



# **ETHICAL INVESTIGATION:**

**A Practical Guide for Police Officers**

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## Preface

It is now over half a century since the Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly of the United Nations in the aftermath of the Second World War. During the intervening years, a body of international laws has developed reflecting the struggle to create a community of states governed by the rule of law. Milestones in that development at the global level are the International Covenant on Civil Political Rights (1966), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Body of Principles for the Protection of Persons under Detention or Imprisonment (1988) and the establishment in 1998 of the International Criminal Court, the latter empowered to investigate, try and punish the gravest human rights abuses. Meanwhile, at the regional level, a parallel development of legal instruments and mechanisms has taken place, as states have sought to affirm shared values: respect for human dignity and fundamental freedoms.

The ultimate test of the strength of a State's commitment to the rule of law lies in the way it deals with those who offend against its rules. And there is no more complex and arduous public service than that performed by the police as the frontline agents of the State in its dealings with the people within its territory. In the third millennium, crime is a preoccupation of States, both crime against individual citizens and crime against the public, including acts of terrorism. In the investigation of crime the tension between the interests of the many and the interests of the individual is high and in the closed world of custody and interrogation there is always a risk of abuse. It is the difficult obligation of every police officer to uphold the rule of law in all circumstances.

Government ministers and senior police officials responsible for the conduct of the police and security forces of their states are increasingly being held to account for the way in which they discharge their duties. Those responsible for the training and equipping of the police and the oversight of their day-to-day operations carry an unprecedented obligation to ensure that policies and working practices are in compliance with international laws and norms. From the work of global and regional mechanisms charged with monitoring police behaviour, a consensus has emerged that the most effective means of preventing ill treatment by the police lies in careful recruitment and training. If law enforcement officers are provided with proper equipment and support and taught professional methods of investigating crime, they will be less likely to resort to bullying, intimidation, violence or torture.

This manual has been written for police officers by a former police officer, whose long and successful career has involved investigations in the UK and three continents and has included serious crime investigation. Drawing on his practical experience, the author offers what to some may be new ideas and new ways of approaching investigative problems. Although the manual cannot provide exhaustive detail on all aspects of investigative police-work, it does give practical advice and guidance on many concrete situations, illustrating with real examples different ways of handling the challenges that arise in the course of an investigation. For police investigators, supervisors and trainers, the manual can serve as a tool for identifying those areas in which more detailed and focused training may be of use.

Although the manual necessarily contains many references to important human rights texts, it is essentially not about the consequences of failure to comply with them. In many jurisdictions across the world, a confession is accepted as what is needed to complete an investigation, without the requirement for supporting evidence. Not surprisingly in such systems it is implicitly, or even explicitly, recognised that some police officers, relying heavily on gaining confessions from suspects in order to solve crimes, will resort to excessive use of force and ill-treat persons held for questioning. Such systems carry the greatest risk of denial of human rights. Whatever the pressures and expectations of the legal systems in which they operate, police officers cannot absolve themselves of their responsibilities under international law: a fundamental rule of international law is the absolute prohibition of torture and other forms of ill-treatment.

The right to a fair trial is one of the basic rights and the prerequisite for a fair trial is a fair, impartial and investigation based on due process of law. The central thrust of this manual is to identify and describe those methods and tactics that allow fair investigations. Such investigations, conducted in full compliance with human rights requirements, will be equally or more effective in combating crime than any other approach and will ultimately serve far better the public interest.

### **Dr Silvia Casale**

President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

## Introduction

Police officers all over the world are suspicious of change. This is hardly surprising, as societies change, as legislation changes, and as criminality changes, the police see themselves, often with some justification, as being left to pick up the pieces. Police officers all over the world are suspicious of lawyers, of academics, of their critics in the media, of people who tell them how they should do or not do their job - often people who have never had to face an angry man without the option of backing away, or tell a family that a loved one has been murdered, or see a criminal they have worked hard to catch escape justice by manipulating and exploiting rules designed to protect the innocent.

Bob Denmark, who compiled this manual, has been just as wary of people preaching at him during his thirty years as an operational police officer, as anyone else. During that time he successfully investigated a large number of serious crimes in the United Kingdom, and travelled to many countries during the course of his enquiries, learning the problems police officers had there. He spent some time in Africa investigating genocide for the United Nations. He has helped train hundreds of investigators of all ranks in how to investigate serious crime, in the United Kingdom, in Asia, in Africa, and in Eastern Europe, and has learnt lessons from students everywhere. He does not want to preach at anybody, but just to share the knowledge he has been lucky enough to get from others. It is however, his firm belief that good policing and good criminal investigation in particular, must be firmly rooted in proper respect for human rights.

The United Nations Universal Declaration of Human Rights is not a long document, neither does it require legal training or specialist knowledge to understand. It is included as an appendix to this manual, and anyone who is unsure what it says or how it relates to their individual job as a police officer, would be wise to read it; no, more than that, they would be extremely foolish not to. That Declaration has provided a foundation of principles for many international treaties and much national legislation designed to outlaw ill treatment, especially torture, of people by employees or officials of the country, including of course police officers. It also supports the basis for the Statute of the International Criminal Court, which is empowered by international statute to investigate, prosecute and punish grave violations of human rights.

Any police officer who believes that none of this affects him or her, because orders are received locally, or because they are only doing what has always been done and no one has told them to change, is living in a fool's paradise. Both they, and the country they are serving, may be answerable to the International Court, or regional courts of justice or courts of human rights if they do wrong. The most difficult area for police officers may well be in the interrogation of suspects. Nobody needs a specialist human rights lawyer to tell them that physically torturing suspects to try and gain confessions is wrong, degrading to those involved, and something of which to be ashamed. Some people may be surprised to learn, however, that it is something that they themselves might be prosecuted and punished for, even if what they do has the tacit approval of their superiors. Many countries' legal systems have developed to stop putting pressure on police investigators to obtain confessions during interrogation, and increasingly there are strong safeguards to ensure that police interviews with suspects are properly conducted. Usually there is specific national legislation to ensure that such interviews are consistent with international human rights law, particularly the United Nations Body of Principles for the Protection of Persons under any form of Detention or Imprisonment. Increasingly, there is legislation that allows or requires the tape recording or video recording of interviews, and to allow what a suspect has said, including any lies, evasions, inconsistencies, and even, under certain strictly controlled circumstances, refusal to answer certain types of question, to be used as evidence in any subsequent trial.

In other countries, however, there may still be an expectation that the police will obtain confessions. This obviously cannot however, excuse torturing suspects, but neither can it excuse bullying, threatening, intimidating, abusing, frightening, humiliating or blackmailing them or their families. In some places at least, police officers have used the existence of human rights legislation as an excuse not to try and do their job properly. When crimes are reported they have said, "There is nothing we can do now that suspects have human rights, there is no point even in arresting them". This is untrue and contemptible. The police have a responsibility not only to respond to serious crimes, but also to do all they can to limit and prevent all crime. Part of that responsibility involves a responsibility to investigate all crimes within reasonable and practical limits. Whilst many of the examples given in this manual refer to serious cases, the general principles apply to all crimes, and the need to treat all suspects or detained persons professionally and in accordance with their rights, whether in the gravest or the most routine cases, is absolutely paramount to acceptable performance.

What is needed is more professional ways of gathering evidence against suspects, and better ways of interviewing them, that cannot be criticised and yet which help to uncover the truth and provide useful evidence. These methods will be discussed in this manual, although there is no promise that all the answers to every problem will be there. In some countries legislation about the admissibility of police or other investigative interviews may need to change as well.

Police officers should not be disheartened by any of the above. Human rights law is not just about affording human rights to criminals or suspects. People have a right to be protected from the attacks of criminals and the police have a duty to protect ordinary people from criminals. Police officers too, have the right to be protected as they do their duties. In countries where human rights legislation has been in force for some time, experience shows that the courts are just as concerned to protect the rights of innocent people, and to support the rights of police officers to do their duties in compliance with the law, as they are to protect the rights of individual suspects. They expect police officers to act reasonably, to obey the law at all times, but not to shy away from doing everything they can within the law to bring criminals to justice.

This manual has not been written for use in any one country and it cannot of course override any local national legislation or legal requirements. It is hoped however, that the ideas within it will have some universal application and be of practical use to anyone who reads it, especially those who are coming to grips with change and want to help change things for the better. It may also help provide some form of template for those charged with undertaking training needs analyses in respect of crime investigation and to give some understanding of principles and problems to those who work alongside, or in support of, or in some supervisory capacity over the police, including judges, magistrates and prosecutors who may themselves have some control and direction over investigations.

## The Principles of Investigation

### **Any criminal investigation should be an open-minded search for the truth. That is easy enough to say, to learn and to repeat, but is it actually easy to be open minded?**

Very few investigators, at the beginning of an investigation, would say, "I have made some assumptions about what happened, based partly upon my personal prejudices, and I'm only going to look for evidence which tends to support my theory. Anything that doesn't support my theory is probably irrelevant and I will ignore it, or make sure it gets hidden so it doesn't confuse things. When I have enough evidence to arrest the person I suspect, I know how to put enough pressure on him to get him to admit it. I also know how to get the witnesses to say exactly what will support the case, and not to mention other things. I'm not bothered if anyone challenges my evidence, because the courts know and trust me, and they will believe me against a criminal anyway." Most people would be ashamed to say anything so stupid. But is this what sometimes happens, to some small degree at least, to all of us? Who can say, hand on heart, that they have never pursued evidence to support a favourite theory, or to implicate a particular suspect, at the expense of doing other things, which should have been explored?

I remember very well the first murder case I ever investigated. An old lady had been attacked in her home. It was clear she had been struck in the face. She also had some head injuries, probably caused by falling against her fireplace. The pathologist found that she had died from a heart attack, but the circumstances were such that he was prepared to say that her being attacked had caused the heart attack. We soon identified two women of very bad character who had been in the habit of visiting the old lady, first borrowing money from her and then not paying it back, and then later bullying her into giving them money. I could prove that they had been in her house not long before she died. I could prove that one of them had thrown away an empty purse that had come from the old lady's home, and had had plenty of money to go drinking later that day. When they were interviewed, they would not admit attacking her. In those days, in England, the police could charge suspects and bring them before the court without consulting the prosecutor. My boss insisted that I consult with the prosecutor and get his agreement before charging the women. I was very angry, because I felt that my judgement was being questioned. I was even angrier when the prosecutor said that there was not enough evidence, and he would not agree to their being charged. I was certain that two wicked women had escaped justice for a cruel and callous crime because the prosecutor was afraid to bring a case based on circumstantial evidence. Just less than a year later, a different woman telephoned the local police station. She was drunk and said that she wanted to confess to killing the old lady. When she was sober she was interviewed, in the presence of her lawyer, and her confession tape-recorded. She mentioned other evidence, and undoubtedly she was responsible. There was no evidence that she had intended to kill the old lady, and she was charged with manslaughter. Eventually she was convicted only of a serious assault.

If I had had my own way, the first two women would have been charged, and I think to this day there is a chance they would have been convicted of a crime they never committed.

How can an investigator avoid making the same mistake I did? By pursuing the evidence against the first suspects, of course, but at the same time remembering that it could have been someone else, and looking for evidence about them as well. There is a very basic investigative model that can help in all cases. It goes like this: -

#### **What do we know about the case ?**

Then: -

#### **What do we want or need to know about this case ?**

Then: -

#### **What is the best way to find out ?**

It is not quite as simple as that, of course. What we know about the case must also involve some analysis of the bare information, so it is not just what we know, but how we interpret it, how we decide what it might mean. Few investigators will be working completely alone, especially on serious cases. The senior or lead investigator does of course have the option of doing all the thinking him or herself, but it is a much better idea to exploit the thinking capacity of the whole team as much as possible. The most junior person on the team may know some small fact that nobody else has noticed, or may see a different way of interpreting things, or ask a question no one else has thought of, or come up with a new way of finding something out.

## What do we know ?

At the first stage, it is good practice to hold a team briefing involving everyone in the case. It might well be appropriate to include the police crime scene manager or specialist, any scientist, the pathologist, and any other expert who may be involved. Some of these people may never have been asked along to police meetings before, but is there any reason they should not attend? Now go round the group, and ask what is known about, for example: -

### **The victim**

The victim's lifestyle, family, job, interests, hobbies, friends, associates past and present, sexual relationships and preferences, income, savings, possessions, drug, alcohol and smoking habits, usual clothing, taste in music, food, drink, places visited, means of transport, health, visitors, time of rising and going to bed.

### **The place the crime was committed, and if different, the place the body was found.**

Did the victim ever go there? The people who frequent that place. The people whose job takes them near that place. The people who go there for recreation - to exercise animals perhaps. What roads, bus routes, railway stations, businesses, shops, houses, cinemas, places of interest it is near. Whether it is isolated or not. If the place is not well known, the people who know where that place is. Whether you can see the actual spot from a road, or a railway, or from a place where people often go. Which other crimes have been committed there, or nearby. What complaints there have been to the police or other agencies such as housing providers, schoolteachers, or religious or community leaders about things happening there? Whether it is easy to hide nearby. Whether it would be a good place to escape from if disturbed. What indications exist to suggest whether went voluntarily to this location, or was he or she lured or forced there?

### **The weapon**

Do we know what sort of weapon was used?  
If a gun, what type? What calibre of ammunition.  
If a knife, what type, size, blade length, how sharp.  
Whether there is a particular type or group of people who own, use or carry such knives, for example for a particular job.  
Where people can get them.

Obviously these are just a few simple examples. There may be many other things worth asking. When you have decided that you have found out everything your team knows about the crime, make sure it is recorded in writing, and then that someone considers it all carefully to see what it may mean. In many countries the police are now employing experts who have been specially trained in analysing large amounts of information, often with computer programmes dedicated to this task. There are also manual techniques which can be learned, which enable large amounts of information to be presented in a way which is easy to understand and remember, such as charts of associations between individuals and organisations and places, and time line charts showing what happened when, according to which witness. Such charts can show discrepancies between different stories, and can also show where the police are lacking information.

## What do we want to know ?

The next stage involves deciding what further information you want, what you want to know or need to know before proceeding further. Again, go round the team inviting them to ask questions. When someone asks a question, dig behind it a little to see if they are also wondering something else. For instance, if one of your team asks, "Did the victim often stay late at work?", he or she may also be trying to ask, "Could he have been having an affair?" If someone asks, "Was he getting through a lot of money his family didn't know about?" they may also be wondering "Was he gambling, or starting to use expensive drugs, or being blackmailed?" Often big questions have smaller questions associated with them. For example the question "Did he usually carry a lot of cash?" might lead to a bigger question such as "Was he wealthy?" or to a smaller question such as "What did he need cash for?" then very specific questions such as "Was he buying drugs regularly?" or "Was he paying prostitutes?" When a question is asked, try and make sure you go up to all the bigger questions, and then down to all the smaller questions. Bigger questions also tend to link together. For example "Was he wealthy?" might link to "Did his wife know how much money he had?", which might link to "Did his wife know all his business?" Some people have inquisitive minds, others do not. A team briefing like this will encourage people to think, and will help you to see who is a good natural investigator and who is not. It also creates a feeling of ownership of the enquiry - individual officers will feel that they are working to answer the questions that they want answered, and not just following the boss's line of thought. It is pretty well certain, too, that someone will come up with a question that the boss never thought of.

### **Decide on the most important lines of enquiry and record them.**

Before dashing off to try and answer the first questions that occur, try to spend time thinking of all the questions, and make sure that they are all recorded somewhere. Usually, you will not have enough resources to do everything, so you will have to decide what your most important lines of enquiry are, based on your own experience and judgement. Others can be returned to as circumstances change. In the United Kingdom, officers in charge of important enquiries keep a Policy File. This is a record of all the important decisions they have made. There are often important choices to be made in enquiries, and the Policy File allows the officer to record the reasons why he or she has decided to do certain things. This often serves to protect the officer from subsequent criticism. The decision to pursue certain lines of enquiry and not others is a key policy decision, and should be recorded. Legitimate decisions are often based upon available resources. For instance it might seem highly desirable to keep a key suspect under full time surveillance, but this might be too costly in terms of money and staff to be realistic. If the officer records why a decision was made not to use surveillance, there will be a degree of protection if it is later suggested that this should have been done. Sometimes the process of having to write down the justification for your decisions can lead to you re-thinking them! There may be a situation where there is enough evidence to justify arresting a suspect, but the investigating officer decides to wait until more evidence has been gathered. If the suspect commits another serious crime in the meantime, the investigator will be glad that the decision not to arrest him earlier was properly recorded along with the reasons. For those to whom this approach is new, practising on routine cases will help when a serious case occurs.

## What is the best way to find out ?

### Keep a record of all the individual tasks and who is doing them.

As soon as you have decided on the main lines of enquiry, begin to decide what individual tasks are needed to gather the information you want. For instance, suppose that your first line of enquiry is to gather more information about the lifestyle and associates of the victim. A list of tasks can then be drawn up to support this, and a few examples are given below: -

- Obtain the records of the victim's home and mobile telephone. Identify all the people he calls. If possible obtain records of his incoming calls.
- Obtain the victim's bank and credit card details. Find out where and when he spends his money, where he has stayed, what restaurants he visits and so on.
- Interview his family and known friends and draw up a list of all his work and social associates. Check to see which of them have any criminal records.
- Interview his neighbours and learn patterns of his movements. Who has been seen visiting his home? What vehicles has he been seen in?

Often, there may be several ways of getting the same information. Say you want to know which people frequent a particular area. Possible tasks might include: -

- Interview the people we know frequent the area and get them to describe all the other people they have seen there.
- Make an appeal in the newspaper or on television for people to come forward.
- Put officers in the area at different times of day to question people and ask them how often they visit the area, and who else they see there.
- Keep secret observations in the area to see who goes there.
- Visit all the local businesses, schools, shops and see who passes through the area.
- Trace all the people whose legitimate business may take them there, such as postmen, delivery boys, members of jogger's clubs, dog owners, hunters, birdwatchers and so on.

You might decide to use all these methods, or some others, or that one or two methods only are the best for you in terms of how much they will cost in relation to what they are likely to provide.

Once the lines of enquiry have been decided, experienced detectives easily think of these tasks. The tasks should be written down, and a record made of whom they are given to, and when. When each task is done, the officer completing it should make a written report of what information has been obtained, and this new information takes us back to the beginning of the cycle - what do we know about the case?

Then, when you hold the next team briefing, instead of asking "What have you done today?", you can ask "What have you learned today?", which is sometimes a much harder question.

In many Western countries there are sophisticated computer programmes for recording these individual tasks, who is doing them, and the results of the enquiries. In the United Kingdom, the tasks are called "Actions", and a computer programme automatically allocates "Action numbers". However, even a simple written list of the tasks, preferably grouped together under the individual lines of enquiry, with a record of whom the task or Action has been given to, and some reference number for the written report of the result, is very, very much better than just trying to remember everything.

## Go back to the beginning of the cycle "What do we now know about the case?"

It is extremely important that as new information comes into the enquiry it is carefully considered and its relevance and importance assessed. In the United Kingdom, in large criminal enquiries, incoming information is first read and assessed by someone responsible for seeing that the tasks have been completed properly, then by an officer who has the job of raising new tasks, or Actions, based on the new information, then by someone who has the job of recording all the information in various indices, before it is read by the senior or lead investigator. In this way it is much less likely that important information may be overlooked. Remember, important information does not always come with a label attached telling you that it is important.

Some years ago in the United Kingdom, a young woman was found murdered in a port town which is a large naval base. Her body was left naked in an empty building attached to a school. She was not a prostitute, but she was in the habit of visiting the many public houses and nightclubs visited by sailors from all over the world, and often formed casual relationships with them. She was a heavy drinker, and was in the habit of going from table to table, talking to different groups of sailors and girls, and then drinking their drinks while they were on the dance floor. On the night she was killed she was known to have left home to set off for the town centre and nightclubs. Unsurprisingly, a main line of enquiry was to try and identify, then trace and interview, all the sailors who had been on shore leave that night, as well as locals who had been in the clubs and public houses. This was an expensive line of enquiry which consumed a lot of resources. The murder remained unsolved for some time, and a team of new experts was invited in to review the evidence and make recommendations. At the post mortem blood samples had been taken, and these had been sent to a laboratory for analysis.

When the results came back as negative, there being nothing recognised as significant, this information had not been brought to the attention of the senior investigator. When the new team asked how much alcohol was in her blood, it was revealed that none had been found. This of course strongly suggested that the girl had never arrived at the nightclubs. A new line of enquiry concentrated on known sexual criminals living near to the point where her route from home to the town centre led to where her body was found. This line of enquiry was successful and a man was charged with her murder. It is quite common for experts such as laboratory staff to work on a case without ever being invited to a briefing, and perhaps not fully understanding what the case is all about. If that happens, they can hardly be blamed for failing to recognise the significance of something. The need to involve everyone in the problem solving process will be returned to in later chapters.

The basic principle of scientific enquiry is to form a theory which is consistent with the known facts, and then devise methods of testing the theory by looking for new facts that will corroborate or contradict it. Police enquiries should follow the same principle. Investigators should not form a theory and then just look for evidence or facts to support it. They should think of all the possible theories consistent with the known facts, and then look for as much evidence as possible to confirm them or disprove them. Sometimes if the investigator has a theory he or she strongly believes in, it may be good practice to give another investigator the task of trying to disprove it. Be open minded at all times.



## Crime Scene Assessment

**Police officers in their careers attend many hundreds of crime scenes. While they often have many similarities, each crime scene is unique, and the investigator should never make assumptions about what things mean, or what may be found there. In particular, beware the expert who tells you that because he or she was unable to recover a particular type of evidence from a similar crime scene in the past, that there is no point in trying to recover it this time.**

In most police forces, there are individuals who have some degree of specialist training in crime scene examination and many will have a high degree of expertise, although this cannot always be supported by the most appropriate technology. Much of the specialist training of crime scene examiners however, understandably concentrates on the proper recovery of physical evidence such as fingerprints, footwear marks, fibres, dust, chemicals, bodily fluids and stains. There is often less emphasis on studying a crime scene as a whole, and looking at it as a visible record of an event that happened there. A good investigator will not just be looking for clues which may lead him or her to a suspect, but should also be asking, "What happened here? When did it happen? How many people were involved? Who were they? Are there any clues as to why it happened? What is this scene all about?" Sometimes those questions are much more difficult than "Can we find any fingerprints?"

Imagine that an unidentified body is found, badly injured, lying in an alleyway near to a housing district. The pathologist should conduct a post mortem in due course, and will be able to tell you whether the person was shot or stabbed, what type of weapon was used, and perhaps approximately when he died. The scenes of crime expert should be able to tell you whether there are any footprints in blood, or anything abandoned nearby which might have fingerprints on it. All this is important and useful information, and we will return to this type of issue.

But the investigator's own assessment of the scene is equally important. Does the victim look as though he or she belongs in this area? Does it look as though there was any attempt to hide the body? In the area where you work, do criminals committing street robberies often use more violence than is necessary to rob their victims, or does the degree of injury suggest another motive, such as revenge, jealousy or racial or ethnic hatred? Does it appear that the killing happened at that spot, or has the body been left there? In what direction would you expect someone to run or drive away from this scene? The investigator should be in no rush to jump to conclusions about such matters, and should always remember that things are not always what they seem.

*I once investigated the killing of an elderly couple in their home. The old lady, who was killed first, had no visible injuries. The old man, who had disturbed the offender just after he killed the old lady, was savagely beaten. After the suspect was arrested, the enquiry team looked again at the deaths of a number of old people, which had not been thought suspicious at the time, and the offender was eventually charged with five murders of old people in their homes. The offender's motives were probably sadistic, and he was interested in cannibalism and vampirism. He would identify old ladies who he thought lived alone, and he had learned to kill them very quickly by manual strangulation, pressing with his fingers on just the right spot to leave hardly any visible sign. At two scenes of killing he had started fires, and placed evidence to make them look accidental. In one case he left a sum of money on a windowsill nearby, and in another he left the victim's handbag, containing her purse with money in it, near to the body. This allayed any suspicions about a criminal having been at the scene. It is not just on television or in detective novels that criminals think to leave misleading evidence, and the investigator should not help the criminal by being satisfied with the immediately obvious interpretation.*

There are a number of key basic steps that everyone should follow when first attending a serious crime scene: -

### **First, take steps to protect the scene, initially by putting some sort of cordon around it.**

Think about where the cordon should be, and do not just put it in the obvious place. Natural boundaries are often not the best place to put a cordon. For instance, if a body is found in a field, the scene examiner may be very interested in the road and verges next to the field where a vehicle may have stopped. If a body is found in a room, the investigator may find the best footprints just outside the window. If there are many bloody footwear marks around a body, the ones giving the most detail and the best evidence may be the ones away from the body, which can hardly be seen with the naked eye, and this is just where an inexperienced person may place a cordon. Insist that the cordon is kept in place until you have decided it is no longer necessary, and beware of officers rearranging it to their own convenience when you are not there. It is very much better to risk putting too big a cordon round a scene in the first place and then reducing it, than to put too small a one in place and then have to try and enlarge it, and guess what might have been contaminated in the meantime. Consider whether there should be an inner and outer cordon - perhaps you can manage to do a meticulous examination of only a comparatively small area, and a more general search of a much wider one.

Before anyone enters the scene, assess what risks might still be there, such as explosives, dangerous chemicals, or health risks such as AIDS or hepatitis from the body itself.

### **Think about quick escape routes.**

Uniformed patrol officers often attend crimes which are still happening or have just happened, such as street assaults or burglaries. They immediately think of where the offender might have gone, or whether he may be hiding nearby. Just because you are an investigator and not a response officer, do not overlook this possibility, or the risk that the offender may still pose a risk to the public or to police officers looking for him. There might be eyewitnesses present who could accompany officers in searching the area for an offender, but their safety must be considered.



**Appoint a crime scene manager who should be in charge of everything that happens at the scene.**

Ideally that person should be someone trained in crime scene examination. They may not understand why you want to examine the scene yourself, so talk to them and do not ignore their advice, which might be to wait until they have done other things first, such as laying down protective boards to protect footmarks. In a serious case, make sure that they have had the best training available in your country, and that they are familiar with all the best methods available in your country, as new techniques for recovering physical evidence are being developed every year.

**With the crime scene manager, decide on an approach route to the body.**

Think about what parts of the scene the victim and offender have most probably been in, and try to avoid them, particularly the most likely escape route. For instance, if the body is on or near a path leading through undergrowth or a growing crop, protect the path and cut a new approach route through the vegetation.

**Make sure that someone is appointed to keep an accurate and complete record of everything that happens at the scene, especially who has visited and entered the scene and when.**

Make sure that the person appointed has the proper equipment to keep such a record, and check that it is being maintained.

**Insist that no one enters the crime scene without the approval of the crime scene manager.**

It is quite common for senior officers who will play no role in the investigation to turn up at an important crime scene and wish to examine it. They should be politely but strongly discouraged and you may have to find time to discuss things with them outside the scene. Explain that any contamination of the crime scene may destroy a prosecution case. It may be helpful to explain that anyone who enters the scene may have to submit their own clothing and footwear for examination, and to make a statement or report about why they entered the scene and what they did there. If you think that contamination may have occurred, never try and hide the fact. Record it, preserve what you can of whatever may have caused the contamination, and discuss it openly with the scientific experts and the prosecutor.

For example, imagine that the first officer at the scene finds a bloodstained weapon and wraps it in a plastic bag which obviously contained food of some sort. Take the weapon out of the contaminated bag and put it in a clean container, but also preserve the original bag and submit it for examination as well, or if you think the weapon is coming to no further harm in the dirty bag, put them both in a clean container and submit them with an explanation, remembering that any blood on the weapon will be better preserved by being allowed to dry out, for example in a dry box, than by being wrapped in something which will keep it damp

**Discuss with the crime scene manager whether there is likely to be anything of value in the crime scene which may be deteriorating and needs to be examined urgently, or protected in some way from the environment or even from animals.**

Officers in Africa may rarely have to worry about footprints melting in snow, but in some countries this can be a real problem! In some places, rainfall may always be expected, and protective material should be available to be used at short notice. It should always be remembered that physical traces and signs can change with time and weather, and produce misleading results, often in the criminal's favour.

**Make sure that the first people to go to the scene, whether they be members of the public, fire brigade or ambulance staff, or police officers, are thoroughly interviewed about what they saw and what they did.**

Sometimes for understandable motives, people do alter crime scenes, especially in buildings, where they open and shut doors, switch lights on or off, turn fires and cookers off, televisions and radios off (or sometimes even on!!) open and close windows and curtains, move bodies or cover them, put dangerous items out of the way - even give food to distressed pet animals. Any of these things might be significant and confuse or mislead your investigation, so make sure that you have an accurate record. With police officers, make sure they are telling the truth; they may not reveal something they did if they suspect that they may get into trouble for it so approach them sensitively. It is no good spending weeks trying to trace a footprint if the police officer who left it there has changed his shoes for fear of being criticised! Telephones, both mobile and land lines, computers, printers with memory cards, digital and film based cameras, fax machines and other devices all present particular problems.

The methods for best preserving the types of evidence they hold may vary from country to country depending on the technology involved, as may the expertise available to examine them. The investigator needs to arm him or herself with that local knowledge before being presented with the problem. If you are at a crime scene and the telephone rings, you will need to know whether it is a good idea to answer it or not - do the wrong thing and you might lose valuable evidence, as you might by shutting a computer down in the wrong way, or searching about in the memory or address book of a mobile phone.

**Do not overlook the obvious.**

The fact that there are three used glasses on the table may be just as significant as any fingerprint or lip impressions, or DNA samples taken from them later.

**Think about what experts you might want to help you at the scene and get their advice before you begin to examine the scene.**

We will return to the matter of experts later. Sometimes it may be possible to speak to a forensic or government scientist by telephone, and get their advice about whether they should attend the scene or not.

**Make sure that the best methods you can acquire of recording what is found are available before you start, whether this is a video recorder, camera, or sketch materials.**

**Also make sure that you have the best available packaging for whatever is likely to be found.**

In most Western countries crime scene examiners have a range of specialist packaging materials, but if these are not available make sure you have the best which it is realistic to obtain. Even wrapping something in clean newspaper is better than not protecting it at all.

**Satisfy yourself that the crime scene examiners have a proper system for making an accurate record of what they find and where, and that it is photographed or video recorded, in position if possible.**

Be sure that items are properly labelled with an individual identifying mark as they are recovered, and that packaging and labels are brought into the scene to the articles, and not the other way round.

In consultation with the scene manager, appoint an exhibits officer who will record everything that is found, keep it safe and preserve it the correct way, and afterwards keep a record of what has happened to it, including any scientific or expert examination.

**Before beginning an examination of the scene, think about what you are hoping to learn.**

Go back to the model in Chapter One, "What do we know, what do we want to know, and what is the best way to find out?" For example, imagine that a body has been found buried in a shallow grave in woodland.

You might want answers to many questions, such as: -

- Who is it? Is there any identification on the body?
- How long have they been there?
- Did they die there?
  - If the body has been somewhere else, what sort of place?
- How did they die?
- Who else has been at this scene?
- Is there anything in the grave or around it which does not belong to the victim?
- If so, might there be traces on it that would help identify an offender?
- Are there any traces from the offender on or in the body?
- Why was the body left here, rather than somewhere else?
- Is this a natural grave or has it been dug?
- Had it been dug long before the body was put into it?
- How long would it take to dig it?
- What type of tools were used to dig it?
  - Would they make much noise?
- How many people might have been involved?
- Have any animals or insects affected the body or the grave?
- What efforts have been made to cover or disguise the body?
  - Does this suggest pre-planning and earlier visits to the scene?
- If natural features have been used, for example the branches from bushes or trees, where did they originate?
  - Might this provide further evidence gathering opportunities?
- Is there anything distinctive about the scene which we may later be able to link to an offender, such as soil, plant material, pollen, insects, unusual rubbish or discarded items?

There may be many such questions. Try to decide them all before beginning the examination, and decide whether some other person may be able to help answer them. Some questions may be answered by experts, and some by members of the public. If a reliable member of the public visits the scene regularly, and can tell you that the body was not there three days ago, that may actually be more reliable than a scientific calculation.

It is particularly important to ensure that no evidence is lost during the initial examination and removal of the body. For example, semen trapped in a body orifice can easily be lost or contaminated if careful precautions are not taken, especially when the body is in the open, rather than inside a protecting building.

A colleague well remembers the body of a six-year-old child being found strangled in a children's "den". There was no sign of sexual activity at that time. However, when her body was moved slightly, semen was seen to escape from her vagina. Fortunately, some of this was recovered, and led to the identification of a local man, and his conviction. Had it been overlooked, the crime may never have been solved.

If a body is found in a room, you may very much want to know if anything is missing from the room, or if there is anything there which does not belong there. Someone who visits it regularly, a family member, a friend, or someone who cleans it, may be able to answer that question better than any police expert, and perhaps that person should look at the room before any other examination.

Make sure that everyone involved in searching or examining the scene or the body knows what questions you want answered.

Some years ago a young woman was reported missing by her parents. She lived alone, although she had a boyfriend. Her parents telephoned the police from outside her house late at night. Officers attended and soon found her body wrapped in a blanket about three hundred metres away, behind a derelict house. I was called to the scene. She had been stabbed over forty times, raped and very seriously sexually abused. We quickly learned about two men who lived nearby. We gained an entry into their house, which was about half way between where the girl lived and where her body was found. No one was there, but there was a large pool of her blood on the floor just inside the front door. We later found lots of evidence that she had been killed in that house. We soon found the man who rented the house, and he told us that the second man, a friend he had met in prison, had talked about the girl. When the killer was arrested, he claimed that he had been having a relationship with the girl. He said he had decided to end the relationship because he did not think it was right, because she had a boyfriend. He claimed they had had an argument, she attacked him with a knife, and then they fell down the stairs. He was knocked unconscious, he said, and when he woke up he saw that she had been injured by the knife and was dead. He panicked and hid the body. Of course he did not explain the rape, or the sexual abuse, or how she was stabbed forty times, but I could see how a jury might be confused by a good defence lawyer. I had the house searched by a team looking for clues. They found nothing they thought important. I then had the house searched again by a team of detectives. In an old baked bean tin amongst the rubbish in the back yard, they found a crumpled up note written in the killer's handwriting. It pretended to have been written by the postman, and said that the postman had tried to deliver a parcel to the girl's house, and had left it for her at the men's house nearby. That explained why the girl went to the men's house and was attacked there.

Whose fault was it that that note was not found, and its importance recognised, in the first place? I think it was my fault, for not identifying to the team early enough that the big question we could not answer was "What was the girl doing in the men's house?" It was now clear that the killer had lured her over with the note and attacked her as soon as she knocked on the door, and grabbed her inside. I believe that the first team may have seen the note, but not understood its significance.

Always remember to identify what you know, what you want to know, and share that information and those questions with the full enquiry team, so that they can help solve the problems.

Although every crime scene is different, there is one common factor in all undetected crimes. That is that you do not know what happened. Your first interpretation of what you see, or the obvious interpretation, may not be the correct one. Always be prepared to reconsider your view of what happened, and think of alternative explanations for what you see. Once you have decided what happened, this may colour your judgement about what else to look for.

A colleague in Eastern Europe told me about a crime scene in a shop on a busy city centre shopping street. An attractive middle-aged woman worked there alone. Her body was found tied to a chair, and it was clear that sexual activity had taken place. The crime was investigated in the first instance on the basis that a stranger had come into the shop and attacked her. Imagine what type and extent of crime scene examination you might have asked for under those circumstances. After some time, enquiries locally revealed that the woman had in the past had a regular male visitor. After he arrived, the "closed" sign would be put on the front door, and he would stay inside sometimes for over an hour before leaving. Other clues, such as her clothing being neatly folded, supported the theory that the sex might have been with consent. The cause of death was asphyxiation, but this again might have been by accident rather than deliberate. Imagine now the extent of crime scene examination you might want. If you think that the attack was by a stranger, it might not seem worth examining area such as electric light bulbs, switches, plugs, inside cupboards, or tea or coffee making facilities for fingerprints. If you believe that the offender may have been a regular and trusted visitor, your view may be completely different.

Most people want to be open-minded, but sometimes it takes a real effort of will and imagination to be so.

# 3

## Part 1 - The Use of Experts

**The purpose of this chapter is not to list the different experts who can come to the aid of police investigations, but rather to look at the context in which they may be employed, and to give some examples not only of their undoubted value, but also some pitfalls associated with their use.**

Public knowledge about the role of various types of expert in relation to police investigations has grown enormously in recent years. This has been in very large part due to their portrayal in works of fiction, particularly in television drama series. Such fiction not only informs the way that the public think about experts as witnesses or investigators, but may also influence the way they see themselves, and the way that police officers regard them. In a typical television programme the expert is portrayed as someone who has insights denied to ordinary mortals, who bravely acts alone in the face of establishment inertia, and leads the progress of an investigation, with a worthy but probably not very intelligent police investigator trailing in his or her wake.

On our television screens we have seen pathologists, forensic scientists, crime scene examiners, and forensic psychologists and behavioural analysts, often called "offender profilers", take charge of investigations, find the crucial evidence, and sometimes confront the offender who inexplicably decides to confess not only what he has done, but why he did it. The reason for this new faith in the infallibility of experts might be subject of much theoretical debate, but this will not take us very far in solving crime. The truth is that very few experts in any field will have the broad experience of good police investigators in their own field of expertise, which is human nature and human behaviour, particularly criminal attitudes and behaviour. Only a minority of police officers have any formal training in criminology, from either a sociological or a psychological perspective, but they should not underestimate the value of their own experience in investigating the things that people actually do.

It is fairly easy to label someone as an "expert" in a particular field, but more difficult sometimes to tie down exactly what that field of expertise is. Let us look at a practical example. Imagine that the police investigate a death, and charge someone with murder, alleging that the killer hit his victim over the head with an iron bar. An experienced pathologist who has examined many murder victims examines the head injuries and says that the damage to the scalp, the skull and the brain is consistent with the victim having been hit hard over the head with the iron bar which the police found in the alleged killers shed, and which they have shown him. However, one of the country's leading neurosurgeons, a man or woman who spends much time every working day examining human brains and nervous systems, examines the victim and states that in his or her opinion the injury could have been caused by a fall. Now the police, and possibly the courts, have a problem. Whose opinion do they follow? The neurosurgeon, the top person in his or her field, undoubtedly knows more about human brains than the pathologist. Does this mean that the neurosurgeon is right and the pathologist wrong?

What the wise investigator needs to consider is not just the depth of the expert's knowledge, but also its breadth, and the context in which it is set. Of course in this case the view of the police officer is immaterial: he or she is not qualified to argue with either expert. But what is the expert really an expert in? What type of brain examination does the neurosurgeon do every day? If the investigator enquires, as he or she is entitled to do, they may find that the great bulk of the surgeon's work is to do with natural disease, brain tumours, strokes, spontaneous haemorrhages, embolisms, and probably quite a lot of road traffic accident injuries. As a healing therapist, he or she may have given comparatively little consideration to the nature and causes of the different types of scalp abrasions, lacerations, cuts and wounds, or to the different ways skulls may fracture when struck with different objects, concentrating quite properly on the best way to treat the patient.

The examination, understanding, interpretation and explanation of such injuries, however, is the daily work of the pathologist, who will also have some experience of examining and considering different types of weapons. The explanation of a fall also needs to be put into a context. Is there anything near to where the victim was found which could cause such an injury in a fall? Equally to the point, did the iron bar when found have traces of blood, scalp or hair on it, and can these be matched to the victim? The point is that an expert's opinion should never be taken alone, but always considered along with all the other facts in the case. The investigator should never view an expert's report as something which cannot be questioned.

There is a well-known story about a forensic scientist giving evidence in court to the effect that he had found tiny fragments of broken glass on a suspect's clothing, which was identical to the glass from a broken jeweller's window. The scientist conceded to the defending lawyer the fact that that particular type of glass was fairly commonly used in glazing. "So", the lawyer asked, "you admit that the glass on my client's clothing could easily have come from any of the windows in this courtroom, for all you know?" "No", replied the scientist, it definitely could not have come from any of these windows." "How can you say that?" asked the lawyer, "you have not examined them have you?" "No", answered the scientist, "but none of these windows are broken." This story is not just amusing, it well makes the point that expert evidence should be viewed with common sense, and if possible, never taken in isolation.

In the past, scientific experts in particular often presented their evidence in a way which suggested a greater degree of impartiality and objectivity than was actually justified. It was rather as though they had come to work one day, found a shirt on one laboratory desk and a gun on another, and had decided in a spirit of scientific enquiry to compare them both with a blood sample which they happened to have to hand.

## Relationships with Experts

What is widely accepted as much better practice today is that the scientist should say that the police have asked him or her to consider the scenario that a particular offender was wearing that shirt at a particular time, and to look for DNA samples on it which match the blood sample taken from the suspect, with a view to establishing whether he was likely to have worn it. He or she will also say that the police asked him to look for any gunshot residues on the shirt, and to see if they match gunshot residues found on the gun, with a view to finding evidence to support the theory that someone was wearing that particular shirt when that gun was fired. This is not only a much more honest approach, but also puts the scientist's evidence into a context which is much easier to understand, and explains why the scientist may have undertaken some types of test and not others. It also makes it easier for the defence to invite the scientist to consider other scenarios, which can only be in the interests of justice.

An experienced and well-qualified scientist should be confident in his or her opinions, and the best ones will be happy to have their findings questioned by the investigator. In the majority of cases, a good test of the expert's credibility will be his or her willingness and ability to explain what tests have been carried out, and what the results might or might not mean, in simple layman's language. The investigator should never assume that a scientist has undertaken any particular test or enquiry, and should never be afraid to ask. If a toxicologist is asked to examine a blood sample for the presence of poison, do not assume that he or she will also tell you whether alcohol or recreational drugs are present, as they will probably not have been looked for. Many scientists are reluctant to offer opinions which they could not attest to under oath in court, and for this reason much information of potential use to the investigator may be missed. For instance, consider a murder and rape committed in an African country where 97% of the population are black. A scientist finds semen from the victim's body, and extracts DNA from it. He or she knows that a particular feature of the DNA profile is very much more likely to come from a white person than a black one, but is aware that there could be complications caused by mixed race ancestry, and cannot in any case refer to any reliable statistics. It would be quite wrong for the scientist's findings to be admitted in evidence in court against any particular suspect, but the information could be invaluable to the investigator in prioritising any list of potential suspects.

Time the investigator spends talking to scientific experts, getting to know them and how they think and approach their work, and politely questioning their findings, will rarely be wasted. The scientist may well need a lot of reassurance about how the information will be used before he or she is willing to part with findings which cannot be definitively proved.

A few years ago in the United Kingdom, scientific samples were submitted to a laboratory following a very serious rape case. The scientist studying the case reported that no DNA samples had been found. The investigator visited the laboratory and asked to see the specimens which had been examined. He was shown the woman's knickers, which had had a piece cut out of them in the middle of the gusset. When he asked why this was, it was explained to him that this section of knickers was usually cut out and subjected to treatment to extract and find semen and then DNA, as it was the most likely source. When the police officer asked for the whole item to be subject to the test, semen was found, DNA was extracted, and a suspect identified. Scientists, just like police officers, have their own routines, and can sometimes do that little bit more when pressed. There is never any harm done by asking.

Where large forensic science laboratories exist, their scientific experts will constantly provide invaluable support to police investigations, and it is to be hoped that one day all investigators will have access to such resources. Even within a laboratory, however, there will be a wide range of expertise. A biologist may work alongside a fire examiner, and gain some level of expertise in investigating arson, but not really have the detailed knowledge or skills necessary to solve all problems or answer all questions. Some cases might well benefit from the advice of several scientific experts in different fields. When this happens, it is good practice for the police investigator to keep an eye on exactly who is doing what with which exhibit, and to make sure that the different experts are sharing their information and findings. Again, when meeting an "expert", the police investigator must not be afraid to ask exactly what someone's background and experience is, although this should of course be done tactfully and politely.

Police officers in many countries are unaware of the range of experts who may be available to offer them advice. It is quite common for people to imagine that only experts employed by police or government laboratories may be available to help them. It is certainly true that in the more prosperous Western countries it may be easier to find expert help, but in every country there are universities, colleges, public health laboratories, public institutes and a range of private and commercial laboratories and research centres. Every case is different, and the best way to think about what sort of expertise may be of help is to return to the model of, "What do we know, what do we need to know, and how do we find out?" Very often, experts who have had no previous involvement of any sort in crime investigation will be very interested and pleased to help. It is however, very important to find out just what the parameters of their expertise are.

Some years ago in the north of England, a very old house was purchased by local government order to make a new car park for a football club. When new drains were being dug across what had been the yard of the house, the body of a young man was found, wrapped in polythene sheeting, about 2 metres deep, and lying on top of a more modern drain which had been covered by stone chippings. Before the post mortem examination was carried out, the police investigator asked for the body to be X-rayed in the hospital. This is good practice in every case, where possible. The X-rays revealed a broken finger on the left hand. When the body was finally identified, the investigators found an X-ray picture of the broken bone taken when it had happened, ten years before. The pathologist, assisted by the radiologist, was then able to say that the bone in the dead body had been healing for between three and five days after the first X-ray, thereby giving a date of death to within a couple of days. The man who owned the house ten years before was arrested, and he admitted having dug a trench to lay a new drain in his yard. The original permission from the local government to build the drain was found, and some receipts for the materials used. He claimed that there had been some delay between him laying the drain and covering it with stone chippings, and having the yard resurfaced with stone paving.

This would have left the possibility that someone else had dug out some of the chippings and put the body there. Fortunately, the investigator had given some thought to what he wanted to know before he had had the body removed from the trench. He had contacted the archaeology department of a local university, and an archaeologist had helped to recover the body, using his professional techniques to record exactly the different layers between the bottom of the trench, the drain, the body, the chippings and the new surface. His evidence helped to prove that no one else had put the body there. The point of this story is that the archaeologist was not a police or government employee, but the investigator thought about his problem and then determined the best place to ask for advice.

## Part 2 - Behavioural Analysis and Offender Profiling

"Offender profiling" is a term that originated in the United States, as did the first description of the range of skills it encompasses. It has been defined very simply as the inference of an offender's characteristics from the characteristics of an offence. In the United Kingdom the phrase "behavioural science" is now used in preference to "offender profiling". The discipline encompasses a wide range of skills, from the statistical analysis of different types of crime scene and the psychological profiles of the offenders subsequently linked to them, to a psychoanalytic approach that seeks to try and interpret and understand an unknown offender's personality. It is fair to say that this has sometimes been presented as an entirely new idea whereas police investigators have in fact always tried to draw inferences about who an offender may be, or what his personality may be, from the offences he commits. Physical abilities or characteristics are often so obviously able to be inferred from a crime scene that no special name has been given to the science of doing so. For instance, if someone has stolen a car, he is able to drive. If he has scaled a high wall he is probably fairly fit, and if he has squeezed through a narrow window he probably is not very fat. If someone has sexually abused and then strangled a child, we might be confident in saying that the offender is sexually attracted to children, and has a predisposition to violence. That confidence could be misplaced however, as experience shows that sometimes people target children sexually not because they prefer them but because they are unable to form satisfactory relationships with adults, and sometimes people murder children not because they enjoy doing so but to stop them crying out, or to prevent them reporting what happened later. It is in this type of offence, and others where the offender's motives may be unclear or less familiar to the investigator, that a trained behavioural analyst may well be able to offer useful advice. Remember though, that he or she is only interpreting what they can see about the offence in the light of specialist knowledge that they have. They have no magical insights, and if their inferences are logical, they should have no problem in explaining them to you. It is also probably true that a behavioural analyst will have learned to draw inferences in a particular country with all its cultural factors, and these may well influence the validity of the inferences if the circumstances have occurred in a different culture.

This would also be true of any investigator who tries to work in a different cultural environment, which is one reason why the investigation of crime committed even within the same country but within a different ethnic or cultural group from the investigator is particularly difficult.

The investigator, as with any other expert, should consider the advice or opinion offered in the light of everything else known about the circumstances, and weigh it against their own experience and judgement. Police officers with some experience of working with behavioural analysts sometimes make the criticism that what they have told them is obvious, and that they could have worked out the analysis for themselves. This is unfair, and if someone from a very different background draws the same conclusions as an experienced investigator from a given set of circumstances, this should be a cause of satisfaction and not complaint.

Let me give an example of how a trained behavioural analyst may draw inferences which are not exactly the same as the investigator. I dealt with a case in which an explosive and incendiary device was used to cause several thousands of pounds worth of damage to an underground junction box belonging to the national telephone company. A letter was received by the company claiming responsibility for the explosion, stating that the offender knew exactly how to cause a much more serious explosion and fire at a junction box in an important financial and commercial district, which would have caused perhaps several million pounds worth of damage. He demanded a large sum of money as blackmail not to cause the explosion. I studied the letter and drew certain conclusions, which were fairly obvious, such as that the offender had some fairly detailed knowledge of telephone systems, probably some sort of grudge against the company, and had acquired knowledge of how to use explosives. I engaged a trained behavioural analyst who agreed with my conclusions, but went further. He believed that the offender had used explosives rather than some other method to cause damage, because he wanted to reveal something of his skills and knowledge. In a way he was saying, "Look at me, who I am and what I can do. You have to take me seriously."

The analyst was confident that the offender would have actually worked with explosives in the past, probably in a role which gave him some status, or sense of worth. He considered that a military background was by far the most likely. When surveillance revealed a man who was an ex-employee of the telephone company, and also had served as a military engineer, I had the confidence to concentrate on him as a suspect, and he was eventually charged with the offences. The most valuable skill of an analyst may be in understanding the motives behind certain aspects of the offence, but the police investigator too should remember that there is nearly always an identifiable reason why anybody does anything, whether by habit or training, to gain a possession or experience which they enjoy, or to release feelings of anger, jealousy, resentment, sexual desire or other emotional cause.

Time should always be found to consider carefully every aspect of the offence, including evidence of what was done immediately before and immediately afterwards, looking at each detail separately and then together, and then, whatever the pressures, time and space must be found to think about them carefully. Such time is never wasted. Always ask, "Why this victim, why this place, why at this time, why did the offender do this or say that, or steal this thing and not that, or use this weapon, or his fists or hands or feet rather than something else, why hide here, or why run away in that direction?" If you have the opportunity to share your deductions with a trained analyst then so much the better, but do not imagine that there is nothing you can do alone.

Unfortunately, there have been instances in the United Kingdom of police officers putting too much faith in psychological profilers, and being misled by them. This was at a time when "offender profiling" was very much in the public interest because of television shows and newspaper reports and an investigator who chose not to employ one might have to explain why. In one case, the profiler supplied an analysis of the probable psychological profile of a man who had committed a particularly shocking murder. The police then identified a man who fitted that profile, and when he had been charged the prosecutor tried to introduce evidence from the profiler that the alleged offender had the personality type likely to have committed the offence. As that is why he was identified as a suspect in the first place, the breakdown in logic is obvious.

The case was thrown out of court with a lot of criticism of the police practice. Had the police dealt with the profiler's opinion more carefully, it might actually have been of value to the investigation.

Linked to behavioural analysis is what has come to be known as "geographical profiling". This discipline is based on research evidence which shows that certain types of offender have in most cases some sort of link to the place in which their offences are committed, such as familiarity with the area, or its' proximity to somewhere they can feel safe, or have had pleasurable experiences, including criminal ones, in the past. Geographical profilers have had some proven success in predicting either where offenders live, or what sort of association they have with an area, and this can be particularly useful in cases of serial or repeat offences. No doubt if geographical profiling could be applied to every offence of domestic burglary, street robbery or car theft much success could be achieved, and this is being explored and exploited more and more every year. Trained profilers may not be available in every country, but experienced investigators may be able to identify cases where it might be advantageous to try and seek advice from another country, such as the United Kingdom, or elsewhere where they are regularly employed.

When experts are briefed it is important to provide them only with factual information, and allow them to draw their own conclusions, rather than seeking their confirmation of what may be an incorrect deduction. It is important to remember that experts are offering an opinion based on the facts as they perceive them. If you have interpreted events or facts in a particular way, and reveal that, the expert may, even subconsciously, accept that deduction as fact. It is paramount that the lead investigator, and any experts, constantly challenge theories, and are prepared to ask "But what if...?"

### Part 3 - Pathologists and Post Mortems

Some years ago, the body of a 15-year-old girl was found hidden in a shallow grave in woodland. She had been there for some time, and insect activity had destroyed her face, neck and throat. There was no cause of death which could be decided at the time, but around the victim's neck was a tightly knotted chiffon scarf. The pathologist concluded that she had been murdered elsewhere and her body later hidden in the shallow grave. After a great deal of investigation, which included the arrest of two suspects, the lead investigator requested a second opinion from a different pathologist. It was then revealed that the true cause of death was alcoholic poisoning. Enquiries then revealed that she had died at a drinking party and the host, a known criminal, had panicked and disposed of the body.

In some countries, where there is no history of the regular use of scientific or other experts on an organised or formalised basis, it may be possible to get specific help or advice, comparatively informally, through the assistance of an embassy or consulate of another country which may, through contact with their home police service, be able to arrange access to a database of relevant experts in particularly serious or difficult cases. Even if it is not possible to fund a visit of an expert to another country, free telephone or email advice might be provided in some circumstances. As a last point, it is worth noting that the value of any scientific examination will probably be severely compromised if exhibits or samples have not been properly recovered, labelled, packaged and preserved in the first place.

In a homicide investigation, the investigator has two points of access to the offender, the first being the crime scene and the second the post mortem, or autopsy. However distasteful it may be, the body of the victim is the source of much useful information. Investigators should learn as much as they can about the practice of pathology, and become as familiar as possible with the techniques and language involved, without making the mistake of ever thinking that they themselves have the underpinning academic and practical knowledge of a qualified pathologist.

In many countries, there is a system for training and accrediting individuals as forensic pathologists, that is, pathologists who over and above their medical qualifications have been trained to look for and interpret evidence which may be relevant to a criminal or other legal enquiry, and to give evidence before the courts. Pathologists who specialise in helping the police to investigate crime inevitably gain, both through training and practice, a much more thorough and detailed knowledge of the factors which may be discovered in criminal cases, the nature and causes of injuries, and the relationship which sometimes exists between natural disease and criminal acts, than a hospital pathologist or any other doctor can hope to acquire. In countries or in circumstances where it is not possible to obtain the services of a forensically trained pathologist, the investigator, whilst treating the pathologist with respect, must bear in mind all the potential limitations of experts generally as discussed before. It is an unfortunate but inescapable fact that the more highly experienced a pathologist is, the more likely he or she is to be cautious about expressing certain findings. The timing of death is a particularly good example, whereas an inexperienced pathologist may confidently make a calculation from the temperature of the body, incorporating known variable factors such as air temperature and clothing, and arrive at a definite hour of death, a more experienced individual may be aware from experience that there may be many other variable factors, some of which can be calculated for, and others which cannot, and give much wider parameters for a time of death. This might seem much less helpful to the investigator, but is actually less likely to mislead him or her.

This is particularly true when death has occurred some weeks or months before, and estimates of the date of death of badly decomposed bodies, whether indoors or out, should be regarded with a very high degree of caution, even scepticism, unless strongly supported or corroborated by other evidence. One form of such evidence, for example only, may come from an entomologist, an expert in what types of decaying matter insects are attracted to, and at what state of decay, how long insect eggs take to mature and hatch at different temperatures, and the timing of different stages of development through maggots, pupae and emerging new insects. A fly may look like a fly to a police officer, and a maggot like a maggot, but there are many instances of case where such evidence has proved extremely useful.

The causes of sudden or unexpected death are many and various, including natural disease, suicide, accidental death and criminal acts. It is not always easy to differentiate between these forms. It is not unusual for a criminal act to have a direct effect upon a natural disease, such as when an assault precipitates a heart attack in a victim with pre-existing coronary disease. To establish the truth in such a case will require a very high level of expertise, both in the post-mortem examination and in the preparation and giving of pathology evidence, as well as in the gathering of evidence, by the police, of all the surrounding circumstances. The number of times when criminals have failed in attempts to make homicide appear to be accident or suicide may be recorded, but the number of times in which they have been successful is not and may well be significant. There are probably also many suicides which are successfully disguised as accidents by the deceased. The investigator should aim to have a very open and trusting professional relationship with the pathologist, and should feel free to discuss all these matters, in particular the possibility of either or both of them being misled.

There are very many things to be said about the conduct of post mortems, but some of the most important are as follows: -

- If possible, the pathologist should be invited to examine the body before it is moved from the scene. His or her visit should be co-ordinated by the crime scene manager to fit in with any other scientific examination.
- Make sure that nobody, such as a mortuary technician or undertaker cleans, washes, tidies up or otherwise interferes with the body before the pathologist. Important evidence can easily be lost in this way.
- The pathologist should be told all the known facts of the case. However, the investigator should be very careful about revealing unproven theories or assumptions to the pathologist.

In one notorious case in England some years ago, a man murdered several members of his family. He then staged the scene to make it appear that it was his sister who was mentally ill who had killed the others and then shot herself, first with a rifle and then with a shotgun. In fact the injuries were the other way round, but the police offered the suicide explanation to the pathologist, implying obviously that the second gunshot was the fatal one, whereas the truth was that the first shot had been fatal and the second fired into the body to confuse the police. The pathologist accepted the police explanation and his report then misleadingly described the first shot and the fatal shot in the wrong order. This repetition of the unproven theory strengthened it and it was only later, through the persistence of another family member who did not accept the theory, that the truth eventually came out and the true murderer was convicted.

- Before the examination starts, decide what you know, what you want or need to know, and discuss how the pathologist may be able to help you find out. A pathologist who has much experience of working with police officers is in any case a useful colleague with whom to discuss these investigative problems, so let him or her know exactly what you are hoping to learn. The practice of a pathologist conducting an examination in private and then just providing a report, whatever the cultural or organisational reasons, is much less likely to provide true scientific support to an investigation than is a consultative approach.

- Consideration should always be given to X-raying the body before the post mortem starts. Until someone looks, no one knows what might be found. There are many examples of fractures, both recent and old, parts of weapons, bullets and other firearms residue such as the wadding from a shotgun cartridge being found following X-ray, which would not have been found otherwise. Prosthetic devices such as hip joints, breast implants and heart regulators usually carry unique identification marks which may help to identify someone.
- Consider whether any other expert should be present, for instance in the death of a child whether a paediatric specialist may be able to assist. In some countries there are pathologists who specialise only in the death of children, whose bodies may present totally different problems to those of adults.
- Think about the need to establish identity if this has not already been proved. Consider fingerprints, papers or documents hidden or sewn into clothing, complete and thorough description, photograph or artists drawing, jewellery present or evidently missing (such as a pale mark where a ring or watch is usually worn), clues as to employment such as calluses on hands, oil, dirt, paint or chemicals on hands or under fingernails. Think about the lifestyle of the victim - consider clothing, nourishment, disease, whether treated or otherwise, manicure and grooming, shaving, haircut, make-up, drug, tobacco, alcohol use. Consider the need for different types of toxicology specimens. Is there evidence of previous involvement in violence? Have the sexual organs and anus carefully examined for signs of abuse or unusual activity.
- Look for contact traces from an offender - skin or blood under fingernails or in the mouth, saliva on the skin from bites or licking or sucking in sexual cases, semen in the mouth, vagina or anus, or on clothing. Bite marks should be recorded as carefully and thoroughly as possible, with photographs from every angle. A three dimensional cast, if possible, will be far more valuable. Remember that even if a victim's own blood is evidently on the body, it may not all be his or hers. It is not at all uncommon for someone to stab or cut themselves in a knife attack, and for their blood to be on the body along with the victim's. Make sure that DNA samples are as free from contamination as possible.
- Establish the cause of death - which are the significant injuries, what degree of force was needed to inflict them and are they consistent with being caused by one or more offenders? What level of attack has there been? Has there been torture? Has the victim been restrained, for example tied up, and if so how and to what? Over what time has the attack lasted? Was the victim capable of fighting back or running away? Are there typical "defence wounds", and is there evidence that the victim fought back? If so might the offender(s) be injured?
- Is there definite evidence of an intent to kill, or could this have been, for example, a fight with unwanted consequences?
- Have all the injuries been inflicted at the time of death? Has there been gratuitous violence or "overkill"?
- Could there have been any attempts to disguise the true cause of death?
- What are the most likely types and numbers of weapons used? Is it likely they were all used by one person? Make sure all firearms residues, including bullets, are recovered. Study exactly how the pathologist measures the depth, angle and width of any knife wounds, and decides on the sharpness of the blade. This is an area in which it is very easy to make mistakes.
- Discuss the possible time of death with the pathologist and make a thorough record of all the methods and techniques he or she uses to determine it, in case this has to be reviewed later. This time of death may be crucial to eliminating suspects from enquiries, and it is far better to be unsure than to be wrong.

There is, really, little that is different about pathology than any other form of expert evidence. Indeed, it is important to remember that a pathologist's expertise and experience in examining injuries may be of great value in cases where the victim is still alive, and there are many good examples of a pathologist examining a living person and giving evidence as to the nature and interpretation of the cause of their injuries, in detail which could not be reasonably expected from other doctors. In the law of many countries, experts are people who are allowed to give their expert opinions as evidence, whereas ordinary unqualified people cannot express their opinions in court. This may be useful in deciding the truth, but investigators must always be wary of accepting opinions as fact.

Most of this chapter has dealt with expert evidence in very serious cases such as murder. Although it is not often feasible to employ the services of experts in investigating more common crimes, the principles remain the same in all cases. Do not just look for evidence to support what you believe to be true.

If an investigator feels that a deeper level of pathology expertise than is available in his or her own country may be important to an enquiry, help may not be as informally arranged as in the case of other types of expert as described earlier in this chapter. Contact may be made in the first instance with the British Consulate or Embassy, who may consider in suitable and appropriate circumstances seeking advice from the Science Policy Unit at the British Home Office, who supervise what is currently a changing situation within the United Kingdom.



## Witnesses

All criminal court cases depend upon the testimony of witnesses. In some countries everyone who has seen, heard or knows anything about a case is regarded as a witness, and the police refer to tracing witnesses and interviewing them. In other countries people are only regarded as witnesses once they have made a formal deposition or statement before an investigating judge or magistrate. The formal way in which police officers make a record of what a witness knows also varies from country to country. However the responsibility for identifying and tracing witnesses, or people with information, always rests with the police. In this chapter the term "witness" will be used to refer to anyone who may eventually give evidence. It does not include persons who are actually suspected of possible involvement in an offence, and who are being detained or interviewed to ascertain whether they are in fact involved. Any person who is obliged to go to a place to be interviewed, or to remain with the police to be interviewed, or obliged to answer questions, should be afforded the rights of a suspect as discussed in later chapters. If someone is being interviewed as a witness, and at some stage the Police decide that he or she is a suspect, and therefore not free to go, the moment of that decision must be recorded.

The detailed legal descriptions of persons involved in police investigations vary very widely from country to country. In the context of this chapter a witness means someone who is speaking to the police voluntarily, and is not subject to any restriction of their freedom. The term "statement" will be used to refer to the written record of their potential evidence, although the use of that word, or its translation, may vary with different countries procedures and legislation. However, in all legislatures, the investigating court will eventually concern itself with the truthfulness and reliability of the witness, whether they may be honestly mistaken about what they believe they saw or heard, whether their evidence can be corroborated or contradicted by other evidence, and whether it is fair to allow their evidence to be taken into account. The police, too, must consider all these factors.

One of the simplest matters the police commonly investigate is a road traffic accident. In such a case the main witnesses are usually known. They will be the people who were actually travelling as drivers or passengers in the cars involved, and people who actually saw the accident happen. In more complex cases, there may also be witnesses as to what happened before the accident, for example someone who maintained one of the vehicles, or saw an example of dangerous driving before the accident, and witnesses as to what some of the people involved said or did afterwards.

In criminal cases matters are usually very much more complicated. Very often there are no witnesses immediately identifiable as to exactly what happened. Only in cases of assault or robbery where the victim survives the attack can someone immediately say what happened, in most offences against property the offender acts in secret, and in homicide cases the most important witness is dead.

When a serious crime occurs, the police should ask a number of questions about the witnesses, such as: -

- Who may actually have seen the crime being committed?
- Who may know something about the victim, such as his or her lifestyle, habits, movements, family and associates, business and potential enemies?
- Who may know something about the place the crime was committed, or a body disposed of, or evidence such as weapons hidden?
- Who may know anything about any property stolen, how to identify it, where it might be sold or hidden?
- Who might know who the offender is?
- Who might know what the offender said or did before the crime, and after the crime?
- Who might have seen the offender at or near the scene of the crime?

This list might become a very long one. Investigators should not just concentrate upon the known witnesses to the offence, but also as to what other witnesses there might be. For example, imagine an armed robbery upon a security van delivering cash to a business, in which a guard is shot dead. We know that in such cases the criminals will probably have kept some sort of observations both on the business and the security van in the past, and could be known to someone in the business or who works for the security firm. Interviewing the people who actually saw the offence happen is just a start. Who is usually, or might have been in that place before, and might have seen something? One technique is to make a reconstruction of the events to jog peoples' memories, another is to stop and question people who pass through an area, recording not just their description but that of other people they have seen.

Remember that witnesses may give vital evidence not only about what a suspect did at the scene at the time of a crime, but also of what he did before in preparing for the crime, and what he did afterwards to hide evidence or conceal his role. Even evidence of changes in behaviour patterns or of mood may be relevant to a case.



## Use of the radio, television and newspapers

The relationship between the police and the different media varies enormously from country to country. Often the relationship is one of mutual mistrust and even hostility, for a number of complex cultural and historical reasons. It is not unusual for journalists to have been involved in helping to press for change in the way countries are run, and they may see the police as being on "the other side". Police officers often have a very negative view of the media, and may even, unreasonably, resent the fact that a journalist is usually more interested in reporting a story than in helping the government or the police to do their job. In some countries journalists have been obliged to report only the official view of matters and a change from that situation is sometimes unwelcome. A free press is however, one of the cornerstones of a free and democratic society and police officers should learn to co-operate with journalists and ask for their help, even if the journalists do not always do what the police officer would like. If informal and friendly relationships are established in advance, it is usually easier to get help when it is needed. There are very often good reasons and adequate justification for not telling either journalists or, through them the public, everything that is happening in a case, but where good reasons do not exist there must be a presumption that the public are entitled to know what is happening in their own country, and that it is a journalist's job to find out. The fact that it is inconvenient, or troublesome, or embarrassing for the police if the public learn something can never be a justification for keeping it secret. Remember too, that attempts to keep things secret often rebound, as your policy not to tell the press anything does not oblige them to stop finding things out. If a story is going to be reported anyway, there can be few excuses for not helping journalists to report the truth.

It is often easy to do local journalists small favours to help them to do their job. Such favours may then be repaid in more important matters. Imagine an incident in which a schoolboy on his way to school sees a bird or animal in distress - a swan frozen in the ice perhaps, or a baby antelope stuck in mud. The boy goes to try and rescue the creature and then gets into difficulty himself. The police are called to the scene, but before they arrive a local farmer on his way to the fields sees the boy, utilises some branches he has in his trailer to make a bridge to the boy, and rescues both him and the animal. This is an incident of little importance to the police and probably no formal report will ever be written. However, the story may be just what a local journalist is looking for. There could be an interesting story in a local newspaper, or an interview on a local radio station, or even a television programme. A little bit of time and trouble in helping the press to obtain such simple stories may help to establish relationships which are later very useful.

Some years ago, in a busy holiday resort in the north of England, a young woman was brutally attacked and raped after she had left a dance club late at night. A security television camera recorded her being grabbed and dragged into an alleyway, although the offender could not clearly be seen. She was very badly beaten, and at first it was not expected that she would live. The officer in charge of the local police detective office was at home in bed early in the morning when his officers rang him and told him about the incident. He had a good relationship with a local radio station that plays dance and pop music, and he telephoned them from his home and spoke to the newsdesk. A group of young men who played for an amateur football team in South Wales, several hundred kilometres away, had been visiting the holiday resort for the weekend, to relax, drink and dance. They had hired a minibus to travel in, and while they were in the holiday resort they had had the bus radio tuned to the local pop music station. In the morning they got up early to travel home.

Just as they were driving out of the area, they heard the report of the attack on the local radio station. The driver of the bus turned to one of the group and asked, "Doesn't that sound like the girl you were trying to dance with last night?" The young man denied it, but the driver and one of his friends were suspicious, and when they got home they reported the matter to their local police station. The man was arrested, and eventually, with strong scientific evidence, he was convicted of the beating and the rape. He had never been in trouble with the police before, and had the story not been broadcast as quickly as it was, the case would probably never have been solved.

If you choose to make an appeal for witnesses in the press or on radio or television, remember that there may be all sorts of reasons why people might not want to talk to the police. Fear of reprisals, publicity, inconvenience, or fear of, mistrust or hostility towards the police or the legal system are all likely factors. Try to think which of these factors may apply in your case, remembering that not all witnesses are the same, and think what you can say to overcome them before speaking to the media. Sometimes something as simple as giving a confidential telephone number may be helpful. Being a witness in a criminal case can cause problems for members of the public, and there is no point in pretending otherwise. Remember that it is not the police who caused the crime to be committed, or the individual to be a witness to it. People do have some moral responsibility even if not a legal one, to help try to solve crime, and the proper role of the police is to be honest with them, to encourage them to come forward and tell the truth and then to try and support and protect them. If your legal system sometimes gives powers to compel witnesses to give testimony, make sure that you know exactly what those legal powers and processes are before you start. Never, ever lie to the media or try to deceive them about what you are actually trying to achieve; and do not make promises you cannot keep, such as to protect witnesses from any possible harm.

## Tracing witnesses abroad in serious cases

It is increasingly common for police investigators to have to trace witnesses who live or have gone to other countries. This is a subject about which much nonsense is talked, often by lawyers. There are no legal restrictions upon you tracing or speaking to a witness who is in another country. Telephone calls and correspondence are free of any legal restraint. Whatever legal rules apply to interviewing potential witnesses in your country do not apply in another country, neither does any legislation about the way testimony should be recorded. It is often possible for police officers to travel informally to another country to make enquiries in co-operation with the local police, and legal formalities such as "Commissions Rogatoires", "Letters of Introduction" and "Letters of Request", which may be mentioned in legislation or procedural guidance, are often not needed, although they sometimes are. Some countries are very relaxed about allowing foreign investigators to visit informally, on what is sometimes known as a "police to police" basis, whereas others are much less so. Genuine legal requirements must of course be complied with, but check that what you may be told is required, is actually necessary in law. It is however very important to remember that a police officer has no powers in another country, and must not seek to pretend to any authority or official status. If you can speak to your witness, establish what their story is, record it and then persuade them to attend court in your country to give evidence, there will usually be no legal obstacles. The offices of Interpol will advise which countries will accept visiting officers in an informal capacity. If you are given advice about what is legally required, it may be wise to check it yourself before getting tied down unnecessarily in bureaucracy and quasi-legal formalities. Lawyers sometimes state that long established practices carry the weight of law, whereas sometimes they do and sometimes they do not. Just make sure that you do not break the law, either in your own country or another, and try not to offend anyone by blatantly disregarding their opinion.

## Interviewing witnesses

It is quite easy to get witnesses to say what you want them to, and to put words into their mouths, and this can be done deliberately or by accident. Ever since police investigations began, prosecuting lawyers have been surprised to find that what a witness actually says in court bears little relationship to what the police have recorded as their statement. This makes the police appear unprofessional at best and dishonest at worst. There is plenty of research to show just how suggestible witnesses may be and how keen they may be to say what they think the investigator wants them to. For example, if a witness sees two men commit a robbery, one of them carrying a metal bar, and the investigator asks which man was carrying the gun, the witness may assume that the police officer is right and his or her own recollection wrong, and go along with the suggestion.

The circumstances under which witnesses are interviewed are often of necessity less than ideal, but every effort should be made to make the interview as professional as possible, remembering that the objective is only to uncover the truth and not to try and build a case against anyone. All witness interviews should be planned in advance. The interviewer must be personally prepared, must have all available information about the matter to hand and be clear in his or her own mind about the objectives of the interview.

As regards the witness, the investigator must consider his or her age, mental capacity, maturity, whether religion and culture may be an issue, their emotional state, fears or concerns they have about the process and what may follow in the future, the relationship they may have now or in the future with the offender, other witnesses, their own friends, family and neighbours, and the potential impact of recalling traumatic events. It may or may not be a good idea to take the witness back to the scene to check what they can actually see from that position. The investigator must avoid suggesting what the witness could or should have seen.

The officer should arrange the interview somewhere where the witness will feel safe, and this might be neither at home nor at a police station. In some countries witness interviews at police stations are the norm, and officers should check as to whether this is actually legally necessary. Sufficient time for the interview should be set aside, and a potentially long interview should not start, if possible, when either the witness or investigator is tired, hungry, or likely to be distracted by other things. Vulnerable witnesses, such as children, should have someone present to protect their interests independently.

At the beginning of the interview, the investigator should explain the purpose of the interview, and explain the identity and roles of everyone present. Any fears or concerns the witness has should be discussed at an early stage. The conversation should deal with non-contentious issues first, and the investigator should use this opportunity to assess the witness's understanding and preferred style of language, adopting his or her own language as appropriate.

The investigator should then explain that the witness should not assume that the investigator knows anything about the case, and that the witness should recount everything that they remember, in their own words and in their own time, without thinking about whether things are relevant or not. They should include as much detail as possible. The investigator should explain in advance that he or she might occasionally interrupt to clarify or summarise something, but that if he or she gets anything wrong the witness must say so.

The investigator should then ask for a brief account first, to "set the scene". The witness should then be asked to recreate the events in their own mind, recalling where they were, what they were doing and what they were thinking about in the period immediately before the event. If appropriate, ask the witness to draw a simple picture or plan. Give them time to think and remember everything they can, and try not to interrupt their train of thought. Listen carefully and make notes, especially about areas you may need to return to. Use appropriate body language and facial expressions to show that you are interested and paying attention - never reveal that you are bored or that you think what the witness is saying is unimportant. If necessary, check that you understand what the witness is saying, and if slang words are used do not hesitate to ask what they mean, especially words used to describe for instance, drugs or sexual activity. Do not challenge what the witness says, but develop their account by asking simple questions to clarify "who?", "what?", "when?", "where?" "why?" and "how?". Remember that the witness may not tell things in a logical or chronological order, so keep notes and return to clarify this later rather than constantly interrupting. Do not ask leading questions, that is questions that suggest the answer, unless there is a very good reason to do so.

When the witness has finished, go back over the story, trying to put it into a logical order. Tell the witness that they must correct you if you get anything wrong.

You now have a choice between taking a detailed written statement from the witness, or compiling full notes and preparing a statement for the witness to sign later. Best practice may depend very much on the legal requirements of your country. Sometimes there are legal restrictions on what may be included in a statement. If there are not, it is usually best to include in the statement everything which the witness has said and let the prosecuting lawyer decide what is legally admissible as evidence or not.

With key witnesses in serious cases, it may be a good idea to tape record everything that is said, or even to video record the interview. Even if not everything the witness has said is used in a formal statement, it is very important that the court can be told about everything that was said between the investigator and witness. It is very important to be able to refute any suggestion that the investigator has chosen which bits of a witness's story to use, or that anything has been hidden from the court. In some countries there may be legislation specifically requiring the police to reveal everything to the accused person's lawyers, but even when there is no such requirement no case should ever be founded or supported by anything being hidden or kept secret.

Research undertaken in the United Kingdom involved tape recording a number of interviews with witnesses to serious crimes. Hand written statements were then taken by experienced police officers at the same time, and these were then compared with the contents of the tapes. Analysis showed that a significant amount of relevant evidence, which had been disclosed to the officers, had not been included in the written statements. In addition, assertions made in a number of written statements actually contradicted the information on the tape. This was despite the fact that both the witness and the police officer were attempting to record an accurate written statement, which the witness had then read and signed. The value of using a tape recorder in order to initially record the evidence of key witnesses cannot be overstated.

In some countries lie detectors are used, but they should never be considered unless there is legislation to allow or require their use, and someone expertly trained conducts the tests. In some countries their use is specifically legally excluded, probably for good reason. Experiments have been held to hypnotise witnesses to help them remember things. This should never happen without the most careful forethought. The testimony of a witness who has been hypnotised will almost certainly be viewed with extreme suspicion, and rightly so. Sometimes an investigator may judge that hypnotising a witness may reveal some clue which will help identify an offender, but only very rarely will the benefits outweigh the dangers. The qualifications of individuals to hypnotise witnesses are not subject to any official accreditation or academic recognition, however skilled or gifted an individual may be, and this in itself may make the procedure inappropriate.

When the witness has finished giving their account, and it has been recorded, it should be compared with the accounts of other witnesses, and particularly with the findings of the crime scene examination and any forensic, scientific or expert evidence. The importance of the role of scientific examination of a scene to corroborate or contradict witnesses is often overlooked. If the witness was not taken back to the scene, consider going back to the scene to check that everything described can actually be seen from where the witness said they were.

If discrepancies are found between the witness's account and that of other witnesses, or the scientific evidence, this must be brought to the attention of the prosecutor. Very careful consideration must be given as to whether to approach the witness about the discrepancy. Sometimes it may be appropriate to clarify some matter, but the investigator must avoid any possibility of being accused of trying to get a witness to change their account. If a witness does change something they have said, it is imperative that the original story is revealed in full, and the reason for the change explained.

Witnesses may have discussed the case with other people before the investigator, and they should be asked about this and details fully recorded. During investigations into the genocidal massacres which happened in Rwanda in 1994, United Nations investigators found many witnesses who had been interviewed many times before by non-governmental agencies, including relief and medical and sometimes counselling agencies, and agencies trying to discover the truth in the absence of any proper official investigation in the early stages, for the very best of motives. Often these interviews took place in groups, with witnesses listening to other witnesses' accounts. When they were finally interviewed by United Nations investigators, the witnesses gave accounts of what they honestly knew or believed had happened, but it was often impossible to tell what they had learned from others and what they had actually experienced or seen themselves. In some cases checking their accounts of what happened with the scientifically provable facts showed that they could not have seen what they claimed, even though there is no reason to doubt that they were trying to give honest accounts.

## Care and support of witnesses

Police officers who deal with crime every day must remember that being a witness to a crime, being interviewed by the police, waiting to find out what will happen, and going to court to give evidence may be very traumatic. Witnesses should be supported by the police throughout the process, as far as possible. There is a fine line, but a very clear one, between telling a witness what to expect in court, and advising them how to conduct themselves and how to answer questions, and telling them what they should say. Whilst coaching witnesses in what their evidence should be is absolutely forbidden, warning them what to expect and helping them to prepare to deal with it is not.

The police should remember that witnesses often have to live in communities where many people strongly disapprove of helping the police or the courts in any way, where the accused person may have friends or family, and where violence and intimidation are commonplace.

In serious cases, the police may often be justified in giving regular support and help to witnesses. This can take the form of help with security measures, providing mobile telephones or house alarms, or just making regular contact. If a witness is being intimidated, it is far better to learn about it at an early stage and do something about it instead of learning that the witness has disappeared when they are required to attend court, or that they have suddenly discovered that they have forgotten everything. In some countries there is specific legislation to deal with intimidation of witnesses and this should be enforced rigorously.

To take a statement from a witness and then abandon them to their fate is unforgivable. There is always something that can be done to help. There is a range of measures, from simple security advice and support, through assistance with relocation to a safer area, to giving a witness and his or her family a completely new identity. The latter measure is extremely expensive and difficult to achieve and requires specialist knowledge and resources, as well as the willing, and legal, co-operation of many agencies.

Often, the new identity plan fails because the witness himself or herself cannot face giving up all contacts and friends. Relocation alone may be very expensive, and before deciding to expose a witness the police should very seriously consider whether such steps might become necessary to ensure his or her, and their family's safety. If such steps are likely to be necessary, the police must then decide whether they can be afforded, not just in terms of cash, but also in terms of time and effort. If the witness cannot be supported in a manner appropriate to the case, it may be indefensible to decide to use them. These problems should always be discussed frankly with the prosecutor, who may also have to accept responsibility for taking difficult decisions.

When a decision has been made to protect a witness to any degree, other practical problems invariably emerge. The witness may begin to realise how important he or she is to the case, and to use that position to extract more and more favourable conditions from the police. There may well come a stage where the defence may be able to say fairly that the witness is not just being protected, but is actually being rewarded for his or her evidence, which may gravely undermine its credibility. Before any protection programme is begun therefore, it must be planned through to its conclusion. Good practice is to insist that the witness sign up to an agreed plan of what will and will not be provided, and what the witness can and cannot do. This plan must always be revealed to the prosecutor.

Certain types of witness, for example children, will always be particularly vulnerable, and the decision to use them as witnesses should only ever be taken after very careful consideration of both the need and the possible consequences.

All witnesses, including the victims of crime, are entitled to the full range of human rights as described in the Universal Declaration of Human Rights. However, the General Assembly of the United Nations has recognised them as being a particularly vulnerable group, and in 1985 set out a Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which is included as an appendix to this document.

# 5

## Identifying Suspects

In cases of serious crime, it is usually hard for the police to avoid their responsibility to try to identify the person(s) responsible, and to gather evidence against them. However, in many parts of the world, some officers have come to see their role in respect of less serious crimes as being merely to record them and make an official report about them. This is unfortunate, because many of the techniques of successful crime investigation are applicable to both serious and less serious incidents. Obviously it will not be possible to deploy a range of forensic and scientific expertise every time someone has a bicycle stolen from their back yard, but the most basic of enquiries can sometimes produce results. If the cycle has been stolen by a professional team who have visited the area for that purpose, other things will probably have been stolen in the same area around the same time, and common sense may suggest where a van or pickup truck is likely to have been parked, and enquiries in the area may reveal some information about it. If, as is more likely, the cycle has been stolen by someone who lives locally, there are a number of useful questions which may be asked. First is, "Who knew it was there?" If the answer is, "Anyone who looked over the wall or fence", then the next question is, "Who walks past there regularly?" Police officers often fail to ask the simple question, "Who do you think might have stolen it?" and a surprising number of people will be reluctant to voice their suspicions unless asked, and not always even then. It might be helpful to ask the question in a less direct way, such as, "Is there anyone who lives around here you are not happy about, or who you have had problems with?" Ask who visits the house, or the back yard, and when you have a list, ask the owner which of those people he or she trusts completely. Remember that people are often reluctant to name someone they suspect, particularly if there is no real evidence, but if you can learn their suspicions, they may well be well founded.

Apply common sense to the situation. Is the cycle likely to have been stolen by the woman next door who is looking after her children all day, the man who has never been in trouble with the police who walks past on his way to work each day, or one of the gang of youths who congregate each night at the end of the road and are always causing problems? Does the victim or the neighbours know who those youths are and where they live? Is there really a good reason not to visit their homes, speak to them and ask to have a look around?

Of course, in some places and at some times police officers are simply too busy to make even the most basic enquiries and in some areas the crime may simply be recorded by telephone with no officer attending. The problem with this approach lies first in the assumption that because the police are often too busy to do anything useful, that they are always too busy. This is very rarely true. The second main problem is that if the police fail to do anything about reports of minor crime, the public lose confidence in them and fail to report similar matters in future. This may make the local police commander very satisfied in that recorded crime rates are artificially low, whereas the truth is that he or she does not actually know what is going on. The third problem is that petty offenders grow in confidence, as they quickly see the obvious truth that nobody in authority really cares what they do, and that nobody is going to do anything to curb their activities. Perhaps even more importantly, the police officers themselves lose, or never properly develop, the skills of asking questions, identifying and tracing suspects, making enquiries about them, and challenging them. For the police to tell a victim that unless he or she can produce evidence against someone there is nothing that can be done is both ridiculous and outrageous. It is the job of the police to investigate and look for that evidence.

In more serious cases different problems are presented. Hopefully the police officer in charge of the investigation will be someone who has already acquired the basic skills of investigation and has a record of successful investigations. In many cases it is fairly obvious who is responsible and the main purpose of the investigation will be to gather evidence to prove the case, as in many murders within the home for example. In other cases, where the offender and victim are not known to each other, such as many robberies, rapes and murders, it may be difficult to know where to start. Even when the investigative model previously discussed is applied, the investigator is usually left with the main question, "Who did it?" and no obvious way to answer it.

Traditionally, investigators have looked at three important areas to determine who may have committed an offence, these being **Means, Motive and Opportunity**. These concepts are explained further below:

- **Means.** This simply refers to someone's physical capacity to have committed the offence, for instance whether they are strong or fit enough, have access to the type of weapon used, links to other criminals such as contract killers, use of a motor vehicle or any other necessary capacity to have committed the crime. For example, if tyre marks are found at the scene of a crime and are thought to belong to a vehicle used by the offender, then the offender must be someone who has access, legitimate or otherwise, not only to a vehicle of that type but to the actual vehicle on which that tyre was fitted at the time. Consider a murder or serious assault case in which the weapon is identified as having been a golf club. Arguably, anyone could get hold of a golf club if they wanted to, but the offence is much more likely to have been committed by someone who has easy access to golf clubs. It is surprising how often the importance and usefulness of this type of almost blindingly obvious conclusion can be overlooked.

■ **Motive.** In cases such as robbery the motive may be fairly obvious. The investigator should be aware however, of the danger of assuming the obvious motive, whereas the offender, as discussed previously, may have the skill to have hidden the true motive and presented evidence of another. In the case of murder especially, the investigator should make the most thorough enquiries as to who stands to benefit from the death, or who believes that they may benefit. The importance of wills and insurance policies is not confined to detective stories or television dramas! The possibility of blackmail, sexual relationships, business dealings, personal rivalries and the aspirations of partners, families and associates should all be carefully explored. There are many cases on record of both men and women arranging the murder of their partners in order to enable them to begin new lives without them. In sexual cases the motive may well be unclear - for instance a victim might be killed either to satisfy some sadistic urge, or merely to prevent the victim from becoming a witness. In cases of suspected "contract killings" the task facing the investigator may seem overwhelming if the victim has himself been involved in organised crime and therefore kept his business dealings secret. However, careful and thorough questioning of his family, friends and associates, detailed examination of his records, financial accounts, telephone and email records, expenditure and travel may well identify a useful line of enquiry.

Identifying the motivation of the offender will often be a key aspect of the investigation and it is important to remember that for some, perhaps rare, offenders, the motivation may be simply "to commit the perfect murder and avoid detection". Whilst such cases are rare they pose a serious challenge to the investigator. Experience shows that serial killers often research police methods, feel that they are in some sort of competition with the police and take every effort to confuse the investigation. Selecting a victim with whom they have had no previous involvement, operating in an area away from their usual haunts to avoid recognition, wearing disguises and establishing false alibis are amongst the tactics they may adopt, and which the investigator will have to consider.

There is a good example to demonstrate this point. A depressed twenty-six-year old gardener began to fantasise about committing the "perfect murder". He was not known to the police and, to those who knew him, he was a hard working, pleasant and honest man with no criminal tendencies. He kept his fantasy secret from his closest family and friends. One afternoon he left his work, put on a black jacket and trousers over his normal clothing of a red "T" shirt and blue jeans, and went to a town several miles away, on his motorcycle. He parked the machine in the car park of a large store and hid his crash helmet under bushes in a park. He then set off on foot to find a victim. He eventually saw a fifty nine-year-old woman sitting alone in the front garden of her house. Making his way to the rear of the house, he knocked on the back door, causing his intended victim to go inside her home in order to answer the door. When she did so he told her that he needed to speak to her husband, and when she said that she lived alone he forced her inside and stabbed her repeatedly. He then calmly left the house, disposed of the knife and his outer clothing, and returned to his place of work without anyone having noticed his absence. The victim died twenty days later, but was able to describe her attacker.

Understandably, the police at first assumed that this was an attempted burglary or robbery which had gone wrong, and concentrated their efforts on local men with convictions for this type of crime. It was only much later that the killer came to notice. He eventually confessed and said that his motivation had been to avoid detection and to kill more women than a notorious local serial killer, who had earlier claimed a total of thirteen victims.

■ **Opportunity.** This can simply refer to the opportunity to actually commit the crime, which was obviously committed by someone who was there at the time. However if the concept is widened, it can very usefully be used to determine who might have identified the victim at an earlier meeting, or become familiar with where a murder took place, or a body hidden.

For instance, in one case where a man murdered two elderly women in their homes, the question was raised as to how someone had been able to identify them and where they lived. Enquiries revealed that both women shared the same doctor and when the offender was eventually arrested, he too had visited the same surgery and admitted having followed one of the women from there to her home. It was strongly suspected that he had also followed the other, although he did not admit this. Offences such as abduction, murder and rape are usually committed in a place or in an area with which the offender has some familiarity, which means that he will have some link with the area, be it that he once lived or still lives there, visits or used to visit during the course of work or an interest, or even played there as a child. In the widest sense, this familiarity and feeling of safety gives him the opportunity to commit the crime there - indeed work as a delivery driver, tradesman or meter reader could even have given the offender the opportunity to commit the offence that day.

Consider the case of a prostitute found murdered. In one such case many years ago in England, a girl was found to have a brand new banknote hidden in her handbag. Enquiries showed that the banknote had very recently been issued to a particular company which had used it to make up staff wages. The enquiry was then to look at who had the opportunity to possess that banknote - in the first instance employees of the firm. The relevant opportunity may then not just be the opportunity to commit the actual offence but some other aspect connected with it.

■ **Modus Operandi Suspects.** The Latin phrase "modus operandi" literally means mode or method of operation, or way of working. In criminal investigation it is used to refer to the particular techniques an offender uses to commit his or her crimes. Human beings, like many animals, are creatures of habit and once they have found a way of doing something which works they will often repeat it again and again rather than look for a new method. Ways of doing things are more likely to alter very gradually over time as new skills and lessons are learned, rather than being radically changed. Police officers very often use the phrase "M.O. Suspects" to refer to people who have previously been convicted of the same category of crime, although this can be very unhelpful as there can be many different ways of committing the same type of crime, whereas the way the crime is committed is more important than the legal category of offence.

I remember with pride the first arrest for serious crime that I made as a young uniformed patrol officer. One day on patrol with a much more experienced officer, he pointed out to me a burglar who had just been released from prison. He told me that the man's "M.O." was to put a dustbin below the rear window of the kitchen of a terraced house and stand on it to allow him to break a small transom window with a stone to gain access to the house. Some weeks later I was sent to the home of an elderly lady who had been raped in her bed by a man who had broken into her home late at night. The transom window of the kitchen had been broken with a stone and a dustbin had been placed below the window. I went immediately to the home of the burglar, who lived less than kilometre away. I went into his backyard and smelled disinfectant in the drain. Feeling the waste pipe from the bathroom upstairs I felt that it was warm and I realised that the man had probably just tried to clean himself. I forced my way into the house and found him in bed wearing distinctive orange underwear as the old lady had described. I arrested him just as more experienced detectives arrived on the scene. He was eventually convicted of rape. He had never committed any sexual offence before, at least he had never been convicted of one, so if the enquiry had concentrated only on people previously convicted of rape or other serious sexual assaults he would never have come to notice.

In recent years much more care has been taken to look at the types of crimes previously committed by people convicted of serious offences. It is not at all unusual for the pattern of previous convictions preceding an offence such as murder or rape to be similar. In the past it was not unusual in serious cases for the investigators to compile lists of people who had been convicted of similar offences before and then to try and eliminate them from the enquiry. Many, many hours, days, weeks and months of work could be spent on this, when the truth was that people who had previously committed other types of offence were just as likely to have committed the crime under investigation. Various attempts have been made over the years to make it possible to extract from criminal record systems details of the specific methods used by criminals to commit their crimes, more recently using various computer programmes, with varying degrees of success. Unfortunately, the offence for which someone is eventually convicted does not always give a clear indication of what actually happened, and once the field of potential suspects has been narrowed down to manageable numbers, there is no real substitute for getting hold of the original case papers if possible and finding out exactly what the offender did and how he did it. The worst possible scenario for any investigator may be to compile a huge stack of criminal records of potential M.O. suspects, who may or may not have committed the offence, spend huge amounts of time, effort and money in tracing and interviewing them and to still be unsure at the conclusion whether any of them committed the crime or not. When "main suspects" are being considered, significant benefits can be gained from speaking to the original investigating officers in the cases they have been convicted of. Case papers may not include compelling details of evidence which might provide crucial clues as to identity, but which was not admissible at the trial. In addition, the process of "plea bargaining" often leads to a considerable amount of evidence being edited from the case papers, so that a very misleading account is given, and formally recorded.

When the police in England were first given the opportunity to link offenders to crimes through analysis of DNA, different methods were used to try and maximise the potential in serious cases. Initially there were several cases of "mass screening". Where DNA was recovered from a crime scene and it was felt that the offender probably lived locally, exercises were conducted to examine the DNA of all the men living in the area, sometimes many hundreds or more. Around the same time the value of "offender profiling" or "behavioural analysis" as previously discussed was just being explored and the two techniques were found to work very well together - one being to some degree intuitive and the other purely scientific. When this was combined with skilful, thorough and logical M.O. analysis and study of means and opportunity, a very powerful tool was developed, which came to be known as "intelligence led screening". Instead of all the men in the area having their DNA tested, people are prioritised using the above criteria and this has proved very successful.

Although this rethinking of how to gather and logically prioritise suspects first came about as a requirement of how to do DNA screening efficiently and effectively, this new way of looking at the problem is very useful even where no DNA exists. Most police forces today cannot afford to trace and try to eliminate hundreds and hundreds of potential suspects in individual cases. An approach using all the skills available, both old and new, should lead to a much more manageable and realistic field of potential suspects, who can be targeted and investigated thoroughly, with a higher chance of success. The computerisation of accurate records is increasingly useful and identifying the person who has just been released from prison to live around the corner from a murder or rape scene may be more valuable than eventually tracing someone with a similar conviction who lives a hundred kilometres away.

■ **Elimination of suspects.** In this context, to eliminate a suspect means to be satisfied as far as possible that they have no connection with the offence. Time spent in deciding what criteria are used to exclude suspects from an enquiry will never be wasted. There are many instances of people being excluded from enquiries because of illogical, imprecise, or even irrational criteria determined by the investigating officer. One obvious and common mistake is to assume that scientific evidence found at a scene, for instance DNA extracted from semen, or a fingerprint, necessarily came from the offender, and to exclude people whose DNA or fingerprints don't match.

*I once arrested a man for a murder committed many years previously, following up information from a member of his family. He had been questioned during the initial enquiry, and excluded because he lacked the gap in his teeth which had been seen in bite marks on the breast of the murder victim. I found that at the time of the offence he had had a false tooth at the front of his mouth, which he could easily and often did remove. When we recovered the dental cast for the false tooth which had been made some ten years before, it fitted the bite marks seen on the body, although not with sufficient certainty for him to be convicted.*

Every case is different, and what worked in the last case may not be appropriate in the most recent one. In any particular case there might be two descriptions from different witnesses, one from a reliable and confident witness of someone seen in the area who might be the offender and another from a less reliable witness of someone who definitely was the offender. The relative weight to give to each description, and whether to exclude people who match neither, calls for skill, experience and judgement from the investigator. There have been a number of cases in the past where members of the public believe they knew who committed an offence, but did not tell the police because the suspect did not match a description issued to the media.

When it is going to be necessary to trace and exclude a significant number of potential suspects from an enquiry, it is essential that before beginning, the investigating officer decides exactly on what criteria people may be excluded. A system should be put in place to ensure that the investigator can be certain as to why someone has been excluded, in case some of the criteria are found to be wrong, as for example, the fingerprint or DNA referred to above being found to belong to another party. It will usually be helpful to list these criteria in order of certainty.

For example, but only as an example, as follows: -

- Scientific criteria e.g. fingerprint or DNA, if and only if, definitely linked to the offender.
- Alibi confirmed by independent witnesses and confirmed by record e.g. employment, passport record or imprisonment.
- Alibi confirmed by independent witness alone.
- Alibi confirmed by family or friends.
- Physical description.
- Unconfirmed alibi.
- Investigator's intuition following interview (not very scientific, but sometimes all you have!)

Finally, remember that if someone is eventually charged with a case built upon circumstantial evidence alone, the existence of people who have been defined as "suspects" and not excluded will always offer opportunities to the defence. The investigator must think carefully about what he or she is going to do, and how the explanation for it is worded and recorded.

**In a serious case, the lead investigator will have four main tasks as regards suspects.**

**Firstly**, he or she must make sure that all the obvious and immediate suspects are first of all recognised and then investigated thoroughly. There are many examples of people who should have immediately been identified as suspects being overlooked in the early stages of an enquiry, very often because existing police records or other easily researched material were not checked properly.

There was recently severe public criticism of the police in a case in England. Two ten-year-old schoolgirls were found murdered. They were known to have left their homes and to have walked past the home of their school caretaker. This man had been the subject of eight previous complaints of sexual offences, including rape and several cases of unlawful sex with young girls. Proper records of these allegations had not been kept, as none of the cases had resulted in convictions in court. He was only arrested at a much later stage of the enquiry than he would have been if proper records had been kept and checked and because of this vital evidence may have been lost, although he was eventually convicted of the murders.

In the early stages of an enquiry there is sometimes a very large amount of incoming information, and this must not be allowed to swamp the obvious. Thorough and organised systems for recording information are very important, but staff must be told to bring potentially important information to the notice of the lead investigator immediately. The lead investigator must be aware of what records and information are available such as, for example, persons recently released from prison to live in the area. Whilst much of this type of intelligence can be gained from police records, it should be remembered that some charities and other organisations provide accommodation for ex-offenders and a variety of non-police agencies often have records of the whereabouts of potential suspects, whose existence or presence in the area is not known to the police. It is important to build good working relationships with such organisations and the individuals within them. The foundations of these relationships are trust and confidentiality and the appropriate and sensitive use of knowledge gained from them.

**Secondly**, he or she must ensure that all the physical clues, scientific or otherwise, which might lead to identification of the offender, are fully exploited both methodically and imaginatively. The investigator should never accept other people's word as to what has been done and should check everything him or herself. An obvious example is checking that a crime scene or forensic examination has been done as thoroughly as possible and that items recovered have been exhaustively tested. It is essential that everything seen or found at the scene is considered for its significance by an experienced investigator and not just filed or stored away somewhere by someone who may not recognise its potential value.

I recall a murder case in which the footprint of a particular make of training shoe was found. The scientist who identified it did not think it was particularly valuable, as there was not much detail on it and many tens of thousands of the size and model had been sold. The lead investigator instructed uniformed police patrols to check the footwear of people frequenting the area of the murder during subsequent evenings and this led to the eventual identification of the offender.

**Thirdly**, he or she must plan a properly realistic programme to compile a list of people who may have committed the crime, based upon their means, motive, opportunity and or previous criminal behaviour. The advice of experts should be carefully considered, especially but not exclusively, that of behavioural analysts. That list of persons should be of a manageable size, and there should be clear and logical criteria for prioritising people within it, and clear criteria for how people are to be eliminated from suspicion. Time spent in deciding who should and should not be included in that list of suspects will almost certainly be better spent than time spent on trying to eliminate from suspicion individuals who should not have been on the list in the first place!

**Fourthly**, he or she must create space for, and encourage, intuitive thinking and "hunches" by experienced investigators. By this I do not mean illogical or fanciful ideas, but the feelings that experience often creates about what may have happened and which cannot always be rationally explained.

**Finally**, the investigator will have to decide what proportion of available resources to devote to each of the above areas, and whether these should remain the same at all stages of the enquiry. This is very largely a matter of judgement, which must be based on long experience and careful consideration of each particular case. I believe that intuition always has had, and should always have, its due place in the investigative process. However, to devote a large proportion of resources to following it up, especially at the expense of other more logical processes, is likely to prove a mistake, as also is the tracing and interviewing of long lists of "M.O." suspects who have no obvious connection with the case before the obvious suspects have been cleared from the enquiry.

The paragraphs above refer very obviously to the investigation of serious crimes, where it is hoped that significant effort will be given to the investigation. It must be emphasised again however, that the principles of investigation apply to all crimes and officers investigating even minor matters must remember that they may be important to the victim, and ask, "What is the best I can do in the circumstances" and not "What is the least I can get away with".

# 6

## The Treatment of Suspects

**This chapter is intended to refer to all those people who are detained by the police in regard to their investigation of crime, irrespective of the power used to detain them or their exact legal status at any particular time within any legal system. It refers not only to recommended good practice, but also to the various forms of international law, conventions and treaties, which demand compliance with certain standards.**

Any person who is being questioned or interviewed about crime, unless it is absolutely clear that they are only a witness, and free to leave or to decline to co-operate at any time of their choosing, should be regarded, for these purposes, as a suspect. Where a number of people thought to be involved in the circumstances surrounding a crime are detained and interviewed to determine which of them may be guilty, they should all be regarded as having the rights afforded to suspects. The practice of putting pressure on all the people who could have been involved in an offence, with the intention of inducing one of them to confess, is to be deprecated. It is entirely opposed to the principles of fair and open-minded investigation discussed in earlier chapters. Clear and obvious suspects should naturally be investigated, and if necessary detained, at the first opportunity, but the investigative process should always lead from the evidence to a suspect, then to the gathering of other evidence through scientific examination and interview, which may or may not involve a confession. The process of seeking a confession first and then looking for evidence to corroborate it is the process which has most often been shown in the past to be implicated in serious mistakes by the police, the abuse of human rights, and miscarriages of justice. Investigations have shown that suspects can be improperly treated at all stages of investigation, not least in the period immediately following contact with the police, before formal proceedings have begun. It is not just that seeking confessions as the first form of evidence is likely to lead to breaches of human rights law, it is also the method most likely to lead the police into making serious mistakes.

This chapter will deal later with some examples of the way suspects should be treated and details of what would be considered quite wrong. However, the issue of what international law regards as "torture" will be dealt with first. Torture has three elements:

1. Severity of pain or suffering;
2. for a purpose;
3. by a public official.

It is absolutely forbidden by the legal systems of all countries that are signatories to the United Nations Universal Declaration of Human Rights and the United Nations Body of Principles for the Protection of Persons Under any Form of Detention or Imprisonment. It is defined in Article 1 of the Convention Against Torture and other Cruel and Inhuman or Degrading Treatment or Punishment as follows:

"For the purposes of the 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."

There are a number of good reasons why people suspected of crime should never be subjected to torture, abuse or ill treatment whilst in police custody. Most people are very familiar with these reasons, but it may be appropriate to list some of the more important ones below: -

1. Persons in police custody are in effect defenceless and the abuse of defenceless persons is contrary to all recognised moral or ethical codes of conduct, whether based upon religious, philosophical or legal principles.
2. People who torture or mistreat those over whom they have power are inevitably held in contempt and loathing by the majority of their fellow human beings.
3. Those who show a willingness to torture, abuse or humiliate others run the risk of serious conflict within their own lives and serious risk to their own psychological well-being. There will be aspects of their working life which they cannot discuss openly with their own families, or with any law abiding citizen, or with any professional such as a doctor or lawyer who they may wish to consult for any reason. They will carry the burden of secrets, which they can only share with other lawbreakers, sadists and criminals. Such a burden is likely to be harmful to the individual in the long term.
4. A system which allows or fails to prevent torture or ill treatment of those in its power will lose the respect and support of the population it supposedly serves. The police in particular will become a focus for hatred and are likely to become the main targets for violence during periods of civic unrest or public disturbance.



5. Torture and abuse are forbidden by the legal systems of all countries which recognise the United Nations Universal Declaration of Human Rights and the United Nations Body of Principles for the Protection of Persons under any Form of Detention or Imprisonment. The prohibition of torture is also considered a rule of general international law binding on all states regardless of whether a particular state is party to a treaty embodying the prohibition. The prohibition is total and absolute. There are no circumstances under which torture may be practiced legally. Whilst such abuses may be tacitly accepted or ignored in some countries, the perpetrators are in fact breaking their own laws and inescapably must be regarded as criminals rather than upholders of the law.

6. Countries which fail to eliminate torture and abuse are liable in international law for the conduct of their officials and officials who break their domestic laws forbidding torture may be making their own government and country liable before International Courts, or other International bodies. Under some circumstances, individuals can also be prosecuted by the International Criminal Court, as agreed in the Statute of the International Criminal Court in Rome in 1998.

7. It is increasingly common for those who abuse human rights to be investigated, prosecuted and punished for their misdeeds not only by their own courts, but also by international tribunals. Obedience to orders or the following of common practice is never accepted as a defence or mitigation by such tribunals.

8. Torture is an ineffective investigative tool. There is incontrovertible evidence to show that confessions and admissions made under duress are likely to be false or unreliable. In the international community of law enforcement, those who resort to torture or abuse are seen as an outdated, ignorant, uncivilised and dangerous embarrassment.

9. Where the defence to a criminal trial can raise the suggestion that a suspect has been tortured or abused, evidence may be ruled inadmissible, or a conviction may be quashed upon appeal. Therefore a guilty criminal who has been tortured or ill treated may actually be able to use that fact to escape Justice in the long term. This method of escaping Justice is much more likely to succeed in countries where previous allegations of torture or abuse have been proved, or where there are inadequate systems to prove that ill treatment has not occurred.

10. Legitimate law enforcement officials who do respect international law regarding human rights will be reluctant to deal openly with individuals, organisations or countries which do not, leading to their further isolation and inability to progress.

11. Criminals who flee their own country will probably be able to avoid extradition from any country in which they are arrested, if they are able to convince a court in that country that they are likely to be subjected to inhumane or cruel treatment in the country seeking their extradition. Defence lawyers are entitled to seize upon any proven cases of ill treatment, whether based upon legally condoned practice or individual malpractice, to argue their case.

12. Some of the best criminal informants are recruited from people who have been arrested for crime, whether they are eventually prosecuted or not. The introduction of violence will prevent the development of the type of relationship between a criminal or suspect and the investigating officer, which can lead to the development of an individual as an informant, either at that time or at a future date. This will further inhibit the professional performance of the police.

13. Once an element of violence, or even the threat of it, has been introduced into a relationship, it becomes very difficult to "turn the clock back" and return to any other form of discussion. The police officer may find it impossible to regard the suspect as anything other than guilty and to properly consider evidence to the contrary, as his own self justification for wrongdoing would be removed. It may also become problematic for the police to release without charge someone who has been maltreated, necessitating the bringing of charges to cover up the malpractice of the police.

Therefore an innocent person who is tortured or subjected to violence is more likely to be prosecuted than if he or she had been properly treated, and the officers involved may find themselves obliged to commit perjury, or to conspire to falsify evidence to defeat the ends of Justice, deepening their own criminality and liability to discovery, prosecution and punishment.

In any particular country, the laws and procedural rules for the arrest, detention and protection of the rights of suspected persons will necessarily be much more complex and detailed than provided for by the Universal Declaration of Human Rights and human rights treaties such as the International Covenant on Civil and Political Rights and the regional treaties such as the American Convention on Human Rights, the African Charter on Human and People's Rights, or the European Convention on Human Rights. More detailed instruments and guidance are however, embodied in such instruments as the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the United Nations Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment. These latter two instruments contain provisions designed to prevent torture and abuse and to make accountable those who practice these evils. The Universal Declaration and a number of the most relevant human rights instruments are included as appendices to this document.

In the United Kingdom there is a law which dictates the principles which must be adhered to regarding the treatment of detained persons and the gathering of evidence against them, and this is supported by very detailed Codes of Practice, which cover most practical circumstances. The police are obliged to follow the Codes of Practice, but when there are minor breaches, or areas of disputable interpretation, these do not in themselves constitute a breach of the Law. At any subsequent trial the Judge will consider the compliance of the police with the Codes of Practice and can exclude evidence against the accused if he or she feels that the breaches of the Code warrant it. The Codes of Practice are amended in the light of practical experience and have the full and wholehearted support of everyone working within the system.

In Europe, there is a Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT). The work of this committee is underpinned not only by the 1987 Convention that established it, but also by the European Convention on Human Rights. This Committee regularly visits and inspects places of police detention in countries with both long and shorter histories of democracy and public accountability. In some countries there are systems for oversight of the treatment of detained persons by the police, but these for the most part are not fully independent. Where no such system exists the work of the committee may provide a useful model. Extracts from their 12th General Report on Police Custody, paragraphs 36-50, which confirmed many of the findings of the 2nd General Report, the 9th General Report (Juveniles deprived of their Liberty), paragraphs 20-27, and 10th General Report, (Women deprived of their Liberty), paragraphs 21 - 24, are included also as appendices to this document. It is important to note that these reports, particularly the 12th General Report, give details of actual visits to, and inspections of police stations, including interview rooms and investigator's offices, and include direct evidence of probable instruments and weapons of abuse. The standards for the proper treatment of all persons detained, whether formally in custody or not, for however brief or long a period, are quite explicit and subject to examination. To commence the interview or examination of a suspected or detained person, or to take responsibility for their detention, without knowing what the relevant standards are, is extremely inadvisable. Ignorance of the relevant standards will never be acceptable as an excuse for failing to comply with them. In places where there is no legal requirement to meet any standard other than to avoid breaches of human rights law, the CPT's standards may provide a useful framework.

**The CPT attaches particular importance to three rights for persons detained by the Police:**

- the right of the person detained to have the fact of his detention notified to a third party of his choice,
- the right of access to a lawyer, and
- the right to request a medical examination by a doctor of his choice.

Access to a lawyer, and to a doctor, should always be afforded in private.

Police investigators, who are charged not only with protecting the rights of persons in custody, but also with the rights of people who are victims of crime, must also consider these three areas very carefully.

They must always bear in mind the two main reasons why suspects are arrested or detained in the first place: to gather evidence relevant to the case, including evidence gained by questioning, and to ensure their appearance before a court or investigating judge. Police officers have a powerful duty towards the victims of crime and they are only given powers to detain suspects and infringe suspects' rights to privacy in order to discharge that duty. If they fail to comply with the law regarding suspects' rights they will damage any future prosecution case against those suspects and thereby betray the innocent victims they are supposed to protect.

Officers seeking to comply with either European or other comparable standards should be aware that young persons (who may be defined by different ages in different countries), have additional rights when detained, including to right to talk to a parent or guardian, or lawyer, or failing that a trusted adult, before being questioned. This principle is accepted in international law by various instruments.

The rights of suspects must be carefully considered. The right to have a third party informed of a suspect's detention for example, does not include the right of a thief to warn someone to dispose of the stolen property. The right of access to a lawyer does not confer upon defence lawyers the right to obstruct lawful investigations, or to bully, confuse or intimidate police officers with legal pretensions. Neither does the right to independent medical examination confer the right to evade or delay investigation by means of feigned or exaggerated illness or injury. In no case can the police presume to be capable of identifying feigned illness, but the appropriate steps can be taken if this is identified by a doctor. The norm must be that rights will be respected and their effective exercise ensured by the police. Only in exceptional circumstances should that norm be deviated from and when it is, it must be justified and explained and steps taken to restore the individual's rights as soon as possible. For example, if it is necessary to exclude a particular lawyer, because there is real evidence that he or she is attempting to pervert the course of justice, for instance by conveying messages to other criminals, another suitable lawyer should be provided as soon as possible.

Ideally, persons detained or arrested by the police when suspected of crime, should be brought before an officer who is independent and who will have responsibility for their safe custody, for seeing that their rights are immediately explained to them and ensuring that they are fully able to exercise their rights. When considerations such as those in the preceding paragraph apply, there should be a robust system for ensuring that conflicting considerations are properly weighed, that an appropriate person has made the relevant decision and that such decisions are properly and fully recorded. The existence of an independent officer overseeing detainees' custody and rights will provide not only a protection against curtailment of the suspect or detained person's rights, but also a strong safeguard for the investigating officer against allegations of malpractice.

However, such systems do not exist in all countries and no convention or agreement specifically requires them to be put in place. Where the investigator him or herself has responsibility for the conditions of detention and for seeing that the suspects' rights are adhered to, it is essential that the investigator puts him or herself in the strongest possible position to prove that there has been no ill treatment, or breaches of national or international law. The earliest possible involvement of a lawyer representing the detained person is probably the best protection the investigator can have against false allegations, closely followed by full and comprehensive record keeping.

When a suspect has been involved in any violence, whether during an offence or during arrest or detention, full medical examination of both the suspect and everyone else involved is a basic safeguard. It must be accepted that police officers sometimes have to use force to detain people and that the principles of minimum force cannot always exclude real violence, including the use of weapons. When this happens, detailed records of the events must be compiled at the earliest opportunity. Medical examination of all parties must take place, as must any forensic or scientific examination of any scene, clothing, person or weapon. The early involvement of an independent officer charged with establishing the facts and dealing with any complaint from the detained person will allow the investigator to concentrate on the job in hand, which should be to proceed with investigating the allegation or matter in respect of which the person was originally detained. In cases where violence has occurred between a police officer and a suspect, whatever the reason, it will always be best if that officer is not involved in any subsequent interview with the suspect, or in the gathering of any key evidence against him or her.

Arrested and suspected persons, and their lawyers, should always be told sufficient about the offence(s) of which they are suspected and the nature of the evidence providing justification for their arrest, to allow them to defend themselves properly. In some countries there exists a requirement to show or tell a suspect all the evidence against them, but where this is not required it may well be very useful for the police to hold back their knowledge of certain facts or details to assist them in the interview process.

## Police Interviews

Different countries vary widely in their systems of criminal justice, rules of criminal procedure, and systems of trial. The history of how different trial systems have evolved is interesting, but not within the scope of this document. The practical effect is that different legislations have very different systems, laws, and rules concerning the examination of the accounts of evidence provided by persons suspected of crime. In some countries interviews with suspects are conducted only by the police, in some countries only by a legally qualified prosecutor, or an examining magistrate or judge, in some countries by both or either. In different countries what a suspect says, or does not say, about his or her involvement in alleged circumstances, may or may not be admissible as evidence at a subsequent trial, depending upon circumstances.

When a police officer, lawyer or judge has been trained within one particular system, and is used to working within that system, it may be hard to see the advantages of other systems. In any case, individuals must operate within the law of their country as it stands at that time.

This does not however, prejudice the principle that any interview or examination of a suspect should be part of an open-minded search for the truth. Criminal justice systems that depend upon the confession of suspects to crimes will, whatever the intention, always tend to undermine the assumption of innocence enshrined in Article 11 of the Universal Declaration of Human Rights. Further, such systems will always put investigators under a degree of pressure to extract confessions, which will always entail the risk of coercion, ill treatment or even torture. Investigators who work under such legal systems must be constantly aware of those dangers, and guard against them.

It is worthy of mention that the visits of the European Committee for the Prevention of Torture, in the 12th General report referred to above, have found evidence of ill treatment, such as intimidating aspects of the interview setting; such as rooms with black, padded walls and very bright spotlights directed at the suspect's chair; seating the suspect on a low chair with interviewers sitting on a raised dais; blindfolding of suspects; lack of water or food; prolonged questioning late at night; and police officers wearing masks. These are mentioned as specific examples of completely unacceptable practices.

The basic fact that being detained by the police will put some people under stress and pressure is inescapable. Only by taking positive steps to reduce and if possible eliminate that pressure, can the police hope to show that evidence obtained during the interview of a suspect is fair and reliable.

The transition from a confession based system to one in which a suspect's account is accurately recorded and then presented as evidence, including evidence of his or her lies, evasions, or failure to explain or contradict facts, is not an easy one. Such a system is heavily dependent upon the prosecutor being able to prove what was actually said, and that that there was no improper pressure or ill treatment to make the suspect say it. Consideration of what actually happened in the United Kingdom may be instructive and useful to those who want to change an existing system.

In the United Kingdom, police officers used to compile accounts of what had been said during their interviews with suspects after the interview had happened. The usual purpose of the interview was to gain a confession, or at least damaging admissions or comments. Such confessions or admissions were routinely challenged in court, as there was no method of proving whether they were true or not. The best the police could hope to do was to get a suspect not only to confess, but to tell them where they could find some other evidence, such as a weapon or stolen property, which would tend to show that the confession was genuine. Even if the confession was genuine however, it was usually very difficult to prove that it had not been obtained through violence, the threat of violence, or blackmail.

The first change in the United Kingdom, in the mid 1980s, was for the police to make a written record of the questions asked and answers given during interview, during the course of the interview. When defence lawyers were not present during the interview, these were often challenged, and, in some cases, proven to have been falsified.

The next change was for a much stronger requirement for defence lawyers to be present during interview, and then for interviews to be tape recorded, with robust systems for proving the integrity of the tape recordings. What then emerged was that even experienced investigators who were used to the previous system, very often had poor interview skills. They did not work to any system, often still sought confessions and admissions in preference to other forms of evidence, and not infrequently still resorted to oppressive conduct, threats and bullying even when they knew that what they said was being recorded.

Quite naturally and properly, the British courts acted to prevent this, by excluding from trial any evidence which had been obtained through improper interviewing.

The police service responded initially by training officers to interview in such a way as not to infringe the rights of suspects. Much of this training was prepared by and often delivered by, police officers who had read and understood the human rights requirements, but who had no practical experience of investigating crime, especially serious crime committed by intelligent and resourceful criminals. The consequence, naturally, was that police officers conducting interviews became very cautious, failed to gather the evidence they might, failed to ask difficult questions or to pursue them rigorously and were often intimidated, browbeaten or in some cases misled by defence lawyers. This led to a drop in morale, and dissatisfaction with the law.

What has been found is that it is necessary to train police interviewers not only in how to comply with human rights legislation, such as the U.N. Body of Principles, especially Principle 21, but also how to plan and conduct interviews so as to gain the maximum possible evidence and to ensure that as far as possible it will be admitted at court. It is unreasonable to expect that just because a police officer knows the law, is intelligent and hard working, that they will somehow instinctively acquire good interview skills. Indeed, even the most experienced police interviewers admit that their skills improve after training. Further, the British courts now expect police interviewers to have been trained to conduct their interviews according to an approved model.

That model envisages five stages to an interview, beginning with planning and preparation. This is followed by a period of engagement with and explanation to the interview subject, before the interview moves to the process of obtaining the subject's account, his or her answer to specific questions, and response to challenges to his or her version of events. Officers are then trained in how to close the interview at the appropriate stage, and finally how to professionally evaluate it. The training emphasises the primary goals of obtaining information, gathering evidence and seeking the truth.

Not only do operational police officers express a high degree of satisfaction with the training, believing that it offers them much help in their key objective of detecting crime and bringing offenders to justice, but independent academic research also demonstrates its success and supports its further development.

The techniques taught in the training programme are too detailed to be included in this document. Experience has shown that training, without use of interpreters, typically takes one working week, and that attempts to reduce the training period are unlikely to be successful. The United Kingdom National Operational Policing Faculty, Bramshill, Hampshire RG27 0JW, publishes "A Practical Guide to Investigative Interviewing", which supports the training course. Although this guide is written with reference to British laws of evidence and admissibility, it can easily be understood in any country's legal context. It is however strongly recommended that officers be given practical training with exercises supervised by experienced trainers rather than simply given a written guide. Requests for help with training in interview techniques should be addressed through the usual diplomatic channels to either the British Foreign and Commonwealth Office, or, in appropriate circumstances, to the Department for International Development.

The best news in all the above is that proper training, knowledge of human rights law and application of best practice results not in a hindrance to effective policing, but to its very definite enhancement. Insofar as some reduction in the capacity of the police to extract confessions from suspects may force them to search harder for other forms of evidence, including scientific evidence and robust and reliable witness testimony, this is a development to be welcomed by all concerned.

## Surveillance

**Surveillance has always formed an integral part of police work, be it general surveillance of an area, of a crowd or gathering of people, or of particular suspects. All surveillance, whether by patrolling officers who see something suspicious going on and hide out of view, drug squad officers trying to prove who is selling drugs and where, or government security agents checking on the activities of political dissidents, would involve a basic breach of Article 12 of the Universal Declaration of Human Rights, that is the right to privacy, if it were arbitrary, that is, not subject to any rules or restraint. The nature of the rules which would make surveillance not "arbitrary" is not elaborated on in the Declaration, and governments and state agencies have been free to argue that if some form of rules and regulation exist to control and limit the extent of surveillance which is allowed, then the surveillance is not arbitrary and does not breach the Universal Declaration. This situation may still hold in some countries, but change should be anticipated.**

Countries which are signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 8 of which deals with the right to privacy, must meet much stricter criteria before any form of intrusion into privacy is allowed.

One of the underlying principles of the Convention is that a public authority, which most definitely includes any police or other law enforcement agency, can only interfere with certain rights, such as the right to privacy, if there is within their country a domestic legal framework which allows them to do so. For a limitation of the right to privacy to be lawful, it must be allowed by a law which is, like any other law of the country, identified and established, available, in writing, to the whole population, and clearly written enough for its consequences to be foreseeable and understandable.

A set of rules or restrictions, written by government officials or the law enforcement agency themselves, however detailed or reasonable, cannot have, and will not be afforded, the same status as codified laws of the country. Even within Europe there is no single law which details what forms of surveillance the police may or may not undertake, but each country has been obliged to draft its own legislation to allow the different forms of surveillance to take place. There is no absolute standard and one country may forbid intrusion into an individual's privacy in circumstances where another country's laws would allow it. However the European Code of Police Ethics, principle 41, stipulates that the police shall only interfere with an individual's right to privacy when strictly necessary and only to obtain a legitimate objective. The commentary to that principle includes the observation that interference in people's privacy must always be considered an exceptional measure and, even when justified, should involve no more interference than absolutely necessary.

In the United Kingdom, different levels of decision are made by specified higher-ranking police officers, government ministers or specially appointed "Surveillance Commissioners", who also review and oversee the decisions of others to ensure common and proper standards.

Whether each European country's laws are held to be in accordance with the underlying principles of the Convention will only be tested over time by the European Court, on a case-by-case basis.

Countries outside Europe may or may not be signatory to other Conventions which may affect the freedom of the police to conduct surveillance. The general trend of international law, although not certain, makes it more likely than not that the law may change in countries where there is no legal oversight of surveillance. In such countries, the police may well be wise to introduce the type of safeguards and regulations, compatible with human rights concerns, which could be incorporated successfully into any future legislation, rather than having something written purely by lawyers with no practical investigative experience forced upon them.

All international, regional and national human rights legislation, and conventions, recognise and uphold the right of citizens to live free of the depredations of criminals. This is implicit in the right to life, freedom of movement, and right to property. Although not always explicitly stated, such conventions *de facto* put upon governments the duty to establish organisations such as the police to uphold those rights. The police therefore have conflicting responsibilities: they must uphold the right of all citizens to be protected from criminals, but also uphold the rights of people who are suspected of being criminals. In few fields is this dilemma more acute than in the field of surveillance. The way forward is through transparency of decision-making, and balance and proportionality.

This means that it may well be perfectly acceptable for the police to compromise the right to privacy of someone suspected of planning murder, kidnapping or serious organised crime, by listening to his telephone calls, hacking into his computer, or placing listening devices in his home, whereas this could never be justified were he to be suspected of having bought a stolen bicycle. However if someone is suspected of having bought a stolen bicycle, there should be no objection to the police watching his house in the morning to see if he rides to work on it. The extent of the intrusion into privacy will be justified not only by the seriousness of the crime suspected and/or failure to prevent or detect it, but also by the likelihood that the intrusion will produce or reveal relevant evidence. For example, even if someone were suspected of planning a terrorist bomb outrage, the police could only justify watching or listening to what happens in his marital bed if there is good reason to suppose that he is likely to discuss or plan the offence there. A further issue will be the degree of privacy the individual is entitled to expect in a particular place - obviously people will expect more privacy when at home than when talking in a public park, and it may be reasonable to eavesdrop on the conversation in the latter but not the former.

In many countries legislation will have been enacted governing police surveillance. In other countries the police would be well advised to introduce systems which will prove compatible with human rights legislation as and when it is introduced.

In general, what might be called "fishing expeditions" will not be compatible with human rights. This means that just because someone is a criminal, the police should not compromise his right to privacy in the vague hope or expectation that they might come across something incriminating. This is not as limiting as it might appear, it just means that the police should do other things first.

Imagine that a known criminal has just been released from prison, following his sentence for drug dealing and kidnapping related to that offence. There is no evidence that he has returned to crime, but it might be quite reasonable of the police to want to find out if he has. Simple observations at his home would probably be justified to determine his lifestyle and apparent expenditure. Suppose he appears to be living well above any apparent legitimate income. The next stage might be to make enquiries with the telephone company, not to attempt to intercept his telephone calls, but to find out which of his previous criminal associates he is in contact with. If no telephone calls have been made from his home to any of his previous associates, this might mean either that he has severed contact with them, or that he is well aware of police methods and isn't prepared to speak to them over a known telephone line. The investigator might have his or her own suspicions about the explanation, but mere suspicion will not justify further intrusion. More work is needed. More thorough and detailed observations near his home may reveal who is visiting him. If he has many visitors, some of whom are active criminals, and others who are unidentified but use only taxis or hire cars. This heightened suspicion might, if resources allow it, justify occasionally putting him under surveillance in public places, to see where he goes and who he visits. Regular contact with other criminals may justify a financial enquiry.

If he is seen using a mobile phone, but appears to have no regular contract with a telephone company telephone, or if he travels by taxi or hire car whilst leaving his own vehicle at home, a reasonable analysis may well be that he is covering his tracks, and taking deliberate steps to hide his business from the police. However frustrating for the investigator it may be, this alone cannot justify more intrusive methods. In no country is it against the law to hide one's affairs from the police. Has the effort been wasted though?

The answer is "no". Although the police are not entitled to assume that his secrecy has a criminal motive, the information may be considered alongside other information to form a reasonable conclusion which would justify further action. Imagine now that a surveillance team have successfully followed the subject into a restaurant where he meets two other men. The conversation is guarded and only partly overheard, but the team recognise slang words and phrases which they recognise to be connected to the drugs trade. One of the men pays by credit card and enquiries into that reveal that he pays for a meal for two or three people at that restaurant regularly. If the restaurant staff confirm that he usually books a table, there would probably be justification for seeking to anticipate the next meeting, and placing some sort of listening device at the table, where the suspects are not entitled to expect a very high degree of privacy. If at the next meeting one of the men is heard to say that they should not talk there, but only at home, there might well now be some justification for seeking to intrude into the subject's conversations, in his own home. The previous observations should be able to clarify which rooms people meet and talk in. If at that meeting drug dealing is clearly discussed and the subject says that he will telephone a third party, that evidence might then justify seeking to intercept mobile phone calls, provided only the phone he is using can be identified and targeted. If technical reasons mean that there is a real risk of intercepting and listening to other innocent people's phone calls, then the interception might not be justified.

Experienced investigators may point out that few real investigations are actually as straightforward, but the example is used only to illustrate the idea of ascending degrees of intrusion, supported by other forms of investigation. Transparency of decision-making and detailed recording both of decisions and the reasons and justification for them, are the two main keys. Someone else can always say that a judgement was wrong after the event, but if the investigator finds it hard to write down the justifications for a decision, then he or she probably knows it is wrong at the time. The degree of intrusion should always be proportionate, both to the harm to be prevented or good to be done and to the probability of it being successful.

Surveillance, including directed surveillance of an individual, physical or technical intrusion into homes and other private places and the interception of telephone calls and computer traffic, is an extremely effective investigative weapon. It is usually only successful if carried out with a high degree of professional skill, both skill at actually undertaking the surveillance and skill at judging whether it is appropriate to do so. Poor technical skills will lead to an identification of police methods and greater care and counter methods being used by criminals. Poor decision making will lead to cases being challenged in court, probably resulting in court decisions which are unhelpful or restricting to the police in future cases. In countries where no specialised surveillance training takes place, such training should be considered as a priority. Officers who work in places where there are few formal restrictions on what they may or may not do may regard themselves as fortunate at the moment, but should seriously consider whether it would be better for them themselves to become agents of change, by establishing rules and practices based upon firm human rights principles, or whether to simply wait for change to be forced upon them.



## Intelligence

**When British police officers talk about "information" and "intelligence", they mean two different things. "Information" refers to raw data which may or may not be significant. "Intelligence" means information which has been evaluated, collated and considered alongside other information, and then analysed to see what it means.**

Consider the three following pieces of information: -

1. An employee of a financial institution such as a bank, reports that a man, a local butcher, has for the past few months been making very large cash deposits into his account, far more than his business would appear to justify.

2. A uniformed beat patrol officer has noticed that several times a day several different men visit the butcher's shop. Two men go in together and she has seen them go into the rear of the shop, ignoring other customers. When they come out they always put bags they are carrying into the boot of a Ford car, and she has recorded the registration number as ABC 1234. The licensing authorities do not know who currently owns that vehicle.

3. A resident of the same town has complained to the police about youths congregating around a public telephone near her home. She has noticed that they use the telephone and soon afterwards a Ford car registration number ABC 1234 stops nearby and the youths go to talk to a man in the passenger seat and sometimes sit in the back of the vehicle.

Each of these three pieces of information, considered alone, might give rise to suspicion. Considered together, they are clearly worthy of action and experienced investigators will immediately think of a number of things which could usefully be done to discover the truth. However, these three very different types of information will not come together automatically. Systems for gathering and retaining information are fairly easy to set up and have long existed in nearly all police forces. Systems for analysing that information and turning it into intelligence which can be acted on are harder to design and implement.

Different law enforcement agencies around the world have designed different models, some dependent upon very sophisticated computer technology, with different degrees of success. There are a number of training packages available in how to evaluate and analyse information, one of the best known and most successful being an American system, first developed commercially, known as 'Anacapa', which can be used both manually or with computerisation.

Traditionally, most police forces have put far more effort and resources into gathering information and filing it away than they have into analysing it. Some people have a garage or workshop where they like to mend things and many of them never throw anything away. They have shelves, boxes and drawers full of bits of old electrical switches, wire, used screws, nuts and bolts, plumbing fittings, broken tools, dried up paint and glues, bits of wood and metal with holes drilled in them or pieces cut out and perhaps parts for a model of car they will never own again. The clutter just grows and grows, the owner does not know what or where half of it is, and the valuable stuff gets mixed up with the junk. Whilst it is true that occasionally the screw connector for a broken television aerial might just be used to mend a faulty washing machine, the whole system is very inefficient and it is usually impossible to find the thing that you want. A system where the owner only keeps what he is likely to use, throws away out of date stuff, labels things so that they can be recognised, and stores things logically so that they can be found, is much more likely to be successful.

Everyone values the old fashioned store, or garage workshop, where you might just be able to get hold of some out of date part, but it is the modern, organised, computerised businesses that are making the profits.

There is a clear analogy with police information. The fact that a piece of information just might be useful one day does not justify keeping thousands of pieces of such information indefinitely and thereby creating an unusable system. There are models that can be taught, for systematically and logically assessing the potential value of information, the credibility of its primary or secondary source and for analysing what it might mean.

Most modern systems work on the principle of keeping less intelligence, actively seeking out useful intelligence rather than waiting for it to come along by chance and then putting it together into useful packages which operational investigators can use to make arrests and disrupt criminal activity. Some police forces have spent large amounts of money in establishing computerised systems, encouraging the submission of information from both the public and police officers and giving intelligence back to operational officers in a useful format.

In many developed countries with adequate budgets, this has been coupled with much more sophisticated analysis of crime patterns. Instead of just producing statistics about how many crimes are being committed in a police area and how many of them are solved by the police, up to date weekly or even daily graphs and charts can be produced to show exactly when and where they are being committed, so that the police can respond effectively, particularly when this information is combined with intelligence about particular known and active criminals.

Some of these systems have proved very effective, but it would be wrong to pretend that success has been universal. An expensive system can only be justified if it tells the police things that they can actually act upon, that they did not know already, or could not have discovered less expensively, and if there are management systems in place to ensure that the intelligence is actually taken into account on a daily basis and policing adapted to put it to use. There is no point in having large teams of experienced investigators gathering and analysing intelligence if there are insufficient investigators left to put it to use. A certain proportion of police time will always have to be spent reacting to crime as it occurs. There are many good arguments for moving towards a more proactive system, and using intelligence to investigate criminals rather than crimes, but if the police fail to reach a certain standard in responding to reported crimes public confidence will be eroded. This in itself can lead to a reduction in useful information coming from the public. The police too, may fail to gather useful information which could have been gained by even basic investigation of the offence.

Many good proactive policing models have been developed, some by academic researchers working alone or alongside police officers. These have variously been labelled for example, as "problem orientated policing", "unit beat management", "hot spot identification", "active criminal targeting" and "intelligence led policing". All have had some degree of success but in some cases this may have been due in some degree to the enthusiasm and commitment of the officers who have implemented them, rather than entirely to any special merit in the models themselves. Senior officers who are considering adopting such policing models would be wise not just to accept the theoretical description of the models but to study places where they have been adopted, examine exactly what happened on the ground, what resources were needed to make them successful if they were, and what problems were encountered. Advice should be sought not just from those who have been associated with introducing the schemes, but also from a wider range of people affected by them. What has proved successful in one environment or culture may not necessarily work in another.

Computerised systems need to be designed with operational policing in mind at every stage of development. If the planning is left to computer experts who make guesses as to what operational officers actually want or need, the result is likely to be unsatisfactory. It is a common mistake to use computers to produce charts showing what everybody knows anyway, such as that cars get broken into on car parks, or that houses get broken into while people are out at work. It is also easy to make management errors, such as deciding that it is more important to have sufficient officers on duty at the times when crimes are being reported and thereby creating an apparent workload, than it is to have officers on duty when they are actually being committed, thereby preventing or solving them. It has also not been unknown for senior police managers to use the systems to surround themselves with masses of management information, figures, charts, graphs and analyses, thereby creating an impression of knowledge and involvement, rather than ensuring that the intelligence is put to practical use.

Good intelligence systems, particularly when they combine the targeting of active criminals with an up to date understanding of when and where different types of crimes are being committed, can dramatically improve the performance of any police force. Such systems can be very expensive however, both in terms of cash investment and human resources. If not carefully designed to address the local needs, resources and abilities of a particular police force or department they can easily disappoint and it is easy for even a well-designed system to be misused or incompletely exploited. Any police force would be well advised to invest in research, training and detailed planning before seeking to implement any radical new system. To rely upon one source of advice may prove costly. When a very high technology system is demonstrated or recommended it may often be wise to consider whether the same results might be achieved less expensively, or by a system less dependent upon expensive technical support.

For instance, computer generated coloured charts showing where different categories of crime have been committed on a daily, weekly, or monthly basis can be very impressive but the inputting of the information might take as long as it would have done to mark pre-prepared maps with coloured pens. The real strength of most computerised systems is to store large amounts of information and find exactly the piece you want when you want it and fancy graphics and charting capacities should be seen as an enhancement of this ability, rather than a substitute for it.

It is vital that all intelligence, or data stored about an individual, can be justified with regard to the fundamental right to privacy. In every case there should be an identifiable individual official who can justify the keeping of specific items of intelligence, by explaining or demonstrating its potential to assist with the prevention or detection of crime or disorder. The keeping of information about an individual's private life, non criminal contacts, family, political views and so on can sometimes be justified, but such details should never be kept unless the justification is clear.

## Informants

Police informants can supply the lifeblood to keep any intelligence system alive. Their successful use has been documented over many centuries in all cultures, having their roots in military and political espionage. Many spectacular policing successes have been due to the clever use of informants and they have been instrumental in curbing terrorism and organised crime around the world. They are perhaps the most useful tool a criminal investigator can have, and perhaps also the most dangerous.

The history of police involvement with informants is riddled with corruption, double-dealing, perversion of the course of justice and public relations disasters. In some countries the career paths of criminal investigators have been fiercely competitive and informants have been seen as a personal resource. In others, the use of "agents provocateurs" to instigate crimes has led to fear and distrust of the police. The mistakes of the past are often repeated, even if in new guises. A system of "intelligence lead policing", if not carefully managed, may lead to a situation where informants, themselves criminals, may play a major role in determining police priorities and strategy.

The value of informants is as variable as their motivation, and they can be recruited in many ways. Around the world, police training typically places little emphasis on how to recruit informants and knowledge of how to do so successfully may rest with a few talented individuals. Probably the most successful potential informants are to be found amongst the ranks of those arrested for crime, with a good relationship established between the arresting or interviewing officer and the suspect. Most experienced investigators will admit that they have allowed good potential informants to slip through their fingers, through not having had the experience, the training, or the time to exploit them properly as a resource. Very often, there has been no adequate system for rewarding informants, leading to them being underpaid and thereby discouraged; indeed it is not rare for police officers to have had to pay informants out of their own pockets. This has naturally encouraged officers to regard informants as their own property, rather than belonging to their organisation, and information which the officer has been unable to use personally has been wasted.

Where police officers are unable to reward informants properly financially, the other great reward open to them is to turn a blind eye to the informant's own crimes, and this has often been a major source of corruption.

When an informant is giving useful information to the police, or is promising to do so in the near future, it can be very tempting to allow him to carry on with his own criminality, on the basis of a hope that this may help him to discover information. People who have been arrested for crimes often think of information that they may be able to offer to the police, often in return for their immediate freedom. More often than not, the informant will only be able to access the information which will help the police to solve another important crime if he is able to gain his liberty and meet the people he intends to inform on. Looked at dispassionately this trick is very obvious, but many criminals are persuasive people and it can be very easy for an inexperienced officer to fall for it, sometimes with embarrassing or even dangerous consequences.

To allow criminals to take part in the planning of a crime in order to give the police information about it is particularly dangerous. In the United Kingdom there are very strict rules about when this can happen, primarily designed to protect the police from allegations that they have used someone as an "agent provocateur".

In many ways, the recruitment and use of informants only makes sense in the context of the overall intelligence capacity of a police force. Each informant poses particular dangers for the police and whether their use can be justified can only be judged in the light of what else is known, what information is needed, and what practical use the informant's information can be put to. There should be no place for an individual officer keeping his or her own informants secret and keeping information supplied to him or herself. The danger of an informant manipulating the police for their own ends is always present and the danger is multiplied manifold when the informant is dealing with a lone unsupervised officer.

It is easy to overlook the fact that informants are part of the criminal underworld and that anything they can learn from the police may be as useful to them in that environment, as their criminal information may be when dealing with the police. It is almost impossible to avoid giving information to an informant, even if that is limited to letting him know what individuals, or what areas of crime the police are currently interested in and what information they are prepared to pay for. Every question reveals what the officer is interested in. It is also very easy to let slip what the police already know, which may help one informant to identify others.

The dangers of informants becoming aware of police plans are constant and very real. This is particularly true in respect of ongoing crimes, such as kidnapping and extortion, and in these cases the questioning of informants should be carefully planned in advance, if allowed at all, to make sure that nothing of police plans, subjects or places of interest, or existing knowledge is given away. No informant should ever be trusted: it should be obvious that an individual who will betray his supposed friends and associates to the police, will not hesitate to betray the police to them if he thinks it advantageous to do so.

In some countries there have been moves to limit the numbers of active informants and to supervise their use more closely to make sure that their information is put to proper use. Many experienced investigators who have had in the past large numbers of informants have tried to resist those changes, using the obvious arguments in favour of having as many informants as possible. However, analysis of results does show that having a smaller number of active informants, supervising their use carefully, and tasking them to gather specific information, is at least as effective, more efficient, and much safer.

The history of the use of informants is so different in various countries that the best practice of one country will not necessarily transfer meaningfully to another. In most countries there are systems of rules governing the use of informants, usually designed to complement the country's criminal laws and legal practices. However the following general points of good practice should be considered. Where there is a very clear difference between these recommendations and existing practice, it might be wise to consider some sort of review, and to at least consider advice from elsewhere.

1. Informants should be used in the context of a structured plan of intelligence gathering.
2. When informants unexpectedly give information about a forthcoming crime which has to be responded to, the possibility of the police working to the informant's own agenda should be considered.
3. Informants should be seen as, and used as, an intelligence resource belonging to the whole police force, and never to an individual.
4. When informants are allowed some minor involvement in serious crime in order to prevent or detect it, all decisions should be recorded in writing, made by someone with sufficient rank and authority to justify them, and the facts should be revealed in any court case to someone of sufficient authority and discretion in the prosecutor's department.
5. A system should be in place to protect the identity and security of all informants. The identity of an informant should be known only to those who need that information to do their job properly, and people with access to informants' identities should be carefully chosen and vetted for the position. Sometimes information passed to operational officers may have to be edited and presented in such a way as to protect an informant's identity.

6. The police officer who actually deals with the informant should be supervised in all aspects of his or her dealing by another officer, who must agree all meetings and agreements with, and payments and promises to, informants. Any form of social contact must be subject to exactly the same rules.

7. If informants are sometimes rewarded by not being prosecuted for minor offences, the process for arranging this should be transparent, recorded, and accountable.

8. The money for paying informants should be properly budgeted for and controlled by someone who can account for how much a specific item of information has cost, and of what value to the police it has been.

9. If the police encourage informants to associate with dangerous people, the risk to their safety must be evaluated. It must be recognised that putting an individual at risk, or encouraging them to put themselves at risk, may involve an infringement of human rights.

10. Payments to informants should be designed to protect police officers from allegations that they have stolen or retained part of the reward. In some countries payments direct to bank accounts may be practical and effective.

11. If an informant is in a position to provide current and useful information, there is a duty to exploit that capacity as fully as possible.

12. Officers should be properly trained in how to recruit and manage informants. Even experienced officers should be positively and actively supervised. It must be recognised that officers can begin to identify with the interests of a trusted or useful informant, and this must be watched for and advised against. The possibility of informants attempting to corrupt, compromise or blackmail officers must be treated as a real danger in every case. Officers may begin to behave improperly to protect their informants, without ever having made a conscious decision to do so.

13. The system should be designed to guard against the same informant dealing with two or more officers at the same time. The possibility of informants using different identities with different officers, or even with different law enforcement agencies, is real and dangerous. Informants who resist revealing their true identities may have legitimate motives, but may also be particularly dangerous.

14. When an informant has been shown to be, or is suspected of, manipulating the police, being unreliable or untrustworthy, or otherwise dangerous, that information must be recorded and made available to any officer having contact with him.

15. In some countries informants are used only to assist with specific crimes. In other countries the police, or other law enforcement agencies, use long-term agents who operate undercover over a long period of time, infiltrating, for instance, terrorist groups, or a geographical area where the police find it difficult to operate. The handling of such agents presents particular and very acute problems and should not be undertaken without advice from experienced specialist sources, specific training and planning, and long-term commitment to adequate resourcing.

It is probably not realistic that all senior officers who have responsibility for supervising in general terms those who handle informants should have personal experience of doing so. Officers who find themselves in that position should be aware that handling a successful informant to catch dangerous and resourceful criminals can be one of the most exciting and rewarding aspects of police work. Because of that, great enthusiasm and commitment may be generated and this enthusiasm can, sadly, be the source of errors of judgment. Supervisors should never shrink from asking relevant questions.





## Corruption

**It is almost certainly true that corruption has existed in all police departments in all countries since they were first formed. It is not the purpose of this chapter to examine the history of police corruption, nor the various management strategies which may be attempted in order to control and limit it. However, while corruption is probably universal in policing, it may be hard for officers who serve in countries where corruption is widespread, condoned and institutionalised, to understand or to believe that there are places where the majority of police officers are honest, have never taken a bribe, have never agreed to an improper intervention by a politician, and would not hesitate to report wrongdoing by a colleague.**

Officers who work, or have worked, in places where honesty and integrity are the norm, need to remember their good fortune, and beware of preaching virtuously to those who work in very different environments. That good fortune is often coupled with the fact that they are sufficiently well paid to adequately feed, house, and clothe themselves and their children, which is not the case for police officers everywhere. There is no excuse though, for regarding some countries, or police forces, as irredeemably corrupt and therefore undeserving of help or advice. Even in places where corrupt practices are the norm, there are undoubtedly honest officers who accept a lower standard of living for themselves and their families than their colleagues who take bribes, who have consistently refused to comply with improper pressures, accepting that their careers and personal advancement may have suffered, and will continue to suffer, as a result. They have failed to accept the false arguments that, sadly, are so often used to explain and excuse corruption. The main false argument, in itself dishonest and corrupting, comes in two stages. The first is that police officers are so poorly paid that they have to resort to extorting bribes in order to make a living. The second is that the public from whom the bribes are extorted understand that fact and therefore do not really resent having to pay them.

The first part of the argument is as transparently false as saying that all poor members of the community have to commit crime in order to survive - which if accepted would destroy the justification for having any laws against dishonesty at all, or for having a police force to enforce them. The second part of the argument is simply untrue, for whilst the public may have sympathy for poorly paid police officers, if they wanted to hand over money voluntarily to them they would do so and not wait until apprehended for some trivial or invented traffic or other legal violation.

Another important consideration is the fear that an individual who speaks out against, or refuses to take part in, corruption may him or herself be victimised. This may of course be true. An individual who has taken an oath of service to a police force and is prepared to take the personal physical risks and face the dangers associated with upholding the law, must find the courage to make this stand. He or she may find that the reality is not as serious as the threat. The corrupt officers who are exerting the pressure are, however powerful their positions, criminals who are liable to be punished for their corrupt crimes and their fear of exposure must be at least as great as the fears of those they bully.

There are long and complex arguments as to what should, and should not, be regarded as police corruption. Some people only regard acts of dishonesty, which abuse an officer's position for gain as corrupt, whereas others would include all forms of misconduct and malpractice. Some police officers would do everything in their power to catch and arrest a colleague who stole money from a member of the public, but would lie to protect another colleague who had used excessive force against a suspect. Many police officers believe that it is impossible for someone who has not done their job to understand the world of violence, dishonesty, meanness, selfishness and cruelty which is their daily workplace. They believe that they too, are the only people who have to face such conflicting pressures, such as using only the law to try and protect the public from criminals and having to obey laws which sometimes protect those criminals and help them escape justice. They may come to believe that their unique position gives them unique rights, including the right to decide what is right and what is wrong. This can never be justified. Officers who enter the service with high ideals may become so disillusioned with what they discover to be the realities of life, that they begin to believe that high ideals are only for the naïve or ill informed, and that this justifies behaving no better than the people they are paid to protect the public from. Supervisors need to recognise this danger to the individual and offer clear moral guidance and leadership in a range of things.

Laws generally in free and democratic countries should represent the wishes of the majority as to how people should behave. All criminal codes, whether based on ancient practice, religion or process of open government, condemn dishonesty. Dishonesty by police officers cannot be seen as more excusable than dishonesty by others, in fact it must always be much worse, harming not only the individual victim but the whole concept of legitimate law enforcement. A member of the public who suffers from an act of dishonesty by a police officer will almost certainly base his or her whole opinion of the state of rule of law in the country on that experience. Telling lies, even if to protect colleagues for whom the officer feels sympathy or loyalty, will be regarded by the majority as being as dishonest as theft.

In the early 1970s, the Knapp Commission enquired into corruption in the New York Police Department in the United States. They categorised corrupt officers into two types, which they labelled as "grass eaters" and "meat eaters". The "meat eaters" are those officers who come to work with the aim of behaving corruptly for gain and who seek out victims and opportunities actively. They are the officers who become involved in organised extortion, protection rackets, and systematic kickbacks, and are usually the targets of public criticism, and campaigns to "clear up" a police force. The "grass eaters" are those officers who simply accept whatever perks, including bribes, free services and favours, as happen to come their way during their tour of duty and are far less often the subject of complaint or investigation. The Knapp Commission argued that the "grass eaters" are just as big a problem as the "meat eaters", in that they help to create an environment in which wrongdoing is condoned and in which the majority of officers are so compromised either by their own "grass eating", or acceptance of that of their colleagues, that it is difficult or impossible for them to speak out against their more aggressively corrupt fellows. It follows from this that no officer who commits any corrupt act can regard him or herself as somehow not being seriously corrupt, or as not being a problem because they only do those corrupt things which are generally accepted as the norm. It is not just a matter of different individuals being more or less corrupt - every corrupt act, however small, corrupts and damages the integrity of the police service.

A summary of the findings of the Knapp Commission, and several other enquiries into police corruption in the United States, the United Kingdom and Australia, along with the findings of academic and professional studies of the causes of, and effective measures against corruption, can be found in a publication entitled "Understanding and Preventing Police Corruption: Lessons from the Literature", published by the British Home Office Policing and Reducing Crime Unit. Whilst the studies are mainly of large city forces in developed "Western" countries, some of the lessons may be universal and will be of interest to police managers concerned with attempting to control corrupt practices.

One key point is that corruption becomes more likely and more deeply ingrained when it is a hidden topic. The issue of corruption is rarely or incompletely dealt with in police training and many police managers have a vested interest in not uncovering corruption within their districts or departments and rely on the defence of there being only a few corrupt individuals when corruption is discovered. There is some debate about whether pride in officers' integrity and adherence to a code of ethics follows a reduction in corruption brought about by other means, or whether such pride is in fact a basic tool for controlling corruption. Pride in integrity is certainly something which can be assisted by good management and supervision, but it also rests in the hands of individuals.

It would appear to be essential that there be some department or body in which both the public and serving police officers have faith, to which matters of corruption can be reported. Corruption will naturally tend to arise in policing, particularly in areas of so called "victimless crimes", that is, typically, crimes committed in the furtherance of supplying what a lot of people want, such as drugs, alcohol, pornography, gambling and prostitution. Police managers should assume that corruption will occur and take measures to prevent it, rather than waiting to react if it comes to light. They must however, avoid the mistake, commonly made, of assuming that officers who work or have worked in those fields are necessarily or naturally prone to be more corrupt than any others: it is the nature of the work and poor supervision, guidance, support and control which creates the corruption. Simply blaming any corruption which comes to light on "bad" individuals actually avoids the real problems. Individuals who behave corruptly deserve to be punished, but should not be used as scapegoats for a failure of the organisation.

There is no doubt that a robust code of ethics is necessary for any police force and the European Code of Police Ethics, which addresses the issue of corruption, is just one good example. Such a code of ethics may help to instil pride in individuals in an ethical approach to their work, but it would be naïve to the point of irresponsibility to assume that this alone can bring about an end to, or satisfactory control of, corruption. Effective systems need to be put in place to make it likely that all corrupt practices carry a high risk of detection, prosecution and punishment.

Officers who work in places where corruption is the norm may face stark and difficult choices. Such choices may be straightforward, such as refusing to participate in systematic bribery or to take a share of the proceeds, or much more difficult, such as estimating whether a proper investigation would follow the reporting of such wrongdoing. To resist improper influence from a local politician may just take resolve and strength of character, but to resist orders from superior officers based on such improper influence may involve real risk and take courage. It would be wrong to pretend that standing up against corruption is always easy, but a decision not to may mean that the individual, whilst wearing the uniform and accepting the pay of a police officer, is really just a criminal in disguise. Turning a blind eye to corruption may seem morally more acceptable than doing something corrupt oneself, but may in the end be just as damaging both to the individual and to the police service.



## Case Preparation

**When the police investigate a reported crime, whether under the guidance or not of an investigating or prosecuting lawyer or judge, they will form a view as to what actually happened, when and where, who was involved, what the motive for the offence was, how it was planned, what the offender did afterwards and so on. This view, which can be recounted as a story, is founded on proven facts, forensic evidence, witness accounts, information from informants, and common sense deductions. The initial view of the case will develop and change as new facts and new evidence come to light.**

It is a common experience for all officers to find out that what they initially guessed had happened, proves to be slightly different when all the facts are known.

When the case eventually comes to trial, the prosecutor does not throw all the evidence before the court and ask it to decide what happened and what offences have been committed. He or she must decide what criminal charges are appropriate given the facts that can be proven. Then the court has to be told a story about what happened, and all the elements of that story have to be proven by legally admissible evidence. The prosecutor sometimes has to admit that the whole story is not known, or cannot be proved, and the court may be invited to find that the criminal offences have been proven despite this.

Police officers are often frustrated when not everything which they believe to be the truth, is brought out before the court, and they may mistakenly imagine this being due to the prosecutor "going easy" on the defendant, or failing to have understood the case. This is totally misguided however, as the prosecutor can only allege those things which can during the trial be substantiated by evidence. Different trial systems have rather different ends in view - those based upon Anglo-Saxon Law depend entirely upon the prosecution proving their case, whereas those based upon European or other systems may be more oriented to the trial court enquiring into the truth of the matter, but under each system the police and the prosecutor will be working to slightly different agendas.

Under all systems the primary responsibility of the police is to try and discover the truth, and then to gather the evidence to prove it. The job of the prosecutor is to try and ensure that people guilty of crimes are convicted by the courts. Whilst it is vital to the interests of justice that these two responsibilities are kept distinct and separate, they are nevertheless closely related and it is highly artificial to pretend that police officers who may have worked hard for weeks, months or years on the preparation of a case, have no interest in the final outcome at court, or that prosecutors have no interest in the quality of the evidence which they are given to work with. However, things may go wrong if the police try to usurp the prosecutor's role, or to go beyond the exercising of their own responsibilities in trying to bring about what they consider would be the correct verdict. To hide relevant evidence from the prosecutor, whatever the reason, is completely unacceptable. If there are legitimate reasons for keeping certain facts out of open court, for instance to protect informants or secret police tactics or intelligence, there must be robust and transparent systems for seeing that this is done in compliance with the law, and in such a way that a defendant cannot claim infringement of his right to a fair trial.

In some countries and cities the police work very closely with prosecutors in the preparation of cases, particularly difficult or complex criminal matters. In others, the prosecutor simply receives a bundle of statements or testimony, along with references to other pieces of evidence, and is expected to make sense of it all and construct a story which can convincingly be put before the court. This absolute separation of functions may not only ensure independence of the prosecutor's function, but it can also easily create misunderstanding, frustration, friction and disrespect between the police and prosecutors. Under such systems prosecutors will consistently complain about the lack of legal understanding of the police, particularly their lack of understanding of the laws governing admissibility of evidence, and the police complain about the lack of purpose and commitment of the prosecutors.

There is a better way to work. All professional police investigators and prosecutors who are used to working together and co-operating in gathering and presenting evidence agree that this is how things should be done. The true independence of the prosecutor depends upon his or her adherence to professional ethics, to adherence to the law and recognition of his or her true responsibilities to the courts and the legal system, and not upon artificial distance from the police or lack of communication with them.

In some countries the prosecutor will play some role in guiding or even directing the investigation. In others they may have no formal role in the investigation, but it will always be wise for the police to seek the advice of the prosecutor at an early stage in difficult or complex cases. That advice may be on how the police can be sure of not breaching the law themselves, on how to be sure of complying with evidential requirements and on what type of evidence might be needed to support particular allegations. Even when advice from a prosecutor is not available the investigator of any offence, complex or simple, must keep one eye on the fact that every decision taken may be eventually examined by a court of law.

Obviously, the necessary co-operation between police and prosecutors cannot take place unless the prosecutor can be certain that the police have done, and will do, everything within the law. A prosecutor, or for that matter a judge, who knowingly turns a blind eye to police malpractice, particularly the abuse of the rights of suspects or witnesses, becomes part of a criminal conspiracy which in itself, could be separately investigated and prosecuted.

There will come a stage in any investigation when the police officer in charge will feel that he or she has gathered all the available evidence, in the form of statements or testimony, the interviews of suspects and records of what they have said, scientific examination and physical evidence such as weapons or documents. The officer should then decide what story that evidence supports and break that story down into manageable sections, for instance any background to prove a motive, preparatory acts by a suspect, witness accounts of what actually happened, scientific evidence to support those accounts or prove the presence of particular people at particular places, significant behaviour by the suspect after the crime, the disposal of evidence, hiding of the proceeds and so on. He or she should then go through all the different pieces of evidence and decide exactly what parts of the story each individual part of the evidence goes to prove. It may then be helpful to create a pile or bundle of evidence which goes to support each part of the story, if necessary copying the evidence which goes to support more than one part of the story. It is at this stage of going carefully through each piece of evidence that the officer may realise that his understanding of what happened may be less than perfect, or that what he or she thought might be readily proved cannot be! All the physical and documentary evidence should be accounted for, with detailed records of which witnesses refer to it, and how its continuity and integrity can be proved.

This is the point following which consultation with the prosecutor may be most useful. He or she can then decide what parts of the case can be properly brought before the court, which parts of the case are sufficiently strong and which parts may need further investigation and evidence gathering by the police. He or she may also see ways in which prosecution evidence might be explained by the defence, giving the investigator the opportunity, not to prevent the defendant from having a proper defence, but to make further enquiries to ensure that the truth is established as closely as possible. The police must be completely frank about any reservations they may themselves have about any aspects of the evidence, and in particular must give an honest assessment of all the witnesses, not just their honesty and reliability but also any motives to lie, or hide aspects of the truth which enquiries have revealed, their strength of character, and, frankly, how they are likely to conduct themselves in court.

When a case is prepared in this way, both police and prosecutor are aware of its strengths and weaknesses. It may be possible to identify which aspects of the case the accused, if a resourceful criminal, may attempt to subvert before trial, for instance by threatening, blackmailing or harming key witnesses, or gaining access to physical evidence, and to take steps to try and prevent this. It also allows the prosecution to predict in advance what effect the withdrawal of a witness, for instance, may have upon a case and allow for plans to introduce alternative evidence to prove the same point.

In many countries no such professional consultation between police and prosecutors takes place and the reason given is often that there is no national legislation requiring it. All that may be required to rectify this situation is a change of practice and the benefits should become immediately obvious.

## Financial Accountability

In most countries the total budget available for running the police force is decided by central government. The amount of money available from year to year will be broadly constant, primarily determined by the number of police officers and their current rates of pay. Central government also usually determines that rate of pay and the number of officers.

Local police commanders therefore, have little control over the number of officers they have available and little accountability for what it costs to train, equip, and pay them. There may therefore be little incentive to ensure that they are deployed in the most efficient way, or to tackle the most pressing problems. Practices of the past become deeply ingrained and it may not occur to people that things can be changed or resources used differently.

In many countries police commanders complain that they do not have sufficient personnel to investigate serious crime properly, to investigate some types of crime at all, or to spare individuals for specialist training. In some of the same countries police officers may be seen patrolling without any particular direction or control, watching traffic go past, manning checkpoints for no clearly defined purpose, going about their social life on duty, visiting cafes and restaurants and chatting and smoking in groups. In the same place other officers may be grossly overworked with no avenues for requesting extra help or resources. This is often because areas of responsibility have historically been divided between different commands, with the level of resources for each decided long ago, when needs were different, with no mechanism for changing things.

Policing is not, of course, a business, and cannot be run like a business. However, some of the lessons of how to run a successful business are directly applicable to controlling and accounting for the use of police resources.

At the highest levels police commanders should know exactly what resources they have in terms of personnel, including their training and expertise and experience, equipment such as weapons, vehicles, uniforms and access to technology and communications. They should know what each of these things costs from year to year and be able to decide, even within a fixed budget, how money should be spent and to what purpose. Local commanders too, should know what resources they actually have and should have daily control over how those resources are directed, ensuring that as far as possible resources are matched directly to local policing priorities. The process of deciding what priorities are and how to use different resources for different ends, should be logical and will be dependent upon accurate information. So much is obvious.

For some people however, the notion of accounting in financial terms for what has been spent and what has been achieved as a result may seem new and even threatening. For the investigator in charge of serious criminal cases, the idea of having to keep accurate records of the deployment of resources may seem alien and an unnecessary administrative burden. Nothing could be further from the truth.

Transparency of decision-making underpins both an ethical approach to investigation and a logical and professional one. Only by keeping records of what different lines of enquiry, different investigative techniques and the use of different types of resources cost and which ones produce results, can the investigator learn what is effective and what is efficient.

Earlier chapters described how an enquiry should be broken down into individual tasks. With experience it should be possible to reasonably accurately predict approximately how much each type of task or enquiry will cost in terms of time and other expenditure, and for this knowledge to support wise choices as to what should be done, and what kept in reserve. If the investigator develops the habit of doing this it will then become easier to predict in advance what a particular enquiry may cost in advance and then to make sure that appropriate resources are made available or asked for. The process of keeping financial records actually encourages the officer in charge of the enquiry to maintain a constant overview of what has been done at any particular time, how much it cost to discover what has been learnt, what is being done and how much it is costing to be done, what remains to be done and how much that might cost.

What follows from this, is the ability of someone in charge of an overworked or under-resourced department, not just to politely ask for more resources year to year, but to put forward a logical business case to show what opportunities have been missed because of inadequate resources and what more could be achieved if resources were increased. The argument is immeasurably strengthened if evidence can be produced to show that the given resources were all spent well. If the person with authority to allocate resources demands such accountability from all local commanders and departments, it becomes possible to see the justification for moving resources from one function to another, not just in terms of where the resources will be needed, but where they will be used efficiently.

Provided everyone involved keeps the overall objectives and priorities of the police service in view, supporting each other rather than squabbling over resources, and provided sensible decisions are made as to the level at which detailed record keeping begins to cost more than it can save, the service should become more efficient, and effective, even without an increase in overall resources.

The police service and every individual within it should be accountable for what they do, why they do it, and what effect their actions have upon the community they serve. Being accountable for what all of it costs is simply part of that process.



## Leadership

Many books have been written about leadership, discussing what it actually means, whether or not it is a set of learned skills, and whether or not certain individuals find it easier than others to become good leaders. To review those arguments is not the purpose of this document. What concerns us is ethical leadership - how individuals can affect the ethical practices of the service, and how the police service itself can show leadership in society, effecting change rather than simply just reacting to circumstances all the time.

One of the key purposes of good leadership is to create a working environment where individuals are able to give of their best and want to give of their best. A good leader will not complain about the quality of the individuals he or she has been given to work with, but will try and forge them into an effective team, getting the best from each that he or she is able to give, teaching them and encouraging them to work together in support of each other, recognising their own and each other's strengths and weaknesses.

This will best be achieved if the team has a clear purpose and a clear intention, not only of the end to be achieved but also of the methods and tactics to be used to achieve it. For the person in charge of the team to say "Bring me a result, but don't bother me with the detail of how you achieved it", shows not just lack of leadership, but a total abdication of responsibility. That purpose and the direction in which the team goes from day to day may well be the subject of discussion and consultation, but the final decision must always rest with someone who is prepared to give firm leadership. The United Nations Body of Principles Concerning Persons Under Arrest or Detention requires the proper recording of the circumstances of interview of suspects and others, and that Body of Principles and other instruments place responsibility on police leaders not only to institute systems for such proper recording, but also to supervise the conduct of subordinates on a day to day basis to prevent abuse of power and abuse of human rights.

Police commanders also have an obligation to directly oversee and take responsibility for the details of planned operations and when they fail to do so their country may be answerable to any court of human rights for any breach of the United Nations Principles.

In the early 1990s the British authorities became aware of a terrorist plot to detonate an explosion during a military ceremony in Gibraltar and planned an exercise to prevent them. During that operation three of the terrorists were shot and killed by soldiers during the arrest operation. A case alleging violation of the Right to Life was brought against the British Government and the soldiers, before the European Court of Human Rights (*McCann and Others -v- United Kingdom*, 1996). The court held that the soldiers themselves had acted reasonably in the light of the information which had been given to them and were guilty of no wrongdoing, but that at the planning stage of the operation the evaluation of the information, the degree to which the soldiers were briefed as to the available intelligence and the planning operation itself were inadequate and the British Government was liable for a violation of the Right to Life.

Any human rights court in the world could follow the same reasoning and it is clear that when things go wrong blame cannot be left to the individuals who actually conduct any operation. There is a clear duty on leaders to exercise leadership and control at all times and to take responsibility for proper planning and support. This will apply not only to high profile terrorist operations but also to all pre-planned operations where there is a recognisable risk to life. There is no requirement that nothing should ever go wrong, or that unforeseen events should not happen, or errors of judgement never occur, but police supervisors must be able to demonstrate proper care and evaluation and proper control in circumstances where they are able to enforce it.

A leader can achieve much by example and a determination by an individual to show and prove that an enquiry conducted ethically, in accordance with the law, and with all decisions transparent and properly recorded, with no tolerance of wrongdoing, can be more effective than one which depends upon illegal or unethical conduct, may do much towards changing an organisation.

A leader is someone who brings about results and change. Not only the person in charge may be a leader, any individual who refuses to become involved in corruption, who refuses to ill treat a suspect, or to seek to interfere with evidence, may influence others to change and become a leader in his or her own right.

The manager or senior officer, who recognises that change is coming, but who does not himself wish to change, and merely distances him or herself from wrongdoing, whether it be the torture of suspects, bribery or the abuse of authority, is not a leader but a burden upon the police service. Similarly, one who pays lip service to the idea of individual rights but continues to treat subordinates and others without respect or consideration, will be sidelined from mainstream change and become ineffective and of no use.

Globally, society is changing, and societies are changing within countries, within cities, and within local communities. As throughout history, some changes are for the better and some may be for the worse. One change that seems set to continue in many countries is more respect for the rights of individuals and accountability for organisations such as the police and for individuals within organisations, as to how they treat others. In such countries police services have a choice as to whether they wish to be in the forefront of change, setting an example of how authority and power should be exercised for the common good, or whether they are prepared to be seen as always resisting change, content to be feared and distrusted by the citizens they have to work amongst.

Individuals within the police service also have a choice. Some will decide to live in the past and to try and protect their own interests and hide their own wrongdoing for as long as possible. Others will play a waiting game and see which way the wind blows, who looks to be gaining power and what their approach may be, before committing themselves to anything.

And a few, it is to be hoped, will recognise that change is inevitable and have the courage to become one of the individuals who make it happen, whether by simple personal example, by speaking out against abuses, or by demanding that international law and conventions be understood, respected and adhered to.

## Appendices

- 71** United Nations Declaration of Human Rights.
- 75** Extracts from the Statute of the International Criminal Court, Rome 1998
- 83** Extracts from the United Nations Body of Principles for the Protection of Persons under any form of Detention or Imprisonment.
- 89** United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 93** Extracts from the American Convention on Human Rights.
- 95** Extracts from the African Charter on Human and People's Rights.
- 97** Extracts from the European Convention on Human Rights.
- 99** European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment: Extracts from 12th General Report on Police Custody paras: 36-56, 9th General Report, Juveniles Deprived of their Liberty paras: 20-27, and 10th General Report, Women Deprived of their Liberty paras: 21-24.
- 107** Extracts from the European Code of Police Ethics.
- 111** Extracts from the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
- 113** Extracts from the International Covenant on Civil and Political Rights, 1966.
- 117** The United Nations Code of Conduct for Law Enforcement Officials.

## The United Nations Universal Declaration of Human Rights

### Preamble

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, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

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

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge, Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

### Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

### Article 3

Everyone has the right to life, liberty and security of person.

### Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

### Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### Article 6

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

### Article 7

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.

### Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

### Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

### Article 10

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

### Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

### Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

### Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

### Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

### Article 15

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

### Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

### Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

### Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

### Article 19

Everyone has the right to freedom of opinion and expression; 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 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

### Article 21

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

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

3. The will of the people shall be the basis of the authority of government; 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 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.



**Article 23**

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25**

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.

**Article 26**

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28**

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

**Article 29**

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

**Article 5**

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

**Article 6**

**Genocide**

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

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

**Article 7**

**Crimes against humanity**

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

- (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

## Article 8

### War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

- (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
  - (i) Wilful killing;
  - (ii) Torture or inhuman treatment, including biological experiments;
  - (iii) Wilfully causing great suffering, or serious injury to body or health;
  - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
  - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
  - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
  - (vii) Unlawful deportation or transfer or unlawful confinement;
  - (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
  - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

- (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
  - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
  - (v) Pillaging a town or place, even when taken by assault;

- (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
- (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (ix) Killing or wounding treacherously a combatant adversary;
- (x) Declaring that no quarter will be given;
- (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

#### **Article 21 Applicable law**

1. The Court shall apply:
  - (a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
  - (b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
  - (c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.
2. The Court may apply principles and rules of law as interpreted in its previous decisions.
3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

#### **Article 25 Individual criminal responsibility**

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
  - (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
  - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
  - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
  - (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
    - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
    - (ii) Be made in the knowledge of the intention of the group to commit the crime;
  - (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;
  - (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.
4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

## **Article 27**

### **Irrelevance of official capacity**

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

## **Article 28**

### **Responsibility of commanders and other superiors**

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

- (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
- (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
- (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

- (b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
- (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
- (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
- (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

## **Article 29**

### **Non-applicability of statute of limitations**

The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

## **Article 30**

### **Mental element**

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
2. For the purposes of this article, a person has intent where:
- (a) In relation to conduct, that person means to engage in the conduct;
- (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.

## **Article 31**

### **Grounds for excluding criminal responsibility**

1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:

- (a) The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;
- (b) The person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;
- (c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;
- (d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:
- (i) Made by other persons; or
- (ii) Constituted by other circumstances beyond that person's control.

2. The Court shall determine the applicability of the grounds for excluding criminal responsibility provided for in this Statute to the case before it.

3. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in article 21. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

## **Article 32**

### **Mistake of fact or mistake of law**

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.

2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 33.

## **Article 33**

### **Superior orders and prescription of law**

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:
- (a) The person was under a legal obligation to obey orders of the Government or the superior in question;
- (b) The person did not know that the order was unlawful; and
- (c) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful. 3 United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**Scope of the Body of**

## United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

Adopted by General Assembly  
resolution 43/173 of 9 December 1988

### Principles

These principles apply for the protection of all persons under any form of detention or imprisonment.

### Use of Terms

For the purposes of the Body of Principles:

- (a) "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;
- (b) "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence;
- (c) "Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence;
- (d) "Detention" means the condition of detained persons as defined above;
- (e) "Imprisonment" means the condition of imprisoned persons as defined above;
- (f) The words "a judicial or other authority" means a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

### Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

### Principle 2

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

### Principle 3

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

### Principle 4

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

### Principle 5

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

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

### Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.\* No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

### Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

\* The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.

3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

### Principle 8

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

### Principle 9

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

### Principle 10

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

### Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefore.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

### Principle 12

1. There shall be duly recorded:
  - (a) The reasons for the arrest;
  - (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
  - (c) The identity of the law enforcement officials concerned;
  - (d) Precise information concerning the place of custody.

2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

### Principle 13

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

### Principle 14

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

### Principle 15

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

### Principle 16

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.

4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

#### **Principle 17**

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

#### **Principle 18**

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

#### **Principle 19**

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

#### **Principle 20**

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

#### **Principle 21**

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

#### **Principle 22**

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.

#### **Principle 23**

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.

#### **Principle 24**

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

#### **Principle 25**

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

#### **Principle 26**

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

#### **Principle 27**

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

#### **Principle 28**

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

#### **Principle 29**

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

#### **Principle 30**

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

#### **Principle 31**

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left with out supervision.

**Principle 32**

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

**Principle 33**

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.

3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

**Principle 34**

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

**Principle 35**

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by domestic law.

2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

**Principle 36**

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

**Principle 37**

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

**Principle 38**

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

**Principle 39**

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

**General clause**

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.



## Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984

entry into force 26 June 1987, in accordance with article 27 (1)

Status of ratifications  
Declarations and reservations  
Monitoring body

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

### PART I

#### Article 1

1. 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.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

#### Article 2

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.

#### Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

#### Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

#### Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

- When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
- When the alleged offender is a national of that State;
- When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

#### Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article

5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

#### Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

#### Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

#### **Article 9**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

#### **Article 10**

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

#### **Article 11**

Each State Party shall keep 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 in any territory under its jurisdiction, with a view to preventing any cases of torture.

#### **Article 12**

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**

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**

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.

#### **Article 15**

Each State Party shall 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 16**

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

## Extracts from The American Convention on Human Rights "Pact of San Jose, Costa Rica"

### Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to 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, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

2. For the purposes of this Convention, "person" means every human being.

### Article 5. Right to Humane Treatment

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.

3. Punishment shall not be extended to any person other than the criminal.

4. 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.

5. 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.

6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

### Article 7. Right to Personal Liberty

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.

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.

### Article 8. Right to a Fair Trial

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, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense 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 defense;

- (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 defense 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

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

### Article 11. Right to Privacy

1. Everyone has the right to have his honor 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 honor or reputation.

3. Everyone has the right to the protection of the law against such interference or attacks.

### Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

### Article 25. Right to Judicial Protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

## CHAPTER V - PERSONAL RESPONSIBILITIES

### Article 32. Relationship between Duties and Rights

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 1: RIGHTS AND DUTIES**

**Chapter I: Human and Peoples' Rights**

**Article 2**

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.

**Article 3**

1. Every individual shall be equal before the law

2. Every individual shall be entitled to equal protection of the law

**Article 4**

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 5**

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 6**

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**

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 18**

1. 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.

2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.

3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.

4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

**Article 19**

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

**Extracts From the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 Rome, 4.XI.1950**

**Article 3 - Prohibition of torture**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

**Article 5 - Right to liberty and security**

1. 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.

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.

**Article 6 - Right to a fair trial**

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.

**Article 7- No punishment without law**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

**Article 8 - Right to respect for private and family life**

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.

**Article 14 - Prohibition of discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

**Some Developments Concerning CPT Standards in Respect of Police Custody  
Extract from 12th General Report on the CPT's Activities - September 2002**

32. More than a decade has elapsed since the CPT described, in its 2nd General Report[3], some of the main issues pursued by the Committee in relation to police custody. In the meantime, the Committee has carried out more than a hundred further visits and the number of Parties to the Convention has practically doubled. Naturally, the CPT's standards in respect of police custody have gradually evolved, in the light of new situations encountered and experience gathered. Following the approach taken in its 11th General Report in respect of imprisonment[4], the CPT would like to highlight in its 12th General Report a miscellany of issues related to police custody which illustrate the development of the CPT's standards.

33. It is essential to the good functioning of society that the police have the powers to apprehend, temporarily detain and question criminal suspects and other categories of persons. However, these powers inherently bring with them a risk of intimidation and physical ill-treatment. The essence of the CPT's work is to seek ways of reducing that risk to the absolute minimum without unduly impeding the police in the proper exercise of their duties. Encouraging developments in the field of police custody have been noted in a number of countries; however, the CPT's findings also highlight all too often the need for continuing vigilance.

34. The questioning of criminal suspects is a specialist task which calls for specific training if it is to be performed in a satisfactory manner. First and foremost, the precise aim of such questioning must be made crystal clear: that aim should be to obtain accurate and reliable information in order to discover the truth about matters under investigation, not to obtain a confession from someone already presumed, in the eyes of the interviewing officers, to be guilty. In addition to the provision of appropriate training, ensuring adherence of law enforcement officials to the above-mentioned aim will be greatly facilitated by the drawing up of a code of conduct for the questioning of criminal suspects.

35. Over the years, CPT delegations have spoken to a considerable number of detained persons in various countries, who have made credible claims of having been physically ill-treated, or otherwise intimidated or threatened, by police officers trying to obtain confessions in the course of interrogations. It is self-evident that a criminal justice system which places a premium

on confession evidence creates incentives for officials involved in the investigation of crime - and often under pressure to obtain results - to use physical or psychological coercion. In the context of the prevention of torture and other forms of ill-treatment, it is of fundamental importance to develop methods of crime investigation capable of reducing reliance on confessions, and other evidence and information obtained via interrogations, for the purpose of securing convictions.

36. The electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. The CPT is pleased to note that the introduction of such systems is under consideration in an increasing number of countries. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions.

37. The CPT has on more than one occasion, in more than one country, discovered interrogation rooms of a highly intimidating nature: for example, rooms entirely decorated in black and equipped with spotlights directed at the seat used by the person undergoing interrogation. Facilities of this kind have no place in a police service.

In addition to being adequately lit, heated and ventilated, interview rooms should allow for all participants in the interview process to be seated on chairs of a similar style and standard of comfort. The interviewing officer should not be placed in a dominating (e.g. elevated) or remote position vis-à-vis the suspect. Further, colour schemes should be neutral.

38. In certain countries, the CPT has encountered the practice of blindfolding persons in police custody, in particular during periods of questioning. CPT delegations have received various - and often contradictory - explanations from police officers as regards the purpose of this practice. From the information

gathered over the years, it is clear to the CPT that in many if not most cases, persons are blindfolded in order to prevent them from being able to identify law enforcement officials who inflict ill-treatment upon them. Even in cases when no physical ill-treatment occurs, to blindfold a person in custody - and in particular someone undergoing questioning - is a form of oppressive conduct, the effect of which on the person concerned will frequently amount to psychological ill-treatment. The CPT recommends that the blindfolding of persons who are in police custody be expressly prohibited.

39. It is not unusual for the CPT to find suspicious objects on police premises, such as wooden sticks, broom handles, baseball bats, metal rods, pieces of thick electric cable, imitation firearms or knives. The presence of such objects has on more than one occasion lent credence to allegations received by CPT delegations that the persons held in the establishments concerned have been threatened and/or struck with objects of this kind.

A common explanation received from police officers concerning such objects is that they have been confiscated from suspects and will be used as evidence. The fact that the objects concerned are invariably unlabelled, and frequently are found scattered around the premises (on occasion placed behind curtains or cupboards), can only invite scepticism as regards that explanation. In order to dispel speculation about improper conduct on the part of police officers and to remove potential sources of danger to staff and detained persons alike, items seized for the purpose of being used as evidence should always be properly labelled, recorded and kept in a dedicated property store. All other objects of the kind mentioned above should be removed from police premises.

40. As from the outset of its activities, the CPT has advocated a trinity of rights for persons detained by the police: the rights of access to a lawyer and to a doctor and the right to have the fact of one's detention notified to a relative or another third party of one's choice. In many States, steps have been taken to introduce or reinforce these rights, in the light of the CPT's recommendations. More specifically, the right of access to a lawyer during police custody is now widely recognised in countries visited by the CPT; in those few countries where the right does not yet exist, plans are afoot to introduce it.

41. However, in a number of countries, there is considerable reluctance to comply with the CPT's recommendation that the right of access to a lawyer be guaranteed from the very outset of custody. In some countries, persons detained by the police enjoy this right only after a specified period of time spent in custody; in others, the right only becomes effective when the person detained is formally declared a suspect.

The CPT has repeatedly stressed that, in its experience, the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill-treat detained persons; further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs. The CPT recognises that in order to protect the legitimate interests of the police investigation, it may exceptionally be necessary to delay for a certain period a detained person's access to a lawyer of his choice. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another independent lawyer should be arranged.

The right of access to a lawyer must include the right to talk to him in private. The person concerned should also, in principle, be entitled to have a lawyer present during any interrogation conducted by the police. Naturally, this should not prevent the police from questioning a detained person on urgent matters, even in the absence of a lawyer (who may not be immediately available), nor rule out the replacement of a lawyer who impedes the proper conduct of an interrogation. The CPT has also emphasised that the right of access to a lawyer should be enjoyed not only by criminal suspects but also by anyone who is under a legal obligation to attend - and stay at - a police establishment, e.g. as a witness.

Further, for the right of access to a lawyer to be fully effective in practice, appropriate provision should be made for persons who are not in a position to pay for a lawyer.

42. Persons in police custody should have a formally recognised right of access to a doctor. In other words, a doctor should always be called without delay if a person requests a medical examination; police officers should not seek to filter such requests. Further, the right of access to a doctor should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of his/her own choice (in addition to any medical examination carried out by a doctor called by the police).

All medical examinations of persons in police custody must be conducted out of the hearing of law enforcement officials and, unless the doctor concerned requests otherwise in a particular case, out of the sight of such officials.

It is also important that persons who are released from police custody without being brought before a judge have the right to directly request a medical examination/certificate from a recognised forensic doctor.

43. A detained person's right to have the fact of his/her detention notified to a third party should in principle be guaranteed from the very outset of police custody. Of course, the CPT recognises that the exercise of this right might have to be made subject to certain exceptions, in order to protect the legitimate interests of the police investigation. However, such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the reasons therefore, and to require the approval of a senior police officer unconnected with the case or a prosecutor).

44. Rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence. Consequently, it is imperative that persons taken into police custody are expressly informed of their rights without delay and in a language which they understand. In order to ensure that this is done, a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.

45. The CPT has stressed on several occasions the role of judicial and prosecuting authorities as regards combating ill-treatment by the police.

For example, all persons detained by the police whom it is proposed to remand to prison should be physically brought before the judge who must decide that issue; there are still certain countries visited by the CPT where this does not occur. Bringing the person before the judge will provide a timely opportunity for a criminal suspect who has been ill-treated to lodge a complaint. Further, even in the absence of an express complaint, the judge will be able to take action in good time if there are other indications of ill-treatment (e.g. visible injuries; a person's general appearance or demeanour).

Naturally, the judge must take appropriate steps when there are indications that ill-treatment by the police may have occurred. In this regard, whenever criminal suspects brought before a judge at the end of police custody allege ill-treatment, the judge should record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment.

The diligent examination by judicial and other relevant authorities of all complaints of ill-treatment by law enforcement officials and, where appropriate, the imposition of a suitable penalty will have a strong deterrent effect. Conversely, if those authorities do not take effective action upon complaints referred to them, law enforcement officials minded to ill-treat persons in their custody will quickly come to believe that they can do so with impunity.

46. Additional questioning by the police of persons remanded to prison may on occasion be necessary. The CPT is of the opinion that from the standpoint of the prevention of ill-treatment, it would be far preferable for such questioning to take place within the prison establishment concerned rather than on police

premises. The return of remand prisoners to police custody for further questioning should only be sought and authorised when it is absolutely unavoidable. It is also axiomatic that in those exceptional circumstances where a remand prisoner is returned to the custody of the police, he/she should enjoy the three rights referred to in paragraphs 40 to 43.

47. Police custody is (or at least should be) of relatively short duration. Nevertheless, conditions of detention in police cells must meet certain basic requirements.

All police cells should be clean and of a reasonable size<sup>[5]</sup> for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded); preferably cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets. Persons in police custody should have access to a proper toilet facility under decent conditions, and be offered adequate means to wash themselves. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Persons held in police custody for 24 hours or more should, as far as possible, be offered outdoor exercise every day.

Many police detention facilities visited by CPT delegations do not comply with these minimal standards. This is particularly detrimental for persons who subsequently appear before a judicial authority; all too frequently persons are brought before a judge after spending one or more days in substandard and filthy cells, without having been offered appropriate rest and food and an opportunity to wash.

48. The duty of care which is owed by the police to persons in their custody includes the responsibility to ensure their safety and physical integrity. It follows that the proper monitoring of custody areas is an integral component of the duty of care assumed by the police. Appropriate steps must be taken to ensure that persons in police custody are always in a position to readily enter into contact with custodial staff.

On a number of occasions CPT delegations have found that police cells were far removed from the offices or desks where police officers are normally present, and were also devoid of any means (e.g. a call system) enabling detained persons to attract the attention of a police officer. Under such conditions, there is considerable risk that incidents of various kinds (violence among detainees; suicide attempts; fires etc.) will not be responded to in good time.

49. The CPT has also expressed misgivings as regards the practice observed in certain countries of each operational department (narcotics, organised crime, anti-terrorism) in a police establishment having its own detention facility staffed by officers from that department. The Committee considers that such an approach should be discarded in favour of a central detention facility, staffed by a distinct corps of officers specifically trained for such a custodial function. This would almost certainly prove beneficial from the standpoint of the prevention of ill-treatment. Further, relieving individual operational departments of custodial duties might well prove advantageous from the management and logistical perspectives.

50. Finally, the inspection of police establishments by an independent authority can make an important contribution towards the prevention of ill-treatment of persons held by the police and, more generally, help to ensure satisfactory conditions of detention. To be fully effective, visits by such an authority should be both regular and unannounced, and the authority concerned should be empowered to interview detained persons in private. Further, it should examine all issues related to the treatment of persons in custody: the recording of detention; information provided to detained persons on their rights and the actual exercise of those rights (in particular the three rights referred to in paragraphs 40 to 43); compliance with rules governing the questioning of criminal suspects; and material conditions of detention.

The findings of the above-mentioned authority should be forwarded not only to the police but also to another authority which is independent of the police.

## Juveniles Deprived of Their Liberty

### Preliminary remarks

20. In certain of its previous general reports, the CPT has set out the criteria which guide its work in a variety of places of detention, including police stations, prisons, holding centres for immigration detainees and psychiatric establishments.<sup>(8)</sup>

The Committee applies the above-mentioned criteria, to the extent to which they are appropriate, in respect of juveniles (i.e. persons under the age of 18) deprived of their liberty. However - regardless of the reason for which they may have been deprived of their liberty - juveniles are inherently more vulnerable than adults. In consequence, particular vigilance is required to ensure that their physical and mental well-being is adequately protected. In order to highlight the importance which it attaches to the prevention of ill-treatment of juveniles deprived of their liberty, the CPT has chosen to devote this chapter of its 9th General Report to describing some of the specific issues which it pursues in this area.

In the following paragraphs, the Committee identifies a number of the safeguards against ill-treatment which it considers should be offered to all juveniles deprived of their liberty, before focussing on the conditions which should obtain in detention centres specifically designed for juveniles. The Committee hopes in this way to give a clear indication to national authorities of its views regarding the manner in which such persons ought to be treated. As in previous years, the CPT would welcome comments on this substantive section of its General Report.

21. The Committee wishes to stress at the outset that any standards which it may be developing in this area should be seen as being complementary to those set out in a panoply of other international instruments, including the 1989 United Nations Convention on the Rights of the Child; the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).

The Committee also wishes to express its approval of one of the cardinal principles enshrined in the above-mentioned instruments, namely that juveniles should only be deprived of their liberty as a last resort and for the shortest possible period of time (cf. Article 37 b. of the Convention on the Rights of the Child and Rules 13 and 19 of the Beijing Rules).

### Safeguards against the ill-treatment of juveniles

22. Given its mandate, the CPT's first priority during visits to places where juveniles are deprived of their liberty is to seek to establish whether they are being subjected to deliberate ill-treatment. The Committee's findings to date would suggest that, in most of the establishments which it visits, this is a comparatively rare occurrence.

23. However, as is the case for adults, it would appear that juveniles run a higher risk of being deliberately ill-treated in police establishments than in other places of detention. Indeed, on more than one occasion, CPT delegations have gathered credible evidence that juveniles have featured amongst the persons tortured or otherwise ill-treated by police officers.

In this context, the CPT has stressed that it is during the period immediately following deprivation of liberty that the risk of torture and ill-treatment is at its greatest. It follows that it is essential that all persons deprived of their liberty (including juveniles) enjoy, as from the moment when they are first obliged to remain with the police, the rights to notify a relative or another third party of the fact of their detention, the right of access to a lawyer and the right of access to a doctor.

Over and above these safeguards, certain jurisdictions recognise that the inherent vulnerability of juveniles requires that additional precautions be taken. These include placing police officers under a formal obligation themselves to ensure that an appropriate person is notified of the fact that a juvenile has been detained (regardless of whether the juvenile requests that this be done). It may also be the case that police officers are not entitled to interview a juvenile unless such an appropriate person and/or a lawyer is present. The CPT welcomes this approach.

24. In a number of other establishments visited, CPT delegations have been told that it was not uncommon for staff to administer the occasional "pedagogic slap" to juveniles who misbehaved. The Committee considers that, in the interests of the prevention of ill-treatment, all forms of physical chastisement must be both formally prohibited and avoided in practice. Inmates who misbehave should be dealt with only in accordance with prescribed disciplinary procedures.

25. The Committee's experience also suggests that when ill-treatment of juveniles does occur, it is more often the result of a failure adequately to protect the persons concerned from abuse than of a deliberate intention to inflict suffering. An important element in any strategy to prevent such abuse is observance of the principle that juveniles in detention should as a rule be accommodated separately from adults.

Examples of a failure to respect this principle which have been observed by the CPT have included: adult male prisoners being placed in cells for male juveniles, often with the intention that they maintain control in those cells; female juveniles being accommodated together with adult women prisoners; juvenile psychiatric patients sharing accommodation with chronically ill adult patients.

The Committee accepts that there may be exceptional situations (e.g. children and parents being held as immigration detainees) in which it is plainly in the best interests of juveniles not to be separated from particular adults. However, to accommodate juveniles and unrelated adults together inevitably brings with it the possibility of domination and exploitation.

26. Mixed gender staffing is another safeguard against ill-treatment in places of detention, in particular where juveniles are concerned. The presence of both male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention.

Mixed gender staffing also allows for appropriate staff deployment when carrying out gender sensitive tasks, such as searches. In this respect, the CPT wishes to stress that, regardless of their age, persons deprived of their liberty should only be searched by staff of the same gender and that any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender; these principles apply a fortiori in respect of juveniles.

27. Lastly, in a number of establishments visited, CPT delegations have observed custodial staff who come into direct contact with juveniles openly carrying batons. Such a practice is not conducive to fostering positive relations between staff and inmates. Preferably, custodial staff should not carry batons at all. If, nevertheless, it is considered indispensable for them to do so, the CPT recommends that the batons be hidden from view.



### Women Deprived of Their Liberty

#### Preliminary remarks

21. In certain of its previous general reports, the CPT has set out the criteria which guide its work in a variety of places of detention, including police stations, prisons, holding centres for immigration detainees, psychiatric establishments and detention centres for juveniles.[3]

Naturally, the Committee applies the above-mentioned criteria in respect of both women and men who are deprived of their liberty. However, in all Council of Europe member States, women inmates represent a comparatively small minority of persons deprived of their liberty. This can render it very costly for States to make separate provision for women in custody, with the result that they are often held at a small number of locations (on occasion, far from their homes and those of any dependent children), in premises which were originally designed for (and may be shared by) male detainees. In these circumstances, particular care is required to ensure that women deprived of their liberty are held in a safe and decent custodial environment.

In order to highlight the importance which it attaches to the prevention of ill-treatment of women deprived of their liberty, the CPT has chosen to devote this chapter of its 10th General Report to describing some of the specific issues which it pursues in this area. The Committee hopes in this way to give a clear indication to national authorities of its views regarding the manner in which women deprived of their liberty ought to be treated. As in previous years, the CPT would welcome comments on this substantive section of its General Report.

22. It should be stressed at the outset that the CPT's concerns about the issues identified in this chapter apply irrespective of the nature of the place of detention. Nevertheless, in the CPT's experience, risks to the physical and/or psychological integrity of women deprived of their liberty may be greater during the period immediately following apprehension. Consequently, particular attention should be paid to ensuring that the criteria enunciated in the following sections are respected during that phase.

The Committee also wishes to emphasise that any standards which it may be developing in this area should be seen as being complementary to those set out in other international instruments, including the European Convention on Human Rights, the United Nations Convention on the Rights of the Child, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women and the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.

#### Mixed gender staffing

23. As the CPT stressed in its 9th General Report, mixed gender staffing is an important safeguard against ill-treatment in places of detention. The presence of male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention.

Mixed gender staffing also allows for appropriate staff deployment when carrying out gender sensitive tasks, such as searches. In this context, the CPT wishes again to emphasise that persons deprived of their liberty should only be searched by staff of the same gender and that any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender.

#### Separate accommodation for women deprived of their liberty

24. The duty of care which is owed by a State to persons deprived of their liberty includes the duty to protect them from others who may wish to cause them harm. The CPT has occasionally encountered allegations of woman upon woman abuse. However, allegations of ill-treatment of women in custody by men (and, more particularly, of sexual harassment, including verbal abuse with sexual connotations) arise more frequently, in particular when a State fails to provide separate accommodation for women deprived of their liberty with a preponderance of female staff supervising such accommodation.

As a matter of principle, women deprived of their liberty should be held in accommodation which is physically separate from that occupied by any men being held at the same establishment. That said, some States have begun to make arrangements for couples (both of whom are deprived of their liberty) to be accommodated together, and/or for some degree of mixed gender association in prisons. The CPT welcomes such progressive arrangements, provided that the prisoners involved agree to participate, and are carefully selected and adequately supervised.

**(Adopted by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers' Deputies)**

**Definition of the scope of the code**

This 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.

**I. Objectives of the police**

1. The main purposes of the police in a democratic society governed by the rule of law are:
  - (a) to maintain public tranquillity and law and order in society;
  - (b) to protect and respect the individual's fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights;
  - (c) to prevent and combat crime;
  - (d) to detect crime;
  - (e) to provide assistance and service functions to the public.

**II. Legal basis of the police under the rule of law**

2. The police are a public body which shall be established by law.
3. Police operations must always be conducted in accordance with the national law and international standards accepted by the country.
4. Legislation guiding the police shall be accessible to the public and sufficiently clear and precise, and, if need be, supported by clear regulations equally accessible to the public and clear.
5. Police personnel shall be subject to the same legislation as ordinary citizens, and exceptions may only be justified for reasons of the proper performance of police work in a democratic society.

**III. The police and the criminal justice system**

6. There shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system; the police shall not have any controlling functions over these bodies.
7. The police must strictly respect the independence and the impartiality of judges; in particular, the police shall neither raise objections to legitimate judgments or judicial decisions, nor hinder their execution.
8. The police shall, as a general rule, have no judicial functions. Any delegation of judicial powers to the police shall be limited and in accordance with the law. It must always be possible to challenge any act, decision or omission affecting individual rights by the police before the judicial authorities.
9. There shall be functional and appropriate co-operation between the police and the public prosecution. In countries where the police are placed under the authority of the public prosecution or the investigating judge, the police shall receive clear instructions as to the priorities governing crime investigation policy and the progress of criminal investigation in individual cases. The police should keep the superior crime investigation authorities informed of the implementation of their instructions, in particular, the development of criminal cases should be reported regularly.
10. The police shall respect the role of defence lawyers in the criminal justice process and, whenever appropriate, assist in ensuring the right of access to legal assistance effective, in particular with regard to persons deprived of their liberty.
11. The police shall not take the role of prison staff, except in cases of emergency.

**D. Rights of police personnel**

31. 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.
  32. Police staff shall enjoy social and economic rights, as public servants, to the fullest extent possible. In particular, staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security, and to be provided with special health and security measures, taking into account the particular character of police work.
  33. Disciplinary measures brought against police staff shall be subject to review by an independent body or a court.
  34. Public authorities shall support police personnel who are subject to ill-founded accusations concerning their duties.
- V. Guidelines for police action/intervention**
- A. Guidelines for police action/intervention: general principles
  35. The police, and all police operations, must respect everyone's right to life.
  36. The police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances.
  37. The police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective.
  38. Police must always verify the lawfulness of their intended actions.

39. 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.
40. The police shall carry out their tasks in a fair manner, guided, in particular, by the principles of impartiality and non-discrimination.
41. The police shall only interfere with individual's right to privacy when strictly necessary and only to obtain a legitimate objective.
42. 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.
43. 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.
44. Police personnel shall act with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially vulnerable groups.
45. Police personnel shall, during intervention, normally be in a position to give evidence of their police status and professional identity.
46. Police personnel shall oppose all forms of corruption within the police. They shall inform superiors and other appropriate bodies of corruption within the police.

**B. Guidelines for police action/intervention:  
specific situations**

**1. Police investigation**

47. Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime.

48. 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.

49. Police investigations shall be objective and fair. They shall be sensitive and adaptable to the special needs of persons, such as children, juveniles, women, minorities including ethnic minorities and vulnerable persons.

50. 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.

51. 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 there is a risk of intimidation of witnesses.

52. Police shall provide the necessary support, assistance and information to victims of crime, without discrimination.

53. The police shall provide interpretation/translation where necessary throughout the police investigation.

**2. Arrest/deprivation of liberty by the police**

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.

**VI. Accountability and control of the police**

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

60. State control of the police shall be divided between the legislative, the executive and the judicial powers.

61. Public authorities shall ensure effective and impartial procedures for complaints against the police.

62. Accountability mechanisms, based on communication and mutual understanding between the public and the police, shall be promoted.

63. Codes of ethics of the police, based on the principles set out in the present recommendation, shall be developed in member states and overseen by appropriate bodies.

## Extracts From the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Adopted by General Assembly  
resolution 40/34 of 29 November 1985

### A. Victims of Crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

### Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

- (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
- (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
- (c) Providing proper assistance to victims throughout the legal process;
- (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

### Assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

### B. Victims of Abuse of Power

18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.

21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

## Extracts From the International Covenant on Civil and Political Rights

### International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49.

#### Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

#### Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) 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;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

#### Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

**Article 15**

1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

**Article 16**

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

**Article 17**

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.

3. 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.

4. 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.

**Article 26**

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Article 27**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

**Adopted by General Assembly  
resolution 34/169 of 17 December 1979**

**Article 1**

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

Commentary:

- (a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.
- (b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.
- (c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.
- (d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

**Article 2**

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary:

- (a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.
- (b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

**Article 3**

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

- (a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

- (b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.
- (c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

**Article 4**

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

**Article 5**

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment .

Commentary:

- (a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which: "[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."
- (b) The Declaration defines torture as follows: ". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."
- (c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

#### Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary:

- (a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.
- (b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.
- (c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

#### Article 7

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

Commentary:

- (a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.
- (b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.
- (c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

#### Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them. Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary:

- (a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.
- (b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.
- (c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

- (d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.
- (e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.



