of injustice on the part of public administration. These are appointed on the basis of establishing legislation, to receive and investigate complaints of such maladministration;

(c) specialized institutions - established to promote government and social policy for the protection of vulnerable and minority groups. These are usually authorized to investigate discrimination against individuals or groups.

984. Commissions, ombudsmen and specialized institutions differ from country to country in their structures and functions, and also in the extent to which and the ways in which any of them may have responsibilities for investigating allegations of human rights violations by police.

985. In addition to these institutions, many States have established bodies specifically to receive complaints of police wrongdoing, including violations of human rights, and to investigate or cause to be investigated those complaints. There are two principal advantages in establishing such bodies. One is that expertise and specialization may be developed in the investigation of complaints against police, and the other is that the investigation of complaints or allegations against police is seen as having some importance.

B. INTERNATIONAL STANDARDS ON INVESTIGATING HUMAN RIGHTS VIOLATIONS BY POLICE - PRACTICAL APPLICATION

1. PRACTICAL STEPS FOR IMPLEMENTING INTERNATIONAL STANDARDS

Command and Supervisory Officials

Issue clear standing orders, and provide for regular training, on protection of the human rights of all persons who come into contact with the police.

Emphasize that all officers have both the right, and the duty, to defy unlawful superior orders, and to report such unlawful orders to a higher official at once.

Remove from service any official implicated in a human rights violation, pending the outcome of an appropriate investigation. If the official is found to be guilty (after a trial), criminal and disciplinary sanctions should be imposed. If innocent, the official's name should be cleared, and all benefits restored.

Issue a clear statement of policy, and corresponding orders, requiring full disclosure and the cooperation of all officials with both independent and internal investigations.

Establish, and strictly enforce, heavy sanctions for interference or non-cooperation with internal and independent investigations.

Review regularly the effectiveness of the chain of command within the law enforcement agency, and take prompt action to strengthen that chain of command where necessary.

Provide clear guidelines on the preparation of reports, the collection and preservation of evidence, and procedures for protecting witness confidentiality.

Provide entry-level and continuous in-service training for all officials emphasizing the human rights aspects of police work contained in this manual.

Develop careful screening processes for new recruits, and periodic assessments of all officers, to determine appropriate character for law enforcement duties.

Establish an accessible mechanism for receipt of complaints by members of the community, and fully investigate and redress all such complaints

Strictly regulate the control, storage and issuing of weapons and ammunition.

Carry out periodic, unannounced spot checks on detention facilities, police stations and substations and inspect weapons and ammunition being carried by police to ensure that they comply with official regulations.

2. HYPOTHETICAL EXERCISES

Exercise 1

The General Assembly resolution 34/169 of 17 December 1979, by which the Code of Conduct for Law Enforcement Officials was adopted, requires the actions of law enforcement officials to be subject to public scrutiny. Among the bodies it suggests should be responsible for this are a ministry, the judiciary and a citizens' committee.

1. In terms of securing proper investigation of human rights violations by police officials, set out the advantages and disadvantages of each type of body.
2. For the purposes of discussion, imagine that local citizens' committees to scrutinize police action are to be established in your country. Such committees will be empowered to:
 - (a) visit detainees in police custody;
 - (b) question police commanders about incidents in which it appears that police may have used excessive force;
 - (c) discuss local policing objectives with police commanders.

Prepare a set of instructions and guidelines for local police commanders in respect of each of these three areas of the committees' activities to ensure that they will cooperate as fully as possible with the committees and that, at the same time, operational effectiveness of policing is not diminished.

Exercise 2

Part I.B, paragraph 3, of the Guideline for the Effective Implementation of the Code of Conduct for Law Enforcement Officials states:

...Effective mechanisms shall be established to ensure the internal discipline and external control as well as the supervision of law enforcement officials.

1. What are the various mechanisms for:

- (a) internal discipline;
- (b) external control

of a law enforcement agency? Which, in each case, are the most effective?

2. You have been asked to prepare a draft of the section of an internal discipline code which sets out acts or omissions of police officials which will be offences contrary to that code.

- (a) Which acts or omissions would you include in the code?
- (b) Would you make "violation of human rights" a specific offence contrary to the code, or would you identify particular actions which amounted to human rights violations and make those offences? State reasons for your preference.

3. You have been asked to advise on the preparation of a training course for newly

appointed first-line supervisors of police officials.

(a) What subjects would you recommend for inclusion in the course?

(b) In his speech to open the course, the commandant of the Police Academy wants to stress to participants the importance of first-line supervisors in securing effective, legal and humane policing. Draft outline notes of his speech for him.

Exercise 3

For the purposes of discussion, imagine that you are a member of a working group formed to make recommendations to the Government on the establishment of a system to secure investigation of criminal activity, including human rights violations, by police.

At present, such investigations are undertaken by a specialized bureau staffed entirely by police officials, but concern has been expressed by the judiciary and politicians, and in the media, about failures to investigate human rights violations by police promptly and effectively.

The terms of reference of the working group are:

To make recommendations to the Minister of the Interior on the establishment of a system to investigate allegations and complaints of criminal activity and human rights violations by police, with particular reference to:

(a) the need to secure easy access by members of the public to the system;

(b) the composition of the investigative body in terms of professional background and qualifications;

(c) the legal powers to be given to the body to enable it to carry out its functions;

(d) the need to retain the confidence of the public and the police in the system.

Outline your recommendations in respect of the matters under (a) to (d) above.

Exercise 4

A governmental committee consisting of members of the Government, officials from the Ministry of the Interior and lawyers has been formed to make detailed recommendations on a revised system for dealing with complaints and allegations of criminal activity and human rights violations by police. It has published an interim report containing the following proposals:

(a) all complaints against police and allegations of criminal activity or human rights violations by them are to be made at police stations or police offices in person or in writing;

(b) all complaints or allegations received in that way are to be recorded;

(c) records of complaints and allegations against police are to be available for inspection at any time by judges, magistrates, lawyers acting for people who have made complaints or allegations, and officials of the Ministry of the Interior;

(d) all such complaints or allegations are to be promptly and thoroughly investigated by specialized police officials;

(e) all such investigations are to be supervised by a judicial committee.

The governmental committee has invited responses on these broad proposals from various interested bodies:

(a) seeking their views on the likely effects and effectiveness of a scheme based on the proposals;

(b) asking for specific recommendations to give effect to the proposals.

Give the responses under these two points of:

(a) the chief officer of police;

(b) a national human rights non-governmental organization.

3. TOPICS FOR DISCUSSION

1. Paragraph (d) of the commentary to article 8 of the Code of Conduct for Law Enforcement Officials states that, in some countries, the mass media may be regarded as performing complaint- review functions in respect of grievances or complaints against law enforcement officials. Under what circumstances would it be acceptable for a police official to report violations of the Code of Conduct to a newspaper?

2. What steps can be taken within police organizations to ensure that police officials report violations of human rights by colleagues?

3. What can be done to reassure the public that, when police investigate unlawful actions, including human rights violations, by other police officials, the investigation are thorough and rigorous?

4. What are the various ways in which members of the public can be made aware of systems adopted to investigate human rights violations by police? How can such systems be made accessible to members of the public so that there are no obstacles to complaints of human rights violations?
5. Should police investigate unlawful activity, including human rights violations, by police, or should a completely independent agency carry out investigations into allegations of police criminality?
6. Under what circumstances and to what extent should police officials with supervisory responsibilities be held responsible for human rights violations by their subordinates?
7. If there are effective systems to investigate human rights violations by police, will this cause police to be overcautious and less willing to act decisively to prevent and detect crime? If this is a danger, what steps can be taken by commanders and managers of law enforcement agencies to avoid this possibility without undermining the effectiveness of investigation systems?
8. In a State where the Government lacks legitimacy with the people, or where it is overdependent on the security forces for its survival, it may be unwilling or unable to initiate effective investigations into human rights violations by law enforcement officials. In view of such cases, would you recommend the formation of a permanent international investigatory body, empowered to carry out investigations of human rights violations within States and to bring alleged perpetrators of those violations before an international criminal court? Give reasons for your conclusions. What factors would affect the effectiveness of such a body?
9. You receive reliable information that a police official under your command tortured a person in detention who then admitted involvement in a bank robbery during which a security guard was killed. The confession led to the recovery of stolen property and the arrest of the other robbers. What would you do?
10. In many countries, special squads of police officials are formed to investigate corruption and other criminal activity by police officials. How do you ensure that such special squads remain uncorrupted? Who watches the watchers?