UNDERSTANDING
POLICING

A resource for human rights activists

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Foreword

Police can be violators of human rights, but at the same time they play an essential role in the protection of human rights. Policing is thus at the heart of a broad spectrum of human rights discourses. Developments in the way in which police have been perceived and addressed by human rights organizations have reflected developments that have taken place within the broader human rights discourse: a focus on case-based concerns targeting State officials has been replaced by an increasing role for engagement with State officials in seeking to prevent human rights violations.

Strategies for preventing human rights violations can vary from the confrontational to the cooperative. Approaching the police as human rights protectors presents an opportunity for increased cooperation in a search for areas of mutual interest based on a common understanding that human rights and policing go hand in hand. Human rights do not impede policing; on the contrary, they provide the police with a space in which to operate and use their powers lawfully. Police should not be opponents of human rights advocates but can rather be counterparts, seeking to achieve similar goals.

This Resource Book builds on the assumption that an approach by human rights organizations that acknowledges the concerns and realities of the police and that understands police language, will be more effective than an approach that sets itself apart and criticises from the sidelines. Clearly this approach requires a police agency that is receptive to human rights concerns and human rights based reforms where necessary.

Amnesty International could play an important role in furthering discourses on security and supporting police reform programs in line with human rights principles. In order to achieve this, a more thorough understanding is needed of the security sector and its workings. This Resource Book hopes to contribute to such an understanding.

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An introduction to 'Understanding Policing'

Introduction

The police are one of the key State agencies targeted for criticism by Amnesty International (AI) and many other human rights organizations. In *Shattered lives. The case for tough international arms control*, published in 2003, Amnesty International states, "The evidence strongly suggests that most of the victims [of torture] were people suspected or convicted of criminal offences. Most of the torturers were police officers who used armed threats and violence to subdue their victims."[1]

Countless examples of police violating the basic rights of the people they are supposed to serve have been documented, ranging from torture and other forms of cruel, inhuman and degrading treatment, to preventing the exercise of legitimate rights to assemble and associate, jeopardizing equal access to justice, and failing to protect basic rights, especially for those vulnerable groups such as women and children. Police have neglected, ignored, and failed to respect basic rights to life, liberty and security in all regions of the world.

The opposite is true as well: police have positively contributed to peoples' full enjoyment of their rights. Police have prevented crimes from being committed, have ensured that people can safely demonstrate for their rights, have facilitated smooth political transitions, have investigated colleagues who have carried out crimes of all sorts, have 'blown the whistle' on their superiors, and have been supportive of political and legal reforms.

No doubt due to this fact that police are both human rights violators as well as protectors, the relationship between many human rights organizations (including Amnesty International) and the police has often been characterized by ambiguity. Human rights advocates frequently tend to feel somewhat uncomfortable with policing issues – and very often for the right reasons, as can be seen in the citation given above. Human rights advocates tend to focus on police misconduct, rather than on strengthening the police in order to prevent future violations. A study carried out by Amnesty International-Netherlands in which Amnesty International's recommendations on policing were reviewed concluded that many of these still "only address specific operational aspects of policing without referring to the larger issue of democratic accountability."[2] Doing so requires expertise about 'the police' as an institution, and 'policing' as a function: something to which this Resource Book hopes to contribute.

1) Amnesty International, 2003, *Shattered lives. The case for tough international arms control*, p.27.
2) Amnesty International – Netherlands, 2004, *Amnesty International's recommendations on policing. A review and guide*, p. 7.

Aims of this Resource Book

Understanding Policing aims to clarify practical concepts as well as international and other standards that relate to policing. It thereby seeks to facilitate the assessment of police agencies in particular countries. Such assessments are fundamental to developing effective research and campaigning strategies that seek to influence policing as a means of improving respect for human rights and bringing conduct in line with internationally recognised human rights standards. They are also fundamental to deciding whether initiating engagement with police to achieve such aims is appropriate. The target for this resource is those working within the framework of Amnesty International's organization. However, it also addresses the broader human rights community.

Understanding Policing seeks to bring together both professional police and human rights paradigms and provides an introduction to literature from both these backgrounds. Policing and human rights are sometimes treated as if they are two separate fields. Literature, both academic and that related to police practice and the work of human rights organizations, tends to focus on either one of the fields, neglecting the inherent links. This Resource Book aims to bring together these different fields. Moreover, *Understanding Policing* aims to explain differences in language that often hamper communication between the human rights community and the police.

Understanding Policing seeks to define a common language and establish benchmarks for a human rights based assessment of police agencies, from these diverse sources. These benchmarks will not lead directly to the formulation of recommendations for policing but rather to a set of questions and considerations to be kept in mind when conducting research on police in a given country or when undertaking a contextual analysis to help identify why police institutions fail to uphold human rights standards. The basic assumption underlying this Resource Book is that in order to achieve effective intervention on the issue of police conduct, it is essential to have a thorough understanding of policing itself.

To treat the police as if they were the same everywhere, regardless of national contexts would be misguided and inappropriate. Countries differ in their resources as well as their cultures, and this affects policing. Instead of prescribing exactly what police should look like, this Resource Book aims to help understand the basic functions of policing in a society and with what minimal norms and principles it should comply. To some this book may appear to focus on contexts most common in industrialised countries where police agencies are well resourced and operate in cultural contexts that have adopted receptive attitudes towards human rights. More specifically, some have argued that this Resource Book focuses on the Anglo-Saxon context rather than taking a neutral perspective. However, we believe that the values discussed in this Resource Book apply universally – regardless of resources or cultural contexts. Police are bound by international human rights standards across the globe.

These standards have been adopted by the United Nations, representing global values and principles. While it is no doubt true that policing in countries lacking financial and other resources presents particular inherent challenges, and the implementation of certain standards will sometimes have to be carried out quite differently in these countries than in those not facing such problems, international norms apply globally and are to be used as indicators to assess human rights compliance by agencies worldwide.

Resources used

Understanding Policing builds on a range of work undertaken within Amnesty International to date. We do not intend to repeat what has already been published but will extensively refer to existing reports and materials available within the Amnesty International movement. This resource aims to bring together and build on existing research, action and engagement experiences and expertise throughout the movement to further enhance the organization's relevance and effectiveness in this field.

As this Resource Book is intended as a practical tool for human rights activists within the field, we have collected reports and references from other non-governmental organizations (NGOs) and others that we believe will be useful for further reading. Whenever possible we have indicated where useful resources are available on the Internet.

With regard to human rights standards, we focus on UN instruments and do not refer to regional standards – the only exception being standards adopted within the Council of Europe's jurisdiction since the Council of Europe, including its 'Police and Human Rights Program', has published a fair amount of interesting materials in this field. The 'European Code of Police Ethics' based on the 1979 'Declaration on the Police' will be referred to in particular. Note that most UN standards with direct relevance for policing, including the UN Code of Conduct for Law Enforcement Officials, the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment and the Basic Principles on the Use of Force and Firearms, are so-called 'soft law' in that they are non-binding declarations and principles.

It should be noted that *Understanding Policing* does not take a legalistic perspective, but explores the possibilities for human rights compliant policing in practice. This means that we will go beyond the international standards. We will look at how the standards can be implemented, assuming that best practice may be of interest for human rights advocates' analysis of police agencies all over the world. Note that as our focus is on policing compliant with human rights standards, we will not address police abuses as such. In addition, our focus is on 'policing in general'. Groups requiring specific attention, such as women, refugees and children, will not be dealt with separately.

How to use this resource

We understand that not everyone will read the entire Resource Book from beginning to end. We recommend however that readers take note of the 'Summary and Conclusions' (hereafter) and the 'Contextual analysis and assessment' (Appendix A) in particular. The 'Contextual analysis and assessment' contains a tool to assist readers when assessing the police in a target country.

We would like to stress the importance of reading the Chapters of Parts I and II of this Resource Book. Too often human rights strategies seeking to address problems that involve the police ignore the fact that the police are part of a broader security and justice system for which they cannot be held fully responsible. Similarly, sometimes human rights strategies do not fully understand the complexities of the interplay between State, public and police that requires the police to have some degree of autonomy (within boundaries) to decide on how to respond to law and order situations. Both these issues are addressed in these two Parts of this Resource Book.

Throughout the Resource Book, terms that are considered relevant for a true understanding of human rights compliant policing are given in **bold** the first time these are used. These terms, which are sometimes ambiguous, are explained in the Glossary, Appendix E, of this Resource Book.

Overview of Chapters

In drafting this Resource Book we have tried to follow a consistent format: whenever relevant we have started with an exploration of what the UN human rights standards say with regard to a particular topic. However, police actions are not, and cannot be, fully covered in rules and regulations. We therefore move on to explore what professional standards have developed to guide police actions in practice, as these can be used as benchmarks against which police can be assessed.

This Resource Book is divided into four parts. Part I introduces the issues and explores the relationship between policing and human rights. Chapter 1 presents an overview of 'Police and Human Rights'. We start by defining 'police' and discuss how police and human rights relate to each other as well as how human rights advocates tend to perceive policing and how this has influenced human rights advocacy targeting police.

Part II aims to describe the context in which the police operate. One of the core functions, if not the core function, of the State is the maintenance of order. We therefore start with an exploration of the concepts of 'order' and 'disorder' in Chapter 2, identifying the police as just one of several State agencies responsible for the maintenance of order within a broader security system whose effectiveness is dependent upon cooperation with and acceptance by civil society.

In Chapter 3 we will look more closely at the objectives police are given and the resources (personnel, financial) and philosophies employed to achieve them. We will discuss those philosophies currently in use, either by design or by default. We will focus particularly on community policing as this is a concept increasingly used by both police and human rights advocates despite the fact that there is a significant degree of ambiguity over what exactly is meant by the term. We present a list with critical success factors to assist those assessing community policing projects in target countries. A brief evaluation of policing philosophies is presented.

In Chapter 4 we will look at how police relate to their political environment. A crucial and often defining element of police actions is that the police have relative autonomy in operational decisions.

After having explored the prime objectives of policing, Part III focuses on the powers police are given to carry out their objectives. Chapter 5 looks at the power to use force; Chapter 6 at the powers to arrest and detain; and Chapter 7 at the task of criminal investigation (with particular focus on the suspect interview). These are the areas where human rights are most frequently abused.

Finally, Part IV looks at how the police can be supported in upholding human rights principles. As police are given special powers that can have a serious impact on people's full enjoyment of their rights, it is of utmost importance that police are held to account for their use of these powers. Chapter 8 describes both internal and external accountability mechanisms and presents a table with which police accountability in a target country can be assessed.

Enhancing training and recruitment policies is often seen as a way of improving police practices. Chapter 9 takes a closer look at these human resources tools and how these can contribute to human rights awareness. It also warns against over-reliance on them. The Chapter describes how police tend to be recruited, selected and trained and makes suggestions for improvement. A list of questions has been formulated that may be of help when assessing basic police training from a human rights perspective.

Finally, Chapter 10 looks at how human rights NGOs can influence police work and enhance compliance with human rights standards. Particular attention will be devoted to the issue of engagement; how can human rights advocates engage with the police, what problems might arise and how can these problems be solved?

We hope this Resource Book will provide the reader with background information on policing issues within a human rights context. Moreover, we hope this resource inspires and motivates human rights advocates to commence working on, and in some situations with, the police.

Summary

"We can not emphasise too strongly that human rights are not an impediment to effective policing but, on the contrary, vital to its achievement."[1]

The area of policing and human rights presents a dynamic and constantly evolving field of study. The human rights discourse has in recent years broadened its attention to include not only the negative functions of the State and its agents as human rights violators but also the positive obligations of the State. This presents an opportunity for the police to be seen as human rights protectors. At the same time, the notion has developed that human rights are not only abused by State officials, including the police, but by non-State actors as well. Both police and human rights advocates are striving for societies characterised by security and safety, an insight that has opened up the possibility of police and NGOs working together rather than opposing each other. The idea of police and NGOs working together is fraught with difficulties. Police officers tend to have a different perspective from that of most human rights advocates. They sometimes use different language when speaking of the same issue and will reach different conclusions about cause and effect. Sometimes this is the obvious result of the different roles they have in society; sometimes they may be the result of stereotypic assumptions. This Resource Book aims to give background information on policing issues for human rights advocates intending to initiate work on policing.

Achieving the objectives of law and order
All countries have one or more police agencies. By and large in all these countries policing involves the maintenance of order and the prevention and detection of crime. However, police are not the only State agencies operating in this field, nor is the achievement of these objectives the sole responsibility of the police. It is rather the State's ultimate responsibility to maintain order in the territory over which it has effective control. States are responsible for doing so under international law, on the basis that order and security are essential conditions for people to fully enjoy all their economic, social, cultural, civil and political rights. Moreover, States are responsible for the maintenance of order as it is vital for the State's continuity: disorder can ultimately threaten to disrupt the very existence of the State itself. The right to security, as set out in the Universal Declaration on Human Rights (UDHR), refers to a State's duty to provide security and maintain order. States must ensure that their officials uphold human rights standards (i.e. avoid abusing their powers in the course of their duties) and protect human rights (i.e. actively ensure physical and mental security and the free exercise of fundamental rights and freedoms for all people within the territory over which the State has effective jurisdiction).

Order and disorder are not fully neutral concepts. A State and its subjects may disagree over what constitutes order and disorder. There are, however, fundamental principles laid down in international law which govern how States ensure order and deal with disorder, and with which police practice should be consistent. Most notably, order must be based on the rule of law. Establishing and maintaining the rule of law is the primary legitimate means a State has to ensure order. Adhering to the rule of law means the government is bound by law, that there is equality before the law, that there are predictable and effective judicial rulings, and that human rights are integral. In order to achieve this, States establish systems and institutions including comprehensive laws, well functioning courts and independent judges and law enforcement agencies. Those working within this security and justice domain, including the police, may sometimes perceive law (and human rights) as restricting their work, but the opposite is in fact true: law makes it possible for them to do their work.

The security sector includes agencies whose functions sometimes overlap with those of the police: notably military forces and the security intelligence agencies. It is important that the differences are well defined, with the police clearly separated from the military. The security sector also includes non-State actors, such as private security providers. The criminal justice system is responsible for criminal investigation, prosecution and adjudication, as well as the execution of sentences. It includes such institutions as the police, prosecution, judiciary, probation and prisons services.

The effectiveness of the security and justice systems as a whole, depends on the quality of the separate entities involved: the chain is as strong as its weakest link, and they all affect policing directly or indirectly. It is crucial to the effectiveness of the security system that the different agencies have clear guidelines and instructions on their respective objectives which also specify their distinct positions and lines of accountability as well as their points of interface (the police's functions and responsibilities usually being set out in a Police Act). Human rights advocates need to be aware of the role and responsibilities of different security and justice agencies within systems established for maintaining order, so as to target their research and campaigning activities effectively. In order to assess police operations and identify those responsible for human rights failings, it is essential to understand and assess the entire system in which the police operate and on which they depend, both as it is laid out in law, regulations and policies, as well as how it is implemented in practice. Police cannot, and should not, be held responsible for misconduct, institutional miscommunication, lack of coordination, policy gaps etc., that are at the responsibility of other 'partners' in the security and justice domain. On the other hand, police can and should be held accountable for their own role in these processes.

All sections of the security and justice sector operate under national authority and within national sovereignty. Most of them are State institutions (the obvious exceptions are private security providers, although they too are bound

1) Independent commission on policing for Northern Ireland, 1999, *A new beginning: policing in Northern Ireland. The report of the independent commission on policing for Northern Ireland* (para.4.4).

by national law) reflecting national (or regional or local) realities, political culture, history, people, and economy. As such, political and cultural realities shape policing. If the State system has not adopted democratic values the police is not likely to defend such values. Police come from the society they police and will adopt and express similar attitudes; as an example if these attitudes are negative towards certain members of the public the police are likely to share these attitudes. Tackling such problems will present a major challenge that necessarily requires engagement from more than just the police.

Within the security and justice sector the police are seen as the primary agency responsible for ensuring security and maintaining order. The three main functions of policing are generally agreed to be:
•   Prevention and detection of crime
•   Maintenance of public order
•   Provision of assistance to the public

Sometimes these functions are spread over a number of separate agencies (as for example in countries with separate Judicial or Investigative Police), while in others they are carried out by one centralised or decentralised police agency. Human rights oriented policing requires that the public have access to at least all these three policing functions (although police may carry out additional functions such as fire fighting, border control, protection of diplomats etc). For this, police need adequate resources, including finance and staff.

In carrying out these functions, police can adopt different methodologies as reflected in different policing philosophies. There are two broad underlying perspectives that underpin these philosophies. One perspective is that of police as an instrument of State control, the assumption being that if States control their territories properly, this will result in 'law and order' and will guarantee security for the people in its jurisdiction. This 'force perspective', or vertical perspective, is clearly seen in authoritarian policing styles employed by many police agencies. The other perspective is that of police as a service provider to communities in their own areas. This 'service', or horizontal, perspective is seen in 'community policing' and its derivatives: problem oriented and intelligence led policing (although the latter can also be seen in authoritarian policing). Crisis policing is somewhat distinct in that it reflects the State's incompetence in maintaining order rather than its competence in fulfilling its core obligation of maintaining order.

Community policing's core characteristic is that communities are involved both in identifying problems of crime and disorder and in solving them, based on the understanding that the police cannot do so alone. For most countries this means an entirely new way of perceiving the police's role as well as the responsibilities and capabilities of the police. It requires police to actively engage with their communities, to focus on crime prevention rather than detection, to study why the public call on the police and to aim to tackle underlying causes rather than symptoms. However, it also necessitates an organizational transformation, where the command structure and

decision-making functions are decentralised (after all, responsiveness to the communities cannot be developed from one central level), and cooperation with other community-safety providers is developed. These fundamental organizational implications are often the cause of problems in practical implementation of this philosophy. In Chapter 3 we have listed success factors that can be used for assessing community policing projects, the prime one being that, when seeking to involve the communities in the maintenance of order and prevention of crime, time is a necessary prerequisite to develop trust. Moreover, developing trust between police and communities requires the full and visible long-term support of both the police leadership as well as politicians. Community policing does not mean the communities taking over policing functions. On the contrary, it requires well-trained professional officers fully understanding their role and responsibility and able to gather and select information that should guide decision-making rather than vice versa.

Because of its emphasis on responsiveness to communities, community policing is often perceived to be the most 'human rights friendly' form of policing. In practice this is not always the case, primarily due to the fact that the concept is often used imprecisely and has somewhat lost its meaning. Practically any policing activity implying any contact with any member of the public has been swept under the umbrella of community policing. Despite this (or thanks to this), it has currently become the leading policing philosophy.

Instead of focusing on the rhetoric surrounding community policing, human rights advocates should focus on human rights principles such as responsiveness and accountability to the communities served as well as legality. Authoritarian policing, or even militarised policing, does not have to be the enemy of human rights friendly policing. In fact, in some countries militarised policing (as opposed to community policing) is probably a better safeguard against human rights violations involving corruption and nepotism (where police serve partisan or other interests rather than the public interest), exactly because this type of policing tends to ensure tighter controls on individual officers. It should be noted however that authoritarian policing does tend to be more violent in many countries.

Law sets the framework within which police carry out their functions and policing priorities are set by (local) security policies. Those representing the people formulate both. As such, police are always closely connected to politics and policing is a political activity in that it seeks to balance various interests in society on behalf of the State. Police are to serve the public interest, rather than some partisan, or other ethnic or religious group interest. Hence, to ensure impartiality and neutrality, and thus non-arbitrary lawful professional decision-making by the police, police leadership must be authorised to decide what resources to spend on what problems with a degree of autonomy – obviously limited by law as well as by established policy. This is known as operational independence. Operational independence of police leadership translates to the rank-and-file officers as discretion (or discretionary powers). While on duty, a police officer typically has great discretionary power and can

decide individually on which deviant behaviours to act on or not – obviously limited by such margins as laid down in national law and policy.

Though not all countries recognize these principles of operational independence, they are at the very heart of policing. The possession of police powers as well as a certain amount of discretion as to when to use them is vital to effective policing. Police work can never be fully captured in rules and regulations prescribing exactly when to do what. As police operate in a complex arena with many interests, they need to be able to balance these interests and make their own professional judgement, although clearly they should always be held to account for these. Police must earn their 'right to operational independence' through their service to the community, lawful and non-arbitrary conduct, and their effectiveness all leading to the public having confidence in the police. Public confidence is to a large extent dependant upon the police being accountable and transparent in what they do and how they do it. Public confidence is a precondition for operational independence – but the reverse is true as well: operational independence can add to people's confidence in the police. Unfortunately in many countries the reality is very different with police lacking the competence to make professional judgements in difficult situations and unwilling to account for their decisions and actions. Similarly in many countries political elites seek to use the police to secure their own interests and are unable or unwilling to exercise legitimate and effective, but restrained, control over the police.

Police powers
Police are entrusted with extensive powers that can have a far-reaching effect on people's lives and which if misused, can result in severe human rights violations. For this reason international standards have set limits on these powers. Human rights oriented policing means policing in compliance with these international standards. It means trying to avoid using force, but being able and willing to use force lawfully and proportionately when strictly necessary and to account for its use afterwards.

Police have many different means of using force at their disposal, varying across jurisdictions. The majority of police carry some instruments of restraint such as handcuffs, a truncheon and/or a firearm. Situations necessitating intentional use of lethal force are a rare occurrence in day-to-day policing; in fact, most police work does not require the use of force at all. When force is required, police should start by employing the least violent method, only gradually adding force when strictly necessary to achieve a lawful policing objective. Use of firearms should always be reported.

Any use of force should always be lawful. Within the legal framework, tactical considerations guide what type and how much force to use in a specific situation. Police must be trained regularly in the use of force as well as in de-escalation techniques (including communications skills) so as to minimise the risk of using force. This is especially important in situations involving large numbers of people.

The policing of public gatherings, such as demonstrations, marches and rallies – also known as public order management – is a particular policing situation. The rights to assemble peacefully and to associate are basic rights which police are obliged to facilitate. The crucial factor in policing demonstrations as well as other public events lies in the preparation. Police should gather intelligence about the participants and their objectives beforehand, and should – where possible – seek to engage with the organizers of the event to identify risks and causes of tensions before they escalate. Preparation should also include such tactical matters as what dress to wear, what communication equipment to bring along and whether deployment of additional police agencies (including specialised units such as dog handlers and mounted police) is appropriate.

Use of force is typically at the police's discretion. Deciding how much force is proportionate is not easy, and may in fact require an independent assessment. Situations in which serious injury and or death have been caused should always be reported to and be reviewed by independent authorities (e.g. an independent police complaints body or judicial authorities). To enable supervisors to ensure that any tendency to excessive or unnecessary use of force, by so-called at risk officers, is detected and checked, detailed records on the use of force by individual police officers should include such incidents as violent resistance to arrest, injuries in police-public contacts and the use of firearms.

Human rights oriented policing also means carrying out arrests and detentions where necessary. This should always be in accordance with human rights principles, the most important of which are non-arbitrariness, the presumption of innocence, 'fair trial' and the absolute prohibition of torture and other cruel, inhuman or degrading treatment. The period just following arrest and detention is when a detainee is most at risk from police abuse. It is for this reason that oversight by independent committees that regularly visit places of detention is considered an important preventive measure. It should be clear that arrest and detention are only lawful when these are carried out within the framework of law; police actions causing additional harm (such as the use of shackles), or that lead to additional punishment (such as forcing a person to eat food that is against his or her religion) are prohibited as the person is still presumed to be innocent and as such may only be subject to those restrictions necessary to the ongoing investigation.

In some cases detention is carried out for administrative (e.g. public order) and or preventive reasons. This is known as 'administrative detention'. In recent years there have been concerns about an increase in legislation that facilitates administrative and preventive detention as a means of addressing terrorism. This is often accompanied by *in communicado* detention and leads to human rights violations.

Police that do not stop or prevent criminal behaviour are neglecting the rights of others, most notably the victims. The detection of crime is a core police

function. Human rights principles relating to criminal investigation include the presumption of innocence, prohibition of torture and other cruel, inhuman or degrading treatment, the right not to testify against oneself, and the right to privacy. Criminal investigation – seeking the truth about a particular crime – may involve a whole range of investigative methods for information-gathering purposes including house searches, wire-tapping and other forms of surveillance. These can be a serious intrusion into people's private life. In general, police should follow the principle of 'subsidiarity', meaning they should try to employ the least intrusive methods possible in the circumstances. There should be a scale of safeguards becoming stricter as intrusiveness increases. Forensics may provide useful and objective information about a crime, making other investigative methods unnecessary. Forensic information is often to be found at the scene of crime, making police skills in handling scenes of crime essential. Decisions about what investigative methods to use are first and foremost bound by law, with some methods deemed unlawful. Within the legal framework, tactical decisions are then made about what method to use when. However, police must also know how to use a certain method professionally and lawfully. Both social and technical skills are important 'investigative instruments'. This is especially the case for suspect interviews despite the fact that there are persistent but erroneous myths, within the police about the possession of a 'gut instinct' for carrying out suspect interviews or how to identify someone who is lying. Research has failed to uphold this assumption. Suspect interview requires a professional and intelligent use of information gleaned from a criminal investigation, rendering the use of any undue pressure on the suspect unnecessary. Any intention to use the suspect interview for anything other than seeking information on the crime i.e. for the purpose of punishing a suspect or creating fear, is both unprofessional and more importantly unlawful and as such should be prevented. When aiming to prevent human rights violations and enhance professionalism in the area of criminal investigation, laws and procedures that adhere to international human rights standards, together with adequate training, as well as constant monitoring and evaluation of practical experiences, are fundamental.

Enhancing police professionalism

Police misconduct, from minor offences to gross human rights violations, should never go unpunished and measures should be taken to prevent their recurrence. Police should be held to account for their actions, but should equally receive adequate 'preparation' (including guidelines, training and equipment) to enable them to carry out their actions professionally and in line with human rights standards. In the absence of such 'preparation', those responsible for failing to prepare police adequately (such as police trainers, managers and policy makers) could also be held to account. Establishing effective accountability mechanisms, both for individual police officers as for the police institution, is crucial.

Accountability, a concept commonly referred to by human rights advocates, is a complex matter involving many players. The fact that the concept cannot be translated in many languages means that care should be taken when addressing it. Calling for the implementation of systems of accountability seen in other jurisdictions will not always prove useful and can even be counterproductive in a given country. In order to promote relevant improvements to accountability, human rights advocates need to understand the structure and functioning of the oversight and accountability system in the target country. Any assessment of the accountability structures in the target country requires an initial assessment of what mechanisms are used and secondly how effective they are before recommendations can be made that are relevant to solving problems and preventing their recurrence.

Effective accountability should always be a balance of power and influence between the various players involved. Just as it is unacceptable to vest all powers and discretion entirely with the police, relying entirely on their professional judgment, it is just as unacceptable to vest all powers to control the police within one other single institution or agency, regardless of whether it is the political elite, the Executive or the community or anyone else for that matter. This would simply replace the locus of trust: how can one be sure that the executive organs, or political institutions, parliament, community forums etc, are more reliable (i.e. acting in the public rather than partisan, private or own community interest) than the police? It is exactly for this reason that a system is needed where oversight and control are spread amongst communities and their representatives, executive authorities and legal institutions (including the law) as well as the police itself.

Accountability mechanisms should incorporate instruments that ensure compliance with policies, regulations and laws relating to policing. For this purpose, these policies, regulations and laws should be as clear and unambiguous as possible. Instruments of accountability can also include complaints procedures and disciplinary and criminal procedures in cases of alleged misconduct. Accountability should encompass both *a priori* and *a posteriori* elements of policing; meaning it should include an assessment of the guidance given to police before an operation as well as how police are monitored and assessed afterwards. All this needs to be supported, in theory and in practice, by police management. Effective chains of command and leadership dedicated to establishing an ethos of respect for human rights are an essential prerequisite for upholding human rights standards. For external accountability mechanisms to be effective at all, internal commitment, most notably from police leadership, is an essential precondition.

Human rights compliant policing starts with the selection of the right people to become police officers and the exclusion of those that fail to uphold human rights values and attitudes. Some characteristics – most notably high moral standards and values – need to be inherent in individuals; others however, – most notably practical skills and knowledge – can (fairly easily) be taught. Recruitment, selection and training are equally important when seeking to establish a police agency that respects and protects human rights.

Recruiting a representative section of society and from these selecting those with high moral standards and values is a fundamental challenge for police organizations. Representation should be at all levels within the police agency. In order to achieve representation, targets should be set and maintained for the recruitment of ethnic groups, minorities and women, and causes for low recruitment of minorities and women should be evaluated. Indeed, recruitment policies and selection criteria, as well as police culture and symbols, should be assessed continuously on their potential discriminatory effect in order to encourage members of diverse communities to apply.

The training of new police recruits should comply with human rights principles – both in theory as well as in practice. Assessment of training programs from a human rights perspective should ensure the following:
- All police officers should receive basic police training.
- Basic training should be long enough for cadets to absorb knowledge, skills and attitudes.
- Training should tally with what is expected from future police officers. If public responsiveness is considered important it doesn't make sense to isolate cadets entirely from local communities on compounds, and expose them only to police officials.
- Training in laws and procedures should ensure that officers can relate these to day-to-day police work once they have completed training.
- A range of topics should be included in police training. These should include such issues as gender and cultural awareness, non-discrimination, and the role of the police in society.
- Police training should continue after basic training. Police officers should be regularly re-assessed on their policing skills, especially in the use of force.

The importance and potential impact of using recruitment procedures targeting all sectors in society, defining selection criteria reflecting respect for human rights principles and offering training that addresses human rights oriented skills, theory and attitudes, should not be underestimated. However, it should not be overestimated either. Both international donors interested in police assistance and human rights advocates tend to overvalue the importance as well as the effectiveness of recruitment, selection and especially training. At the same time there is a tendency to ignore institutional causes for human rights violations. Challenging and dealing with these institutional problems is far more difficult and requires long-term commitment, whereas training can seem like a quick-fix solution that is easily implemented. For training to be truly effective, it has to be reinforced in practice. When training cadets in the lawful use of police powers, the prerequisite must be the existence of operational procedures that are in line with human rights standards. This however is not a training issue. In situations in which police are violating human rights one should question whether training is the most effective starting point for change. And if so, one should consider starting with training police leadership, rather than rank and file officers. Answering this question accurately obviously requires a careful analysis of the respective situation.

When seeking to enhance police professionalism NGOs can play a distinct role. Exactly because they are not involved in State orderings, and often understand the community's concerns and worries, NGOs can be important partners for police seeking to improve their responsiveness and overall human rights compliance. We have mentioned before that the relationship between human rights NGOs and the police has for long been characterized by antagonism rather than trust. However, when police are open to human rights based reform, human rights NGOs and police can seek to formulate a common agenda through 'engagement'. Engagement between police and NGOs has often been characterised by involvement of NGOs in police training programs.

Engagement has created new dilemmas for NGOs, most notably the dilemma of how to work together while keeping enough distance to allow for criticism. Based on experiences within Amnesty International, the following lessons have been drawn:
- Any engagement activity should always be based on information: a proper contextual analysis should always be the starting point on the basis of which a strategy and a project plan defining objectives and activities can be developed. This assessment should include an analysis of what other NGOs are doing in this field.
- Establishing a relationship that is friendly but critical requires time.
- Transparency towards membership, as well as other NGOs, is essential in preventing resistance and opposition.
- Commitment from top police leadership should be clear so as to institutionalise contacts. In many countries this can only be achieved when there is clear commitment from the Ministry of Interior and/or Justice.
- Understanding policing is a precondition.

Work on policing issues should always be based on a solid analysis, involving a contextual analysis as well as a self-analysis, leading to the formulation of the main concerns based on which an intervention strategy can be developed. Undertaking such an analysis – one that goes further than a direct focus on the human rights violations – may not always be easy for human rights advocates who are eager to intervene. Indeed, the starting point for most human rights advocates will lie in things that go wrong rather than right. This Resource Book suggests that having decided to initiate work on policing issues – which in most situations will be based on human rights concerns – it is vital to 'take a step back' and start with an analysis focusing on what the police are required to do (as set out in national legislation and other standards and regulations governing the police), in what judicial and societal context they operate, and what their internal organization looks like. Based on this analysis, as well as a realistic estimate of one's own resources, human rights advocates can develop a strategy for research, campaigning and possible engagement.

This Resource Book aims to help in making these assessments, by providing human rights activists with a tool for carrying out an analysis and general background information on the police institution and policing.

Conclusions

Policing and human rights are two related subjects. In countries where human rights violations occur police are almost invariably involved in one way or another. Human rights violations involving police include the abuse of police powers (unlawful use of force, illegal arrest and detention) on the one hand and a lack of due diligence in carrying out police functions on the other. Police can be corrupted, unmotivated, uninterested, untrained etc. all leading to a police agency that is unable and/or unwilling to achieve its lawful objectives with due diligence. Yet even in countries where police receive extensive training, where advanced recruitment and selection methods have been developed and where there are abundant resources, human rights violations still occur as is documented in many of Amnesty International's country reports. Why is this and how can human rights advocates develop effective and relevant strategies for intervention and engagement with police?

To start with the first question; how do human rights violations occur and how do they persist? The answer will differ from country to country because of the different realities. It is for this reason that any attempt to intervene in relation to police conduct should always be based on a contextual analysis and assessment. Too often international consultants and trainers, usually employed by international donors, simply aim to export the system they know from 'back home' when addressing problems with policing. It should always be clearly understood that police are part of the State system in all its aspects. The country's history, culture, economy etc, are reflected in its legislation and policies, and in its operational practice as well as in the language used. Human rights compliant policing requires a human rights compliant environment in which to operate. Seeking to intervene in policing, while ignoring this simple fact, will rarely if ever be effective. With this in mind we would like to make four specific observations about human rights interventions that seek to improve policing and how these can be made more effective.

First: Too often the police are analysed in isolation as if it is possible to improve the human rights situation by changing just this one aspect of the security and justice system while leaving the other aspects untouched. Even though this point is often recognised in theory, it is hardly ever acted on in practical recommendations. Indeed, both consultants and international donors tend to focus on just one aspect of the security and justice system instead of targeting the system in its totality, thus ignoring how the different institutions interrelate. In practice, addressing problems in policing in isolation is rarely sufficient to improve policing as a whole. Any human rights strategy that seeks to be effective should always start with an assessment of the broader security and justice system as such and subsequently analyse the police's role in it. This should always include an analysis of both the legal and policy framework upon which the police and the other security and justice agencies operate and how clearly they define and limit the various objectives and operational boundaries of these agencies. It should also include an assessment of their administrative, and/or political, authorities. Any kind of police reform requires commitment from police authorities; if not active commitment then at least permission to move on.

Secondly: Human rights interventions in relation to policing often focus on police operations in which human rights violations most commonly occur. Police reform programs often focus on implementing new philosophies and/or methodologies, usually involving some form of 'community based policing', and/or include the deployment of new equipment and weaponry, and very often the dissemination of new practices through training.[1] However, paradoxically, such interventions tend to have little effect, as focusing on police operations tends to ignore the institutional causes of human rights violations and their persistence. Rather, it usually leads to interventions focusing on rank and file officers and how they carry out policing while failing to address the police leadership and police authorities. As a result such reform programs and related interventions tend to have little effect on respect for human rights in daily practice.

Thirdly: Interventions that do seek to deal with the institutional context of policing tend to underline the importance of accountability. Human rights advocates and international donors tend to emphasize the importance of improving accountability without explaining what it is exactly. Accountability is easily misunderstood and is difficult (if not impossible) to translate in many languages. Human rights advocates tend to underline the importance of external accountability and oversight bodies, sometimes at the expense of understanding that the effectiveness of such external mechanisms is dependent upon the internal commitment of the police, most notably police leadership. External accountability must always be accompanied by internal commitment to accountability, reflected in internal accountability mechanisms. For police these internal mechanisms – those that affect their promotion and demotion opportunities, their salaries and other benefits – may have more impact, as they may more directly affect their (working) lives. Human rights violations can often persist because there is no effective internal correction mechanism and a police culture characterized by a 'wall of silence' that prevents human rights abuses from being acknowledged and investigated. At the same time however, focusing only on internal systems while ignoring external mechanisms runs the risk of further reinforcing internal norms (rather than challenging these), including those that disrespect human rights.

The answer is that there needs to be a balanced system of accountability involving both external and internal parties taking responsibility for effective and human rights oriented policing. Ignoring this risks rendering systems of accountability ineffective. External accountability mechanisms are not the answer *per se* and can themselves become the instrument of particular interests, thereby necessitating oversight of their operations, leading to a spiral

1) Note that in recent times police reform programs have increasingly focused on how States can better defend themselves against 'terrorism', facilitating the adoption of legislation broadening police powers and functions – and sometimes thereby undermining the original objectives of the reform programs to improve police-community relations.

of accountability structures. Human rights advocates need to acknowledge the important role that internal accountability mechanisms can play and take steps to assess these. There has been a traditional reluctance amongst human rights advocates including Amnesty International to address these internal mechanisms. However, failing to address them risks developing strategies to tackle accountability that ignore some of the root causes of problems.

Fourthly: Human rights interventions almost invariably include training. Police are trained in new operational methodologies, in legal issues, in human rights, in dealing with minorities etc. Over and over again recommendations are formulated stressing the importance of improving training, apparently in the belief that training can solve all ills. It can't, for more than one reason. First of all, and most importantly, because many human rights problems do not stem from inadequate training alone but rather from the absence of adequate standards and procedures on which to base the training. This is the responsibility not of the training institutes but of those responsible for developing regulations and policies and translating these into standard operational procedures – in most countries the Ministry of Interior and/or Justice. Another reason why training alone can never be effective is that training tends to target the rank-and-file officers rather than the police leadership. Training rarely starts with police leadership, which is odd given that it is the leadership that is responsible for ensuring that training is put into practice. The ability of police leadership to shape an ethos of respect for human rights, and its effect on the overall police culture, should never be underestimated. Recruitment, selection and training are undoubtedly very important tools, but the extent to which police retain the information and values they have learnt during training in carrying out their duties is to a great extent shaped by the process of socialization which that person undergoes following training. What new recruits see and experience while doing their job shapes their thinking and behaviour. Training that is not embedded in a broader framework; that receives no follow-up in practice; and receives no visible support by police management, is bound to be ineffective.

So why is it that training is so often referred to as the solution to improving respect for human rights? The cynical answer is that it is probably because addressing training does not require a shake up of fundamental policing policies, doesn't touch upon daily realities, is not politically risky (both for donors as well as recipients) and doesn't cost too much, while it does convey an image of commitment to human rights (which is why so often the numbers of police undergoing training is highlighted).

Addressing policing and seeking to influence police behaviour requires a thorough understanding of the police and the context in which it operates. To understand the police and all the complexities involved, an understanding of policing concepts and relevant standards can help to reach a richer analysis in target countries and develop an effective and comprehensive research, campaigning and/or engagement strategy. Such analysis may very well result in the conclusion that in order to change police behaviour, legislative changes, or

changes to the prosecution services, or other elements affecting the police, may in fact be more fruitful.

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Part I. Introduction

Mindful that the nature of the functions of law enforcement in the defence of public order and the manner in which those functions are exercised have a direct impact on the quality of life of individuals as well as society as a whole

General Assembly Resolution 34/169 adopting the UN Code of Conduct for Law Enforcement Officials,17 Dec. 1979

1. Human Rights and the Police

1.1. Introduction

Human rights advocates as well as academics often argue that 'good policing' means policing in line with international human rights standards. Although this is no doubt true, it must be understood that international human rights standards offer only limited guidance for day-to-day police work. In fact, good police work can never be fully captured in rules and regulations, however numerous and detailed they might be. The necessary **discretion** required by police to carry out their functions presents problems for those human rights advocates preferring to have clear norms against which police behaviour can be measured. Many police find the reasoning of human rights advocates to be naïve at best, and theoretical to say the least, reflecting a lack of understanding of their reality and placing an unrealistic burden on police work. Human rights advocates on the other hand say that police use this as an excuse to sidestep criticism.

Police and human rights are two domains that reflect differing perspectives on rights and security. Though the relations between the two fields may seem obvious, differences in fundamental frames of reference between the two may lead to major miscommunications. In this Chapter we will take a closer look at how the two domains relate to one another. We start by exploring the police as a professional group and policing as an activity. Though police are often referred to as law enforcers, we prefer to use the term police, since policing encompasses more than mere law enforcement tasks. In Section 1.3. we look at the specific field of policing and human rights and explore developments that have taken place in this domain over the past decades. These developments have influenced those working in both fields, and in Section 1.4. we look at how the developments have impacted on the relationship between representatives of both groups. We close with a brief summary.

1.2. 'Police' or 'law enforcer'?

The commentary to article 1 of the UN Code of Conduct for Law Enforcement Officials (UN Code of Conduct) provides the following definition of law enforcement officials: "The term 'Law enforcement officials' includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest and detention. 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."

The UN definition implies that all officials, whether called Security Forces, Gendarmerie or Military Police, having the power to arrest and detain, are to be

considered as law enforcement officials, and thus should uphold the norms set out in the UN Code of Conduct. This principle is also reflected in the 'Guidelines for the effective implementation of the code of conduct for law enforcement officials'.[1]

It is notable that the definition in the UN Code of Conduct does not explicitly refer to the powers police have to use force against members of the public (in times of peace). The power to use force is very often seen as a defining police characteristic: the police may legally use force to maintain order, whereas other members of the public may in most circumstances only use force in self-defence. This is often referred to as the police having a 'monopoly on the use of force' in times of peace. It is exactly this monopoly on the use of force that gives the police its particular, and sensitive, position within the State system, thereby necessitating adequate control mechanisms to prevent abuse.

The specific power of police to use force is reflected in the European Code of Police Ethics which (referring to police as 'traditional police', trusting – perhaps rightly so – that everyone understands what that is) states that the "hard-core characteristic (…) entrusted to all existing public police bodies in Europe [is] the power to use force to maintain law and order in civil society."[2] Unlike the UN Code of Conduct, specific types of police formed for purposes other than maintaining law and order in civil society – such as military police, police involved in prison systems and secret security services as well as private security companies – are explicitly excluded from the European Code.[3]

In literature the terms 'police' and 'law enforcement official' (LEO, plural LEOs) are used interchangeably. In international human rights standards the latter term is most commonly used, thereby probably leading to its use by the majority of human rights advocates. Police themselves however tend to prefer the term 'police' as policing is not the same as law enforcement. Although police are always law enforcement officials, most countries also have non-police agencies whose officials enforce the law, for example border guards or customs officials. Even more important is the fact that the police function is often so much broader than mere law enforcement. It is generally accepted that the **functions of police** encompass: [4]

- Prevention and detection of crime
- Maintenance of public order
- Provision of assistance to the public

The term **policing** is used with many different meanings in mind; most notably it is referred to as the process of 'ensuring compliance with the law' in all its aspects. It should be apparent that ensuring such compliance can never be achieved by the police alone. Policing may indeed encompass more agencies and entities than just the police and is sometimes even taken as a social process involving civil society at large rather than a professional duty carried out by a State agency. However, such an interpretation of the concept of 'policing' may create unnecessary confusion, underlined by the fact that

the term is not always easy to translate in other languages. We will therefore use a simple definition and define policing as 'what the police do to ensure compliance with the law'.

The history of 'police' as a concept

The concept of 'police' has a long history. Its characteristic feature is that the concept has been narrowed down more and more. 'Police', 'politics' and 'policy' are clearly related words. The words derive from Latin 'politia', meaning 'civil administration' or 'the State', stemming from the Greek 'polis' (city) and 'politikè' (that which belongs to the city state, to civil society).[5] Originally the word 'police' encompassed the entire responsibility of the State, including religious functions (where these were still the responsibility of the State). Later the concept was used only for secular functions of the State and again later only for certain aspects of these State functions.[6] Only in the 19th Century is the concept restricted to those functions of the State that encompass protection against threat. Police agencies (as opposed to the police function) as we know today, are relatively new. In fact the first civil, public police, was the Metropolitan Police of London, formed by Sir Robert Peel in 1829. Other countries followed, with most developed democracies having police for some 100-150 years. In many formerly colonized countries the police were 'implanted' by colonial rule, primarily serving the interests of the colonial power at the expense of the local people.

Police are a State institution, operating under national authority and within national sovereignty. For many they are the most visible representatives of the State. They can operate in a centralised or decentralised system, organised at a federal, state or provincial level, divided into a judicial or a uniformed agency. Indeed, there are as many different police agencies as there are countries. Police are always *contingent* upon the State and its inhabitants: they will always reflect the nation (or region or locality) in its political culture, history, people, and economy. This simple notion can have enormous consequences. Political realities shape policing: if the State system has not adopted democratic values the police are not likely to defend such values. Police themselves invariably come from the society they police and will adopt and express similar attitudes (which must not be confused with police always being responsive to a community's needs). If societal attitudes are hostile to certain members of the public the police are likely to share these attitudes. If the country is confronted with high levels of corruption, alcohol abuse, physical violence etc, it is to be expected that these problems will be reflected within the police agencies and that therefore tackling them will present a major challenge and may very well require an entry point other than the police. Indeed: "It must be realized that the professional police standards (rule of law, accountability, transparency of decision-making etc) are to a large extent universal. However, the police function within cultural limits and constraints as well as economic realities."[7] General statements about the police, as given

1) Resolution 1989/61 adopted by the Economic and Social Council, 24 May 1989 and endorsed by the General Assembly in its Resolution 44/162 of 16 December 1989.
2) The European Code of Police Ethics. Commentary to the definition of the scope of the Code.
3) Ibid.
4) See for example: Rover, C. de, 1998, *To serve or to protect;* Crawshaw, R., e.a., 1998, *Human rights and policing. Standards for good behaviour and a strategy for change;* European Code of Police Ethics.

5) The word first appeared c.1530 in the English language, as a synonym for 'policy', that is civil administration. Up to the mid-19th century, 'police' in English meant both 'civil administration' and, borrowed from French, 'administration of public order'. Online Etymological Dictionary, at www.etymonline.com.
6) See for example; Cachet, A., 1990, *Politie en sociale controle.*
7) Das, Dilip K., 1997, "Challenges of policing democracies: a world perspective." p. 628.

in this Resource Book, should always be set against the reality of the target country – obviously without lowering the standards against which the police are assessed.

Different perspectives on the role of the State and its officials

Broadly speaking there are two perspectives on the role of the State vis-à-vis its dependants.[8] One (Napoleonic) is based on the assumption of the State as strong and authoritarian in its ability to provide security for the people in its territory; the State is thought to best represent and defend the public interest. State officials are to neutrally and professionally carry out State missives irrespective of who the State agent is. From this perspective it is hard to "think of security outside the box of the all-powerful nation-state."[9] The most notable representation of this perspective is France, but the other continental countries of Europe as well as most South American countries, tend to share this perspective. The other (Anglo-Saxon) perspective is critical (even suspicious) of public management of security problems. The role of the State in providing security is considered equal to that of other non-State actors. State officials are to engage with their communities, and should be representative of them, as a means of ensuring that they work in the community's interest. This perspective is seen in the United Kingdom and the USA, as well as in many other countries that have been influenced by them.

The perspective in use is strongly based on a particular country's historical context and is reflected in the judicial systems in use (inquisitorial or rather accusatorial, see Chapter 2).

How people perceive the role of the State strongly influences how they perceive the role of the police. In the one system police are primarily seen as the strong arm of the State, whereas in the second tradition police are primarily seen as service-providers to the communities. Both perspectives are legitimate – in theory they are equally able to be consistent with human rights principles or to violate them. However, the human rights domain is heavily influenced by the Anglo-Saxon context with its preference for a service-oriented decentralized police, that is responsive to and representative of the people they serve. It is true that this may indeed be very helpful when seeking to establish human rights compliant policing – though it is certainly not a precondition. The more formal State, operating at a certain distance to the people also has the potential to comply with human rights principles. Moreover, those introducing concepts and methodologies from one system to the other may encounter difficulties.

It is important to be aware of the distinction between perspectives on the role of the state, as well as to reflect on one's own position in this regard. Most major international human rights organizations are based in Anglo-Saxon contexts and seem to have adopted its outlook on the State accordingly.

8) Ferret, J., 2004, "The State, policing and old continental Europe: managing the local/national tension."
9) Ibid. p.50.

This Resource Book strives to take a neutral position on this issue, while adhering to international human rights standards. Wherever relevant we will reflect on the different systems and the consequences for policing.

As has been shown above, policing encompasses more than mere law enforcement. This Resource Book will therefore use the word 'police' rather than 'law enforcer'. The term 'law enforcement official' will only be used when referring to the UN Code of Conduct. This Resource Book will not address additional police functions such as those relating to immigration, asylum and refugee policies and practices, border control, correction and detention (other than police detention) and policing in war situations and refugee camps.

1.3. Police and human rights
Human rights standards were initially developed as a means of placing controls on the powerful State and its apparatus of power, and protecting the individual against State abuse of power. The International Covenant on Civil and Political Rights (ICCPR), and other treaties within the human rights framework, all reflect this principle. Those international human rights standards relating to police focus for that reason on police powers. International law sets standards as to how police powers are to be used legitimately. These international human rights standards tend to be perceived by police officers as limiting their room to act. This is not totally coincidental, as indeed this is exactly what human rights advocates tend to stress.

Policing tends to be associated with the negative functions of the State – police can use their powers to legitimately restrict people's rights and liberties. For a large part the legitimacy of police use of their powers can only to be assessed after the event as police have (and require) a degree of **discretion** as to when and how to act or not to act. Obviously this requires a functioning system of **accountability**. Indeed, issues of accountability are a major concern for human rights advocates, and enhancing accountability is often referred to as an important solution for human rights problems.

This having been said, the attention of the human rights community has gradually shifted to encompass the positive obligations of the State and hence to the police in its other roles: as human rights protectors and as one of the key players in the overall maintenance of stability (what police call order), supporting the creation of a situation in which people can enjoy all rights (including civil, political economic, social and cultural rights). Indeed, the police for long have been under the human rights spotlight uni-dimensionally and yet negatively, whereas in more recent times other dimensions have been added including those that acknowledge a more positive role for police, opening up the possibility for reflecting on areas of mutual interests for both human rights advocates and police officials.

For decades human rights were considered from the perspective of a powerful, abusive, State *against* the weak individual: the public needing protection against the State which was *actively* violating their rights. Consistent with this perspective, human rights were mainly regarded as something taking place in the public sphere. However, in recent years the emphasis has shifted to highlight the fact that human rights are not restricted to acts or omissions of State officials against the public, but equally encompass inter-public acts as well (acts of non-state actors against members of the public, and of members of the public against one another) and to highlight the role of the State in protecting those in the private sphere. As the Committee on the Elimination of Discrimination Against Women (CEDAW) stated in 1992 "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."[10] The police are the primary institution responsible for the maintenance of public order and the **rule of law**. They are also one of the key State agencies responsible for the prevention and investigation of criminal acts including those that can be qualified as human rights abuses or violations. As such, police are to carry out their functions with due diligence. We will return to the issue of **due diligence** in Chapter 2.

At the same time however, the notion of the powerful State has gradually been eroded: citizens have claimed increased rights and States are not as powerful in reality. Police often seek to highlight this point. According to their reasoning, the imbalance of power has shifted from the State to sections of society such as members of organized crime networks as well as terrorist groups who are aware of their rights and seek to 'abuse' the system to their benefit (such as delaying trials, filing complaints, appealing to higher courts etc). From this viewpoint, human rights are seen as an impediment to effective policing. Moreover, police feel that such sections of society are given more freedom to act than police themselves are. The perception is that a 'Catch 22' situation has evolved in which the human rights system, developed to protect the 'weak' individual, is actually weakening the State, resulting in a perceived dichotomy with security on the one side and human rights on the other.

There are other relevant relationships between policing and human rights. Often overlooked but worth studying is the resolution adopting the UN Code of Conduct, which states: *"Every law enforcement agency should be representative of, and responsive and accountable to, the community as a whole."*[11] This implies that police ought to engage with those they are to serve – members of the public – so as to establish their objectives in a joint process together with those in whose interests they are to act. This is the only way to prevent police becoming technocratic maintainers of public order, or worse. Indeed a preoccupation with 'professional policing' among police reformers tends to ignore the importance of police work being 'value-driven', one of these values being empathy with and responsiveness to those the police are serving. Professionalism, although essential, is not sufficient to ensure human rights compliant policing. At the same time responsive policing is no guarantee of human rights compliant policing either. Public tolerance of police violence

tends to increase in situations of high crime, to the extent that police violence can be praised by sections of the public as being 'tough on crime' (as currently seen in many countries including Brazil, South Africa and Colombia). This presents police leadership and their political masters with complex issues that must be solved in joint cooperation with civil society.

Police are to ensure that other people can enjoy their rights. However, the rights of police officers themselves are often neglected, both by human rights advocates as well as by the police. Police leaders sometimes tell police they are not entitled to civilian's rights because they are not civilians. This is clearly not true. Police are entitled to the same rights as everyone else, as provided for in the International Covenant on Economic, Social and Cultural Rights (ICESaCR) and ICCPR, including leisure time, fair pay, fair working hours, safe working conditions, equal promotion opportunities.[12] The only exception is given in Article 22(2) of the ICCPR that States can restrict the rights of those working within the armed forces or the police to freedom of assembly including the right to form and join trade unions (in fact, this is the only explicit mention of police in the entire body of international human rights treaties).[13]

Unfortunately in many countries the reality for police is extremely hard. Police often work excessively long hours, are underpaid, carry out dangerous work with little if any protection, are ill-prepared (both in terms of training and equipment) to perform tasks, have little social status and receive criticism from all sides. Indeed, many working in the field of police and human rights ask how the police can be expected to protect human rights when their own rights are not protected. Any effort undertaken to improve police respect for human rights should include making a fair analysis of their own situation. Where necessary, it could include advocating protection of police rights. This may be a difficult issue for human rights advocates, yet it is a logical consequence of their work. Moreover, any effort to improve police professionalism should address police management and elicit their full and visible commitment.

Police officers have rights too!

The European Platform for Police and Human Rights, in which both police and NGOs (including Amnesty International) participate, and that works under the auspices of the Council of Europe, has published a leaflet called 'Police officers have rights too!' The leaflet discusses the following rights:

- **Rights on duty:**
  The right to life
- **Rights in the workplace:**
  The right to privacy
  The right to freedom of expression and association
  The right to freedom of discrimination
- **Rights to proper working conditions**
- **Rights in disciplinary or criminal proceedings**

10) CEDAW, General Comment No.19, para 9.
11) General Assembly Resolution 34/169 adopting the UN Code of Conduct, 17 Dec. 1979.

12) As is also stated in the 'Guidelines for the effective implementation of the UN Code of Conduct for law enforcement officials': *"All law enforcement officials shall be adequately remunerated and shall be provided with appropriate working conditions".*
13) Article 11(2) of the European Convention and Article 16(3) of the American Convention reflect similar principles.

1.4. Police and human rights advocacy

As we have seen in the previous Section 'Police and Human Rights' is a dynamic field that has seen major developments during the past decades. This has affected the work of human rights advocacy, and continues to do so.[14] Those working in the field of human rights advocacy who wish to address police need to consider these developments and challenges to their work which include:

- Human rights advocates have tended to ignore the police's responsibility in actively *protecting* people's rights through preventing crime (including violent crime) and maintaining public order. They have mainly been concerned with the negative aspects of policing, thereby making it difficult to engage with police. The resulting distance between police and human rights advocates has limited the development of a common language and understanding. Acknowledging the positive obligations on the State, and the police, may in fact present the possibility of a 'shared agenda' or 'common ground' for police and human rights advocates.

- Human rights advocates have tended to stress the police's role in relation to civil and political rights while ignoring its role in the maintenance of stability and order to ensure the realisation of people's enjoyment of their economic, social and cultural rights.[15]

- This has resulted in the paradoxical situation that human rights advocates have tended to pay little attention to general crime that may have been a more serious threat to people's full enjoyment of their rights, than police behaviour was. People's sense of insecurity has become a major issue in the media in the last decade. Crime is a serious threat to the lives of people all over the world. Fear of crime, even when subjective, threatens people's sense of security and safety. Human rights organizations have tended to underestimate how crime affects people's lives – and sometimes misunderstand people's perception that human rights can render criminal institutions less effective. The effect of this has been that in some countries victims groups are opposing human rights groups rather than seeking co-operation[16] and that 'security' and 'human rights' are sometimes percieved to be opposites rather than two sides of the same coin.[17] Indeed, in some countries governments and police have been succesful in convincing the public that tough policing (often meaning more police powers with lesser safeguards for their lawful use) is necessary to provide a feeling of security.[18]

- Linked to this is the fact that traditionally human rights advocates – including those working within Amnesty International – have focused on State violence against political opponents. However, "the new victims of police abuse are common criminals – both perpetrators and victims of crime – in contrast to the past when the

people whom human rights organizations defended were victims of state repression. It is clear that the idea of defending the new 'guilty victims' is increasingly discomforting to [human rights organizations]. (…) They face denunciation by politicians for coddling criminals and must contend with the argument that tough-on-crime policies entail a necessary trade-off in the abrogation of some rights. In transitional societies, where rights are fragile in both public consciousness and political discourse, this hard-line appeal threatens a loss of public support for hard-won rights values."[19]

Human rights advocates who approach the police to establish some kind of engagement sometimes encounter a lack of understanding on the side of police. Rather than assuming that this reflects a lack of commitment, it should be understood that in some situations this misunderstanding by police officers – of human rights in general and how it relates to police work – is real and is often made worse by the fact that human rights semantics have been abused by (former) authorities. For example, police officers sometimes believe that arresting someone is a violation of human rights, making it difficult for them to understand how the two (policing and human rights) can go together. Human rights advocates should make it very clear what human rights are and what negative restrictions and positive obligations these place on police work. Human rights compliance first of all requires there to be a lawful basis for police action, that the action itself should conform to the law, and that the law should conform human rights standards. Moreover, human rights compliance requires the police to investigate and prevent incidents in which the rights and freedoms of people are curtailed.

1.5. Summary

Policing encompasses more than mere law enforcement. This Resource Book will therefore use the word 'police' rather than 'law enforcer'. Policing encompasses prevention and detection of crime, the maintenance of public order and provision of assistance to the public. These three functions together are believed to ensure security for those living in the State's territory. In order to ensure security, police can legitimately restrict peoples' rights, referred to as the negative function of the State; however police also have a positive obligation to help create an environment in which people feel and are free and secure. Police themselves are also entitled to this positive obligation of the State; they themselves are entitled to the same rights as anyone else, including economic, social and cultural rights.

Police officers tend to have a different perspective from that of most human rights advocates. They sometimes use different language when speaking of the same issue and will reach different conclusions about cause and effect. Sometimes this is the obvious result of the different roles they have in society; sometimes they may be the result of stereotypic assumptions.

14) Neild, R., 2002, "The new face of impunity."
15) For several decades, AI focused on civil and political rights, but has broadened its mission to include economic, social and cultural rights. See, 2005, *Human rights for human dignity.*
16) Cavallaro, J.L., 2003, *Crime, public order and human rights*.
17) Ibid. See also: Varenik, R., 2003/04, *Exploring roads to police reform: six recommendations.*
18) Cavallaro, J.L., 2003, *Crime, public order and human rights*.

19) Neild, R., 2002, "The new face of impunity."

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Part II. Achieving the Objectives of Law and Order

Achieving the Objectives of Law and Order: Introduction

To many the most important police function, and the one they associate most with policing, is the maintenance of public order. Indeed, all other police functions derive from this.

The police are not the only agency responsible for the maintenance of order, nor are they the only agency operating in this field. There is a conglomerate of partners involved, all with distinct roles and responsibilities and distinct powers. In many cases it would be inappropriate, but also ineffective, to approach only one agency with concerns about the lack of law and order. It is therefore essential to understand what other players are involved in the maintenance of order and how the police relate to (and depend on) these.

It is also essential to understand how the police relate to the State and its citizens. Are police the coercive arm of the State or are they an instrument to render service to the community? This debate is often reflected in the use of the different concepts of police as a 'force' or a 'service' respectively. The perspective taken strongly affects how police approach the public as well as how the public approaches the police. Human rights advocates tend to perceive the police as a 'force' and strive for the police to become a 'service'; a police that is responsive and directly accountable towards the community. Indeed 'from a force to a service' is a slogan that is often used in relation to human rights work with the police.

Obviously, when prioritising service to the State, police risk becoming an instrument of force of the powerful elite. However, when prioritising service to communities, police risk serving the needs of some at the cost of others. It is for this reason that police need some freedom to make their own choices based on their professionalism (obviously bound by law and established policy). Indeed, in seeking to achieve policing compliant with human rights, the question should not be whether they are a force or a service, but rather how these two aspects of policing are balanced. Police are the strong arm of the State, operating in the public interest. Put the other way around: The police are a service that may lawfully use force in order to achieve their lawful objectives. How force and service are balanced in practice is closely related to the role police have in society. Ignoring either side will inevitably result in less effective policing. As such it is not appropriate to talk about 'police forces' or 'police services'. We suggest rather using the neutral concept of a 'police agency'.

Part II of this Resource Book explores some of these issues. It looks at what it is the police are required to do and in what context. Chapter 2 looks at the concepts of 'order' and its opposite 'disorder'. Chapter 3 looks at how the police can give form to their responsibility to maintain order; by adopting different methodologies to achieve their goals. Chapter 4 looks at the interplay between the State, its citizens and the police and explores the necessity, but also the risks, of operational independence. We believe that this background information about what the police should do and the context in which they operate, is crucial for those wishing to make an adequate assessment of police in a given country and to develop an effective intervention strategy.

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Everyone has the right to life, liberty and security of person
Article 3, Universal Declaration on Human Rights

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this declaration can be fully realised
Article 28, Universal Declaration on Human Rights

2. State Responsibility for Law and Order

2.1. Introduction

Some level of tranquillity in society is a necessary precondition for ensuring that people prosper. Indeed, the link between security and the full enjoyment of both civil and political, as well as economic, social and cultural rights is increasingly acknowledged, as reflected in the fact that international development initiatives are being linked to issues of security.[1] For people to be able to live together peacefully, norms of behaviour within and between groups emerge, which are sustained naturally through socialization and informal discipline, or they may be externally imposed through formal regulations. Ultimately, the State is responsible for ensuring a minimum level of order and the police are one of several State entities tasked with giving effect to this obligation. The resolution adopting the UN Code of Conduct for Law Enforcement Officials refers to *"defence of public order"* as *"the nature of the functions of law enforcement."*[2] An important precondition for adequately evaluating police practice is a full understanding of the background against which police operate – including all aspects of the broader security and criminal justice systems.

We start in Section 2.2 of this Chapter by exploring the concept of 'order' and how it relates to the 'rule of law'. It is the State's ultimate responsibility to maintain order, which we discuss in Section 2.3. Section 2.4. looks at how States realise their responsibility to maintain order in practice through the establishment of security systems involving agencies that sit alongside a criminal justice system. It addresses how these various entities – including non-State actors – interrelate, developing the institutional context in which police operate. Order can be defined as the absence of disorder; Section 2.5. looks at disorder in different manifestations. Disorder may require States to establish a state of emergency, derogating from human rights standards, and frequently impacting on police activities, an issue discussed in Section 2.6. We close with a brief summary.

2.2. Order

2.2.1. The right to security and the duty to maintain order

The 'right to security', 'secure' meaning 'untroubled by danger or fear; safe, protected'; 'security' meaning 'a secure feeling'[3] is a basic right guaranteed in Article 3 of the Universal Declaration on Human Rights (UDHR). It is a difficult right to guarantee, as there are so many factors involved in providing security. The individual may require different factors to ensure his or her security from those required by the collective (certainly considering that achieving security may involve subjective feelings rather than objective criteria). High levels of

1) This is clearly endorsed by many funders of police reform and police assistance programs. See for example Stone, C. and J. Miller, M. Thornton and J. Trone, 2005, *Supporting security, justice and development: lessons for a new era*. The paper draws together lessons from experiences of UK funded policing and justice programs in seven countries.
2) General Assembly Resolution 34/169 adopting the UN Code of Conduct, 17 Dec. 1979.
3) The Concise Oxford Dictionary, 1990.

4) Rights to liberty of movement, freedom of thought, opinion, assembly and association respectively.
5) ICHRP, 1999, *Taking duties seriously: Individual duties in international human rights law- A commentary.*
6) The Concise Oxford Dictionary, 1990.
7) In this view laws tend to criminalise those acts that are of most concern to the (middle-class) electorate, typically acts such as theft, pick pocketing, street violence, house-breaking etc. Criminal acts that tend to be committed by the 'well to do', such as fiscal offences, tend to receive far less public attention and are not considered a threat to order according to this line of argument. Many authors make this point. See for example Chevigny, P., 1995, *Edge of the knife, police violence in the Americas;* Smith, B.W., 2004, "Structural and organizational predictors of homicide by police."
8) AI, 2003, *Shattered Lives*.
9) See www.humansecurity-report.info for the 2005 Human Security Report.

crime, whether real or perceived, may result in people feeling unsafe and insecure and may facilitate the acceptance of a tougher anti-crime regime potentially jeopardizing the rights of others.

The right to security is strongly connected to the 'entitlement to order', as stated in Article 28 of the UDHR, implying that order is necessary for people to realise their rights and freedoms and fulfil their aspirations. Article 28 is taken further in the preambles of both the ICCPR and the ICESCR: "(…) *the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.*" One of these conditions is an environment that is safe and secure, where there is 'order'. The importance of order can also be derived from Article 29(2) UDHR and Articles 12, 18, 19, 21 and 22[4] of the ICCPR which state that certain rights may be limited to meet the just requirements of 'public safety, (public) order, health or morals' or in the interest of 'national security' or for respect of the rights or reputations of others (though some may never be limited). Order must be maintained as it is in everyone's interest; and everyone is to contribute as everyone 'has duties to the community' (as stated in Article 29(1) UDHR).[5]

We will define **order** as 'a state of peaceful harmony under a constituted authority'.[6] Order is not a fully neutral concept however. Some will argue that order means the absence of those that disobey laws. Yet others may argue that the maintenance of order aims at preserving the inequitable distribution of resources. [7] Order tends to be defined by those in power as the absence of any threat to their own power. It is for this reason that political leaders sometimes seek to curtail peoples' right to associate and assemble in order to prevent the emergence of any opposition that may question their position. The repression of dissidents is then justified as 'a necessary measure for the maintenance of order.'

Security is a shared responsibility
Order is related to the concept of 'community safety'. In fact one could say that order is a concept that State agencies would use, whereas community safety is the concept used 'on the ground'.[8] This 'local perspective', as opposed to the national perspective, is all the more relevant as it has become clear in recent years that States are not always successful in their ability to ensure peace and order. Indeed, a State's capacity to intervene in conflicts of all sorts and influence non-State actors is limited and is sometimes biased in favour of specific interests. Moreover, ensuring community safety requires cooperation amongst all the relevant entities involved, as well as civil society. The UN has responded to this challenge with the concept of 'human security'.[9] This emphasises the notion that States are required to protect peoples' rights but should also support their empowerment so as to enhance their potential for self-protection. It is worth noting that the human security concept relates to all human rights including economic, social and cultural rights and again

acknowledges the "indivisibility of security, economic development and human freedom."[10]

Human rights advocates may feel somewhat uncomfortable with the order concept. Order may have a connotation of conservatism and maintenance of the *status quo*. However, order as intended in Article 28 of the UDHR, does not mean the adherence to rules regardless of the content of those rules. Indeed, in a gang-ruled community order can be maintained through fear. It follows from the 'right to security' that order is to be seen as including non-arbitrariness and predictability of what rules and norms will apply.[11] This means the State ought to be guided by principles of the rule of law and human rights so as to increase the likelihood that harmony is indeed peacefully acquired and maintained. 'Order' as such is a hollow concept. For order to be in line with human rights principles it must be based on the rule of law and lead to 'the ideal of free human beings enjoying all their rights'.

Measuring crime as an indicator of order and security
In order to give effect to their responsibility for the maintenance of order in their territory, States require some insight into levels of 'order' within the country. Some may argue that to achieve this, it is sufficient to measure the volume of crime and use this as an indicator of how secure society is. However, doing so ignores the fact that people's sense of security is affected by more factors than crime alone. Indeed, in order to develop an effective security policy some insight into both objective crime rates as well as people's sense of security is required. In many countries in all regions of the world governments are confronted with populations experiencing a sense of insecurity, often as a result of (real) high levels of crime but also stemming from fear of terrorist attacks, sensationalist media coverage etc. Indeed, fear of crime is largely driven by perceptions rather than realities. Managing perceptions and expectations of the public should be part of an effective security strategy – without forgetting real levels of crime of course. High levels of fear of crime may in itself constitute a failure of the State's responsibility to provide security. Do note that not all crimes make people feel equally as insecure. Crimes involving violence in particular disrupt people's sense of security.

10) Secretary-Generals' High-Level Panel on Threats, Challenges and Changes, 2004, *A more secure world: our shared responsibility.*
11) Kleinfeld Belton, R., 2005, *Competing definitions of the rule of law.*
12) Reference to the registration of crimes in international human rights standards (as well as in the work of AI) has thus far been largely restricted to the context of violence against women and discrimination, rather than focusing on the importance of registration in ensuring the monitoring of 'overall security' as such.

To be able to make accurate statements about levels of crime and security requires the monitoring of crime, both qualitatively and quantitatively. Measuring crime objectively is extremely difficult. Measuring State effectiveness in dealing with crime is equally difficult, if not impossible. To get a minimally reliable figure of real crime rates, a combination of public surveys, victim studies, offenders studies and statistics of crime reports should be used. It is important to use a combination, since any of these sources used alone can be unreliable and therefore insufficient. For example, not everyone reports crimes and police tend to mis-record certain crimes, making this statistic an unreliable source for identifying the number of crimes in a particular area and in a given time period.[12] Note that in some countries crime statistics become unreliable because of police tactics to suppress crime through

non-registration. This is due to various factors including the way police performance is evaluated. Sometimes the government does not want the police to register all crimes as any increase in crime figures can be used by opposition groups to criticise the government. Non-registration of their complaints by the police is indeed a major and very common grievance of citizens in many countries.

By combining various sources, the inaccuracies can be minimised. The Vera Institute of Justice has published a useful tool that provides guidance on how to measure various aspects of 'safety and justice' and identifies valid performance indicators.[13]

2.2.2. Rule of law: a precondition for order

The preamble to the UDHR states: *"It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."* The UN have defined **rule of law** as follows: "Rule of law (…) refers to the principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision making, legal certainty, avoidance of arbitrariness and legal transparency."[14]

The rule of law, as an essential element of lasting peace, is an essential element of Amnesty International's mission which states: "Amnesty International urges all governments to observe the rule of law." The rule of law terminology is strongly connected to democracy and human rights; in fact it is stated in many UN documents that the three should always go together as they are so strongly linked. However there is some debate over what is meant by the rule of law.[15] Procedural formalists would argue that 'rule of law' simply refers to the existence of laws and a system ensuring compliance with these laws regardless of the law-making process and the content of those laws. Under such a viewpoint apartheid laws would not be contradictory to rule of law principles for example.

Another interpretation of rule of law focuses on the institutions necessary for upholding rule of law, including comprehensive laws, well functioning courts and independent judges and law enforcement machinery. Yet, rule of law can also be about achieving certain goals, for which these institutions are necessary, yet insufficient. These goals are[16]:

1. A government bound by law
2. Equality before the law
3. Law and order
4. Predictable and effective rulings
5. Respect for human rights

It is this latter normative interpretation of the rule of law – meaning the establishment of institutions seeking to achieve all five goals – that is advocated by human rights organizations, including Amnesty International. Clearly, human rights must be an integral element (whereas for 'procedural formalists' the first four points would suffice). This position also implies that 'mere' advocacy for the establishment of rule of law institutions does not suffice.

One of the objectives of the rule of law is to establish order, order that subsequently must be based on the rule of law. Establishing and maintaining the rule of law is one of the means a State has to ensure order. It goes without saying that the existence of the rule of law is fundamental to human rights based policing as it defines and limits both police functions and powers, provides guidelines governing professional conduct, and places the police within the broader security system.[17] Adherence to the rule of law obviously requires a well-functioning system of laws protecting people's rights, be they civil, cultural, economic, political or social rights. Police may sometimes say "laws limit their work" while the opposite in fact is true: law makes it possible for them to do their work.

2.3. State responsibility

The maintenance of order is one of the core objectives of the State as it is necessary for the continuity of the State itself: "No service of government is more fundamental than protecting people's bodies and possessions. Indeed, the relationship between personal security and government is tautological: if people are not provided with protection at some minimum level, government is not considered to exist."[18] Indeed, any relatively stable government, whether democratic or authoritarian, will develop some security and justice arrangements, including the establishment of law enforcement agencies, and carry the responsibility for upholding the rule of law and the maintenance of order.

The maintenance of order is also a legal requirement on States. Under international law States are ultimately responsible for maintaining and ensuring peace and security within their territories so that their citizens can fully enjoy their human rights. This follows from the preamble of the UDHR which states: "Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms". This is reiterated in the preambles of the ICESCR and the ICCPR: *"the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms."* Amnesty International strives to ensure that States uphold their responsibilities in the field of human rights under international law. In various reports, most notably *Shattered lives* and *Making rights a reality*, the organization has formulated language on State responsibility.[19] Indeed, the right to security translates to the State's duty to maintain order and provide security.

13) Vera Institute of Justice, 2003, Measuring progress toward safety and justice: *A global guide to the design of performance indicators across the justice sector.*

14) Report of the Secretary-General, 2004. *The rule of law and transitional justice in conflict and post-conflict societies.*

15) Kleinfeld Belton, Rachel (2005), *Competing definitions of the rule of law*.

16) Ibid.

17) Report of the Secretary-General, 2002, *Strengthening the rule of law.*

18) Bayley, D. and C. Shearing, 2001, *The new structure of policing. Description, conceptualization and research agenda*, p.30.

19) AI, 2003, *Shattered lives*, especially its section on the duty of the State to protect its citizens (p. 79-81); AI, 2004, *Making rights a reality*, especially Chapter 2; AI, 2002, *Rights at risk*, on security legislation and law enforcement measures.

International law puts both negative and positive obligations on States: States should not abuse their powers and should protect people's freedoms respectively. In *Making rights a reality,* reference is made by Amnesty International to the (draft) articles on the Responsibility of States for Wrongful Acts.[20] According to these an internationally wrongful act refers to an act or omission that is attributable to a State and constitutes a breach of an international obligation of the State. States bear legal responsibility for respecting and implementing human rights standards within their territories and in territories where they have effective control and jurisdiction. This includes the obligation to prevent people's rights being violated or abused by State officials or others and to promote the full enjoyment of human rights. If private citizens threaten to abuse those rights, certainly the right to life and security of the person, a State is, under international law, obliged to prevent such from happening. If the abuse has taken place a State is, under international law, obliged to investigate and prosecute in accordance with international human rights standards.[21] This principle is the basis of the legal concept of **due diligence**.[22] States are responsible and must take positive measures for upholding people's rights and can be held accountable when failing to do so. For our purposes here it follows from the foregoing that States are responsible for guaranteeing security by establishing and maintaining order and creating a system to ensure this. States must ensure State representatives uphold human rights standards, i.e. avoid abusing their powers in the course of their duties, and must protect human rights standards, i.e. actively ensure basic security for all people within the territory over which the State has effective jurisdiction.

'The State' is an abstract concept. It is represented by 'organs' "whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State, whose conduct shall be considered an act of that State under international law. An organ includes any person or entity which has that status in accordance with the internal law of the State."[23]

It is clear that police agencies, as well as individual police officers, fall within the above definition of an organ representative of the State and therefore assume State responsibility. Through their objectives of maintaining public order, and preventing and detecting crime, the police are one of the key State organs responsible for the protection of human rights. With reference to due diligence, this means that when the police know, or should have known, of human rights abuses and fail to act to prevent them from happening, they bear responsibility under international law. However, the relationship between policing and the due diligence responsibility of the State is often more complex. How actively should police investigate certain crimes? And at what cost – what could go ignored? Are all crimes appropriate for police involvement? It is a responsibility of the State to employ optimal efforts to try to prevent human rights abuses of any kind. State agencies other than the police may in fact be more effective and better equipped than the police.

Although States are responsible for the maintenance of order, it is clear that they are not always effective in protecting the security of their people or providing an effective security system, as is documented in many of Amnesty International's reports. The resulting security gap in many countries is filled by armed groups or vigilantes threatening to replace State institutions as the significant security providers, often in fact contributing to increasing insecurity and signalling or causing a situation of disorder. In some countries private security forces step into the security domain, with mixed results.[24]

Amnesty International takes the position that the State need not monopolise the security sector, and that there is room for non-state 'orderings', including community-generated security initiatives (which may also be outside the formal legal process). However, the organization is also clear that the State is ultimately responsible if any of these 'orderings', including the private security sector, or vigilante groups, violate human rights.[25] The paradox is evident; if the State is not effective in providing security for all its people, other players emerge, yet on condition that the State can (and will) regulate effectiveness and equity and preferably can (and will) step in whenever necessary – which was exactly the problem in the first place.[26] The issue of private security providers is discussed further in Section 2.4.

Note that in some countries, mostly but not limited to Africa, the idea of the State maintaining security is alien to indigenous culture and traditions. In these countries **traditional justice systems** sometimes support local communities in the maintenance of order and the resolution of conflicts. Very often traditional justice encompasses some kind of a court function where individuals (either elected or leaders through inheritance) solve conflicts and problems that may threaten the peaceful harmony of the community. This may concern marital disputes, thefts, violence etc. For some countries the establishment of a formal judicial system in line with international human rights standards that is accessible to all is simply a bridge too far. In those countries, where official agencies may be located hundreds of miles away, requiring days of travel to register a criminal act, the traditional system can fill the gap and prevent impunity. However, it should be noted that traditional systems are in many situations discriminatory against women, children and juveniles.[27]

2.4. Security and justice systems

2.4.1. Introduction
All States develop various institutions and entities with the aim of maintaining order and ensuring security. These form their security and justice systems. For most of these, if not all, legislation defines their objectives, structures and powers. Laws, rules and regulations, national and local policies and operational codes are used to direct what these agencies do and how they do it. As is recognized in the resolution with which the UN Code of Conduct was adopted, effective law enforcement depends on a *"well-conceived, popularly accepted and humane system of laws."*[28] Non-State actors operating in the security

20) UN General Assembly resolution 56/ 83 adopted on 28 January 2002. The Articles are annexed to the resolution "without prejudice to the question of their future adoption or other appropriate action."
21) Ibid.
22) AI, 2004, *Making rights a reality*, p. 7; AI, 2003, *Shattered lives,* p.81.
23) See note 20. Article 4.

24) Goldsmith, A., 2003, "Policing weak states: citizen safety and state responsibility."
25) AI – Netherlands, 2004, *Amnesty International's recommendations on policing. A review and guide*, p.17.
26) See note 24.
27) Penal Reform International, January, 2001, *Access to justice in sub-Saharan Africa; the role of traditional and informal justice systems.*
28) General Assembly Resolution 34/169 adopting the UN Code of Conduct, 17 Dec. 1979

domain, such as private companies, are in most jurisdictions bound by law just like any other citizen.

Police are just one of a number of State institutions responsible for the maintenance of order. They have a limited responsibility when it comes to restoring public order as they are only equipped and trained to do so to a limited extent.

The security and justice systems of a country are partly overlapping and mutually reinforcing. Effectively maintaining order will help to prevent crime and an effective criminal justice system will support the maintenance of order. In this Section we will look at those players in the security and justice field with whom police cooperate and on whom they depend.

2.4.2. The security system

The security sector includes all agencies involved in the lawful maintenance of security. It includes the police, 'Special Forces', army, military police, security intelligence agencies and private security agencies. Note that there are also 'auxiliary services' such as social workers, schools, housing co-operatives etc. that all play a role in the maintenance of order. In fact: "Everyone plays a role in these processes – parents, siblings, peers, friends, acquaintances, colleagues and a host of authority figures."[29] Of course there are also those that are unlawfully involved in the maintenance of public order such as vigilantes and paramilitary groups.

Having so many different players in the security field, sometimes with similar institutional objectives, creates particular dynamics. As the security sector is often based on some level of secrecy, cooperation amongst agencies is not always easy. Indeed, in some situations competition between agencies is not uncommon.

It follows that the different objectives and operational boundaries of various players in the security field should be clearly defined and limited. In the next Sections we will look more closely at those entities involved in providing security and the maintenance of order whose activities may strongly affect police work.

2.4.2.a. The military

In principle the division between the tasks of the police and the military is simple; police deal with domestic, public, security while the army deals with external threats. Police are to engage with the communities they serve, being responsive and accountable to them.[30] The military on the other hand are trained and tasked to deal with an enemy threatening the State. Responsiveness to the community is not a relevant value for the military and accountability lines are typically internal within the hierarchy with only the highest commander being publicly accountable. This division in tasks explains most of the differences between military and civilian officers, including:

- Soldiers do not have discretionary powers: they "take orders from above rather than responding to the appeals of individual citizens" [31]
- Soldiers tend to operate in groups whereas police tend to work alone or in pairs
- Soldiers' means of conflict resolution are very different: "their use of force is much less restrained."[32] The military are trained to use force to kill, whereas the police are only to shoot to kill as a last resort
- "Secrecy is a more ingrained mindset"[33] within the military

In many countries the military receive (far) greater prestige and resources than the police do (sometimes even *de facto* over-ruling the police) sometimes leaving the police under-equipped and under-resourced. This can have particularly negative consequences in countries in transition where crime tends to rise while the old security system (typically of a military type) is dismantled and the new one (typically of a civilian type) has not yet adequately established itself. An example can be seen in Nigeria: "In Nigeria, as in other transitional states, the military left the scene with their bullet-proof vests, high-performance vehicles, life insurance and higher motivation. The police that succeeded them lacked resources and the government was not in a haste to equip them fully. It did not take long for the consequence to be noticed on the streets in terms of increased crime."[34]

Even though the military's primary task is to deal with 'external' threats, they are sometimes called upon to restore public order when (internal) disturbances are violent and ongoing. The Sudanese Police Forces Act 1999 (Article 8) for example, provides that when a state of emergency is declared the President may reintegrate the Police Forces into the People's Armed Forces at which time they will operate under the laws and regulations of those armed forces. In situations of disorder or internal disturbance, as well as in emergency situations where firm and fast action is needed, military tactics, including their strict command and minimal discretion, may be perceived as more effective than police tactics. Indeed, police units trained for riot control typically have more military features than other police departments do. The opposite is also true. Military peacekeeping units performing policing functions in post-conflict situations sometimes adopt civilian police tactics including establishing community relations and driving around unarmed and without helmets.

Indeed, in some countries, typically in many central and South American countries, the distinction between the police and the army is not so clear. Civil policing and military duties are blurred where soldiers perform police functions regardless of the circumstances, as a normal part of their duties and States sometimes decide to deploy (part of) the civil police with the military. Moreover, in some countries police are required to perform military duties when ordered to do so simply because the regimes trust the police more than the military.[35] Police are sometimes even ordered to perform military duties outside the State's territory. For example some time between 1997 and 2002, the Angolan government sent their paramilitary Rapid Intervention Police to Congo Brazzaville to fight as military combatants.[36]

29) Bayley & Shearing, 2001, *The new structure of policing. Description, conceptualization and research agenda*, p.2.
30) See note 28.

31) Bayley, D., 2001, *Democratizing the police abroad: What to do and how to do it*, p.38/39.
32) Ibid.
33) Ibid.
34) Cavallaro, J.L., 2003, *Crime, public order and human rights*, p.22.
35) Goldsmith, A., 2003, "Policing weak states: citizen safety and state responsibility."
36) AI, 2003, *Republic of Congo: A past that haunts the future.*

Clearly delineating the separation between internal security and national defense is a priority for achieving democratic policing and respect for citizens' rights. Not only should there be clear separation of duties but when military do perform police functions and vice versa there should be clear criteria for when and how and for how long. In particular it should be clear under what legal and operational procedures the military are performing police functions and using police powers, with special emphasis on those procedures guiding the use of force as well as the means of force available.

Paramilitary
Many countries operate paramilitary police forces, often for political rather than public interests.[37] Amnesty International has documented many examples of paramilitary forces responsible for excessive use of force. In many situations these paramilitary forces are not trained as police but do carry out police functions and have police powers. The term 'paramilitary' is ambiguous. In some country contexts it is used to refer to non-State armed groups (whether operating with or without the tacit approval of the State), while in others they are an official part of the State security apparatus. Those carrying out research into security systems should be aware of the complexities of the command structures of any 'paramilitary' groups as well as related complexities surrounding issues of accountability.

Militarization of police
In most countries police are civilian in nature and origin, attached to the Ministry of the Interior or Justice rather than Defence.[38] Some countries, including France, Turkey and Chile, have dual systems where 'Gendarmerie' agencies, originating from the military (sometimes still within the hierarchy of the Ministry of Defence but under (local) civilian authorities) operate next to the civilian police. In many countries the police have strong military features: they wear combat uniforms, patrol in groups, have a military type ranking system (Police General rather than Commissioner) and live in separate compounds.

Militarization of police may show itself in many aspects including:
- The hierarchical system in use
- The culture
- Training aspects (in a militarized system typically much time is spent on marching)
- Living quarters of police officers (in a militarized system police typically live in separate compounds, isolated from the communities they serve)
- Personnel policies (in a militarized system officers tend to be transferred without being consulted)
- Operational tactics being used

In theory and in practice it is undoubtedly considered best practice for the police to be as non-militarized as possible, since more militarized police tend to

be less responsive to community needs (as a consequence of culture as well as methods) and will experience difficulties in establishing relationships with the public.[39] It is for this reason that even in times of disorder it is recommended that basic law enforcement responsibilities be kept in the hands of civil law enforcement agencies for as long as possible.[40] This having been said, some authors argue that some 'functional blurring' may be appropriate in fragile environments since "militarization can make police more violent, but its associated hierarchical structures and discipline may also offer a potential tool for controlling brutality and ensuring a degree of public safety."[41]

The Inter American Commission on Human Rights (IACHR)
"The lack of clear delineation between police and the army is a serious problem in many countries within the jurisdiction of the IACHR. The Commission has addressed the issue repeatedly, stating that, "a state must not permit the Armed Forces to influence the actions of police institutions." It has also affirmed that, "given that the Armed Forces lack proper training for controlling internal security, it is the responsibility of an effective and rights-respecting civilian police force to combat insecurity, crime, and violence internally." In addition to noting the differences in military and police training in its 1998 Annual Report, the IACHR recommended that, "the Armed Forces not be deployed for the purposes of law enforcement. Due to their specialty, complexity and degree of interaction with civilians, the investigation of common crimes and arrests, amongst other tasks, require a duly trained police corps particularly respectful of the Law."
(…) According to the IACHR, when states authorize military interventions in internal security matters, they confuse the concepts of public security and national security. Neither the abuse of "states of exception" nor the extraordinary increase in crime can justify the intrusion of the military in matters related to internal security. Another worrying aspect of militarization is the continued use of military jurisdiction for misconduct, even when soldiers are engaged in policing functions. For their part, police forces continue to be deeply militarized in their organizational structures and educational systems, and in their control and disciplinary mechanisms." [42]

2.4.2.b. Internal Security Agencies
As a general rule of thumb the police are restricted to crime prevention and detection the maintenance of public order. Their intelligence gathering, carried out under a Criminal Procedure Code, is restricted to criminal intelligence. Police should not actively gather political intelligence. Gathering political intelligence about State security rather than crime is the prime responsibility of Security Agencies whose function it is to prevent (foreign) threats against the State. As Security Agencies tend to operate under secrecy, their accountability lines are quite different from the police. Generally, Security Agencies report to a secret parliamentary commission and/or are (internally) accountable to the Minister of the Interior.[43]

37) See for example: AI, 2002, *Policing to protect human rights*.
38) Art. 13 the European Code of Police Ethics requires the police to be placed under civilian authorities, with the commentary adding that "A police organization under civilian responsibility is likely to best cultivate police professionalism suitable for civil society."

39) See for example O'Rawe, M. & L. Moore, 1997, *Human rights on duty*; Bayley, D., 2001, *Democratizing the police abroad: What to do and how to do it*, p.39; Rover, C. de, 1998, *To serve and to protect*; Crawshaw, R., e.a., 1998, *Human rights and policing. Standards for good behaviour and a strategy for change*.
40) Rover, C. de, 1998, *To serve and to protect*.
41) Global Facilitation Network for Security Sector Reform, 2005, *Compendium of good practices on security sector reform*.
42) The text, and the IACHR quotes, in this box are taken from *Civil Society Organizations and the Inter-American System for the Protection of Human Rights Face Citizen Security Challenges in the Americas*. Document prepared for the hearing on Citizen Security and Human Rights At the Inter-American Commission on Human Rights, presented on October 14, 2005, issued by a conglomeration of human rights NGOs.
43) Despite secrecy being their core business, Security Agencies have opened up slightly recently. E.g. the US National Security Agency and the UK based MI5 both have websites explaining their mission and objectives.

The exact distinction between police and internal security agencies is not always clear. In some countries Security Agencies are separated entirely from the police, necessitating some kind of coordinating mechanism for exchanging relevant information. In others, such as Malaysia and Ireland, both are performed within the same agency (though not necessarily by the same officers). In still others, police have 'security officers' accountable to both the police and the Security Agency.

The focus of these Internal Security Agencies tends to be different to that of the police: their first priority is to prevent acts that may disrupt the State, without having to pay much attention to how this is accomplished. As such, they are less inclined to follow rules of procedure under the Criminal Law, as the police are required to do. In some countries Internal Security Agencies operate under different legislation to the police. Clearly however it is important to note that, when they do have police powers such as the power to arrest and detain, and the power to use force, the principles of the UN Code of Conduct for Law Enforcement Officials should be applied as a safeguard against human rights violations.

Intelligence is a vital 'resource' for both police and Security Agencies. It is not always clear what intelligence is criminal and what is political and information held by police may be interesting for Security purposes. Indeed, the demarcation between police and security agencies can become unclear with Security Agencies, often without proper training in the law of evidence, gathering information that is used as evidence in court and police using their community relations for gathering intelligence that is used for political reasons. Due process standards in criminal trials can be undermined by the fact that Security Agencies tend to be unwilling to disclose both their sources of information and the actual information itself, which often is 'classified'. Conversely, if police start using their community relations for gathering political information they risk losing the trust of their communities. This is especially the case with intelligence regarding "terrorism". "Terrorism" for some involves criminal acts, though with a political motive, and for others is seen as purely a political act. As a consequence both police and Security Agencies may be interested in gathering intelligence about "terrorists."

Security Services in the Council of Europe

Within the Council of Europe, the general characteristics of internal security services of Member States have been identified and defined in recent years.[44] The Group of Specialists on Internal Security Services (PC-S-SEC) which looked into this issue concluded that the existence of an internal security service is based on the fundamental principle of international law that a state is entitled to protect its national security (which may be defined in national law), which in turn is justified by the principle that national sovereignty requires protection. National security is considered as the backbone of national sovereignty. The internal security services contribute to the protection of human rights; they are part of the constitutional state and operate under the legal system. This

means that the functioning of an internal security service is not just aimed at defending the national security but also at protecting and guaranteeing the human rights of its citizens.

The PC-S-SEC further concluded that all internal security services are embedded in their national legal frameworks, either in the constitution, or in specific laws, or in laws regulating other governmental bodies as a means of safeguarding the application of the rule of law. They should be organised and operate based on rules laid down by statute. In this respect it was considered as a general principle that all laws should go through the normal parliamentary law-making process, which is by its nature a public procedure. This means that any statute establishing internal security services should be in accordance with the principle of legality.

The PC-S-SEC identified that one of the functions of internal security services can be to prevent threats of a serious criminal nature and that the information internal security services obtain may be of great assistance to law enforcement agencies. It concluded that since one of the functions of an internal security service can be to assist law enforcement agencies, it is justified – as is the case in some Council of Europe member States – that internal security services are organised within a law enforcement agency. It recognised that the functions and powers of law enforcement and intelligence gathering are separate but complementary and that it was a matter for each member State to decide how best to protect its national security and to structure its internal security services. However, it concluded that whatever structure was adopted must be legal and that where the functions are carried out by different bodies, legislation should build in safeguards to ensure a proper balance between the necessity to keep information confidential, if and when necessary for national security reasons, and, if required by law, a proper mechanism to inform law enforcement agencies, when necessary in a specific case or required by law. Where documentation containing information on persons gathered by internal security services is subsequently used in court as evidence by a public prosecutor, the equality of arms principle requires that this information be accessible to the defendant.

2.4.2.c. Private security providers

As we have seen, the State cannot, and need not, provide security in isolation. Non-State actors, including private security companies, play an important and ever-increasing role. This is sometimes referred to as the 'privatization of policing' as if private companies and individuals increasingly take over the police function. This may be an oversimplification. What is happening is not so much the privatization of police functions, but rather 'multilateralization': "a host of non-governmental groups have assumed responsibility for their own protection, and a host of non-governmental agencies have undertaken to provide security services."[45] Indeed, both sponsors and providers of policing can be public or private. Various groups can authorise policing (the auspices of security) including those representing economic interests (businesses as well

44) The PC-S-SEC was asked by the Council of Europe's Committee on Crime Problems (CDPC) to submit a report on the feasibility of recommendations on security services. The CDPC considered the report of the Group at its 52nd Plenary Session (16-20 June 2003): CDPC (2003) 09, Addendum IV.

45) Bayley & Shearing, 2001, *The new structure of policing. Description, conceptualization and research agenda*, p.1

as criminal gangs), residential communities, cultural communities, individuals and governments; and various groups can provide (non-governmental) policing, including commercial security companies, non-governmental auspices acting as their own providers (industries, real estate developers, neighbourhoods), individuals and strange enough governments themselves. Governments providing non-state policing services may seem somewhat awkward but is very real as can be seen when governments allow police officials to work in their official uniform off-duty for private gain (called 'moonlighting'); and in situations where governments charge for policing services (such as policing commercial events and responding to private burglar alarms).

'Multilateralization' of police functions is a reality. Moreover this is not new: "it could be argued that the monopolization of policing by government is an aberration. It is only in the past 100 to 200 years that policing has been effectively monopolized by governments, and even that was not uniform across countries." [46] However, it must be clear that the government remains ultimately responsible for policing. Justice, equality of service and quality of service, are to be respected at all times. In order to understand the current dynamics and complexities in security maintenance the process of multilaterization must be fully understood.

The phenomenon of security provided by private companies is not without concerns. Several observers have pointed to the negative effect on public police practices. As the line between private and public security is not always clear, responsibilities for who is doing what as well as lines of accountability can get blurred, sometimes leading to a loss of trust in public police. Furthermore public and private providers often employ different practices based on the powers they are able to lawfully operate: public police tend to prevent crime through resort to use of force; private providers tend to do so through exclusion and the regulation of access.[47] All in all it seems that an influx of private security providers seems to lead to public police becoming less service and community-oriented and focused increasingly on situations where they are more prone to use force.

In recent years, Amnesty International has particularly focused on the context of the employment of private security by multinational companies or the secondment of police officers to the employment of such companies to defend property, recommending for example that companies should not employ personnel with a record of human rights abuses and that private security companies should be subject to national regulations ensuring strict accountability and that security procedures employed by private security personnel should be consistent with the human rights standards including measures to prevent excessive force, as well as torture or cruel, inhuman or degrading treatment.[48]

2.4.3. The criminal justice system
The criminal justice system is responsible for criminal investigation, prosecution and adjudication, as well as the execution of sentences. It

includes such institutions as the police, prosecution, judiciary, probation and prisons services (and some would argue it also involves non-State players like private investigators and traditional and informal actors). All agencies within the criminal justice system interrelate and are dependent upon each other. There are countless examples of police keeping someone detained without trial as a means of avoiding an overloaded and/or ineffective court system; public mistrust in trial decisions leading to public and/or police vigilantism; police making crucial procedural errors in investigations leading to release of suspects; sentenced criminals being released because of overcrowded prisons, not to mention corrupt practices where the entire criminal justice system is rendered ineffective.

The quality of the overall criminal justice system undoubtedly contributes to the maintenance of security, though the effect of the criminal justice system on crime is limited: a large percentage of all crimes go unpunished. One important aspect of the criminal justice system that contributes to security has to do with access to justice. Users of this Resource Book researching the role of police should be aware of broader issues around accessing justice – for example the existence of an adequate security and justice infrastructure throughout a country, properly trained representatives of the judiciary, law enforcement and judicial personnel with a knowledge of local languages and culture amongst others – and the role and obligations of police in ensuring access to justice.[49]

Criminal justice systems are ordinarily based on one of two judicial systems: the **accusatorial** (or adversarial) common law system and the **inquisitorial** civil law system:

- Under the inquisitorial civil law system police and prosecution as well as judges are considered as neutral and objective 'servants of the law' working to find the objective truth. The pre-trial judge or investigating magistrate, assisted by the prosecutor, is primarily responsible for the criminal investigation, actively involved in determining the facts of the case, whereas one or more judges are in charge of the trial. The system is focused on the accused.
- Under the accusatorial common law system both parties (defence and prosecution) have the same standing at trial and during trial are considered as equal parties in search of the ('subjective') truth. The judge, sometimes assisted by a jury, is there to mediate and safeguard the judicial process – as an impartial referee between parties. The purpose of the investigation for the prosecutor is to obtain information that will convince the judge or jury that sufficient proof exists to prosecute and convict the accused.

Of-course in practise these systems are not followed in such pure forms and quite often there is mix of an inquisitorial pre-trial phase and an accusatorial trial phase. Very generally speaking one can say that the UK and USA as well as most (former) British Commonwealth countries tend to have a moderately accusatorial and most of the European continental countries, most Latin

46) Ibid. p.1.
47) Ibid.
48) AI's 2004 booklet on UN human rights norms for business, *Towards Legal Accountability*.

49) Vera Institute of Justice, 2003, *Measuring progress toward safety and justice: A global guide to the design of performance indicators across the justice sector*. This guide has a section on performance indicators for measuring access to justice.

American countries and countries that were under Soviet influence have a moderately inquisitial judicial system.

The different systems result in different roles for the prosecutor – in turn affecting the police. In the inquisitorial (continental) system the investigation takes place under the authority of the pre-trial judge or investigating magistrate assisted by the prosecution. The prosecutor starts the investigation, directs it and takes the results to court. The other party – the suspect and his/her legal representative – are rather passive and usually do not actively conduct any investigation themselves (they may however request the investigative judge to carry out certain actions, e.g. hear certain 'new' witnesses that went unnoticed by the prosecution). The prosecution role can be carried out by a prosecutor (a party in the trial) or by an (impartial) examining magistrate or pre-trial judge (for example in France, Italy, Belgium). Countries with such a civil law system often have separate judicial police who carry out criminal investigation functions on behalf of the prosecutor. As judicial officers, the judicial police are separated from other police functions, such as prevention of crime and the maintenance of public order. In this context the 'other' police are known as the 'preventive police'.

In the accusatorial system however, the police carry out the investigation, under their own authority, and take the results of the investigation to the prosecutor who takes them to court. This diminishes the role of the prosecutor substantially but increases the importance of the police role. Such countries often have one police agency carrying out all police functions – though within the agency there are usually separate investigation departments. Further information about the role of police in criminal investigations and prosecutions can be found in Chapter 7.

2.5. Order or disorder?

States are responsible for the maintenance of order. However, this doesn't mean countries are always ultimately stable, peaceful and tranquil. People disagreeing with a government's policies have the right to demonstrate and organise opposition. This is laid down in article 21 of the ICCPR (right to peaceful assembly) which also states: *"No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."* Police are to impose these legal restrictions, requiring them to understand people's rights and freedoms (and to technically know how to deal with demonstrations and assemblies).

It is not always easy to distinguish at what point order becomes disorder, nor can a fully neutral judgment always be made. Small-scale non-violent demonstrations do not have to lead to a situation of disorder. On the contrary, they are an expression of people enjoying their civil and political rights to the

fullest and show functional participation in the political process.[50] Forming peaceful assemblies and staging peaceful demonstrations are basic rights that the police should facilitate rather than obstruct. Police should manage these professionally, in order to prevent them becoming unlawful and/or violent. Indeed: "when a community, or a section of a community, articulates demands on the political system police are to facilitate the transmission of those demands and not to suppress them; it means that when opponents of a regime or government seek to achieve their ends through violence or intimidation, or otherwise illegally, police should frustrate them; it means that when the means or ends of government are at odds with accountable government or the rule of law, police are not to serve those means or ends. In this sense police can act as a 'conscience of constitutionality'."[51]

Yet, those in power can regard such demonstrations, even when peaceful, as disorder threatening the continuity of the State and as such may want to disrupt them. The existence of so-called disorder is often used as an excuse by States to lower human rights standards and safeguards. States tend to give preference to security considerations and argue that restoring order should be given priority over human rights, as it is their duty to provide security.

Peaceful assemblies or demonstrations may be an indication of tensions within a society, and these may develop into disturbances – unlawful or violent assemblies. Ultimately, tensions and disturbances may lead to non-international armed conflict (civil war), although on most occasions, of course, they do not. The law protecting people in these various situations is different as thresholds are crossed. International human rights law, which seeks to protect people from abuse of power by the State and to secure remedies in the event of human rights abuse, is applicable across all of the thresholds. It is applicable in times of peace, in times of tension and disturbance and in times of armed conflict – international and non-international. However its effectiveness is reduced through measures of derogation as States seek lawfully to limit human rights in times of emergency that threaten the life of the nation (see Section 2.6). International humanitarian law, or the law of war, becomes applicable in situations of armed conflict (international or non-international). In Appendix H an overview is given of the relevant international humanitarian law.

Whatever the level of tensions within a society, civil policing functions continue: i.e. police continue to investigate crimes, provide assistance (where possible) and maintain order (where possible). Adherence to the rule of law and the bringing to justice of criminal offenders, even in situations of conflict and disorder, are the prime means by which States prevent impunity leading to an increase in civil disobedience and (organized) crime. That said, responsibility for the maintenance of order may be shared with, or transferred to, State agencies other than the police during states of emergency, most notably to Special Forces and the military. In any event, international human rights and humanitarian law tasks States to uphold certain minimum norms regardless of the circumstances. Discrimination and inhumane treatment can never by justified by internal conflicts or any other public emergency.

50) Crawshaw, R., e.a., 1998, *Human rights and policing. Standards for good behaviour and a strategy for change.*
51) Ibid., p.44.

2.6. A state of emergency

In situations such as those described in the previous Section, States can get to the point where they consider it necessary to declare a state of emergency. Human rights treaties allow States to limit human rights when there are emergencies such as war, civil unrest or natural disasters that threaten the life of the nation.

2.6.1. Derogation of human rights under a state of emergency

Under article 4 of the ICCPR States can declare a state of emergency and may derogate from their obligations under the ICCPR: *"in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed."* This derogation needs to adhere to the principle of proportionality as it is only permitted *"to the extent strictly required by the exigencies of the situation"* and may not be inconsistent with other obligations under international law nor may it be discriminatory. The State Party must notify other State Parties through the Secretary-General of the UN. From these requirements it follows that derogation must be subject to regular review and must be limited in time.

Some rights are non-derogable and these vary according to the treaty. The ICCPR permits no derogation from:
- The right to life (Article 6)
- The prohibition of torture (Article 7)
- Prohibition of slavery (Article 8, paragraphs 1 and 2)
- The right not to be held guilty for crimes that didn't constitute crimes before (Article 15)
- To be recognised as a person before law (Article 16)
- The right to freedom of thought, conscience and religion (Article 18)[52]

States that are parties to the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, cannot derogate from this obligation as prescribed in Article 6 of that Protocol.

The right to a fair trial can be subject to derogation, as can – amongst others – the rights to freedom of assembly, freedom of association, freedom of expression and the right to privacy.

A State can declare a state of emergency when the life of the nation is threatened. However, it is not always clear if and how 'the life of the nation' is threatened; nor whether it requires the level of derogation as carried out. Many countries have implemented some kind of security law, very often relating to the threat of "terrorism", providing their respective police agencies with wider powers and authority. These *de facto* (but not *de jure*) states of emergency are not always in accordance with Article 4 of the ICCPR, and if so are a violation of international law. Both declaring a state of emergency and implementing security legislation are in practice not always governed by objective considerations: what happens if the vast majority of people of that area do not agree with the government's assessment of the situation and do not want

the emergency law to be promulgated? Who will decide that the proclamation of emergency is absolutely essential to meet the threat to the security of the country or province and that the force used is necessary and proportionate to the situation?[53]

The Human Rights Committee (HRC) has given an elaborate seven-page authoritative interpretation of Article 4 of the ICCPR in its General Comment 29.[54] It is recommended that readers familiarise themselves with this comment thoroughly and pay particular attention to those aspects dealing with law enforcement and maintenance of public order issues. The comment clearly states that 'restoration of a state of normalcy' must be the predominant objective of derogation. The requirement of Article 4 that derogation measures must be 'limited to the extent strictly required' "relates to the duration, geographical coverage and material scope of the state of emergency and any measures resorted to because of the emergency."[55] The HRC stresses the importance of adhering to the principles of legality and rule of law 'at times when they are most needed'.

Derogation may not be inconsistent with other obligations under international law, particularly humanitarian law (see appendix H). As stated by the HRC: "States parties may in no circumstances invoke Article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence."[56] Other elements of fair trial that should be respected include the condition that only courts may try and convict persons for criminal offences and the right to take proceedings before a court to enable the court to decide on the lawfulness of detention.[57]

All in all, for States to lawfully derogate from human rights they must comply with the following principles:
- Derogation must be exceptional and temporary
- Absolutely necessary
- Proportionate to threat
- Non-discriminatory
- A state of emergency must be officially proclaimed. Declaring such a state of emergency must be necessary to deal with the situation and the measures taken must be appropriate measures
- Respect for the inherent dignity of the human being
- Respect for those non-derogable rights mentioned earlier. In addition, the taking of hostages, abductions or unacknowledged detention are always prohibited
- Derogation must be subject to international review

2.6.2. Restrict or derogate?

Some articles of human rights treaties contain limitation clauses, allowing the rights they embody to be limited under certain circumstances. For example

52) Not to be imprisoned for not fulfilling a contractual obligation (Art.11, ICCPR) is another non-derogable right.

53) Based on personal communication with Mr. G.P Joshi, CHRI, Police Program Coordinator, India.
54) HRC, General Comment No 29 adopted on 24 July 2001.
55) Ibid., para 4.
56) Ibid., para 11.
57) Ibid., para 16.

Article 21 of the ICCPR protects the right of peaceful assembly. However, it allows restrictions, imposed in conformity with the law and necessary in a democratic society, to be placed on that right for a limited number of purposes. These are the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights of others. The articles protecting the rights to freedom of thought, conscience or religion, to freedom of expression; to freedom of association and to liberty of movement contain similar limitation clauses. Indeed, General Comment 29 of the HRC states that not every disturbance or catastrophe qualifies as a public emergency: "[States] must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the Covenant are strictly required by the exigencies of the situation."[58] In other words, it will not always be necessary to declare a state of emergency and limit peoples' rights, nor can declaring a state of emergency be used to restrict more rights than was necessary to meet the exigencies of the situation.

2.6.3. Absolute rights

Some rights are absolute in that States can never derogate from them and they may never be limited in any way. Absolute rights are:

- The right to be free from torture and ill-treatment
- The right not to be enslaved
- The right to freedom of thought and conscience

Although the right to life is non-derogable, it is not an absolute right in that there are some circumstances under which agents of the State may use lethal force. However, the right not to be arbitrarily killed is an absolute right. Similarly, the right to liberty of person is not an absolute right as treaty provisions allow for lawful deprivation of liberty. However, the right not to be arbitrarily arrested and/or detained is absolute. See Chapters 5 and 6 for further information on this.

Another absolute right implied from all the human rights treaties is that States cannot treat different people differently under similar circumstances; the right not to be discriminated against is implied in all human rights standards.

2.6.4. Terrorism

Terrorism represents a particular situation that governments often claim threaten the life of a nation. It iscurrently viewed as a major threat to security.[59] There is not one widely accepted definition of terrorism to guide international norm-setting, although there are moves to address this.[60] Amnesty International welcomes initiatives towards a Terrorism Convention as the organization comes across vague definitions in security legislation that may lead to the criminalizing of peaceful activities involving the exercise of rights that are protected under international law as well as the jeopardizing of rights of suspects of security offences.[61]

Terrorism seeks to create disorder and destabilize States. Since governments have a duty to ensure order in their territory they have the right and the duty to protect their people against such threats. However, the means used by States to achieve this often has far reaching effects on the rule of law. Terrorism may lead to States proclaiming a state of emergency. In such cases, States are bound by the conditions discussed above. In practice however, States tend to refrain from officially proclaiming a state of emergency but rather implement some kind of security legislation which very often includes the broadening of police functions, granting law enforcement agencies additional powers to search, arrest and detain while weakening safeguards against abuse of those powers.

An example is Malaysia, where the government, under provisions of the 1957 Constitution allowing for restrictions to fundamental liberties in the event of serious subversion or organised violence, enacted the Internal Security Act (ISA) in 1960. The ISA, whether or not an official state of emergency has been declared, empowers the police to arrest without a warrant any individual they believe has acted, or is "about to act", in any manner that may threaten Malaysia's security, "essential services" or "economic life". Detainees can be held up to 60 days for investigation with access to lawyers, doctors and family members entirely at the discretion of the police. Subsequently the Minister, acting on the advice of the police, can issue a two year detention order renewably indefinitely. As Amnesty International wrote in its 2005 report: "The ISA has, through a series of amendments, incrementally extended executive powers, while stripping away the judicial safeguards designed to protect against their abuses. Once a person is detained under the ISA, he or she has no effective recourse to legal protection, nor any opportunity to establish their innocence." [62] Since the ISA was enacted in 1960, states of emergency have been declared on 4 occasions. The declarations in 1964, and 1969 have never formally be annulled by parliament, so many of the legal orders issued under the emergencies remain in force.

In many countries facing terrorism governments overlook police misconduct and the public is often willing to accept serious restrictions of their rights if they believe, or are led to believe, it will help them feel safer and protected against terrorism. Governments ultimately succeed in conveying to the public that without tough policing they will not be able to provide a feeling of security. This happens in countries where democracy has taken root, as much as in countries that have emerged from military dictatorships and where politics is dominated by a strong military culture, though in such countries the problem is even more acute.

Moreover, security legislation often facilitates the targeting of particular groups "such as human rights defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists and the media."[63] Indeed, some States use the threat of terrorism to sidetrack rule of law institutions and restrict political, cultural or other opponents.

58) Ibid., para 5.0
59) Report of the Secretary-Generals' High-Level Panel on Threats, Challenges and Changes, 2004, *A more secure world: our shared responsibility.*
60) Ibid, para 164.
61) AI, 2002, *Rights at risk*.

62) AI, 2005, *Malaysia. Towards human rights-based policing*, p.15.
63) OHCHR, 2003, *Digest of Jurisprudence of the UN and regional organizations, on the protection of HR while countering terrorism* p. 8. The digest discusses relevant jurisprudence under the ICCPR, ECHR, AHRC and the African Charter.

The delicate issue of security and human rights has been addressed by Amnesty International in its *Shattered Lives* report, as well as in the "anti-terrorist" context in recent years, notably its *Rights at Risk* report which focuses on the organization's concerns regarding security legislation and law enforcement measures. In the latter report, Amnesty International states: "The challenge to States, therefore, is not to promote security at the expense of human rights but rather to ensure that all people enjoy respect for the full range of rights. The protection of human rights has been falsely described as being in opposition to effective action against "terrorism". Some people have argued that the threat of "terrorism" can justify limiting or suspending human rights. Even the prohibition to torture, one of the most basic human rights principles and a rule of international law which binds every state and every individual, has been called into question."[64] Clearly Amnesty International strongly opposes any limitation of rights that is inconsistent with international human rights law.

In its *Annual Report 2005* Amnesty International states: "Governments have a duty to prevent and punish [atrocities like the bombings in Madrid and the hostage taking of school children in Beslan], but they must do so while fully respecting human rights. Not only is it a moral and legal imperative to observe fundamental human rights all the more stringently in the face of such security threats, in practice it is far more likely to be effective in the long term. Respect for human rights and fundamental freedoms is not optional in efforts to defeat "terrorism". States' efforts to combat "terrorism" must be firmly and unconditionally grounded in the rule of law and respect for human rights."[65] Human rights are not at odds with security but rather the two should go hand-in-hand. Indeed: "Terrorism often thrives where human rights are violated, which adds to the need to strengthen action to combat violations of human rights. Terrorism itself should also be understood as an assault on basic rights."[66]

2.7. Summary

Any relatively stable government, whether democratic, authoritarian or other bears the responsibility for upholding the rule of law and the maintenance of order. It will therefore develop some security and justice arrangements, including the establishment of law enforcement agencies. The security sector will invariably include non-State actors.

In all their functions police cooperate with other security and justice institutions and entities, both State and non-State actors, to achieve their objectives. Moreover, other entities may share objectives with the police. Indeed, the effectiveness of the security and justice system as a whole depends on the quality of all separate entities involved: the chain is as strong as its weakest link as all entities are interdependent. It is crucial for the effectiveness of the system that different agencies have clear guidelines and instructions on their respective functions which also specify their distinct positions and lines of accountability as well as their points of interface. An important effect of this

interdependence relates to accountability. The police cannot, and should not, be held responsible for misconduct, institutional miscommunication, lack of coordination, policy gaps etc., that are at the responsibility of other 'partners' in the security and justice chain. Human rights advocates need to be aware of the role of different agencies within systems established for maintaining order as a means of targeting research and campaigning activities effectively.

Order, which we characterised as a state of peaceful harmony under a constituted authority, is not threatened by peoples' full enjoyment of their rights, including the right to peacefully assemble. Indeed, demonstrations should not be seen as a sign of disorder. However demonstrations can be a sign of tensions in society that may lead to internal disturbances. In situations of disorder States can, under strict conditions, proclaim a state of emergency. In such situations some rights can be subject to derogation, however some rights are non-derogable. Moreover, some rights are absolute, meaning they are non-derogable and can never be limited in any way.

64) AI, 2002, *Rights at risk*, p.3.
65) AI, 2005, *Annual report 2005*, p.8.
66) OHCHR (2003), *Digest of Jurisprudence of the UN and regional organizations, on the protection of HR while countering terrorism*, p.9.

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

Article 1, UN Code of Conduct for Law Enforcement Officials

The work of law enforcement officials is a social service of great importance (…)

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

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

General Assembly Resolution 34/169 adopting the UN Code of Conduct for Law Enforcement Officials, 17 Dec. 1979

3. Police Functions

3.1. Introduction

It is the State's ultimate responsibility to preserve public order so that those people within its jurisdiction can enjoy their rights to the full. Amnesty International has documented countless cases of situations where governments have failed in this responsibility and in fact have contributed to a lack of order and security by committing human rights violations and failing to protect human rights.

Numerous State agencies are, either directly or indirectly, involved in securing order. A complex situation of interdependence exists and police are but one of the State agencies involved. In this Chapter we will take a closer look at the specific objectives police have in maintaining order and providing security and how police agencies aim to achieve these. It is interesting to note that both international human rights standards, as well as human rights literature, tend to ignore police functions, focusing instead on police powers. The importance of police functions is all the more relevant considering the fact that they may represent an area in which a dialogue between the human rights community and police could be most fruitful. Human rights violations can clearly occur because police abuse their powers, and this tends to be the focus of human rights advocates. However, human rights can also be violated due to police not carrying out their functions effectively. Police should do what they are lawfully required to do and they should carry out their work correctly and effectively.

Section 3.2. of this Chapter looks at police functions, and Section 3.3. explores some organizational aspects of implementation of these functions. In order to achieve objectives, several policing philosophies have been adopted which incorporate different levels of responsiveness to the communities served. There is continuing debate about which philosophy is most effective. In Section 3.4. we discuss some philosophies practiced around the world and close with some evaluative remarks and a brief summary. Please note that the information provided in this Chapter seeks to support human rights advocates in formulating an informed opinion in a particular context, rather than to formulate universal norms on how things should be. Of-course not all the detail of how police carry out their work or how it is resourced is relevant for human rights advocates, but we hope to point to those areas that are particularly relevant from a human rights perspective.

3.2. Police functions

International human rights treaties do not mention the police explicitly, nor their main objectives. Police are usually referred to as law enforcers. They are required to maintain the law and are bound by law themselves. Police are

typically unfamiliar with international law and will rather follow what is set out in national law. Police functions are in most jurisdictions laid down in a Police Act, spelling out the core objectives police should achieve as well as the resources for doing so. Such a Police Act usually also defines responsibilities of police and their authorities as it defines how much freedom police have in setting priorities on how to spend their resources. A human rights assessment of policing should include a study of such Police Acts. In Chapter 8, on police accountability, legislative frameworks within which police operate are further explored.

3.2.1. Three basic police functions

Though international standards do not define police functions, in literature as well as in practice over time a common understanding has evolved of the main functions of the police in a democratic State governed by the rule of law.[1] These are:

*   To prevent and detect crime
*   To maintain public order
*   To provide assistance to those in need

Police functions are about the objectives of the police; what are they here for? They should not be confused with what the police do (i.e. police actions, for example public order management) nor with police powers – both of which are discussed in part III of this Resource Book.

These functions also follow from various human rights principles relevant to policing. The resolution adopting the UN Code of Conduct for Law Enforcement Officials states that the police must be 'responsive to the communities they serve.' Its Article 1 states: *"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."* The commentary to this Article clarifies that "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". As such "all persons" is to be read as non-discriminatory. "Illegal acts" are interpreted as all "prohibitions under penal statutes" including those conducted by persons "not capable of incurring criminal liability". Article 4a of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power obliges states to implement crime prevention policies. The maintenance of public order is an explicit police function mentioned in several principles – as discussed previously. All in all it is reasonable to expect human rights oriented policing to encompass, as a minimum, all three of these functions. In other words: members of the public are entitled to these three services.

1) See Crawshaw, R., e.a., 1998, *Human rights and policing. Standards for good behaviour and a strategy for change;* Rover, C. de, 1998, *To serve and to protect*; Article 1 of the European Code of Police Ethics.

'Providing assistance'

The Commentary to Article 1 of the European Code of Police Ethics reads as follows[2]:

"The provision of *assistance* to the public is also a feature of most police bodies, but such functions are more or less developed in various member states. The inclusion of service functions under the objectives of the police is somewhat different as it changes the role of the police from that of being a "force" to be used in society into a "service" body of the society. For some years there has been a clear trend in Europe to integrate the police more fully into civil society, to bring them closer to the public. The development of "community policing" in several member States serves such a purpose. One important means used to do this is to give the police the status of a public service body rather than a pure law enforcer. In order to make such a shift a bit more than a semantic exercise, the service side of the police should be included as one of the purposes of a modern democratic police. Whereas assistance by the police is generally related to specific situations where the police should have an obligation to act, such as offering direct assistance to any person in danger or assisting persons in establishing contact with other authorities or social services, the service side of the police is more vague and thus difficult to define. It should not be confused with certain administrative duties given to the police (issuing passports etc). In general, the police as a public service body is connected to the role of the police as a resource for the general public, and easy access to the police is one of the basic and most important aspects in this respect. The service side of the police has more to do with police attitudes towards the public than with giving the police far going service functions in addition to their traditional duties. It is clear that the police cannot be charged with a too heavy responsibility for service functions in society. Member states should therefore establish guidelines for police performance and duties in this respect."

3.2.2. Operationalizing police functions

Many studies have looked at what it is that police officers do while on duty to achieve their objectives.[3] Three distinct categories emerged:

1. **Patrolling:** aims to provide assistance to the public, maintain public order and prevent crime. Patrolling means walking, riding or driving around, keeping a close eye on what happens and basically waiting for an opportunity or a request to act. Work may be generated by radio dispatch (following requests from members of the public or from colleagues and superiors). Patrol officers are usually deployed in a particular area; patrol teams tend to be geographically organised. Patrol officers usually work in shifts covering 24 hours. In most countries the police are the only State agency that operate 24 hours a day. This may lead to situations where police take on diverse tasks including those that are strictly speaking the responsibility of others – police sometimes take care of the mentally disturbed, the

2) The European Code of Police Ethics, Commentary to article 1, p.29-32.
3) Well known and often cited is: Bayley, D., 1994, *Police for the future.*

socially deprived and others needing assistance. However, it also leads to the police being 'omnipresent', something that can both contribute to people's sense of security as well as diminish it.

2. **Crime investigation:** aims primarily to detect crime after it has occurred although it is also expected to have a preventive effect. Criminal investigators ('detectives' or 'CID officers' – CID meaning Criminal Investigation Department), typically working in plain clothes, tend to have a higher informal status within the police, although they do not necessarily hold higher ranks. Criminal investigation departments tend to cover larger geographical areas and tend to be organised according to categories of crime (fraud, vice, juveniles and children, drugs, homicide etc.). Criminal investigators usually work daytime hours. There are various specialist disciplines involved in crime detection, such as forensics, criminal intelligence, surveillance, information-analysis etc.

3. **Traffic**: aims at traffic related crime prevention and the maintenance of public order. The traffic department usually combines patrolling functions with various sorts of 'tests' (testing alcohol usage, safety belts etc.). Apart from that they usually conduct investigations into traffic accidents.

Although patrolling is designed to have a preventive effect on crime, the effect in practice is extremely limited. Very often patrolling enables the police to intervene in and potentially pacify situations of conflict by using 'authoritative intervention'[4] (authoritative because police *can* use their powers, even though they do so quite rarely) and thus maintain public order. In fact, in many countries patrolling seems to be primarily used to literally *demonstrate* State power, especially when patrol officers are dressed in combat uniforms and appear heavily armed. It is difficult to make general remarks on this issue as it is also strongly connected to public confidence in the police, as well as to cultural values and historical events. In some countries people appreciate *seeing* State power as it contributes to their feeling of safety; in others the effect is quite the opposite. The effect is strongly connected to the situation of particular groups, or individuals in society. Some individuals or groups are confronted with being regularly profiled by police, or experience regular aggressive confrontations with police (such as the *favela* communities in Brazil[5]) and as such will have a different reaction to police presence from those who have not had such negative experiences. This having been said, patrolling in itself is welcome in the sense that it requires police to come out of their stations and compounds and facilitates community contacts. Obviously this depends to some extent on how the patrol is carried out – whether with the intent of instilling fear or trust and confidence. For this reason patrols should preferably take place on foot, whenever possible – rather than in vehicles – as on foot police are, literally, more approachable and less intimidating.

In general, the effect of what the police do to prevent illegal acts is limited. The police – both patrol officers and criminal investigators – tend to hear of just a small proportion of illegal acts that are occurring. The majority of demands on the police (by the public as well as the authorities) relate either to the maintenance of public order or to aid and assistance in emergencies. Still, "the management of law enforcement organizations tends to give priority to the prevention and detection of crime. This emphasis may be perceived as peculiar, given the limited success and effectiveness (…) in this particular field. (…) Service to the community, protection of victims and the prevention of further victimization present challenges to law enforcement that appear to have less appeal than the traditional game of cops and robbers."[6]

With this in mind it is interesting to note how police agencies spend their resources on the three categories of patrol, criminal investigation and traffic. What percentage of police are working on criminal investigations and how many are on patrol? How many are engaged in community relations functions? If for example 50% are working in criminal investigation – this being a less responsive function of the police – there will be fewer resources for enhancing community relations and developing community responsiveness. Distribution of police resources is also determined by which function of the police is assigned greater importance by the political executive.[7] In some countries governments attach greater importance to the functions related to maintenance of law and order compared to crime investigation functions simply because governments feel more threatened by what happens on the law and order front than what happens on the crime front. For example in India, it is reported that police officers are regularly withdrawn from criminal investigation work and deployed to law and order duties whenever there is a law and order emergency (in fact this has been a major factor in the advocacy of the separation of law and order personnel from criminal investigation personnel at the police station level in that country).

Effectiveness of patrolling

Over the years patrolling has increasingly been considered a fairly ineffective way of organizing police capacity. Many police agencies are looking at ways in which they can organize more effectively. This typically means reducing the number of patrol cars to an absolute minimum and having only one officer in the vehicle. This is really a mathematical exercise; one can deduce how many cars are needed to cover a certain area while guaranteeing police availability within a certain time period. That way, the costs of policing can be cut down, or police can do other things, such as crime prevention work.

Most police agencies also have a Riot Control Unit, or Public Order Unit. Sometimes the officers working in this unit come from other departments, such as patrol units, and are called upon when needed. In other jurisdictions there are separate, often fairly isolated, Riot Control Units which typically spend a lot of time on physical exercise and training. The advantage of the latter form of unit is said to be the resulting increase in professionalism. However, such units are sometimes seen to be more violent, more prone to using force than is strictly necessary as they tend to be more militarised and less familiar

4) Ibid.
5) AI, 2005, *Brazil: They come in shooting. Policing socially excluded communities.*

6) Rover, C. de, 1998, *To serve and to protect*, p.146.
7) This notion and the example of India are based on personal communication with Mr. G.P Joshi, CHRI, Police Program Coordinator, India.

with members of the public, for example when dealing with demonstrations. On the other hand, when local police do deal with crowds and riots, they are sometimes perceived to be favouring particular groups and using too much force against others. It is impossible to identify a preferable model as it is dependant on many factors. In Chapter 5 we will discuss public order management tactics in more detail.

3.2.3. Additional Functions

Police are required to perform the three basic functions (maintenance of public order, prevention and detection crime, and providing assistance) but more functions may be added including:

• Fire fighting duties
• Prison duties
• Transport (railway/river etc.) duties
• Parking control
• Border & Immigration control
• Administrative functions (such as issuing passports and permits)
• Prosecution functions (usually up to a certain level)
• National Security and Intelligence functions
• Protection of VIPs

As long as these tasks do not conflict with one another, are based on law, and do not exceed police authority (as is the case when adding for example military tasks) there is no reason to argue against the addition of more functions. Some of the additional tasks, such as fire fighting, and some of the administrative functions, may actually be of help in improving police relations with the community. Obviously additional tasks should not interfere with the basic police functions and only those officials that perform tasks for which special police powers are needed should be authorised to use such powers. There is also a need for appropriate training. Moreover additional tasks should not lead to the withdrawal of (financial) resources from basic police functions. In some countries 'fancy' functions, such as VIP protection and anti-terrorist brigades, receive relatively large portions of the overall budget at the cost of basic policing functions such as the maintenance of public order and criminal investigation.

3.3. Organizing police functions

Though there is agreement on key police functions, there is far less agreement on how the police should carry out these functions. The carrying out of police functions to implement objectives is organized differently in different countries. There are many reasons for this, most notably the country's history, culture and resources. Formerly colonized countries often adopt the police structure of the former colonizer. Countries with a violent history of coup d'états sometimes prefer small-scale police agencies, whereas countries with a strong centralised system tend to have centralised police agencies under strict central control. In any event, good policing starts with having enough resources, including

personnel, to do the job. It is impossible to make any definitive prescriptive statements about how police agencies should be organized and the resources required (with a view to ensuring respect for human rights), nor is it the responsibility of human rights advocates to do so. The information provided in this Section is rather meant to support human rights advocates in formulating an informed opinion in a particular situation.

Criminal justice systems around the world
The World Factbook of Criminal Justice Systems, developed under the US Department of Justice's Bureau of Justice Statistics grants, provides narrative descriptions of the criminal justice systems of 45 countries around the world. The original 42 descriptions were completed in 1993. The latest five entries: Brazil, Colombia, Mexico, Costa Rica and Venezuela were prepared in 2002. The Factbook is available at: http://www.ojp.usdoj.gov/bjs/abstract/wfcj.htm

3.3.1. Centralisation and integration of police functions

Some countries, including Malta, Malaysia, and the Russian Republic, have one centralised police agency responsible for all police functions, usually under the Ministry of the Interior, but sometimes reporting to both the Ministry of Interior and Justice. In such agencies all functions are carried out under this one single agency (though in separate departments), all reporting to one central Police Commissioner.

However, police functions as discussed in the previous Section do not have to be carried out by the same one agency. In fact many countries have separate agencies for criminal investigation (often called investigative police or judicial police); for the maintenance of public order (often called Patrol Units); police specialised in demonstrations and crowd control (often called Riot Squads or Riot Control Units); and for traffic control (called Traffic Police Departments). These separate agencies tend to have their own separate Commissioners, usually in turn reporting to the Minister or his or her Deputy. Some other countries for example France, Chili and Turkey also have a Gendarmerie Agency, with lines to the Ministry of Defence.

Countries with a federal structure tend to reflect this in their police organizations. They often have a variety of separate police agencies (Brazil, Argentina) some centralised (federal) some decentralised (state or provincial police) covering different geographical areas. Do note that these provincial agencies sometimes operate in a highly centralised fashion. Other federal countries, including Belgium and the US, have a conglomerate of municipal police agencies, ranging from one officer in a small locality to some 40,000 in New York City. And to make things even more complicated, some countries also have 'administrative police', often possessing fewer powers and less status and working at a municipal level – usually accountable only at municipal level (e.g. to a Mayor or city council).

Indeed, police are generally organised according to two separate principles: geographically or along functional lines (or a combination of both). Either one of these, or both, can be centralised or decentralised. Most States however tend to have police with quasi-military structures and ranks, typically centralised, with top-down decision-making processes.

In a centralised structure officers report up the internal line of command, to the highest level (usually the Minister) who in turn reports to the Parliament. In a decentralised structure officers tend to have much more freedom to adapt their resources (time as well as financial) to local circumstances. As an example, in Russia (a centralised structure), the central government sets the targets officers are to meet for all police (investigative departments as well as the uniformed branches) throughout the country and assesses at regular intervals whether they indeed meet their targets. These assessments are typically quantitative, with targets set for figures and percentages.[8] In a decentralised structure, such as the United States, the local sheriff – a locally elected figure – has great discretion as to what issues to take on and what to ignore.

Organizing different police functions in separate police agencies, often with distinct training centres, usually leads to specialisation. This is believed by some to enhance professionalism and quality. However, competition may arise between the various agencies. For example in South Africa since the late 1990s a new law enforcement agency (the so-called Scorpions) has been introduced under the authority of the National Director of Public Prosecutions. The intention behind it was to create a more professional (police) investigation body without the burden of the apartheid past and to encourage investigators to work more closely with the prosecution service in the investigation of crime.[9] Better-educated and trained personnel were recruited and they were paid more highly than members of the South African Police Service (SAPS). Their very success and better conditions has created resentment amongst the SAPS and politicians (the investigation of corruption has been a strong focus of the Scorpions' work).

Establishing separate wings of the security forces to deal with particular issues of law and order is also of concern for another reason. These 'special police units' tend to place a strong emphasis on achieving certain specific targets and tend to be less regulated than the 'regular' police. As they are often separated from regular policing functions, and have less interaction with the public, they are often found to be responsible for a number of human rights violations.

Moreover, the existence of more agencies with overlapping functions may complicate accountability as it may make it more difficult to work out which agency is responsible for carrying out what action. In fact, there are many countries where it is difficult to know where to report a particular type of crime and to know which agency is responsible for what aspects of crime prevention and public order. An example is Sudan, where the Positive Security (*amn al-ijaabi* – a security agency with powers to arrest, detain and interrogate)

8) Demos Center for Information and Research on Public Interest Issues, 2005, *Reforming law enforcement: overcoming arbitrary work practices.*
9) See AI's concerns about the prosecution service in South Africa in *South Africa: The criminal justice system and the prosecution of human rights: the role of the prosecution service* (1998).

10) Article 10, Sudan Police Forces Act, 1999.

and the Popular Police (*Shurta Sha'abia* – an agency that deals with offences linked to dress code, public order and drinking alcohol) operate alongside the Sudan Police Forces. These two agencies are devoted to ideological issues. However, the Sudanese police is also tasked to "Preserv[e] ethics, manners and public order, urging for good conduct and preventing the bad and ensuring accountability".[10] On the other hand, multiple agencies may also help to keep one another accountable, thus improving overall accountability.

The existence of separate police agencies may lead to some agencies having poor community contacts as some police functions simply involve less contact with communities, e.g. public disorder functions. However, community contacts are essential for all aspects of good policing as the public are major sources of information about crime *and* overall public order issues. For that reason some will argue that police functions are indivisible and dividing them among separate agencies will always lead to a loss of police quality and effectiveness. A particular disadvantage of separate police agencies reflects a typical feature of police culture: police agencies are traditionally unwilling to share information and thus each agency tends to collect their own information. This may result in an excess of data recording (affecting issues of privacy) and duplication (affecting effectiveness).

To centralise or not to centralise?

Centralisation of police command typically coincides with centralising oversight. In a centralised system police tend to be accountable internally to the next manager in line, the final one in line (the Chief Commissioner) being accountable to the Minister or Governor. In a decentralised system the local police tend to be accountable to a Mayor (or other locally elected or appointed official, who him/herself is accountable to the next person in line, all the way up to the Minister). Stated differently, in a centralised system the police are internally accountable with the leadership being externally accountable, whereas in a decentralised system local police management is externally accountable too.

Decentralization must be distinguished from delegation. When authority is delegated, the responsibility stays with the most senior official. Decentralising means decentralising authority and responsibility. So, a Police Chief may delegate the authority to decide on how to spend resources to his or her police officers as a means of being responsive to communities, but he or she will still maintain responsibility for it.

The European Code of Ethics explicitly favours decentralisation of the police, as this is considered helpful in bringing the police closer to the community. However, it should be noted that it is not always necessary to decentralise the entire system. One may very well continue to centralise the administrative functions while decentralising authority and civil oversight. A centralised system has its own advantages: decision-making is more efficient, as is the implementation of new policies and methods. Moreover, whether or not

centralisation is effective also depends on the country's history and culture in this respect. Some cultures have a history of central authorities issuing orders and directives whereas others are used to placing authority at the lowest possible level.

Decentralizing police agencies along geographical lines may help to create agencies that are closer to the communities they serve – though this may in some situations be less cost-effective. An optimal balance ought to be found between decentralization and integration of functions within one agency. For a human rights assessment it is important to include research on all agencies that operate in a country and also to study the laws and regulations (statutory and non-statutory where these are available) under which they operate. Moreover, such an assessment should also include looking at the impact of (de)centralization and integration or specialisation on issues of accountability, resources and effectiveness.

3.3.2. Human Resources

In any organization people are the crucial factor in ensuring its success or failure. Police personnel are the prime resource available for achieving police objectives; they are also the most visible as police tend to work in uniforms.[11] Having some understanding of how many police are employed within a particular country and how they relate to the people served is helpful when assessing the police from a human rights viewpoint. Recruitment and selection procedures, training (both basic as well as in-service), and procedures for appointments, transfers and promotions are essential elements when discussing personnel issues. These elements will be discussed separately in Chapter 9.

3.3.2.a. Numbers

Obviously, in order to undertake basic functions, police need sufficient personnel. However, dictating numbers is difficult. Police/public ratios across countries differ widely: there is 1 officer for 178 people in the Czech Republic, 1 officer for 280 people in England and Wales, 1 officer for 1200 people in Bangladesh.[12] A police/public ratio of roughly 1 : 300-400 tends to be common for countries within the European Union.

These numbers should be read with caution however, as it is often difficult to establish exactly how many police there are in a given country. For example, police agencies in some countries employ civilian, non-executive, personnel while in others everyone employed by the police, including those performing administrative functions, trainers and those working within human resources departments, are police (called 'executive' personnel). Therefore, in order to correctly interpret given numbers of police officers it is necessary to identify who exactly is included in the figures and what kind of functions they carry out. When seeking to establish the male/female ratio it is important to keep in mind that the percentage of women tends to be higher within the civilian-type functions than within the executive ranks, and as such doesn't say much about how far the police really reflect the people served.

11) Article 14 of the European Code of Police Ethics states: *"The police and its personnel in uniform shall normally be easily recognisable."*
12) CHRI, 2005, *Police accountability: Too important to neglect, too urgent to delay.*

Another factor relevant to the interpretation of police numbers is how many different law enforcement agencies there are and whether these are included in the figures. For example, if there are three further agencies possessing police powers which are organized separately from the police – let's say Border Control, Customs and the Fraud Units – these would have to be included in order to achieve a realistic assessment. Indeed, those possessing police powers are often 'hidden' within other organizations – complicating accountability requirements.

Ambiguous numbers

As an example: The Netherlands has some 16 million inhabitants. Most sources would refer to the country having some 50,000 police employees, resulting in a ratio of 1 : 320. In total some 10,000 officers carry out criminal investigative functions. From these 50,000 police some 15,000 are civilian non-police personnel. Some 28% of the entire police are female; however some 18% of the executive staff is female, while women make up 50% of the civilian staff.[13]

However, in total there are some additional 24,000 people working in other non-police agencies but carrying out policing functions (including in special units, such as Fiscal Investigations, Customs, Social Welfare Investigations etc., but also non-police patrol officers). This would bring the ratio to 1 : 216! These 24,000 have the power to arrest, though usually limited to their specialist domain (such as for fiscal offences). A few of these 24,000 carry equipment to use force, including some who carry firearms. From a human rights viewpoint what is important is how many people have special police powers, most notably the power to use force.

Another issue is how these numbers are distributed across the country. Amnesty International's report on Brazil[14] refers to the relatively wealthy city of Bauru having 200 officers for a population of 100,000 (1 : 500), whereas Jardim Ângela, which includes several *favelas* (shanty towns) has 37 police for a population of 300,000 (roughly 1 : 8,000). A related issue is where police are based. Again, in Brazil, as in many other countries, police stations tend to be far from the communities they are supposed to serve, further limiting the establishment of community relationships and reinforcing the negative image public and police have of each other.

In summary, numbers of police, when available at all, usually do not distinguish between police and 'non-executive' personnel and do not reveal whether other agencies (such as security agencies) have similar policing functions, nor do they reveal where police are based. It is important to take care when interpreting numbers.

13) Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, 2006, *Kerngegevens Nederlandse Politie* 2005.
14) AI, 2005, *Brazil: They come in shooting. Policing socially excluded communities.*

Relevant questions for human rights advocates are as follows:
- How many staff carry out what policing functions?
- How many people have police powers?
- How many are armed?
- How are these police using their powers?: If the police are oppressive, an increase in numbers means adding to the oppressive machinery, often resulting in an increase in human rights violations.

In many countries it may be difficult to retrieve such data. In others it can simply be found on the Internet.

3.3.2.b. Representativeness of police personnel

As note elsewhere, the resolution adopting the UN Code of Conduct states that police are to be representative of the communities they serve.[15] As a minimum, police ought to be representative in terms of ethnic and religious background and gender. This requirement is not met anywhere in the world. Police all over the world are predominantly male and their ethnic composition is predominantly either that of the ethnic majority or of the ethnic ruling group. The Commonwealth Human Rights Initiative (CHRI) refers to various initiatives that are being undertaken to improve representation in countries as diverse as New Zealand and Sierra Leone. The latter has 15% women in its ranks. South Africa has the highest rate with 29% women within the South African Police Service. On the other side of the range, India is referred to as having only 2% women within the police.[16]

The fact that police are nowhere truly representative affects good policing: "Lack of racial, religious and regional diversities affects the way routine policing is done, to whom services are provided, how conflict is handled and particularly affects the ability of the poor, minorities, women and vulnerable groups to access justice."[17] Certain crimes tend to go ignored or receive little priority, including those crimes that tend to victimize women more than men, such as sexual abuse, domestic violence and women trafficking. All these are under-policed, both because the victims may feel ashamed or be pressured not to file charges, but also because of the unsympathetic response victims receive when they do report such crimes. Amnesty International has documented numerous cases of women being ignored or abused when at the police station in countries as diverse as Kenya and Afghanistan. In Guatemala Amnesty International documented police abuse of rural workers in land eviction cases. In Brazil police tend to use excessive force against those living in the *favelas*. All these people are deprived of good policing as their worries tend to go unnoticed and when they do address the police they frequently encounter indifference or worse.[18]

Being unrepresentative not only affects policing 'outside' the agency. Internally, skewed personnel composition often leads to the harassment and verbal abuse of police officers from minorities and other vulnerable groups within a police agency. The dominant culture is often documented to be extremely unreceptive to change and harsh attitudes tend to prevail.

Training materials produced by the Office of the High Commissioner for Human Rights on human rights for police state that representative policing means that police must ensure that their ranks are sufficiently representative of the community they serve. Minority groups must be adequately represented within police agencies through fair and non-discriminatory recruitment policies, and through policies designed to enable members of those groups to develop their careers within the agencies. Alongside their numerical make-up, police need to consider the qualitative make-up of the personnel. This means police must have the willingness and the capacity to carry out democratic policing in a democratic political system.[19]

However, it should be noted that expectations that an increase in the number of women and members of minorities will automatically lead to a decrease in human rights violations is a gross simplification. Indeed, research has shown that in some situations new recruits, of whatever background, are quick to adopt the dominant behavioural code in practice, sometimes at the expense of respect for others.[20] Police culture tends to be a strong factor that cannot be ignored. Enhancing sensitivity towards diversity may in fact be a more effective way of improving police respect for human rights, than advocating numerical representation. We will return to issues of police culture in Chapter 9; representativeness is also discussed in Chapters 8 and 9.

3.3.3. Financial resources

Resources should be sufficient to enable police forces to perform their duties in a professional manner.[21] Police should have adequate housing, equipment, means of transportation and uniforms in order to carry out their functions properly and there should be sufficient resources for training new recruits in both theory and practice. Moreover, police are entitled to receive fair salaries and their overall working conditions should accord with international standards.

Article 7 of the International Covenant on Economic, Social and Cultural Rights sets out the right of all to enjoyment of just and favourable conditions of work including as a minimum *"fair wages"* and *"a decent living for themselves and their families"*. The Guidelines for Implementation of the UN Code of Conduct include the statement that *"all law enforcement officers shall be adequately remunerated and shall be provided with appropriate working conditions"*. In a small number of cases, Amnesty International has commented on the salaries of police officers, and recommended that the problem of insufficient salaries is addressed. Often this is argued on the basis of evidence of widespread corruption within police, used as a means of topping up meagre salaries. In Amnesty International's report on Timor Leste it is noted that: "The culture of any police service is closely related to the conditions under which its officers work and the attention paid to their rights, which in turn affects the way they are regarded by the community."[22] The report recommends that, "salaries of police officers should be set at a level such that they are protected against economic pressures and so as to provide a reasonable standard of living and reflect the important and sometimes dangerous job carried out by the police. Salary levels should be regularly reviewed."[23]

15) General Assembly Resolution 34/169 adopting the UN Code of Conduct, 17 Dec. 1979.

16) CHRI, 2005, *Police accountability: Too important to neglect, too urgent to delay.*

17) Ibid., p. 7-8.

18) See *Kenya. Medical Action: The role of medical evidence in prosecuting cases of sexual assault* (2002); *Afghanistan: No one listens to us and no one treats us a human beings. Justice denied to women* (2003); *Guatemala: Suspension of evictions and genuine agrarian policies are the keys to solving land conflicts; Brazil: they come in shooting* (2005).

19) OHCHR, 1997, *Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police,* para 217-218.

20) See for example Sandfort, T. and I. Vanwesenbeeck, 2000, *Omgangsvormen, werkbeleving en diversiteit bij de Nederlandse politie.*

21) CHRI, 2005, *Police accountability: Too important to neglect, too urgent to delay.*

22) AI, 2003, *The Democratic Republic of Timor Leste : A new police service a new beginning,* p. 22.

23) Ibid., p.23.

There should be equal pay for equal work i.e. no differentials based on ethnicity or other factors and salaries should be paid on time (or at least regularly). There should be no need for police to supplement their jobs with other means to raise an income, either through corruption, criminality or through taking on additional jobs, sometimes in private security companies possibly creating tension between the two (e.g. when police start using their police resources – uniform and weapons – for carrying out private functions). Advocacy for improvements in this area may indeed help establish a dialogue about human rights.

However, it should be clearly stressed that earning meagre salaries and working under poor conditions can never justify human rights violations – as police are sometimes tempted to argue. Police in many countries face scarce resources and this is often used to justify their limited success in providing security and to excuse human rights violations. In this respect it is worth noting that a General Comment of the Human Rights Committee states that those deprived of their liberty should be treated with humanity and respect for their dignity, a right that "cannot be dependent on the resources available to the State party."[24] Though recognizing the difficult situation in which many police officers must operate, it must be clear that a lack of resources can never justify human rights violations by State officials.

Resources are frequently spent on use of force rather than on means to prevent force such as communication and social skills training aiming to de-escalate conflict situations. Indeed, more financial resources are no guarantee of human rights oriented policing, as is seen in situations where governments have modernized their police agencies by increasing their mobility and communication and providing them with modern sophisticated weaponry and equipment. In some situations this only makes the task of suppression easier for police agencies. How governments prioritise funding for various aspects of policing, but moreover how they allocate resources for policing within their overall budgets is an important issue. In the current climate, many countries may be prioritising national security and resources for specialist anti-terrorist forces over ordinary policing at the local level. Governments should provide adequate resources for policing, as a means of ensuring the security of their citizens. One important aspect of resourcing is the availability of research into police practice and resulting funding of necessary reforms, including training. In many countries, police agencies have remained unreformed for decades, and government funding for research, analysis and reform appears non-existent. While many non-governmental agencies do carry out research into policing, their calls for reform may go unheard if financial resources are not available to fund not only official research but also the reforms themselves.

One related aspect to watch for is corruption within the financing of policing once budgets are set, how the management of police finances is overseen and what accountability mechanisms are in place for this. In many instances, money allocated to certain aspects of policing is routed to other aspects.

24) HRC, General Comment No.21.

Corruption

Undoubtedly there will always be those interested in influencing police work. Bribes are easily paid so as to ensure a certain investigation isn't initiated, evidence gets lost, witnesses intimidated etc. Bribes are easily solicited as well. Indeed, police work is particularly vulnerable to corruption and it may be difficult for officers to resist temptations, especially when "everyone is doing it" and salaries are low. Corruption is often defined as the abuse or misuse of an official position for personal gain. In the UN Code of Conduct corruption is understood to encompass the commission or omission of and act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted (Article 7). Corruption can lead to police not doing what they should do, not doing it properly, doing what they shouldn't do or demanding services (money, sex) for what they were supposed to do anyway or for not doing what they shouldn't be doing anyway. An example is given in Amnesty International's report on Brazil where detainees are forced to pay money in order to avoid being tortured.[25]

Issues around poor salaries and other benefits do appear to contribute to corruption among police but they are usually not the primary cause. Corruption within police services is clearly linked to the issue of accountability in particular, and the manner in which police generally are able to exercise power without being checked. Corruption is closely linked to collusion (with non-police human rights abusers) and the committing of human rights violations traditionally addressed by Amnesty International. Police corruption is often linked to political corruption and political interference.

Corruption is a major problem within police agencies all over the world. It affects policing in a particularly damaging way, not only making policing ineffective, but contributing to police turning against the communities they are supposed to serve. It erodes policing in every aspect as it leads to arbitrary policing and ignores the principle of equality before the law. In its worst form it can ultimately lead to police becoming a State within the State: a criminal gang with their own rules and procedures for their own benefit. Corruption undermines the police's ability to respect human rights with due diligence as other interests (often personal) prevail over the public interest.

Article 7 of the UN Code of Conduct states that "law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts." The UN Convention Against Corruption, adopted by the General Assembly in 2003, elaborates on previous UN documents regarding corruption and incorporates articles on, amongst others, prevention and criminalization of corruption.

25) AI, 2005, *Brazil: They come in shooting*.

While there is no generic standard for police resources and material necessary to ensure human rights oriented policing, where possible an analysis of the role of (limited) resources in relation to the ability of police to operate should be

incorporated into any assessment of how the police function. As with finding out numbers of police personnel, it may be difficult to find reliable data on police funding. The World Factbook (referred to above) contains this information for some countries.

3.4. Policing Philosophies

Opinions differ on the most effective policing method and which policing method results in better community relations, less crime etc. As is so often the case when it comes to policing it is difficult to define cause and effect relationships. Crime rates, public safety, public satisfaction and community violence, are only affected by what the police do to a limited extent. The policing philosophy in use (i.e. how the police accomplish their objectives), is strongly connected to the 'government philosophy', i.e. with how the State manifests itself with respect to its people. How the police carry out their functions is also based on factors such as the country's historical, cultural and economic background as well as the expectations of the public. Policing is an ongoing and constantly evolving process: different situations require different types of policing and societal changes will require police to adopt different approaches. To be able to match policing to the context in which they operate, police need to be aware of developments in society and how expectations are changing for example.

A policing philosophy may more or less evolve gradually from new working methods adopted; it may also be an explicit choice by the authorities or police management to strengthen public consent or rather to enhance State control. Philosophies and methodologies cannot always be clearly separated as they mutually influence each other. Various philosophies may co-exist in one country where for example different agencies have adopted different philosophies. Some philosophies – typically philosophies in use in Anglo-Saxon countries – seem to be overvalued at the cost of others. The concept of community policing, for example, referred to in an increasing number of Amnesty International reports, sometimes appears as the 'panacea' to all policing problems, as if this indeed is the one best policing philosophy. But is that true? What other philosophies are there? In the next Sections we will discuss different policing philosophies. As community policing is such a dominant philosophy we will pay considerable attention to it.

3.4.1. Crisis policing

Crisis policing is defined as "continued repressive policing where officers are preoccupied with order and the control of violence."[26] Rather than being a proper philosophy, it is characterised by the lack of it. It is typically seen in countries (sometimes in transition) or regions within countries, which are disintegrating or collapsing and where the State risks losing control. Not surprisingly, the focus is short term, and based on survival of the State system. The UN Code of Conduct requirements that police be accountable, responsive and representative of the communities they serve are ignored; police are force-oriented rather than service-oriented organizations. Police Acts will focus

on detection of crime and public order control, at the cost of assistance to the public and prevention of crime. Jargon in use reflects military rather than civilian principles; as does the way the agency is set up and managed.

An example is given in Amnesty International's report on policing socially excluded communities in Brazil.[27] Insofar as these communities, living in the *favelas*, receive any policing at all this policing is based on containment of the problems inside the *favelas* rather than contributing to any solution. Police invade poor communities, often using collective warrants discriminating against whole communities at a stroke and are responsible for gross human rights violations including extrajudicial executions.

3.4.2. Authoritarian policing

Authoritarian policing usually aligns itself with authoritarian political systems but may survive after transition to a democracy. "Typically, police or the government set policing priorities without consideration of the needs of the population or preferences of the citizens."[28] Police are inclined to act unilaterally and do whatever they consider best. The focus tends to be on controlling the population, rather than seeking a partnership. Authoritarian policing always goes together with centralised systems where rank-and-file officers have little discretion on how to spend their days and local managers have little say in how to spend resources. A subcategory of this kind of policing might be called 'political policing', where politicians set the priorities for policing, thus seriously limiting the operational independence of police.

Under these policing systems, human rights tend to be considered as an additional burden that place limits on the police. "While some formal legal arrangements may be set up to satisfy international pressures or obligations (…) formulation of human rights standards normally has little impact in reality."[29] Authoritarian policing, being so unresponsive to the public, is seriously hampered by a lack of contact between police and public and thus by access to information. In fact, 'providing assistance to the public' is sometimes not seen as a police function at all. As such this kind of police may be perceived by the public as having little legitimacy and may have problems upholding accountability norms.

3.4.3. Community policing

Community policing can be defined as: "a collaborative effort between the police and the community that identifies problems of crime and disorder and involves all elements of the community in the search for solution to these problems."[30] It is based on the assumption that police cannot control crime and disorder alone but require the support of communities to ensure safety. Goals of community policing include: prevention and detection of crime, reduction of fear of crime and improvement of police-community relations. These goals are achieved through three efforts[31]:
- **Community engagement:**
  - Discussing priorities and strategies with communities
  - Mobilizing active assistance of the public

26) Uildriks, N. & P. van Reenen, 2003, *Policing post-communist societies. Police-public violence, democratic policing and human rights*, p.31.

27) AI, 2005, *Brazil: they come in shooting*.
28) Uildriks, N. & P. van Reenen, 2003, *Policing post-communist societies. Police-public violence, democratic policing and human rights*, p.32.
29) Ibid, p.32.
30) The definition is from the Community Policing Consortium and is quoted in *Community Policing, the past present and future*, Nov. 2004, on community policing in the US, published by the Police Executive Research Forum (PERF).
31) Ibid.

- **Problem solving:**
  - A focus on crime prevention rather than crime detection
  - Studying why people call on the police and trying to tackle underlying causes of problems instead of their symptoms (also known as Problem Oriented Policing, see next Section)
- **Organizational transformation:**
  - Decentralizing command structures and decision-making, including decisions on expenditure of resources
  - Developing close cooperation with other parties involved in community safety

Building partnerships for problem solving

The basic idea of community policing is building partnerships for problem solving. This can be done in various ways for various purposes.[32] The most basic form is the improvement of relations between the police and the public to ease mutual tensions. Slightly more progressive is the cultivation of better community relations to control crime. Even more progressive is the active pursuit of popular input and public collaboration to prevent crime and improve police services. The most advanced form being the forging of a strategic partnership between the police and the public, to work towards crime-free communities with high quality of life, in which the decision-making power is shared by both.

Community policing is in fact 'geographic policing' where police officers have a 24-hour responsibility for policing 'their' locality. Often community policing means 'maximal policing' in that it assumes a greater responsibility for the police than mere crime-fighting. Indeed, police are expected to support overall community well-being and residents' quality of life.

Among the operational elements typical of community policing programs are[33]:
- Police department sponsored neighbourhood watches
- Crime prevention newsletters
- Crime prevention education for the public
- Storefront police stations
- Foot patrols
- Increased attention to minor offences that are major annoyances to the public
- More recruitment from among minority groups
- Increased education level of the police
- Reassignment of certain management tasks from police personnel to civilian personnel

Community policing requires 'operational independence' at the lowest levels in the hierarchy as it requires police to be flexible and able to respond to community needs. This also means that it requires responsibilities for resources

32) Wing-Hung Lo, C. and A. Chun-Yin Cheuk, 2004, "Community policing in Hong-Kong. Development, performance and constraints."
33) WOLA, *Themes and debates in public security reform. A manual for public society – Community policing.*

34) Bayley, D., 2001, *Democratizing the police abroad: What to do and how to do it,* p.25-26.

to be delegated to lower levels within the organization. Community policing requires a professional, well trained, police, fully understanding their role in society and able to deal in a responsible way with their increased discretionary powers.

Community policing evolved from the notion that the police were lacking consent from the public: "Police tend to believe that the public regards them less well than it does. The primary reason for this belief is that the contacts police have with the public are skewed toward those that are disorderly, criminal, needy or incompetent. In almost every neighbourhood and in every society, there is a suppressed demand for responsive, sympathetic policing. One important way to convince police of this demand is to expand their contacts with the vast non-criminal, non-troublesome public."[34] The emergence and implementation of community policing can have all sorts of origins. In the US, UK and The Netherlands it evolved as a natural next step after 'traditional policing'. In countries in transition, the implementation of community policing is often used to demarcate regime change and the adoption of democratic values. International donors involved in police reform programs currently invariably require the new police to adopt community policing principles.

Unfortunately the concept is often used inaccurately leading to its cheapening and loss of meaning. Practically any policing activity implying any contact with any member of the public has been swept under the umbrella of community policing. Despite this (or thanks to this), it has become the leading policing philosophy of current times.

Community or proximity policing?

Community policing is interpreted differently in different languages. In Dutch it is called 'area related policing', in French, Spanish and Portuguese the term 'proximity policing' is often used ('Police de la Proximité'). It seems reasonable to assume that the guiding principle behind it differs too. The concept used probably also reflects the perceived role of the police in society.

In general two perspectives can be seen when police decide to engage with the communities. The one reflects the ambition of police to be more responsive to the needs of communities and enhance the influence of the public over police priorities. Police seek to improve service to the community. In the second perspective police intend to engage with communities as it may help them to gain access to information the communities have. Police seek to use the communities primarily as a tactical consideration.

Obviously the distinction is never so strict; police will always seek to improve their access to information with the public, and in any democracy police will always understand the need to be responsive to the public at large.

Community policing is sometimes seen as one police function rather than as an integral policing philosophy. This usually leads to isolated 'community policing units' within the police, typically focusing on crime prevention and providing assistance to the public. However, when seen as a philosophy, as was intended, community policing is integrated in all aspects of policing, including crime detection and public order management. Indeed, community policing is about changing the perception of the role of the police in society and as such requires fundamental change both within the police agency and outside in its cooperation with other agencies and the public at large. It moves away from the notion of police as the dominant agency carrying out their own agenda or the agenda of those in power.

Community policing is sometimes seen as 'soft policing', but this doesn't reflect the reality. Crimes are committed in communities by people living in communities. Residents can possess crucial information essential for effective policing. When adopting community policing, police officers are still responsible for maintaining order, preventing and detecting crime and providing assistance to the public. Moreover, they maintain their respective police powers including the powers to arrest and detain and the power to use force.

Caution should always be exercised in translating practices from one context to another. The very essence of community policing is that it should be in line with the local reality. These vary across countries but also within countries. What works in a suburb of Buenos Aires, doesn't have to work in Athens or Northern Ghana. Nevertheless, the basics of community policing, encompassing responsiveness to the concerns of the public and the search for joint solutions, are a crucial defining element. Simply organizing police on a local basis is not sufficient to meet the criteria.

A number of best practices are described in the vast amount of community policing-related literature available.[35] Many Amnesty International reports too refer to small-scale experiments in implementing community policing. The manner in which community policing is put into practice differs immensely. A BBC documentary described the implementation of community policing in one of the *favelas* in Rio de Janeiro, Brazil. After a public outcry following police brutality, the two prime goals were to re-establish partnerships with the communities and identify problems facing the communities.[36] The police commander concerned based his approach on three principles: disarmament ("before community policing can be introduced, the gunmen must be ruled out"), no child offenders, and no internal corruption. An important aspect of the Brazilian case was to bring two communities together: one middle-class and one *favela*, the former seeking protection from and thus repressive policing against the latter. Addressing this lack of solidarity and lack of understanding was one of the objectives of this project.

Some countries, including South Africa and Uganda, have so-called Community Police Forums (South Africa) or Local Councils (Uganda), operating at police station level, in which members of local communities are represented. These

forums take part in decisions on police priorities and in some instances engage more actively in policing. The local governments of the Local Council structure in Uganda have been given responsibility for, among other things, law and order.[37] These structures were introduced after the civil war in order to prevent a law and order vacuum emerging after the old order of local chiefs was swept away. The Local Councils' duties include mobilizing local communities in law and order matters, law enforcement through the local police, gathering criminal data and running courts. Though these Local Councils have had a remarkable success in preventing the emergence of illegal and informal forms of policing (including vigilante groups) and have managed to achieve some sense of order, they are not without problems. Corruption and a lack of legal knowledge are the most visible of these and have caused frustration within the professional Ugandan police agencies.

A community policing project that has gained considerable attention is the 'Broken windows' approach of the New York Police Department (NYPD) developed in the mid-nineties. It is based on the assumption that intervening to prevent and stop minor crime will gradually lead to a decrease in major violent crime; if one window is broken, young criminals and others will feel less inhibited to break another. There was 'zero tolerance' towards crime with police arresting anyone committing a minor crime. Although crime statistics reportedly showed a decrease in petty as well as serious crime, and the policy reportedly improved some peoples' sense of security, it also led to some extremely repressive police actions towards certain communities. As reported by the New York Civil Liberties Union, "This racial bias in police practices occurred during a period in which the NYPD had initiated a strategy that involved the aggressive prosecution of so-called "quality of life" crimes."[38]

Community policing practices are indeed very varied across the globe and do not always reflect the principles as formulated above. An example is provided by Mozambique.[39] According to Amnesty International's understanding, the system of community policing adopted in Mozambique, is led by the Police of the Republic of Mozambique (PRM)'s public relations office and involves the establishment of Community Policing Councils. The council members are selected by local community leaders, and the police members selected from lists of volunteers. The members do not receive a salary, but are encouraged to raise money by running small enterprises. They do not wear a uniform, nor are they authorised to carry arms. Their functions include providing PRM with information about criminals, using mediation techniques (including in domestic violence cases) and persuading delinquents to change their behaviour. They may arrest people under the ordinary powers of "citizens' arrest" in cases of *flagrante delicto.* They work with the police in their respective area. PRM representatives have told Amnesty International that the system is working successfully on the whole. Other observers have informed Amnesty International that some communities have said that community policing has given them greater security but that there are also serious problems.

35) See for example: Bayley, D., 1994, *Police for the future*.
36) 'On the Rio beat', 2001, available at AI's International Secretariat.

37) Baker, B., 2005, "Multi-choice policing in Uganda."
38) Testimony by the NYCLU on profiling, dated 23 Feb, 2004. See: http://www.nyclu.org/profiling_testimony_022304.html, See also WOLA, *Themes and debates in public security reform. A manual for public society - Community policing,* discussing broken windows and zero tolerance.
39) The example is taken from a Memorandum AI has submitted to the Government of the Republic of Mozambique concerning police and the protection of human rights in 2005. The Memorandum has not been published.

Amnesty International has recorded a disturbing number of allegations concerning community police agents including:

- Bribery and extortion by community police agents, many of whom are unemployed
- The use of handcuffs and the carrying and use of firearms
- Arrests of suspects not *in flagrante delicto*
- Use of torture or other cruel, inhuman or degrading treatment or punishment and also reports of extrajudicial executions

Indeed, the model for community policing that has been set up in Mozambique has potential for turning into a form of militia as ordinary citizens who are unpaid and untrained have been given authority, endorsed by the police, to exercise some control over their neighbours.

As it is important to be able to assess the quality of community policing projects, and to prevent them from developing into militias or vigilantism, we have drafted a list of success factors that can be used for this purpose.

Critical success factors of community policing include[40]:

- Community policing needs time; it needs time to establish contacts with communities, especially when initiated in situations characterised by distance and distrust. Moreover, in communities that are heterogeneous it is important to take steps to ensure that the programme is not captured by dominant powerful interest groups or is not affected by caste and communal considerations.
- Time means money; it needs adequate funding to retrain officers, adapt police stations, transform organizational structures and culture etc.
- Community policing requires bottom-up rather than top-down strategizing. Rank-and-file officers are the first contacts for communities. Information they have should guide decision-making rather than vice versa. The organizational structure must reflect this principle. Note that this can become difficult in organizations that practise(d) 'authoritarian policing' and are rather feudal in structure and ethos. In such situations vertical communication tends to be poor in quantity as well as quality and seniors are often unwilling to trust the opinion and judgement of subordinate ranks. Hence:
- Police leadership must be willing to comply with this (bottom-up) principle both in theory as well as in practice. Implementation needs full support, first from the police leadership and then down the hierarchy. Special departments, including detectives, may resist implementation, as it requires a change in their working methodologies. Therefore implementation needs to be well communicated.
- Community policing necessitates decentralization of decision-making on priorities as well as on resources. As such:
- Community policing requires well-trained high quality officers able to engage with communities and assess their needs and 'objectively translate' these into organizational efforts. It does not mean they simply do what the public wants them to do! Indeed, high levels of

corruption and weakly developed professionalism are factors to be extremely cautious of when implementing community policing.

- There must be a system for reward and promotion that reflects the community policing objectives. Officers should be rewarded for their community policing efforts (rather than being named 'social workers' or even in some cases 'nurses'). Evaluation of performance under community policing can be more difficult as the problems faced by police can be more complex. However, measuring the effects of community policing (impact assessment) may be crucial to guaranteeing future resources. Success can best be measured in terms of the police's ability to effect a change in attitudes and behaviour on the part of both the police and the public, to promote mutual understanding, increase friendly interaction, and ultimately facilitate close cooperation.
- Misconduct by police officers must be addressed adequately and promptly. Results of (internal) investigations into complaints must be communicated to the relevant communities.
- Community policing should preferably be a policing strategy rather than assigned within an isolated unit. However, starting with a separate unit may help to convince those resisting implementation.
- Continuity; as implementation of community policing requires firm and visible commitment of police leadership, this should continue after a change of leadership. New leaders must be willing to continue with policies their predecessors have initiated; rather than embarking on yet another experiment.
- For successful implementation, willingness to cooperate by those falling outside the scope of the police is essential as well. These include:
  - Unions. Though co-operation of the unions is perhaps not essential, their resistance can create serious problems. Countries with police unions should involve these in discussions around implementing community policing.
  - Politicians and other opinion formers, including the media. When seen as a social experiment, rather than good policing, implementation may result in competition over resources and expectations of what good policing entails.
  - Other agencies within the security domain. Community policing is not limited to police agencies but rather encompasses an overall security policy. Interagency cooperation is essential; problems that go beyond the police agency's reach will need addressing by others. Other city agencies may be better equipped to solve certain problems high on the community's agenda e.g. garbage on the street can be a major nuisance for the public but is not a police responsibility. The responsible agency however may be unwilling to deal with what *they* perceive to be an outcome of community policing projects and as such not their 'cup of tea'. As a rule: "If community policing is the police department's program it will fail. Community policing must be the city's program."[41]

40) There are many publications on community policing projects. See for example Bayley, D., 1994, *Police for the future;* WOLA, *Themes and debates in public security reform. A manual for public society-Community policing;* PERF, 2004, *Community Policing, the past present and future.* For this list we've also used: Wing-Hung Lo, C. e.a., 2004, "Community policing in Hong-Kong. Development, performance and constraints."; Broeck, T. van der, 2002, "Keeping up appearances? A community's perspective on community policing and the local governance of crime."

41) PERF, 2004, *Community Policing, the past present and future,* p.166.

• A responsive public! Community commitment must be actively sought and sustained. If communities perceive the police as their enemies, if they distrust the police, if those in the communities are afraid of retaliation from gang members, or if they simply don't care, they will be hesitant to cooperate. In fact in many countries, many communities, especially those comprised of the socially excluded and economically deprived, will be reluctant to respond to the police's efforts to engage and will wonder seriously whether cooperation will be in their interest. Establishing trust requires a long-term sincere and consistent effort by the police. In some countries a vocal public supports police practices that involve human rights abuses thus encouraging police to become more repressive. Indeed, community policing may require efforts to raise public awareness regarding human rights principles in general as well as policing practices in particular.

The basic all-encompassing success factor is commitment. Police in many countries take on community policing for various instrumental reasons, including as a means of improving community relations, to legitimize police practices (including those that are in violation of human rights standards) and to gain additional funding. Indeed, community policing has gained moral value in itself; regardless of the exact form it is given, thus further eroding the concept and its underlying philosophy. However, community policing should not undermine professional policing. On the contrary, professional policing is a prerequisite. It doesn't mean the public taking over police responsibilities but rather requires effective cooperation where the public advises the police and helps them ensure and sustain security.

3.4.4. Problem Oriented Policing[42]
Problem oriented policing (often abbreviated as POP, not to be confused with Public Order Policing) means gathering information about area-related problems instead of investigating a particular crime by a particular offender. "The full POP-approach requires a systematic process of problem identification and analysis, followed by appropriate intervention and subsequent evaluation."[43] As such POP requires a long term proactive, rather than reactive, approach. Originally a new working method developed in the 1980s, POP resulted in a radical shift in thinking from 'offender' to the 'overall problem' and turned into a new philosophy.

POP evolved from community policing: cooperating with other community safety partners, such as schools, community centres, housing corporations, civic organizations, etc., proved to be vital in solving those problems that were most disturbing to the public. These were not necessarily restricted to crimes nor were the police the most obvious agency for solving them. Indeed, peoples' overall feeling of insecurity can be highly affected by such things as streetlights not working, garbage on the streets, graffiti, youths hanging around etc. This inter-agency approach is also the main weakness of POP: it assumes a comparable level of quality across all (State and non-State) agencies and

entities involved and a neutral 'professional' willingness by all of these to tackle problems. Unfortunately the reality is often far from this. Apart from that, cooperation with such a range and diversity of agencies and entities can make it difficult to operate consistent policies.

'Good' community policing should adopt a problem-oriented approach: that is, the two should go together. However, "in practice problem oriented policing tends to dominate whereby it is the police who define the problems to be tackled."[44] POP is 'easier' to carry out than community policing as measuring its results is easier and it is not tied to the existence of a community that is clearly defined, has clear expectations and is willing to collaborate with the police. This is also the drawback of POP: it can reinforce the impression that police can solve crime on their own (without cooperating with communities) and confirm the role of the community as a passive one.[45]

POP in essence is about effectiveness; it is about how the authorities and the police can organize their resources to optimal effect for the benefit of citizens. Every police officer understands that in the end it makes no sense to respond to the same calls over and over again without dealing with the underlying problem. As such, POP doesn't have any disadvantages, other than that it may lead to police taking on too many activities, as with community policing. In times of trouble (high crime rates, public insecurity etc.) this easily turns *against* the police, typically with politicians and the media starting to question how police spend their resources and how priorities are set, typically ultimately leading to complaints about the police being 'soft on crime'.

3.4.5. Information/ Intelligence led policing
The 'material' police work with is information. Information is gathered by the police but by many other agencies and authorities as well. Indeed, in these times of information technology, data-collection, and knowledge management, the police have come to realise that "the acquisition, development and use of information about serious and prolific offenders is likely to be an effective route to the disruption or cessation of their activities."[46] Information may be collected through both open and covert sources as well as through community contacts. Over time, intelligence led policing has evolved to include any police activity that is informed by the intelligent analysis of information. Like POP, intelligence led policing followed from community policing: establishing closer contacts with communities revealed the vast amount of information available. After all, offenders live in communities themselves and for a large part crimes are committed in communities. Improving community relations leads to improved access to information and as such is a vital precondition for good policing in all its aspects.

Intelligence led policing in essence is also about improving effectiveness. However, it has some more fundamental repercussions as well. Apart from an increased volume of information being collected, it can also change the nature of information collected. The lion's share of information gathered and used is 'open source' information, available to anybody. Though there might be strict

42) Those interested could look at: http://www.popcenter.org
43) Hale, C. e.a., 2005, "Uniform Styles II: Police families and police styles."

44) Broeck, T. van der, 2002, "Keeping up appearances? A community's perspective on community policing and the local governance of crime", p.169.
45) Ibid.
46) Hale, C. e.a., 2005, "Uniform Styles II: Police families and police styles", p.5.

privacy rules on data-storage it is unclear what the consequences of collecting all this data are, for example in relation to certain minority groups. Police may become like Security Agencies collecting political rather than criminal intelligence. Especially when police starts using their improved contacts with the communities for political information-gathering this may ultimately lead to a revival of 'Securitate'-type police agencies. Indeed, community policing using information-led methods can result in 'two steps back' rather than 'one step forward'.

The 'War on Terror'

Obviously the 'war on terror' declared in the aftermath of September 11th 2001, is not a policing philosophy. However, it has had an important impact on policing and policing philosophies in many areas of the world. It has brought military jargon ('war') to an area of crime – i.e. an area that is to be dealt with by the criminal justice systems including the police. Whereas community policing is very strongly based on the premises of the police being a service to the people, the 'war on terror' is a step away from this as it seeks to legitimise the placing of limits on judicial safeguards against abuses of State power. Some countries, especially those with backgrounds in authoritarian policing, readily adopt the vocabulary of the 'war on terror', thus justifying authoritarian policing and ignoring legitimate demands for more accountability towards communities.

Thus far the 'war on terror' has increasingly legitimised the targeting of members of certain groups within society ('profiling') and made use of police powers without accountability. The 'war on terror' seems to have encouraged a redefinition of the human rights framework by some in power, making human rights violations such as torture 'acceptable' methods of investigation. At present, positions seem to be polarised, with supporters of the 'war on terror' on one side and human rights advocates on the other. In this dichotomy, human rights advocates run the risk of being perceived to defend 'terrorists' making it more difficult for them to be effective. Developing a 'human-rights oriented anti-terrorism approach' will indeed be one of the major challenges of the next decade. Note that a Section on "terrorism" is also included in Chapter 2.

3.4.6. Concluding remarks on policing philosophies

Clearly these policing philosophies are not as neatly separated in practice as is suggested here. Some police agencies have characteristics of crisis policing, even though the countries in which they operate are not in crisis. Many have features of authoritarian policing. It is remarkable how many have adopted the 'community policing' vocabulary – though just a small minority have truly adopted the philosophy 'as intended'. It rather seems to be the influence of foreign experts and consultants, together with foreign funds, that have helped the community policing philosophy to gain popularity at such speed.

Roughly put, one can argue that there are two broad underlying perspectives that underpin the philosophies we have discussed in the previous Sections. The

one underlying perspective is that of police as an instrument of State control. The assumption being that if States control their territories properly, this will result in 'law and order' and will guarantee security for most of the people in their jurisdiction. This 'force perspective', or vertical perspective, is clearly seen in authoritarian policing styles. The other underlying perspective is that of police as a service provider to communities in their own areas. This service, or horizontal, perspective is seen in community policing and its derivatives: problem oriented and intelligence led policing (while the latter can also be seen in authoritarian policing). Crisis policing is somewhat separate in that it shows the State's incompetence in the maintenance of order rather than its competence in fulfilling its core obligation of maintaining order.

'Community policing' is certainly favoured by human rights advocates for its responsiveness to civil society. The UN Guidelines on Crime Prevention stress the importance of involving communities in crime prevention.[47] To stress the importance of responsiveness towards communities, and to avoid semantic discussions about what it is that community policing exactly entails, human rights advocates (including Amnesty International), tend to refer to 'community-based policing'. Having said that, there are still some dilemmas and difficulties with community policing that require attention:

- Authorities sometimes implement community policing initiatives by activating communities to police themselves, sometimes leading to situations of vigilantism. It is therefore crucial to always double-check what is meant when police say they have adopted community policing. Indeed: "Community policing may produce a constructive partnership between police and the public in the United States, but in authoritarian countries it can be used for co-optation and top-down regimentation."[48]
- Community based policing still suggests there is such a thing as a clearly demarcated community having clear and consistent ideas about what it is they want and willing and able to engage with the police. But what is the community and who represents it? How can exclusion be prevented? What about subgroups that are discriminated against?
- A related question deals with how to put 'serving the community', or 'responsiveness to the community' into practice. How is the community best served? Is simply doing what the community wants enough to serve them? What if the community asks for unlawful acts? As always, police will have to find a balance between being operationally independent, forming judgments based on police professionalism, requiring a certain level of public confidence, and listening to communities. In the end it is up to the police, sometimes even up to a single police officer to decide what is best. Indeed the main dilemma for community policing is how to balance a neutral (fair and impartial) approach with community emotions and attitudes.
- How can one ensure community policing doesn't increase corruption?
- Community policing is maximal policing; giving the police a major role in building and supporting communities, with strong ties to the 'due

47) Annex to ECOSOC resolution 2002/13 adopted 24 July 2002.
48) Bayley, D., 2001, *Democratizing the police abroad: What to do and how to do it,* p.36.

diligence paradigm' discussed in Chapter 2. However, maximising the police function to include tasks for which police powers are not needed (and for which police are not well-trained) may lead to police growing ever larger thus increasing the number of people being granted the powers to arrest and detain and use force. In fact, such expansion may entail police taking on functions of other governmental agencies, thus blurring the line between them. It also may lead to police taking on too many activities and creating too high expectations amongst the public, ultimately leading to frustration and disappointment.

'Situational policing'

There is not one best way to police. A recent initiative within the UK aims to develop a model to situational policing in combination with neighbourhood development in which policing philosophy (called strategy) is linked to the crime profile (types of common crime, level of crime, fear level) and social capital of the community (level of trust, informal contacts, formal association) hence seeking an optimal match.[49]

Though authoritarian policing may appear incompatible with human rights, it does not *have to* lead to human rights violations as it can be carried out in a professional manner. This depends on the legislation governing policing, the political commitment to human rights, the internal disciplinary procedures and many other factors. When there is political commitment to human rights, and the internal chain of command functions properly, and police are trained adequately and operate under close supervision, authoritarian policing, but in a disciplined way, may in fact be the optimal philosophy for many realities. This is especially the case in contexts with high levels of corruption. Though authoritarian police agencies are in some countries more violent, they are sometimes also less corrupt and therefore 'preferred' by the public as the least negative option. This is seen in several countries having several police agencies: the more militarised agencies, typically having more authoritarian features, being centralised and far away from the communities, are sometimes more respected and valued as these are seen as being more reliable and less influenced by personal or partisan local interests, indeed sometimes at the expense of 'being close to the communities' and sometimes even at the expense of being more violent.

An example is in India[50], where policing is the responsibility of state governments (in a federal structure) and the central government has no original jurisdiction in police matters. However, a number of central police agencies exist and can intervene in states (although only when their assistance is requested i.e. when a particular state police force finds itself unable to deal with a situation, particularly a law and order problem, effectively). Generally the public are said to place greater trust in these central police agencies compared to their own state police forces, as they are seen to be better trained, better led and better equipped than the state police forces and what is more they are

49) Ashby, D.I., 2005, "Policing neighbourhoods: Exploring the geographies of crime, policing and performance assessment."
50) Based on personal communication with Mr. G.P Joshi, CHRI, Police Program Coordinator, India.

perceived to be more fair and impartial in dealing with law and order problems. Their performance in controlling communal riots for example is generally seen to be less biased than that of certain state police units. These central agencies are more militarised and authoritarian than the state police units. Most of them are armed units and do not normally carry even non-lethal police equipment such as truncheons. To that extent they are more prone to using force or firearms. They are seen to be less corrupt because they do not carry out normal police tasks that offer opportunities to make money.

It is important for human rights advocates to know about the various policing philosophies in use and how these may affect human rights principles such as legality, accountability and responsiveness. The various philosophies can differ quite a bit in relation to the latter two principles. Community policing philosophies by their very nature are (more) responsive to the communities served, and overall are more open to public scrutiny than authoritarian styles. Adherence to the principle of legality is not likely to be strongly affected by the philosophy in use: corruption and human rights violations are seen in all. However the more authoritarian philosophies will often be combined with stricter laws, broadening police powers and lessening accountability mechanisms.

The name given by police to the philosophy they use does not always reflect the actual working methods practiced. Human rights advocates should be careful not to get involved in semantics and rhetoric about what philosophy to use; nor should they tell the police what system to use. They should rather check on what it is police do in so far as this relates to human rights issues. This means they should rather advocate that police:
- Be responsive to and accountable to the communities served
- Be representative of the communities served and sensitive to the needs of vulnerable groups within these communities
- Combine effectiveness and legitimacy
- Ensure all three basic police functions are provided for
- Work in compliance with the law including international human rights law and use measures that are proportionate to the ends sought

Police should be aware of developments in society and adapt their working methods accordingly with a critical eye on the effects of any changes to human rights. In order to do this, constant monitoring of developments in society and their effects on community expectations with regard to policing is necessary. When police have established good community relations 'staying in touch' with society is a logical result.

3.5. Summary

In this Chapter we have looked more closely at the police as the prime agency tasked with ensuring security and maintaining order. The police are tasked to carry out three functions. These are:

- Prevention and detection of crime
- Maintenance of public order
- Provision of assistance to the public

Human rights oriented policing requires that the public are provided with all three police functions. To enable police to carry out these functions effectively they need adequate resources. They need sufficient staff that are well trained and reflect the communities served. They also need sufficient funding to carry out their functions.

There are several policing philosophies in use. Deciding on which is the best one is a difficult if not impossible task. Roughly, policing philosophies either reflect the position that police are an instrument of State control, or a service to communities. Though community policing rhetoric sounds as if this philosophy is the most 'human rights friendly', in practice this is not always the case. We have listed success factors that can be used for assessing projects said to involve community policing and have suggested that human rights advocates focus on human rights principles such as responsiveness and accountability to the communities served as well as legality.

The police organization shall enjoy sufficient operational independence from other state bodies in carrying out its given police tasks, for which it should be fully accountable

Article 15, The European Code of Police Ethics

4. Operational Independence

4.1. Introduction

As we have seen States are responsible for the maintenance of order and security within their territories. It follows from the principle of equality (Article 1 of the Universal Declaration on Human Rights) that States are responsible for ensuring security for everyone equally. It is essential that the systems established by States to maintain order and security operate for the benefit of all, rather than seeking to please a few. However, political interference and discrimination in many countries make human rights oriented policing, as part of their overall security and justice systems, extremely difficult (if not impossible).

Police need to be able to carry out their functions in a non-arbitrary and impartial manner. In order to achieve this, they require some degree of autonomy. However, this autonomy can never be total as police are granted powers that have the potential to seriously affect people's rights and could lead to them exercising uncontrolled power within the State. In order to prevent this from happening, police need to be granted a degree of autonomy while ensuring full transparency in what they do. 'Operational independence' as it is known, is a complex yet basic characteristic of policing which requires a delicate balance. The existence of too much autonomy may lead to overly violent police actions. Too little may result in police seeking to fulfil the partisan (ethnic, religious or other) interests of those in power rather than the interests of all.

Readers of this Chapter should refer also to Chapter 8 on 'Accountability' given that the issues of operational independence and police accountability are inextricably linked.

4.2. Policing is a political activity

The law sets the framework within which police carry out their functions, and priorities for policing are generally set by (local) security policies. In democracies, both laws and security policies are formulated by representatives of the people. As such police are always closely connected to politics. However, law can only prescribe policing to a limited extent. Policing is always, by definition, a political activity in that it seeks to balance various interests in society.

4.2.1. Vertical perspective: Police and State

State institutions are by definition closely connected to State power and the police is no exception to that rule. Police are the strong arm of the State. They are accountable to the State, depend on the State and must enforce State laws as formulated by those in power (through elections or otherwise).

The State is to serve the public interest. This notion is reflected in Article 1 of the UN Code of Conduct for Public Officials which states: *"A public office, as defined by national law, is a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be to the public interests of their country as expressed through the democratic institutions of government."*[1] Clearly this is of particular relevance for those State officials involved in law and order functions who are granted special powers, such as the power to arrest and detain, and to use force. Having control over these powers is a powerful source of influence and can easily be misused for other than the public interest. Indeed, in some countries, instead of serving communities, police rather serve the partisan, ethnic, religious, or other, interests of those in power, occasionally resulting in abuse of police powers, obstructing the growth of police as a professional organization and subverting the rule of law.[2]

Police will generally reflect the attitude and values practiced by those in power. If those in power show disrespect for fundamental principles of the rule of law, human rights compliant policing is unlikely to flourish. "Police actions, however "democratic" are not determinative of democratic growth. Indeed: the causal connection runs strongly in the other direction: democratic government is more important for police reform than police reform is for democratic government. Police reform is a necessary, but not sufficient, condition for democratic government. The police tail cannot wag the government dog."[3]

That said, for States to carry out their responsibilities effectively and impartially, loyalty of their officials to the public interest, as represented by the State, is a precondition. Creating and sustaining such loyalty is not always an easy task. How can States ensure loyalty to the public interest, as required by the UN Code of Conduct for Public Officials, instead of the interests of the (ethnic, religious, cultural) group the public official comes from for example? The situation of the police in Basra, Iraq, presents an example of the complexities involved. As described by a New York Times journalist: "Basran politics (and everyday life) is increasingly coming under the control of Shiite religious groups, from the relatively mainstream Supreme Council for the Islamic Revolution in Iraq to the bellicose followers of the rebel cleric Moktada al-Sadr. Recruited from the same population of undereducated, underemployed men who swell these organizations' ranks, many of Basra's rank-and-file police officers maintain dual loyalties to mosque and state. In May, the city's police chief told a British newspaper that half of his 7,000-man force was affiliated with religious parties. This may have been an optimistic estimate: one young Iraqi officer told me that "75 percent of the policemen I know are with Moktada al-Sadr – he is a great man." (…) "No one trusts the police," one Iraqi journalist told me. "If our new ayatollahs snap their fingers, thousands of police will jump."[4]

4.2.2. Horizontal perspective: Police and public
It is a basic human rights principle that the State and its State organs are to be responsive to the communities they serve. This is reflected in many international standards including the resolution with which the UN Code of

1) The UN Code of Conduct for Public Officials, adopted by the General Assembly Resolution 51/59, on 12 December 1996, is recommended to Member States "as a tool to guide their efforts against corruption".
2) Goldsmith, A., 2003, "Policing weak states: citizen safety and state responsibility."
3) Bayley, D., 2001, *Democratizing the police abroad: What to do and how to do it*, p.13.
4) The New York Times, *Switched Off in Basra*, 31 July 2005.
5) General Assembly Resolution 34/169, 17 Dec. 1979.
6) Bayley, D., 2001, *Democratizing the police abroad: What to do and how to do it*, p.13-14. The other three are:
- Police must be accountable to the law, rather than to the government
- Police must protect human rights, especially those that are required for the sort of unfettered political activity that is the hallmark of democracy
- Police should be transparent in their activities.
7) OHCHR, 1997, *Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police.*
8) This is sometimes referred to as the social contract: an agreement by the people to delegate certain responsibilities to the State. The people comply with national laws and behave in an orderly manner and accept police intervention when doing otherwise. The police on the other hand agree to comply with the laws under which they operate.
9) Peel's principles can be downloaded at various websites.

Conduct for Law Enforcement Officials was adopted which states: *"Like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole."*[5] It is also reflected in police and human rights literature. In a study reviewing 500 documents on police reform and 'democratizing the police' four norms for democratic policing were defined, the first of which reads as follows: "Police must give top operational priority to servicing the needs of individual citizens and private groups."[6]

Being responsive to the public does not mean that the police simply carry out whatever the public wants them to do. It rather entails the police being able to make a fair assessment of what response serves the broad *public interest* instead of what serves a particular community specifically. According to the Office of the High Commissioner for Human Rights (OHCHR), responsive policing ensures that:[7]
- Police are responsive to public needs and expectations, especially in preventing and detecting crime and maintaining public order;
- Policing objectives are attained both lawfully and humanely;
- Police understand the needs and expectations of the public they serve; and
- Police actions are responsive to public opinion and wishes.

Maintaining order and providing security is the core function and responsibility of the State as it is in the interest of all. To achieve the objective of maintaining order the police and the public are interdependent. Fundamental aspects of any democracy based on the rule of law include that there should be fair and humane laws with which the public complies and that the public are in turn willing to accept the police as (one of the) law enforcement agencies. Thus, members of the public should be willing to comply with the law and should accept corrective measures if they don't.[8] This is often referred to as **policing by consent.**

'Police are the public and the public are the police'
Sir Robert Peel was the founder of the London-based Metropolitan Police in 1829, reflecting the notion of public police. Often quoted are 'Peel's Nine Principles'. His seventh principle states "To maintain at all time a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen, in the interests of community welfare and existence." [9]

Policing by public consent serves a further, more operational, goal. Police are dependent on the public for information – such as the reporting of crimes – and their willingness to act as witnesses. As the police are dependent on the public for their professional performance, they should be aware of the legitimacy

10) Mawby, quoted in Marenin (Ed.), 1996, *Policing change, changing the police*, p.7.
11) See for example Davis, R.C. et al., 2004, "A cross-national comparison of citizen perceptions of the police in New York City and St. Petersburg, Russia." AI's 2005 report on Brazil presents an example of different expectations people may have of police actions. See *Brazil: They come in shooting*.
12) Cavallaro, J.L., 2003, *Crime, public order and human rights*.

they have with the public. Legitimacy "implies that the police are granted some degree of monopoly [to provide security and use force for that reason] by those in society with the power to so authorise," which can be "the legal system, the community, the State, the police organization itself or the political elite."[10] Different policing models may differ in the bases for their legitimacy. A way to ensure such legitimacy is by being responsive to community needs, by showing impartial and professional judgement, and being effective in ensuring security. Moreover, by providing assistance to those in need, police also add to their reputation. Indeed, police carry out duties for which police powers are not strictly needed so as to ensure public acceptance if and when they are required to use these powers.

Legitimacy is reflected in the confidence the public has in the police. Public confidence is a precondition for operational independence and the result of police being effective and accountable. Monitoring public confidence is essential. Obviously, public confidence is strongly influenced by the public's perception of the police's effectiveness in preventing crime and maintaining order. However, being effective *as such* is never a sufficient parameter to assess the police. Policing compliant with human rights means both effective and legitimate policing.

An absence of public confidence due to police corruption, discrimination, police violence, a lack of resources or overall unprofessional behaviour, is a major problem for many police agencies throughout the world. If there is no public confidence the public tends to resort to traditional and informal systems of justice or private security, and vigilantism often flourishes. In many countries police do not carry out their duties lawfully (if at all). In such situations where their legitimacy is compromised and public confidence is weak, police are forced to rely on alternative means for ensuring compliance. This often leads to a vicious cycle with police relying on force to seek compliance, leading to less public confidence, resulting in further police force and so on. Unprofessional policing, for example shown through incompetent handling of a demonstration, often results in overuse of force – which in itself is an example of unprofessional policing. Indeed, bad policing reinforces itself, becoming worse and worse.

Public confidence across communities

Public confidence can vary across groups and communities. Satisfaction with police is closely related to factors such as poverty and levels of crime. The poorer the area and the higher the crime level, the less satisfied people tend to be. Minorities tend to have worse experiences of police than those from dominant groups. There are many reasons for this and academics have for long studied cause-and-effect relations.[11] In general, research has found that people want police to be responsive to their needs and be available whenever required. However, in high-crime situations people tend to want the police to be tough on crime and are willing to accept repressive policing – as long as it targets others. [12]

Public confidence is closely related to how people perceive police use of force. "Disagreement exists over the larger purpose of police violence in modern society: whether it is needed to control those segments of the population that fail to abide by society's laws and employ violence themselves, or as an instrument of the State to maintain modern society's inequitable distribution of resources. This contrast is often exposed when police kill a citizen. Many within minority communities view these incidents as examples of social injustice and oppression, while others view them as the "collateral damage" of police work."[13]

4.2.3. Policing is balancing

Policing being a political activity is not the same as police always simply doing what politicians tell them to do. The distance between police and their stakeholders must be sufficiently far to prevent corruption but close enough to 'stay in touch', i.e. be responsive. Police are given their powers by the State, represented by politicians both in parliament and in Ministries, and must 'earn' their use from the public. Indeed, policing requires a delicate balance between doing what the public wants them to do, i.e. serving communities; serving those in power who ultimately control the police; and deciding autonomously what should be done to maintain order and ensure safety, i.e. making a professional, neutral, judgement on what to do. The figure below symbolizes the various interests involved:
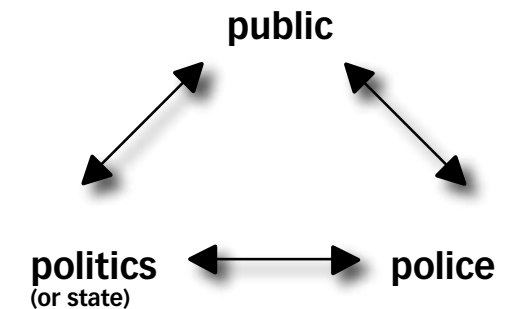
The figure also shows clearly what lines of accountability there are for the police (to be further discussed in Chapter 8). Police have to maintain enough distance from all parties to be able to carry out their functions objectively and impartially, i.e. professionally, in compliance with (the spirit of) the law. However, they should always work under the authority of the other parties, i.e. be accountable to the other parties. Solving this dilemma is one of the fundamental tests for assessing the role of the police in a society.

13) Smith, B.W., 2004, "Structural and organizational predictors of homicide by police.", p. 539.

4.3. Operational independence

4.3.1. Introduction

Policing requires a balancing act between the State and the public. Neither simply doing what the State wants, nor simply following the public's wishes will guarantee policing in the public interest. To ensure (political) impartiality and neutrality, and thus non-arbitrary lawful professional decision-making by the police – in other words to be able to operate in the public interest – police leadership must be authorised (and equipped) to have some degree of autonomy to decide, within the established budgetary and legal framework, how they allocate resources and how they respond to law and order situations. This is known as **operational independence.** Operational independence presents a fundamental problem from a human rights perspective, yet as stated above, the requirement is inherent in professional policing as opposed to political policing. However, as an armed agency with a degree of autonomy, the police require some form of control.[14] Independence is to be limited, both by law and policy (police cannot do whatever they like) and by its co-requirement of accountability.

4.3.2. Operational independence and accountability

There should be no police power without accountability. This is why some prefer to avoid using the term 'independence' and replace it with the term 'responsibility'. For example the Patten Commission, responsible for formulating reforms of the police in Northern Ireland in the late 1990s, suggested the use of the term 'operational responsibility' rather than 'operational independence' so as to underline that police should never escape scrutiny. "Operational responsibility means that it is the Chief Constable's right and duty to take operational decisions, and that neither the government nor the Policing Board should have the right to direct the Chief Constable as to how to conduct an operation. It does not mean, however, that the Chief Constable's conduct of an operational matter should be exempted from inquiry or review after the event by anyone. That should never be the case."[15]

The Patten Commission found that though everyone with whom they consulted agreed on the importance of operational independence, nobody was able to present a clear definition of it nor did they come across a definition in any legislation. Article 15 of the European Code of Police Ethics does however elaborate upon the concept in a clear and sound way: "The police organization shall enjoy sufficient operational independence from other state bodies in carrying out its given police tasks, for which it should be fully accountable." Commentary to this Article reads as follows: "The police belong to the executive power. They cannot be fully independent of the Executive, from which they receive instructions. However, in executing their given tasks the police must follow the law and are, in addition, entrusted with discretion. In exercising their powers, the police should not receive any instructions of a political nature. Operational independence should apply throughout the organization. Such independence is an important feature of the rule of law, as it is aimed at guaranteeing that police operations are being conducted in

accordance with the law, and when interpretation of the law is needed, this is done in an impartial and professional way. Operational independence requires that the police are fully accountable for their actions/omissions."[16]

For the public and the State to 'grant' the police operational independence, police must actively show they are willing and able to account for what they have done *(a posteriori)* and adhere to policies and legislation that were formulated to guide police actions beforehand *(a priori).* Operational independence should always go together with effective accountability mechanisms. Only then can the police carry out its functions effectively and raise public confidence. The three principles, or concepts, interrelate:

- A police agency lacking public confidence is often seen to be unwilling to account for its actions
- A police agency with operational independence but refusing to account, will ultimately erode public confidence
- A police agency that is transparent and willing to account will be given more autonomy as people will have more confidence
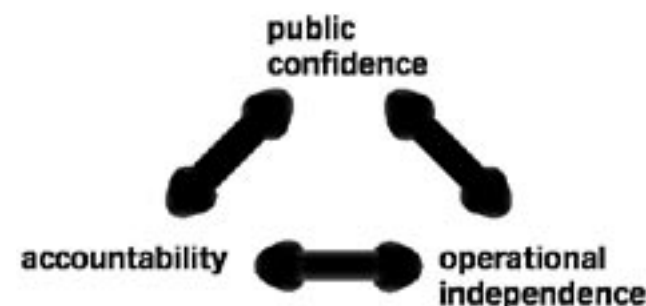
4.3.3. Discretion

Operational independence of police leadership translates down to rank-and-file officers as **discretion** (or discretionary powers). While on duty, a police officer typically has great discretionary power and can decide individually which deviant behaviour to act on or not (obviously limited by such margins as laid down in national law and policy). However, some discretion is at the very heart of policing: not every offence is worthy of police action nor is police action always the best solution for a problem.

An example of an offence that can lead to multiple police reactions is where a person is speeding beyond the legal speed limit. This is a traffic offence in most jurisdictions and the police can decide to issue a fine. However, they can also decide to give a 'final warning', which is sometimes more effective than fining. Another example is if vandals had demolished a school building. Police could decide to arrest them for this but could also decide to refer these young people for social work; or to have a word with their parents or try to arrange mediation or another action not involving police powers, nor specific police skills, nor

14) Stenning, Philip, 2004, *The idea of the political independence of the police: international interpretations and experiences.* In this report the author discusses how independence and accountability relate conceptually as well as in practice. Experience with the doctrine in three common law jurisdictions, England and Wales, Australia and New Zealand, are explored.
15) Independent Commission on Policing for Northern Ireland, 1999, *A new beginning: policing in Northern Ireland,* para 6.21.

16) European Code of Police Ethics, Commentary to art. 15, p.41.

being dependent upon penal law. As this example shows, the margins for police to act with discretion are dependent upon the legal system in a given country, the confidence police have with the public and the level of professionalism, in how far they are trained to find alternative solutions and/or refer to alternative agencies, or to what degree alternative solutions or agencies are available to them.

Code of Conduct of the International Association of Chiefs of Police (IACP)

The IACP states: "A police officer will use responsibly the discretion vested in his position and exercise it within the law. The principle of reasonableness will guide the officer's determinations, and the officer will consider all surrounding circumstances in determining whether any legal action shall be taken. Consistent and wise use of discretion, based on professional policing competence, will do much to preserve good relationships and retain the confidence of the public. There can be difficulty in choosing between conflicting courses of action. It is important to remember that a timely word of advice rather than arrest – which may be correct in appropriate circumstances – can be a more effective means of achieving a desired end."[17]

4.3.4. Threats to operational independence

It should be noted that in large parts of the world the police do not enjoy operational independence.[18] There are many countries where the type of control exercised over the police results in them being subservient to the political executive, sometimes leading to police inaction where there should be action or action where there should be none. For example in India, where there is a federal system of government, the Police Act vests "superintendence" over the police with state governments. However, the word "superintendence" has not been defined in law, allowing political interference in police work, often resulting in misuse of police powers and leading to violations of citizens' rights. In some countries, even though superintendence is vested in the head of the police force, it is subject to the directions given by the political executive and these directions are binding and have to be complied with. As an illustrative example, in Nigeria, while the Inspector General of the Police (IGP, who is the head of the police) is charged with the command of the police subject to the directive of the President, surprisingly enough the President is charged with the operational control of the force.[19] The President is also authorized to give the IGP such directions for the maintenance and securing of public safety and public order as necessary and the IGP shall comply.[20] Another example is provided by Uganda, where, according to the Constitution, the "Inspector General of Police shall be subject to and act in accordance with the laws of Uganda, except that on matters of policy, the President may give directions to the Inspector General".[21] The problem with this provision of the Constitution is twofold. One, there is no cut and dried definition of what constitutes policy matters. Two, the provision does not state that the directions by the President should be given subject to and within the framework of law. This provision in

fact allows an IGP to act in accordance with laws except where he receives policy directions come from the President. There is a similar provision in the Police Statute, but here it is the Minister who may give policy directions to the IGP and the Statute further says that the "Inspector General shall comply with those directions".[22]

Another way in which operational independence is eroded is through the power of governments to appoint and remove or transfer senior police officials. In many countries the Chief of Police and other senior officers are appointed by the government or the head of the political executive and the law is silent about the process or procedures of selection, neither prescribing guidelines for appointment to posts, nor setting down any conditions under which the heads of the police can be removed. As an illustrative example, in Costa Rica it is a constitutional right of the government to remove police leadership whenever they deem it appropriate. In many such situations, it is left entirely to the discretion of the head of the political executive to decide who should head the particular police agency and how long the selected person should remain there. This means that senior police officials can remain in their posts at the whim of politicians. It is in the career interests of police officials to act in accordance with the wishes of political leaders, even if that leads them to function outside the law.

4.4. Summary

Police operate in a complex arena with many competing interests. Simply complying with any one of these interests will never be sufficient for true human rights oriented policing nor will it reflect police reality. Police are the strong arm of the State, serving the public interest. To achieve an appropriate balance between State and community interests, police need operational independence to be able to make their own professional judgement in particular situations. Having a certain amount of discretion as to when to use police powers is a practical necessity but this presents the problem of how to control the police. The police must prove they are worthy of enjoying operational independence: they must earn legitimacy with the public by serving the community. Through openness and transparency they can improve their community relations and increase public confidence; a basic precondition for independence. Moreover, police must operate lawfully and non-arbitrarily, and be effective and accountable in what they do.

Unfortunately in many countries the reality is far from this, with police lacking the competence to reach professional assessments of situations and the will (or confidence) to account for their actions afterwards. This is often accompanied by political powers seeking to secure their own interests rather than the public interest and unable or unwilling to exercise legitimate and effective, but restrained, control over the police.

17) Download from their website at www.theiacp.org
18) The text in this Section, including the three examples, India, Nigeria and Uganda are based on personal communication with Mr. G.P Joshi, Commonwealth Human Rights Initiative, Police Program Coordinator, India.
19) Section 9 (4) Nigeria Police Act (CAP 359) 1943 refers.
20) Section 10 (1) of the Police Act refers.
21) Article 213 (4).

22) Section 6(2) of the Police Statute, 1994.

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Part III. Police Powers

Police Powers: Introduction

Police can be defined by the powers they hold, most notably the powers of arrest and detention and the power to use force. This is recognized both in international as well as in national law. Police Acts, Criminal Codes and Criminal Procedure Codes as well as so-called Standard Operational Procedures (SOP's) usually set out these powers and regulate how police are to put them into practice. Any assessment of the police in a given country should therefore always start with a study of these documents in so far as they are publicly available. Typically, the more practical these documents get – SOPs are generally far more concrete and specific than Police Acts – the more difficult it may be to get hold of them. Sometimes they simply don't exist on paper.

Great caution should be exercised in making any general comments on police powers. Police agencies vary hugely, as do the extent of their powers. Some police carry firearms, some go unarmed. There are as many examples as there are countries. This Resource Book does not pretend to give a complete overview of police realities.

The subsequent three Chapters of this Resource Book focus on those police powers and policing situations that most often lead to human rights violations that are well documented in Amnesty International's reports. In Chapter 5 we will explore the power to use force; Chapter 6 will look at the powers to arrest and detain and Chapter 7 will look more closely at criminal investigations, with a special focus on the suspect interview. Each of these Chapters follows the same structure. We start with the key principles as given in international human rights standards. We then look at gaps in these standards: what do the standards not say? Subsequently we discuss (best) practices for carrying out a particular police activity lawfully and professionally.

Professional guidance

The UK based Association of Chief Police Officers (ACPO) working in England, Wales and Northern Ireland has an informative website worth exploring where guidance documents and manuals can be found of all sorts of policing situations including the use of force, policing demonstrations, dealing with domestic violence etc. Less informative regarding professional standards, but with a lot of links to other police associations and organizations is the website of the US based International Association of Chiefs of Police (IACP).[1]

1) See www.acpo.police.uk (under 'policies') and www. iacp.org respectively.

The Model Codes Project: Model Codes for Post-Conflict Criminal Justice

The US Institute of Peace and the Irish Centre for Human Rights[2], in cooperation with the UN Office of the High Commissioner for Human Rights (OHCHR) and the UN Office on Drugs and Crime (UNODC), spearheaded a project seeking to provide tools to assist in processes of legal reform in post-conflict states. The tools are a set of codes that focus on criminal law legislation as a means of enabling more effective delivery of criminal justice. The codes – a criminal code, procedure code, detention/prison code and police act – have been developed by a group of some 300 experts from around the world.

- The "Model Criminal Code" (MCC) contains general provisions on substantive law, as commonly found in national penal codes, such as criminal liability, grounds for defence, jurisdiction and penalties. It also contains a list of offences in its "Special Part". The definitions contained in the MCC are those crimes most commonly found in a conflict and post conflict environment, and that are frequently missing from national legislation.
- The "Model Code of Criminal Procedure" (MCCP) consists of provisions on all aspects of criminal procedure, from investigation to appeal. It also contains provisions on issues such as juvenile justice, extradition and international cooperation, witness protection and redress for victims.
- The "Model Detention Act" deals with detention, both pre-trial detention and detention upon conviction. It contains a mix of both general principles and also standard operating procedures applicable to the relevant detention authority including police.
- The Model Police Powers Act deals with police powers and procedures outside the context of criminal procedure and includes provisions on issues such as use of force and firearms and crowd control.

The model codes are published in three volumes. Volume 1, published in 2007, contains the Model Criminal Code. Volume 2 contains the Model Code of Criminal Procedure and Volume 3 contains the Model Detention Act and the Model Police Powers Act. All volumes will contain guidelines on how to use the model codes, including how to adapt and tailor them as appropriate to individual countries undertaking legal reform. Publication of Volumes 2 and 3 is expected in 2008. Each book contains a CD on which is an electronic copy of the book. The books will be posted on the USIP website and can be downloaded from there.

2) See www.usip.org and www.nuigalway.ie respectively.

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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
Article 2, UN Code of conduct for law enforcement officials

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty
Article 3, UN Code of conduct for law enforcement officials

1) Basic Principles, Principle 8.
2) Basic Principles, Preamble
and Principle 21.

5. Police Use of Force

5.1. Introduction

Police are typically associated with the equipment they carry to enable them to exercise force – particularly their handcuffs, truncheon and firearm (though these may vary from country to country). However, most police work does not entail any use of force. There are only a few functions in which some sort of force, or the threat to use force, may be necessary and legitimate to attain a lawful policing objective. These include making arrests, preventing crime and managing incidents involving public disorder. As the use of force against its own people is one of the most extreme measures a State can take there are many standards aimed at limiting the use of State force. At the heart of all these standards is the question of what constitutes legitimate force. Officers must make rapid assessments about the nature of the risk as well as the degree of threat involved, and the appropriate way to deal with it while ensuring minimum harm.

It is not always clear what exactly is meant by 'force' and whether a certain act did indeed contain 'force'. We will define 'lawful force' as any physical force by police, ranging from open hand techniques to the use of firearms, to compel persons to act or prevent them from acting, in order to achieve a lawful policing objective. Article 3 of the UN Code of Conduct for Law Enforcement Officials (UN Code of Conduct) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereafter Basic Principles) are the main standards covering the use of force and firearms for the police. We recommend that the reader familiarise him or herself with the full text of these. Note that exceptional circumstances, such as political instability or a public emergency, may not be invoked to justify any departure from the Basic Principles.[1] Note also that both the UN Code of Conduct and the Basic Principles apply not only to civilian police but also to military or state security officials exercising police powers.

Police sometimes perceive that human rights standards complicate their job without taking the realities of their work into consideration. Policing can be a dangerous job, sometimes requiring use of force. Amnesty International acknowledges this fact – and does not oppose the lawful use of reasonable force – in many of its recent reports, including Amnesty International's 2004 report, *Guns and Policing: Standards to prevent misuse.* So do the Basic Principles, stating in the preamble that police perform a *"social service of great importance"* and acknowledging the dangers which officers face in doing their duties. They also emphasise the duty of care in ensuring officers' welfare and providing counselling to those who have had to use force and firearms.[2]

Guns and Policing sets out a range of reasons for the inappropriate or abusive use of firearms by police and provides suggestions as to how to counter these.[3] The reasons given are:

- Lack of accountability mechanisms
- Lack of training
- Lack of supervision
- Lack of professionalism (incl. lacking an understanding of police tactics)
- Lack of resources, such as defensive equipment
- Poor cooperation between police and the community (resort to force rather than cooperation)
- Confrontation of police with particular communities based on discrimination

The reasons listed (which are not absolutely exhaustive: for example corruption is also a factor behind abusive use of force and firearms) could also be used for explaining inappropriate use of force more generally by police. In this Chapter we aim to identify relevant issues when assessing police use of force and firearms and developing strategies for intervention.

In Section 5.2. below, we look at the key principles relating to the use of force and firearms as set out in international standards. Section 5.3. briefly discusses what the standards don't say. Police have a range of means of force at their disposal; Section 5.4. discusses some of these in more detail. In Section 5.5. we look at how police can use force and firearms lawfully in practice, including how they should be prepared as well as what they should once force has been used. Section 5.6. discusses public order management as a particular situation in which force is sometimes required. It points to what the international standards say and what they do not say, and how police can exercise public order management lawfully and professionally. We close with a brief summary.

5.2. Key human rights principles relating to the use of force and firearms

Key human rights principles regarding the use of force and firearms in general are:

• **Proportionality:** use of force must be proportionate to the lawful objective to be achieved and to the seriousness of the offence.[4] In the training of police, special attention should be given to[5]:

- Alternatives to the use of force, including the peaceful settlement of conflicts, understanding crowd behaviour, and methods of persuasion, negotiation and mediation
- Technical means (including less than lethal weapons and protective gear for officers)

Proportionality can only be achieved if police have a broad range of techniques and equipment available to them including self-defence equipment (such as shields, helmets, bullet-proof vests and bullet-proof means of transportation), empty hand techniques and non-lethal incapacitating weapons.[6]

• **Lawfulness:** The use of force by police is lawful when it conforms to national laws and police regulations that in turn conform to international human rights standards. Both the objective and the means of achieving it must be lawful. In the preamble, the Basic Principles require States to take the Principles into account in their national legislation and in police rules and regulations on the use of force and firearms. Its Principle 1 specifically requires States to adopt national rules and regulations concerning the use of force and firearms and to keep the ethical issues involved constantly under review. These rules and regulations should include guidelines that[7]:

- Specify the circumstances under which police may carry firearms and the type of firearms and ammunition permitted
- Ensure that firearms are used appropriately and with least risk of unnecessary harm
- Prohibit firearms and ammunition that cause unwarranted injury or present unwarranted risk
- Regulate the control, storage and issuing of firearms, including procedures that ensure that officers are accountable for the weapons and ammunition issued to them
- Provide for warnings to be given, when appropriate, if firearms are to be discharged
- Provide for a reporting system whenever officials use firearms in the performance of their duty

• **Accountability:** To ensure accountability for the use of force and firearms there must be adequate reporting and review procedures, including:

- *Incident reports*: The UN Code of Conduct requires that a report be made promptly to the competent authorities every time a firearm is discharged.[8] The Basic Principles add that a detailed report must be made "in cases of death, serious injury and other grave consequences" and submitted promptly to the authorities responsible for administrative review and judicial control.[9]
- *Reports of violations*: The UN Code of Conduct requires that officers report any violation of the Code.[10] The Basic Principles put the onus on superior officers to do everything in their power to "prevent, suppress or report" unlawful use of force or firearms.[11] Both the UN Code of Conduct and the Basic Principles state that police should not be penalized for refusing to carry out violations or for reporting them.[12]
- *Effective independent review*: The Basic Principles call for an effective review process by independent administrative or prosecutorial authorities whenever a firearm is used and in every case of death, serious injury or other grave consequences. Victims, relatives or others affected by the use of force or firearms, or their legal representatives must also have access to an independent process, including a judicial one.[13]
- *Personal responsibility*: Following the orders of a superior is no excuse for unlawful use of force.[14] It follows from this principle that police officers are personally responsible[15] and also that officers

3) AI, 2004, *Guns and policing*.
4) Basic Principles, Principle 5.
5) Basic Principles, Principle 20.
6) Basic Principles, Principle 2.

7) Basic Principles, Principle 11.
8) UN Code of Conduct, Article 3.
9) Basic Principles, Principles 6, 11(f) and 22.
10) UN Code of Conduct, Article 8.
11) Basic Principles, Principle 24.
12) UN Code of Conduct, Article 8; Basic Principles, Principle 25.
13) Basic Principles, Principles 22 and 23.
14) Basic Principles, Principle 26.
15) HRC, General Comment No.31, para. 18.

should be personally identifiable. They should wear nametags or numbers that are clearly visible.

• **Necessity**: Force should be an exceptional measure.[16] This means that non-violent means must be tried first and force and firearms should only be used if these "remain ineffective or without any promise of achieving the intended result."[17] "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."[18]

"PLAN"

UK police have an acronym for the above four principles: "PLAN"– **P**roportionality, **L**awfulness (or legality), **A**ccountability and **N**ecessity. It is noticeable that the Codes of Conduct of both the International Association of Chiefs of Police (IACP) and the Southern African Regional Police Chiefs Co-operation Organization (SARPCCO) include these principles, as do many national codes.

Other general principles regarding the use of force and firearms include:

•   **Criminalizing unlawful force**: Any arbitrary or abusive use of force and firearms should be a criminal offence.[19] Obedience to superior orders is no defence if, in a case where death or serious injury has occurred, the order was manifestly unlawful and the person had a reasonable opportunity to refuse to obey it. The officer who gave the order must also be held responsible.[20]
•   **Providing assistance after an incident:** Officers have a responsibility, as soon as possible after the use of force, to provide assistance and medical aid to any injured or affected persons and to notify relatives or close friends of the injured or affected persons.[21]
•   **Instruments of restraint**: Restraints may be used to prevent the escape of a prisoner or, by order of the prison director and in consultation with a medical officer, to prevent the prisoner from injuring him or herself or others or from damaging property. They may not be applied for longer than necessary. They may never be used as a punishment. Chains and irons may not be used at all.[22]
•   **Responsibility for developing and deploying non-lethal incapacitating weapons**: The Basic Principles call for "careful evaluation" of development and deployment of such weapons the use of which should be carefully controlled.[23] This appears to place an onus on both the suppliers and the users of weapons to ensure that they minimize the risk to uninvolved persons and that they are responsibly controlled.
•   **Selection and training of firearms officers**: The Basic Principles lays down requirements for the selection, training and testing of officers authorised to carry firearms including in techniques that could diffuse tension and reduce the likelihood of the need to use force.[24]

16) UN Code of Conduct, Commentary to Article 3.
17) Basic Principles, Principle 4.
18) UN Code of Conduct, Article 3.
19) Basic Principles, Principle 7.
20) Basic Principles, Principle 26.
21) Basic Principles, Principle 5.
22) UN Standard Minimum Rules for the Treatment of Prisoners, Rules 33 and 34.
23) Basic Principles, Principle 3.
24) Basic Principles, Principles 18-21.

And finally, with specific regard to the use of firearms:
•   **Firearms may be used only**[25]:
    · In self-defence or in defence of others against the imminent threat of death or serious injury
    · To prevent the perpetration of a particularly serious crime involving grave threat to life
    · To arrest a person presenting such a danger and resisting their authority
    · To prevent his or her escape

and only when less extreme means are insufficient to achieve these objectives. Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life, a situation that will be rare in civil policing. Police must identify themselves and give clear warning of their intention to use firearms, with sufficient time for the warning to be observed, except when doing so would place the officers or others at risk of death or serious harm or if it would be clearly inappropriate or pointless in the circumstances.[26] The commentary to Article 3 of the UN Code of Conduct adds that every effort should be made to exclude the use of firearms, especially against children.

Subsidiarity

The principle of '**subsidiarity**' requires that officers adopt the least intrusive approach and the least damaging to a suspect's rights. This principle (meaning subordinate, supplementary or auxiliary) may be used in relation to the PLAN principles, particularly alongside the principle of "necessity". A simple example: An officer is confronted by an individual with a knife. It is necessary to disarm the individual. It may be possible for the officer to say "drop the knife" and if the individual obeys, there is no need to use force.

The point of subsidiarity is not whether an action is necessary, but whether that particular way of carrying it out was necessary. This does not mean that the officer has to exhaust all subsidiary options first if there is an imminent threat or danger.

5.3. What the standards don't say

The standards cannot, and do not, cover every aspect of policing. Hereunder some gaps are listed:
•   They do not define 'force' or 'firearms'
•   The Basic Principles on the Use of Force and Firearms do not specify how they should be implemented in practice nor do they give guidance on tactics
•   Proportionality is not defined; nor is 'imminent threat of death or serious injury' defined: when is a threat imminent?
•   They make no reference to **open hand techniques**, i.e. techniques not requiring equipment, or define what constitutes 'less than lethal' weapons
•   They do not define what is meant by the need for continuous and

25) Basic Principles, Principle 9 of which builds on the Commentary to Article 3 of the UN Code of Conduct.
26) Basic Principles, Principle 10.

thorough training and the need for periodically reviewing police officer's fitness for carrying out police functions, nor do they explicitly relate this to the particular use of force

- The standards do not identify means of restraints that might involve a significant risk to life.[27] It is left up to national legislatures and police authorities to establish regulations to cover these areas
- It is left up to national legislatures and police authorities to establish regulations for the use and storage of weapons

These gaps mean that national police agencies are required to develop standard operational procedures covering:

- Definitions of the terms used, for example "firearms"
- What types of force and firearms may be used
- Precise circumstances in which these types of force and firearms are to be used
- Responsibilities following the use of force and firearms including detailed reporting responsibilities
- Management roles at different levels and systems for responding to incidents in which the use of force may be necessary
- Qualifications required in order for officers to be authorised to carry and use a firearm
- Specific rules and techniques for avoiding the need to use force
- Provisions for issuing, storing and transporting weapons
- Provisions for ensuring continuous training in the use of force and firearms

5.4. Types of force

5.4.1. Introduction
As noted before, police should have access to a differentiated range of police equipment with which to apply appropriate minimum force in a variety of circumstances – as required in the UN Basic Principles. Only then can police start at the lower end of the 'scale of force' and gradually increase force depending upon the situation; thus preventing excessive force and facilitating the use of proportionate force.

Types of police force can vary immensely and include:

- Police presence itself as a deterrent (obviously this is not a means of force as such, but may help to prevent subsequent resort to force)
- Verbal instructions
- Open-hand techniques, such as a raised open hand or pushing someone back with the palm of the hand
- Hard empty hand techniques, such as holding someone's arm behind the back
- Body impact (pushing)
- Handcuffs or other restraints
- 'Pepper' or OC spray, tear gas

27) AI has called for a ban on specific restraint techniques, particularly those which can lead to "positional asphyxia". AI – Netherlands, 2004, *Amnesty International's recommendations on policing. A review and guide*, p.25.

28) AI, 2003, *The pain merchants*.
29) Bailey, W., 1996, "Less-than-lethal weapons and police-citizen killings in US urban areas.".
30) AI, 2001, *Trading in terror: Military, police and security transfers*.

- Sticks, batons, truncheons
- Electro shock weapons
- Baton rounds or rubber bullets
- Water canon
- Dogs
- Firearms

Many of these techniques are discussed in Amnesty International's 2003 report *The Pain Merchants: Security equipment and its use in torture and other ill-treatment*[28] and in *Guns and policing*. Amnesty International-Netherlands' 2004 publication *Amnesty International's recommendations on policing: A Review and Guide* lists recommendations the organization has made relating to these means of force used by police officers. Some of those listed are lethal, most notably firearms. Other means are referred to as being "less than lethal", stressing that, although intended for use by police as a last resort instead of lethal force, they can have lethal consequences. Moreover, their abuse can amount to gross human rights violations. In practice these less than lethal devices are sometimes used in the first instance, rather than as a last resort.

"Less than lethal" weapons
Amnesty International uses this term for weapons other than guns. Other terms used by police agencies are "non-lethal" or "intermediate" weapons. The term "less than lethal" was adopted in view of the evidence that many of the weapons placed in this category have the potential to be lethal.

Principle 2 of the Basic Principles encourages the development of "non-lethal" weapons in order to decrease the risk of death or injury inherent in the use of firearms or other potentially lethal weapons. Principle 3 recommends that "the deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled."

"Non-lethal" riot control devices such as water-cannon, plastic and rubber bullets, and chemical agents such as pepper spray and tear gas, can result in serious injury and even death. Many of these weapons, including their medical effects, have not been independently assessed and some remain inherently open to misuse. An independent study on the effects of less-than-lethal weapons on police killings found that the availability of chemical agents and restraining devices, associated with reducing police killings, had no such effect.[29] Amnesty International calls on governments to introduce strict guidelines on the design and use of such equipment and to set up adequate monitoring mechanisms to ensure that the guidelines are kept under review and adhered to.[30]

Here we will only give a brief explanation of some types of force. For further information we refer to the respective documents.

5.4.2. Restraint techniques/equipment

Handcuffs are the most common restraint equipment police have. Used properly they are used to tie the wrists, in front or behind the back. Handcuffs can also be used to tie some people together. Sometimes handcuffs can be used to tie the ankles. Restraints should never be used for punishment and the use of chains and irons, such as shackles, on prisoners is prohibited.[31] The use of restraints should never amount to torture or ill-treatment. Various specific methods of restraint employed by police have been referred to in Amnesty International's documents, including neck-holds, hogtying, mouth restraints (sometimes used on deportees), sedative drugs and handcuffs. Generally, Amnesty International has called on the authorities to review restraint techniques used by law enforcement officials, outlaw those involving a significant risk for life and in particular to ensure regular and repeated training about the dangers of "positional asphyxia" which is a particular danger during restraint.[32]

5.4.3. Irritant sprays

Two of the most used, and most known irritants are:

- **Pepper Spray / Oleoresin Capsicum (OC) Spray**
  Pepper spray, used at closed range, is sprayed in the face to temporarily disable someone posing a threat or heavily resisting arrest, in order to avoid greater means of force. In relation to the US, Amnesty International has recommended that the federal authorities establish an independent review of the use of pepper spray by law enforcement agencies and that police departments that authorize the spray should introduce strict guidelines and limitations on its use, with clear monitoring procedures.

- **Tear Gas**
  Tear gases are permissible in safe mixtures for domestic law enforcement purposes in riot control situations to prevent or counter collective violence, for example to disperse assemblies posing an imminent threat of serious injury. In confined spaces tear gas should not be used indiscriminately.[33] However, Amnesty International has documented cases where teargas was unlawfully used against non-violent protesters not posing any threat to property or the police, including the firing of tear gas directly at individuals and directly into private property for no apparent reason.[34]

Any possible use of irritant sprays aimed at temporarily disabling an individual must be subject to strict guidelines and limitations on their use. Irritants cause pain and must be used in very limited and controlled quantities and situations. Their use should be evaluated and monitored. Amnesty International campaigns for rigorous independent investigations to assess the risk to human rights of law enforcers using such devices and calls for such research to be published in open scientific journals for public scrutiny before governments authorize the use of such equipment by security forces. In *The Pain Merchants* a list of types of irritant sprays is provided.

5.4.4. Rubber bullets and plastic baton rounds

Plastic bullets are used to inflict pain and disable someone at a distance posing a serious threat and/or trying to escape. Plastic baton rounds, rubber bullets and rubber-coated steel bullets are potentially lethal weapons that also have the capacity to inflict cruel and inhuman suffering. In *The Pain Merchants* Amnesty International expressed concern that credible reports from different parts of the world point to security forces using rubber bullets as weapons of first resort, rather than as the last step before the use of live ammunition.[35] The manner and context in which plastic bullets are used, as well as the rules of engagement under which they are used, needs careful consideration. The absence of identification markings in plastic baton rounds, rubber bullets, bean bags *et al*, and therefore the impossibility of carrying out a forensic ballistics investigation to ascertain which officer pulled the trigger, and in what circumstances, poses another problem.

5.4.5. Electro-shock weapons

Tasers are hand-held electronic stun guns that fire two barbed darts up to a distance of seven metres, which remain attached to the gun by wires. The fish hook-like darts are designed to penetrate up to two inches of the target's clothing or skin and deliver a high-voltage, low amp, electro-shock along insulated copper wires. Amnesty International's 2004 report on the use of tasers in the USA includes an overview of the distribution and deployment of tasers per country.[36] Though electro-shock weapons may result in less use of lethal force, Amnesty International has documented tens of examples where people died after having been subjected to electro-shock weapons and hence calls for the equipment to be treated in line with requirements for lethal instruments.[37] However, most agencies using taser guns in the USA still place them well below the deadly force level. In some agencies the use of these electrical weapons is allowed if a person does not comply with an officer's demands. In 2004 Amnesty International called for tasers to be "rigorously and independently investigated to ascertain their compatibility with human rights standards before being authorised for use by police forces". In 2006 the organization stated: "pending the results of a comprehensive, independent and impartial medical study, AI is reiterating its call on all police departments and authorities to suspend their use of tasers or strictly limit their use to deadly force situations as defined under international standards. Strict guidelines and monitoring should govern all such use."[38] Amnesty International has similar concerns about a range of stun guns.[39]

Amnesty International has also recommended a ban on the use of remote control electro-shock stun belts.[40] These belts are strapped around a prisoner's waist and operated by guards through remote control. The belts deliver a 50,000 volt shock through the kidneys for 8 seconds. In the USA these belts are used during the transportation of prisoners as well as during judicial hearings.

5.4.6. Use of dogs

Dogs may be used to chase an escaping suspect, defend the handler and/or itself against attack, disarm a suspect armed with a firearm or other weapon,

31) UN Standard Minimum Rules for the Treatment of Prisoners, Rule 33.

32) See for example AI's 2002 report, *United States of America: AI's concerns on police abuse in Prince George's County, Maryland.*

33) AI, 2004, *Guns and policing.*

34) AI, 2001, *Canada: Amnesty International calls for public enquiry into alleged police brutality.*

35) AI, 2003, *The Pain Merchants.*

36) AI, 2004, *USA: Excessive and lethal force? Amnesty International's concerns about deaths and ill-treatment involving police use of tasers.*

37) AI, 2006, *USA: Amnesty International's continuing concerns about taser use.*

38) Ibid (summary).

39) AI, 2003, *The Pain Merchants*, Chapter 4.2.

40) Ibid. Chapter 4.1.

guard and escort suspects after arrest. They can also be deployed as a deterrent in situations of general disorder, such as a rowdy crowd of football fans or in an offensive role, for example behind police armed with batons, to be used if these fail to reach the police's objective. Dogs should be kept in the background until required; warnings should be given before they are released and the PLAN principles apply. The handler is ultimately responsible for the dog. Note that the use of dogs is to be regarded as a 'heavy' means of force.[41]

5.5. How to use force lawfully

5.5.1. Introduction
Police responses must be lawful, necessary and proportionate. The police agency, as well as individual officers, may be called upon to account for their actions. They will need to show that any force used was necessary and proportionate on the basis of their honestly held belief based on the information or intelligence available to them. Amnesty International has made many recommendations on the use of force in a variety of situations, such as whether to effect an arrest or disperse an assembly, as in practice use of force often violates the principles of proportionality and necessity.[42] Professional standards have been developed at national level and disseminated through international cooperation and in training. There are regional codes of conduct (e.g. Council of Europe, Southern Africa) but none (that we know about) have detailed codes on the use of force and firearms. National codes do of course exist.

Deciding whether the force used was indeed proportionate is not always easy. Moreover, *who* will decide whether the use of force or firearms was arbitrary and excessive? The police are usually the first people to reach the spot and remain there until they have controlled the situation. Deciding on the use of force is therefore very much at their discretion (within the limits of the law). They will give their own version about the circumstances of the situation that required the use of force and the amount of force used by them. Unless a judicial inquiry is instituted into the use of force by the police or until an independent investigation is conducted, it may not be possible to find out if the use of force was arbitrary or abusive. In some countries there must be a mandatory judicial inquiry into any instance of death or grievous hurt caused while in police custody and death resulting from police firing in the dispersal of an unlawful assembly.[43]

5.5.2. Tactical considerations when using force in police practice
In order for force to be used according to the PLAN principles (referred to above), the law needs to be in accordance with these principles and police need to know the law. Within this legal framework police can make tactical decisions on what type of force to use in what situation and for what objectives. In general police should try to avoid using force. However, sometimes the use of force can be foreseen and prepared for. If it is known a demonstration may get out of control, local authorities may decide to prohibit

the demonstration for reasons of public order; this principle is laid down in several articles of the ICCPR (see also Chapter 2). Sometimes it can help to prevent force if the police are 'visibly present'. Sometimes this will have a contrary effect and result in escalation of the situation. It is therefore crucial for the police to gather intelligence for risk-assessment purposes. In any event, use of more extreme measures of force is usually to be authorised beforehand by a higher (judicial) authority.

Even when the use of force is lawful, it is not always tactically the right thing to make use of all means of force available. Consider a situation where police are called upon to restore peace to a bar where drunk and aggressive individuals are involved in a fight. Police may be legally permitted to use force to stop the fighting, however, they may very well consider it wiser to protect the innocent people present and let those fighting get rid of their adrenalin first, thereby preventing further escalation and unnecessary damage and injury (on both sides!).

Another tactical consideration that relates to the use of force is how police are equipped, both in general and in specific situations where the use of force can be anticipated. The term 'equipment' includes both weaponry and self-defence equipment (including bullet-proof vests), but also other means of force that they can call on (dogs, horses etc). Perhaps an even more important tactical consideration is the type of communication equipment available to police. Police sometimes resort to excessive force because they see no other alternative: for example when they are unable to communicate with each other because of lack of proper equipment.

The Association of Chief Police Officers (ACPO) guidelines (in the UK) state, "In deciding whether the action was 'necessary in a democratic society' it will be necessary to show that the action:
i   fulfilled a pressing social need, and
ii   pursued a legitimate aim, and
iii   reflected a reasonable relationship of proportionality between the means employed and the aim pursued.

This means that the action was designed to:
a.   impair as little as possible the right or freedom in question
b.   meet the objectives of the domestic law in question and
c.   not to be arbitrary, unfair or based on irrational considerations, and
d.   to be **balanced** against the severity of the effect that the measure has on the individual or group. The more severe the adverse effects of the measure, the more important the object must be if it is to be classified as legitimate." [44]

The ACPO *Manual of Guidance on Police Use of Firearms* lists factors that must be taken into account when selecting weapons appropriate to the tactics employed in a specific operation:

41) ACPO *Police Dog Training and Care Manual*, October 2002.
42) AI – Netherlands, 2004, *Amnesty International's recommendations on policing. A review and guide*.
43) Based on personal communication with Mr. G.P Joshi, CHRI, Police Program Coordinator, India.

44) ACPO *Manual of Guidance on Keeping the Peace*, p 17.

- The level of force required to meet the threat
- The type of situation to be dealt with
- The likely distance between the armed police officers and the threat
- Information received as to the weapon/s used by any armed subject
- The operational environment
- The training and experience of the officers involved.[45]

Police make tactical decisions within the legal framework in which they operate. Obviously they also need to know how to implement those decisions properly and in accordance with international human rights principles. Knowing how to use force includes knowing about alternatives to the use of force. If police know of no other intervention than violent techniques, the use of excessive force is more likely to occur. Moreover, if police know they will 'get away with it', they will be inclined to choose the easiest solution, which force is often perceived to be.

Readers should be aware that in situations where civilian possession and abuse of firearms is out of control, police can face enormous difficulties in protecting the public. In such situations applying non-violent means before resorting to force and firearms may become *de facto* obsolete.[46]

5.5.3. Selection, training and qualification of officers

Officers dealing with violent incidents should be selected according to strict criteria including their physical fitness, emotional strength, capacity for team-work and co-operation, decision-making under pressure etc.[47] Training should incorporate how to assess a situation and how to respond proportionately. However, in many countries, training in the use of force is completely absent or is restricted to general sports training, including some fighting techniques. Moreover, training in the use of firearms in many countries simply consists of training in how to load, aim and fire a weapon. Such training is clearly inadequate.

Adequate training should cover all potentially dangerous situations. Moreover, it should include instruction in how the use of force can be avoided. Indeed, training in social skills, including dispute resolution and other de-escalation techniques, is an essential element of such training. Training must not only include theory but also practice in simulated real-life situations on how to make decisions, and to account for them afterwards, so as to adhere to PLAN principles. This kind of training should be provided at all levels of the police and should be as close to reality as possible.[48] Completion of training must be a prerequisite for carrying firearms.[49] Once trained, officers should have to keep their certificates up to date by undergoing regular tests.[50] Officers should have to show that their qualifications for a certain weapon are up to date before being issued with that weapon. See also Chapter 9.

5.5.4. Use of firearms

Use of firearms is usually defined as *pointing* or *firing* a weapon, not simply

carrying one. Firearms include handguns, revolvers, self-loading pistols and carbines firing handgun ammunition at short range, and rifles and carbines using rifle ammunition for long-range use. Guns can be semi-automatic or automatic. In general there is no occasion in 'normal policing' for the use of automatic guns – though police in quite a few countries do carry them. Readers should note that police usually use lower velocity weapons than military because their tactical environment substantially different. "Police operations occur at much closer range than military engagements because of the need to identify whether a threat to life is being made or not and to ensure the safety of the public."[51]

Police commanders may give authority to use firearms, but it remains the responsibility of each individual officer to ensure that he or she is acting in accordance with the PLAN principles. A clear verbal warning of intent to use firearms should be given and the subjects given time to obey police orders. No warning is required if it would be inappropriate or pointless in the circumstances. Warning shots, including firing in the air, are rarely effective and can cause collateral damage. They may also lead the subject/s or other officers to believe that they are under fire. Some police agencies forbid warning shots (Amnesty International does not have an established position on this).[52] Firing at moving vehicles in which an armed suspect is travelling is pointless and dangerous. Pursuit is advised or, if necessary, a total road-block. In any case, road safety must be a primary consideration.[53]

Amnesty International has documented many examples where police have shot individuals in response to 'resistance'. For example, the organization's 2005 report on Brazil[54] documents a number of examples of 'resistance followed by death'; a common phrase in many countries. In Mozambique being 'shot while trying to escape' is a recurrent phenomenon.[55] Similarly, Amnesty International's report *Guns and Policing* refers to police stating that victims of police shootings 'got caught in crossfire between police and criminals'. The report also refers to police in Jamaica making "remarkably uniform statements" about people behaving suspiciously who, when challenged, produced firearms and opened fire on police officers who returned fire and killed them.[56] While shooting to kill is not necessarily unlawful, the action of shooting must clearly be in line with relevant international standards referred to above. Under international law any accidental shooting is required to be investigated. However, in practice, investigations are rarely carried out. Police employ excuses as a means of avoiding investigations and thereby create effective impunity.

Caution is warranted when police shootings invariably result in casualties amongst the public, typically combined with relatively low numbers of police casualties. After all, if there are so many shoot-outs, there would be police casualties. In Amnesty International's report on Brazil the so-called 'lethality-index' is presented as a measure to assess whether lethal force has been over-used. This index is the ratio between those injured and those killed by a police force. When many are killed in police operations, this suggests police are over-relying on lethal force; attempting to kill rather than arrest.[57]

45) ACPO *Manual of Guidance on Police Use of Firearms*, p.13.
46) AI, 2003, *Shattered lives*.
47) European Code of Police Ethics, Article 37 and Commentary.
48) European Code of Police Ethics, Article 29 and Commentary.
49) Basic Principles, Principle 20.
50) Basic Principles, Principle 18.

51) AI, 2004, *Guns and policing*, p. 27.
52) Note that the European Code of Police Ethics, in the Commentary to Article 37 states "shoot to warn before shoot to wound".
53) ACPO *Manual of Guidance on Police Use of Firearms*, p. 5-6 para 9.18.
54) AI, 2005, *Brazil: they come in shooting*.
55) AI, 2000, *Mozambique: Suspected extrajudicial executions: Tomás Paulo José Nhacumba and Gildo Joaquim Bata*.
56) AI, 2004, *Guns and policing*, p. 14.
57) AI, 2005, *Brazil: they come in shooting*, p. 41.

On most occasions when police use firearms, the use of lethal force intentionally would be disproportionate. Indeed, some national standards on the use of firearms require police to target 'non-lethal' parts of the body.

Police shoot to kill?

In principle police are not meant to shoot to kill. There is no provision in international law for "shoot to kill" policies but the Commentary to Article 3 of the UN Code of Conduct notes that every effort should be made to exclude the use of firearms. Shooting to kill is only lawful when it is carried out as a last resort to protect life (i.e. in self-defence or in defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, to prevent his or her escape) and only when less extreme measures are insufficient to achieve these objectives. All law enforcement agencies should be guided at all times by the principles of necessity and proportionality when using force. Every effort must be made to apprehend rather than kill – lethal force must never be used as an alternative to apprehension.

Amnesty International recently made recommendations to the UK government following the fatal police shooting of a man, wrongly thought to be a suicide bomber, some weeks after the London underground bombings, as part of what was reported to be a "shoot to kill" policy by police.[58]

5.5.5. Storage of firearms

An issue often forgotten is that there should be strict procedures for the storage and registration of weapons and ammunition as a means of controlling the use of firearms by police. Weapons should be stored in designated secure facilities and should each carry a registration number. When weapons and ammunition are issued, the receiving officer's name, the date and time, the registration number of the weapon, and the type and number of munitions issued should be registered. These details should be checked when the weapons and any munitions are returned. The number of munitions used should be accounted for in the report that follows any operation in which firearms are used.

In some situations officers may wish to take their weapons home. Amnesty International has documented examples where police have used their guns in domestic and neighbourhood disputes or rented them out to criminal gangs in return for a share in the proceeds of crime, or used them to commit crimes themselves.[59] If a police officer intends to take his or her weapon home, this should be reported to and approved by a superior officer. Adequate and secure storage facilities should be available in the officer's home. However, the taking of firearms home should be the exception rather than the general rule.

58) In 2005 AI urged an independent investigation into: what the terms of the rules of engagement were, including the policy which appeared to permit officers to "shoot to kill", i.e. to shoot in the head, suspects believed to be suicide bombers (this operation was reportedly codenamed Operation Kratos); how the operation was planned; how the police officers were briefed and what orders they were given; whether a senior officer was contacted before action was taken; whether a sufficient warning was given; and whether the action taken by the officers was fully in compliance with international human rights standards concerning the use of force in the context of law enforcement. See *UK: Full circumstances into fatal shooting must be investigated.* These points were reiterated in UK: *The Killing of Jean Charles de Menezes: let justice take its course.*

59) AI, 2004, *Guns and policing.*

5.5.6. Reporting procedures

Records should be kept of decisions made and actions taken during the course of an incident in which force is used. In the United Kingdom, an "audit trail" of these decisions must be kept in the "Command Log / Incident Record". This is used for evaluating the operation in order to distil lessons for the future and as evidence in case an incident leads to any disciplinary or criminal action.[60]

Whenever a new technique of force is introduced, such as the use of pepper spray, appropriate reporting procedures, similar to those used for firearms, should also be introduced. Moreover, development and deployment of such means should be carefully controlled.

5.5.7. Investigations following an incident

International law requires that investigations be carried out in cases where a firearm has been used by police, or where police action has resulted in serious injury or death. Additionally, there should be investigations where operations have shown failings in command or where there has been danger to the public.[61] The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions include articles on the investigations of such illegal shootings.[62]

Police typically tend to be extremely hostile towards such investigations and seek to avoid them. Colleagues may feel uncomfortable co-operating with such investigation and may even be pressurised not to cooperate. In Chapter 9 we will look at police culture and its so-called 'blue wall of silence' that often seriously hampers investigations. However, resistance to such investigations may not be restricted to the police; indeed the prosecution services, the media and the wider public may support the police in avoiding accountability and may even turn against human rights advocates, blaming them for complicating police work.[63]

It is in the interests of the public, any victims and the police agency itself that an investigation into the use of firearms or cases where death or serious injury has occurred be thorough and transparent, while protecting the identity of those involved as appropriate. The purpose of the investigation is to establish the truth about what happened. The scope of the investigation should include the circumstances of the situation prior to the use of firearms or the occurrence of death or injury as well as the management of the incident. For the purposes of the investigation, there should be an examination of the scene of the incident, as well as the notes made by officers involved or noted in the incident report log (the 'audit trail'). The scene of the incident must therefore be protected and forensic evidence preserved as appropriate. Independent witnesses should be identified and interviewed.[64]

60) Basic Principles, Principle 20.
61) ACPO *Manual of Guidance on Police Use of Firearms*, Chapter 6, section 2.
62) Resolution 1989/65 adopted by the Economic and Social Council, 24 May 1989. Principles 9-17 deal with investigations.
63) Cavallaro, J.L., 2003, *Crime, public order and human rights.* An interesting case-study concerning police violence in Norway is presented by Bratholm, A., "Police violence in the city of Bergen: A marathon case concerning the rule of law and human rights."
64) ACPO *Manual of Guidance on Police Use of Firearms*, Chapter 6, section 2.

5.6. Policing demonstrations – public order management

Article 21 of the ICCPR sets out the 'right to peaceful assembly'. Amnesty International has documented countless examples of governments violating

this right, prohibiting people from assembling and often employing excessive force to disperse those who do assemble. Concerns about excessive use of force in relation to public order management in a particular country need to be measured against systems of public order management developed in that country to 'manage' the use of force and firearms, as well as international human rights principles governing the use of force.

The Basic Principles distinguish between "lawful assemblies" and "unlawful assemblies". In many countries the law restricts the right of assembly beyond the limits allowed under Article 21 of the ICCPR. Note that the issue of the violation of the right to freedom of assembly is beyond the remit of this Resource Book and is therefore not dealt with here.

5.6.1. Key human rights principles relating to public order management
In addition to those principles for the use of force referred to in Section 5.2. that are applicable to the policing of demonstrations, there are some additional or more specific principles, including:

- The **right to peaceful assembly**[65]: police have to monitor public events of all kinds, including pre-planned political or other demonstrations, spontaneous public gatherings (for example in response to an incident) and major public events such as sports competitions. They must protect the rights of the participants to assemble peacefully and protect the safety of all, including non-participants. A public event can breed hot-spots of violence which may be fairly easy to cordon off and contain. It can also turn, gradually or instantaneously, into a stampede, a riot involving use of improvised weapons or even a battle with firearms.
- Principles **of proportionality** and **necessity**: Force and firearms may only be used to the *minimum extent* necessary: force should be avoided when dispersing unlawful but non-violent public order events but if that is not practicable force may be used to the minimum extent possible.[66] However, it should be clear that if an unlawful assembly is not causing, and is unlikely to cause, disturbance of public peace and is non violent, the question of using force should not arise. Peacefully assembling to protest or demand something is an mportant democratic activity. Human rights oriented policing demands that this right be respected.
- In the dispersal of **violent assemblies** firearms may be used *only* when *less dangerous means are not practicable and only to the minimum* extent necessary. This means other means of force should be applied first, and only if these have failed to control the situation and disperse the unlawful assembly should police be allowed to resort to using firearms. The amount of force used must be the minimum required to control the situation. In case the use of firearms becomes absolutely necessary, firing must be the minimum and cease immediately the crowd shows signs of dispersing. In any event firearms should be used against persons only in self-defence or the defence of others against the imminent threat of death or serious injury.[67] Note

65) ICCPR, Article 21. This right is reiterated in the UN Basic Principles. Principles 12-14 deal with use of force against assemblies.
66) Basic Principles, Principle 13.
67) Basic Principles, Principles 14 and 9.

that while the international standards do not actually say that firearms should not be used indiscriminately, this is definitely implied in the Basic Principles 5 (a & b), 9, 10, 11 (a, b, c & e).

5.6.2. What the standards don't say
The UN Code of Conduct and the Basic Principles both state that the principles they contain should be incorporated into national regulations. However, there are many vital issues concerning the use of force and firearms in public order situations that the international standards do not cover, including:
- What criteria are used to decide when a public event is violent – is it when one stone is thrown or ten? When is the degree of violence sufficient to allow for the use of what types of force?
- How do police adapt different levels of force to different situations?
- What kind of force may be used against a group rather than one or more individuals (such as tear gas or water canon)?
- What tactics should, or should not, be used?
- What weapons should, or should not, be used?

5.6.3. How to exercise public order management[68]
There are a variety of public order situations including spontaneous incidents arising from community disputes, criminal or police activity; protests and demonstrations by direct action groups and others or as part of industrial disputes; and organized public events such as sporting events, concerts etc. Any of these public events could be lawful or unlawful. In any event the police response to them must be lawful, necessary and proportionate. Individual officers may be called upon to account for their actions. They will need to show that any force used was necessary and proportionate on the basis of information or intelligence available to them. For this reason they should record decisions and actions taken in crowd control situations.

Public order management is really about managing conflict. Planning, preparation, communication and leadership are key principles in public order management. It is important that police, in co-operation with other relevant agencies (local government, social services etc.) identify and address the causes and symptoms of a conflict before tension escalates. This requires:
a. The gathering of intelligence to identify and assess risk
b. Preparation and communication
c. Provision of a reasonable, proportionate and effective police response

Intelligence:
- Good intelligence includes identifying groups that may be involved and obtaining information about their strength and their aims
- Having good community relations facilitates intelligence-gathering
- Intelligence enables police to plan effectively
- Intelligence should be gathered continuously during an operation so that tactics may be adapted to meet the changing nature of the threat

68) This section relies heavily on the principles included in the European Code of Police Ethics and the manuals of the UK Association of Chief Police Officers (ACPO) most notably the *Manual of Guidance on Keeping the Peace*.

Preparation:
This includes making decisions about the numbers of police needed as well as their dress (normal uniforms or combat uniforms) and equipment. Decisions need to be taken about the deployment of auxiliary services such as the Dogs Unit and mounted police. Preparation also includes the minimisation and management of possible risks with other appropiate agencies and community representatives.

Communication:
*   Communication within the police: including with headquarters and those deployed to the public order situation.
*   Communication with crowd leaders and facilitation: establishing liaison with leaders of the crowd at an early stage and explaining how police intend to facilitate the lawful aims of the crowd while dealing with groups and individuals that act illegally.

Graduated police response:
Police must make adequate resources available to manage a public order situation but should deploy them tactically and in proportion to the situation as it develops. Though there might be some factions in a demonstration intent on causing violence, policing must be carried out in such way as to protect the rights of the peaceful demonstrators. Those that are intending to cause, or are causing, violence could be isolated from the peaceful demonstrators. This requires good policing skills, most notably observation and communication skills, so that the police can respond as required to different people and groups amongst the demonstrators. Indeed: a demonstration should not be treated as one collective mass, but should rather receive differentiated responses (see box below). If this is difficult, police reaction could rather aim at dispersing the crowds and diffusing tensions, hence avoiding use of force. Obviously, if force is required police should use it proportionately and lawfully to restore order and protect the rights of the public.

Chain of command:
There should be a clear chain of command to ensure a clear strategy, good communication, and an 'audit trail' of decisions taken, so that the operation may be evaluated and lessons learned subsequently. The ACPO Manual of Guidance on Police Use of Firearms describes a command structure of three levels:
*   Strategic ('gold') – responsible and accountable for overall strategic command and provision of human and material resources;
*   Tactical ('silver') – responsible for deployment and use of the resources;
*   Operational ('bronze') – responsible for leading groups to carry out the tactical plan.

At each level, commanders are responsible for maintaining communications and for keeping an 'audit trail' to record decisions and events. However it is recognized that the 'bronze' commander, who is closer to the action, may not always be able to keep records.[69] At each level of responsibility, commanders

69) ACPO *Manual of Guidance on Police Use of Firearms*, Chapter 4, section 1.

have to weigh the risks of actions, and of taking no action (sometimes it may be better to refrain from an action, or even abort the operation, on grounds of public safety).

The principles of crowd psychology

The principles of crowd psychology are increasingly influencing police practice through incorporation into training and tactics. Recent research[70] argues against the previously accepted idea that people in a crowd lose their individual identity, values and standards – which indeed is the false presumption with which police are still trained in many countries. There is evidence that people adopt more than one social identity. When in groups the social identity belonging to that group becomes salient and people conform to the norms of that group. Instead of being a mindless mass, people act according to the concerns of the group. They will defend members of their group against attack; they will also act against deviant members of their group, for example they may restrain a member who acts violently if they think that violence will defeat the aims of the group (self-policing). Studies have suggested that crowd violence is not random but occurs when another group (such as the police) *either* acts in ways the group views as contrary to its values and standards *or* acts to prevent the group doing something they consider legitimate in terms of the same values. A crowd comprising more than one group will reflect different aims, standards and values.

This perspective suggests that police should promote 'self-policing' by being supportive to people acting legitimately even in the presence of people or groups with illegitimate motives. This implies greater emphasis on:
*   Gathering intelligence about groups to understand their motives and composition
*   Facilitating their legitimate objectives by organizing policing accordingly communicating with the group either through their own leaders or through 'community mediators' or 'guards'
*   Ensuring that communication takes place before, during and after the event
*   'Differentiation' which implies: treating individuals and groups according to their different ways of acting; using differentiated strategy, tactics and equipment

70) Reicher, S., C. Stott, P. Cronin, O. Adang, 2004, "An integrated approach to crowd psychology and public order policing.".

The use of 'less than lethal weapons' is a grey area in public order management and there is no consensus about their use. The minimum requirements for the use of less than lethal weapons are:
*   It should be clear who is authorised to decide on deployment
*   It should be clear that the weapons are deployed in such a way as to minimise damage and the potential for lethal consequences
*   They should always be used in accordance with the principles of proportionality, legality, accountability, necessity and subsidiarity
*   They should take the principles of crowd psychology into account

5.7. Summary

Police are entrusted with important powers that can affect people's lives immensely and, if misused, can result in serious human rights violations. For this reason international standards have set the boundaries for using these powers. Human rights oriented policing means policing within the limits of these boundaries. This means trying to avoid using force – but being able and willing to use force lawfully and proportionately when strictly necessary and account for it afterwards. Amnesty International and other human rights advocates understand that the police sometimes have to use force in order to achieve a lawful policing objective. Indeed, assessing how much force is proportionate is not always an easy task and requires intensive training and experience. Police practice and experience in this area should be subject to constant monitoring and evaluation so as to improve police professionalism. Vital to improving police professionalism is accounting for police actions. Such accountability necessitates transparency about actions and a willingness to reflect on how practice can be improved.

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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
Article 9 (1), International Covenant on Civil and Political Rights

Everyone charged with a criminal offence shall have the right to be presumed
innocent until proved guilty according to law
Article 14 (2), International Covenant on Civil and Political Rights

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
Article 1, UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

No law enforcement official may inflict, instigate or tolerate any act of torture
or other cruel, inhuman or degrading treatment or punishment (…)
Article 5, UN Code of Conduct for Law Enforcement Officials

6. Arrest and Detention

6.1. Introduction

The right to liberty is one of the most important rights available to individuals.[1] Depriving someone of her or his liberty is one of the most intrusive actions a State can take against its people. At the same time, deprivation of personal liberty represents one of the most common means used by the State to fight crime and maintain internal security. The right to liberty is not an absolute right, but the lawful application of the powers to arrest and detain is restricted to specific circumstances, that need to be well described in law and for which subsequent accountability is required. In the commentary to Article 1 of the UN Code of Conduct for Law Enforcement Officials (UN Code of Conduct), law enforcement officers (LEOs) are defined by their distinctive powers to arrest and detain. As the UN Code of Conduct uses a wide definition for LEOs, it is implied that authorities other than the police may be authorised to arrest and detain. Most jurisdictions do have additional agencies, other than the police, that have powers to arrest, such as special investigation units (fraud units, special inspectorates), customs officers and fire officers. These law enforcers have the responsibility, as well as the authority, to enforce the laws of the State they serve. However, the UN Code of Conduct applies to all of these. Article 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereafter: Body of Principles) additionally requires these officials to be "competent or authorised for that purpose."

The meaning of the terms 'arrest' and 'detention' is not always clear. The Body of Principles provides the following definitions.

'Arrest' means the "act of apprehending a person for the alleged commission of an offence or by the action of an authority." Note that this arrest may be on criminal grounds, reviewed by a judge, or may be administratively ordered ('by the action of an authority'). Police may carry both out.

'Detained person' means "any person deprived of personal liberty except as a result of conviction for an offence." 'Detention' and 'custody' are used interchangeably. This definition includes administrative as well as preventive detention, both of which may be carried out by police.

Arrest and detention are often used interchangeably. Similarly 'arrest' is often used in conjunction with suspect interview. It is important to distinguish between these different concepts. A suspect can be arrested but this need not happen. An arrested person can be detained, but might also be permitted to await his or her trial at home.[2] An arrested person that is not detained can still be technically 'under arrest'; as long as someone is under arrest he or she can have his or her liberty restricted in order to be 'available for the investigation'

1) Articles 3, 9 and 29 of the UDHR; Articles 9, 10, 11, 14 and 22 of the ICCPR.
2) After all, he is to be presumed innocent and has a right to liberty. ICCPR Article 9 (1); AI, 1998, *Fair Trials Manual*, p. 26.

(this normally means that a person is not permitted to leave the country). Suspect interview might take place following or prior to the arrest, and the arrest can take place during the interview. Suspect interview is an investigative method, whereas the arrest is a legal step in bringing someone to trial.

'Imprisoned person' means any person deprived of personal liberty as a result of conviction for an offence. Note that, contrary to the definitions given above, Amnesty International sometimes uses the term 'prisoners' both for (pre-trial) detainees as well as for (post-conviction) prisoners.

In Section 6.2. will look at what the international standards say regarding arrest and detention, followed by what they don't say in Section 6.3. States don't always detain individuals under criminal law, nor do they always detain individuals as a step towards initiating criminal proceedings. In this regard, Section 6.4. looks into preventive and administrative detention. Section 6.5. looks at how arrest and detention are carried out lawfully in police practice. We close with a brief summary.

This Resource Book looks only at detained persons in police detention. Detainees in police custody can be held at detention facilities at the police station, or at other designated premises (such as separate facilities in a prison). Imprisonment, which in some countries the police are responsible for, is not considered here. Secondly this Resource Book will focus on adult detainees. International standards covering juveniles will not be considered. Finally, the applicability of international standards to other groups than those arrested and detained on criminal charges will not be discussed in this Chapter. Amnesty International's *Fair Trials Manual* discusses the right to liberty extensively in its first Chapter. We recommend that readers of this Resource Book study the first part of the *Fair Trials Manual*, focusing on pre-trial rights.[3] Detention situations are also addressed extensively in Amnesty International's *Combating Torture: A manual for action.*[4]

6.2. Key human rights principles relating to arrest and detention

6.2.1. Key principles

- **Non-arbitrariness**. "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established in law."[5] Arbitrary should not only be understood as 'against the law', but should also be interpreted more broadly to include elements of inappropriateness, injustice and a lack of predictability.[6] For arrest and detention to be lawful, i.e. non-arbitrary, it must be in accordance with domestic and international law. An arrest is unlawful if a person is arrested for an action they are entitled to carry out under international as well as domestic law (such as the right to assemble, associate etc.). Arrest and detention are only to be carried out for the purposes of the administration of justice: restrictions

imposed on the detainee that are not strictly required for the detention or to prevent hindrance to the administration of justice are forbidden.[7] Moreover, even when detainees have been arrested lawfully, but are held after their release has been ordered by a judicial authority, the detention becomes arbitrary.

- **Presumption of innocence:**[8] "the presumption of innocence implies a right to be treated in accordance with this principle."[9] It shall not be the general rule that a person awaiting trial shall be detained in custody – but release may be subject to guarantees to appear for trial.[10] It follows from the presumption of innocence that a detained person is to be segregated from convicted persons.[11]

- **Right to information:** the right to be informed of the reasons for the arrest/detention, to be informed of his or her rights (including the right to legal counsel), the right to be informed of charges against him/her, in a language the person understands.[12]

- **Prompt appearance before a judicial authority**[13]: Specific and precise time limits are fixed by law in most States parties and, in the view of the UN Human Rights Committee, delays must not exceed a few days.[14]

- **Right to legal counsel**. Communication with the detainees' legal counsel must be 'in full confidentiality' (within sight but not in hearing).[15]

- **Use of force** should accord with principles discussed in Chapter 5 of this Resource Book. Law enforcement officials shall not use force unless strictly necessary for maintenance of order or for personal safety reasons. Firearms may only be used for the protection of life. In principle, firearms should not be carried by detention officers, unless absolutely necessary.[16]

- **Absolute prohibition on torture and other cruel, inhuman or degrading treatment**.[17] Each State shall take effective administrative measures to prevent torture.[18] Every State is obliged to "keep under systematic review (…) 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."[19] In order to keep custody arrangements under systematic review this implies that such arrangements must be recorded in writing, open to scrutiny and must be communicated to the responsible officials. It also implies that detention must be open to improvement of any kind (facilities, training of the detention officers, legal provisions etc.). Note that solitary confinement can be seen as falling within the scope of torture (or other cruel, inhuman or degrading treatment) and as such is not acceptable.[20]

- **Right to a fair trial.**[21] A suspect is entitled to a fair trial, reflected in the principle of 'equality of arms' between the parties in a case, as stipulated in Articles 9 and 14 of the ICCPR.[22] "Equality of arms (…) means that both parties are treated in a manner ensuring that they have a procedurally equal position during the course of a trial, and are in an equal position to make their case."

3) AI, 1998, *Fair Trials Manual*. Chapters 1-10 with special emphasis on Chapters 1, 2, 4, 5, 6 and 10.
4) AI, 2003, *Combating Torture: A Manual for Action*. Chapters 2, 3, 4 and 5.
5) ICCPR, Article 9.
6) See AI, 1998, *Fair Trials Manual*, p. 25, referring to the HRC's comment on Article 9 (1) ICCPR.

7) Body of Principles, Principle 36.
8) ICCPR, Article 14 (2); Standard Minimum Rules, Rule 84; Body of Principles, Principle 36.
9) HRC, General Comment No.13, para. 7.
10) ICCPR, Article 9(3).
11) ICCPR, Article 10(2)a,; Standard Minimum Rules, Rules 8(b) and 85.
12) ICCPR Article 9 and 14; Body of Principles, Principle 13, 14 and 17.
13) ICCPR, Article 9(3).
14) HRC, General Comment No.8 para. 2.
15) ICCPR art 14 (3); Body of Principles, Principles 17 and 18; Standard Minimum Rules, Rule 93.
16) Standard Minimum Rules, Rule 54 (3).
17) UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); ICCPR, Article 7.
18) CAT, Article 2.
19) CAT, Article 11.
20) HRC, General Comment No.20, para. 6.
21) ICCPR, Article14.
22) AI, 1998, *Fair Trials Manual*, p.83.

23) Standard Minimum Rules, Rule 7; Body of Principles, Principle 12; Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 6.
24) HRC, General Comment No.20, para 11. The Comment also states: "(these) registers (must be) readily available and accessible to those concerned, including relatives and friends." And "States parties should ensure that any places of detention be free from any equipment liable to be used for inflicting torture or ill-treatment."
25) See also Body of Principles, Principle 32.
26) ICCPR, Article 14(3)c; Body of Principles, Principle 38.
27) Body of Principles, Principles 15, 16, 19, 24, 25 and 26; Standard Minimum Rules, Rules 22, 24, 37, 38, 91 and 92; UN Code of Conduct, Article 6.
28) CAT, Article 13 and 14; Standard Minimum Rules, Rules 35-36; Body of Principles, Principles 33 and 35.
29) CAT, Article 13; HRC, General Comment No.20, para. 14.
30) Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Article 2; Body of Principles, Principle 24; Basic Principles, Article 24; Guidelines for the Effective Implementation of the Code of Conduct for LEOs stress the importance of clear lines of command.
31) Standard Minimum Rules, Rule 55; Body of Principles, Principle 29; Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 7.
32) Giffard, C., 2000, *The torture reporting handbook*.

- **There shall be duly recorded**[23]:
  - The reasons for the arrest
  - Identity of the arrestee
  - Date and time of: the arrest, when the arrested person was taken to a place of custody; her or his first appearance before a judicial or other authority
  - Identity of the law enforcement officials concerned in the arrest
  - Precise information concerning the place of custody; specific steps should be taken to rule out the possibility of incommunicado detention[24]
- **Habeus corpus** (or **Amparo**). The arrested/detained person is entitled to take proceedings before a court, in order that the court may decide on the lawfulness of the arrest and/ or the detention[25]
- **Trial without undue delay.**[26] Pre-trial detention should be an exception and as short as possible. As the trial must be held within a reasonable time, this can be taken to mean that the investigation needs to be conducted promptly and swiftly.
- **Right to access to the outside world:** This includes the following rights[27]:
  - the detainee should have the right to communicate and receive visits (in particular with members of the family) subject only to reasonable conditions and restrictions (when exceptional needs of the investigation so require);
  - incommunicado detention is at all times prohibited;
  - the right to inform family of the arrest and detention and place of detention;
  - the right of access to doctors.
- **The right to lodge complaints** against ill-treatment and **the right to compensation**.[28] So as to make the remedy effective, competent authorities must investigate complaints promptly and impartially.[29]
- **Chain of command**. Governments shall ensure strict control, including a clear chain of command, over all officials responsible for apprehension, arrest, detention, and custody, as well as those officials authorised by law to use force and firearms.[30]
- **Oversight:** Places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority independent of the authorities in charge of the administration of the place of detention. The detainee is entitled to communicate freely and confidentially with these visitors.[31]

Investigating cases of torture

There are several relevant instruments regarding investigation of cases of torture. A well known one is *The Torture Reporting Handbook*, developed by the University of Essex in 2000.[32] This handbook discusses how to document and respond to allegations of torture within the international human rights system.

It also has some chapters on regional mechanisms and procedures.

The *Manual for the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* also known as the Istanbul Protocol, developed by a group of international experts and NGOs, gives substantial guidance on why and how such investigations could be carried out.[33] The Manual provides in-depth legal as well as medical information relevant to investigations into torture, and is intended to serve as international guidelines for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body.

The *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*[34], contain the minimum standards required of states in order to ensure effective documentation of torture. The Istanbul Protocol incorporates these Principles in its appendix.

6.2.2. International and regional oversight
As mentioned above, international human rights standards require States to establish some mechanism to oversee places where people are held when deprived of their liberty. The most well-developed of such systems exists on a regional basis within the Council of Europe (see below); a recent initiative at UN level aims at establishing a similar system worldwide.

United Nations
In 2002 the UN adopted the Optional Protocol to CAT (known as OPCAT). OPCAT's purpose is defined in its Article 1: *"to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment."*[35] OPCAT came into force as of 22 June 2006.

Council of Europe
Countries within the jurisdiction of the Council of Europe are subject to scrutiny by the Committee to Prevent Torture and Inhuman or Degrading Treatment or Punishment ((CPT). The Committee examines, by means of visits, the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment (Article 1, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment). CPT delegations visit Contracting States periodically but may organise additional "ad hoc" visits if necessary. The Committee must notify the State concerned but need not specify the period between notification and the actual visit, which, in exceptional circumstances, may be carried out immediately after notification. Governments' objections to the time or place of a visit can only be justified on grounds of national defence, public safety, serious disorder, the medical condition of a person or on the grounds that an urgent interrogation relating

33) Istanbul Protocol, Manual for the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Submitted to the UN High Commissioner of Human rights, 9 August 1999.
34) UN General Assembly Resolution 55/89 of 4 December 2000.
35) UN General Assembly Resolution 57/199, 18 December 2002. For the latest update on signatories and ratifications see: www.ohchr.org.

to a serious crime is in progress. In such cases the state must immediately take steps to enable the Committee to visit as soon as possible. Under the Convention, CPT delegations have unlimited access to places of detention and the right to move inside such places without restriction. They interview persons deprived of their liberty in private and communicate freely with anyone who can provide information. The recommendations that the CPT may formulate on the basis of facts found during the visit, are included in a report that is sent to the State concerned. This report is the starting point for an ongoing dialogue with the State concerned.

A visit by the Committee for the Prevention of Torture: what is it all about?

In joint co-operation between the Council of Europe and the Swiss-based Association for the Prevention of Torture, together with the Geneva Police, a leaflet has been produced targeting police officers, explaining what a visit by the Committee for the Prevention of Torture is all about. The leaflet, called: *A visit by the CPT: what's it all about*? is in a Q&A format and discusses issues such as 'Why should a police officer co-operate with the CPT?', 'Does torture exist within Europe?', 'Does the CPT give prior notification about their visit?', 'How does a police officer identify these are CPT-delegates?' and 'What happens after the visit?'

Note that the CPT also publishes extracts from its reports (so-called substantive sections from its general reports), containing standards to which police should minimally comply.[36]

6.2.3. Prohibition of racial or ethnic profiling
One of the basic principles underlying all others in relation to arrest is the principle of non-arbitrariness. Non-arbitrariness implies that someone should not be arrested, nor stopped or searched, for reasons that are discriminatory; e.g. no one should be stopped or searched simply on the basis of their race, ethnicity, national origin or religion. This principle is violated in practice on numerous occasions and as is shown in the many examples of **racial** or **ethnic profiling** documented by Amnesty International. Amnesty International-USA (AI-USA) published a comprehensive report on this issue in 2004 and the Open Society Justice Initiative has undertaken a project on the same topic in Europe.[37] AI-USA has defined racial profiling as "the targeting of individuals and groups by law enforcement officials, even partially, on the basis of race, ethnicity, national origin, or religion, except where there is trustworthy information, relevant to the locality and timeframe, that links persons belonging to one of the aforementioned groups to an identified criminal incident or scheme."

Though discrimination is clearly prohibited under international law, profiling is not mentioned. Police work is often about pinpointing the right person as a

suspect of a certain offence. When certain communities are associated with crime, or with particular types of crime, this may lead to police officers focusing on these particular communities when seeking to solve or prevent crime. These stereotypes lead to stigmatization of certain communities or certain groups within these communities and lead to further polarization between the police and these communities. On the other hand, police may argue that these stereotypes are not entirely based on prejudice but are validated by detention statistics often showing the involvement of a relatively high proportion of these communities in certain crimes. Though international standards clearly state that arrest and detention should be based on law and the principle of the presumption of innocence, the reality of crime statistics as confronted by police in their daily work can lead to bias in their attitude towards certain groups.

Recommendations in the aforementioned report by AI-USA, state that all legislation should accord with the ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination, and should ban racial profiling, proscribe mandatory data-collection for all stops and searches and criminalize violations of the ban. There should be effective diversity recruitment policies and all policies and practices should be reviewed for their possible discriminatory impact. Police misconduct should be monitored, investigated and punished.

6.3. What the standards don't say

6.3.1. Concerning arrest
International standards are quite specific in relation to arrest. As the arrest itself is really just a brief moment in time there is not much to add: the standards specify clearly what needs to be said and what rights the arrested person has. However, some issues that need to be specified in national legislation and Standard Operational Procedures include:

- Who may arrest exactly?
- What is the difference between 'stop' and 'arrest'?
- How long is a crime *'in flagrante'*?
- When is a warrant required?
- How should an arrest be carried out and how should officers deal with potential resistance?
- What amount of force is acceptable in order to arrest a person? Force needs to be proportionate, but the standards do not specify what 'proportionate' is, i.e. how much force may be used to prevent resistance?
- How much damage to property is acceptable in carrying out an arrest? For example, when arresting someone it may be necessary to break down a door; how much effort should police spend in trying to avoid this?
- How much information should the police disclose in informing the arrested person of the reasons for his or her arrest and the charges

36) CPT, 2004, *The CPT standards. "Substantive" sections of the CPT's General Reports*.

37) AI – USA, 2004, *Threat and humiliation, racial profiling, domestic security and human rights in the United States*; Open Society Justice Initiative, *Justice Initiatives*, June 2005.

38) Within the Council of Europe's jurisdiction, in *Fox, Campbell and Hartley v the United Kingdom* the court said that any person arrested should know why he is being deprived of his liberty. Any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features.

against them?[38]

- What investigative methods, such as body searches, may be carried out on an arrested person, upon arrest, *before* she or he has appeared before a judicial authority?

6.3.2. Concerning detention

In relation to detention, the standards are even more precise. The Body of Principles cover a whole range of issues relating to detention and are very clear on what lawful detention requires. However, a few things that may need further clarification remain:

- The Standard Minimum Rules on the Treatment of Prisoners (Standard Minimum Rules) provide guidance on food, drink, separation of men and women, and leisure time, time spent in the open air etc. (Rules 8-21). These can also be applied to police custody. However, two points are worth mentioning:
  - pending the investigation these rules tend to be less strictly observed. It is unclear what restrictions are considered acceptable in this period of time.
  - similarly, police custody usually means a police station. As such, the facilities tend to be very minimal.
- There is no reference to commercially run detention facilities.
- There is no reference to what measures should be taken to prevent suicide or other forms of self-harm.

6.4. Preventive and administrative detention

Administrative detention is a procedure under which detainees are held without charge or trial. No criminal charges are filed and there is no intention of bringing the detainee to trial.[39] Administrative detention is not authorised by judicial authorities (defined in the 'Use of terms' of the Body of Principles as "authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence"). Examples are 'illegal aliens' detained prior to their expulsion, temporary detention for public order reasons and the detention of psychiatric patients.

Administrative detention must not be confused with preventive detention, meaning detention without there being the requirements for reasonable suspicion as stated in penal law. Preventive detention should not be confused with pre-trial detention (though in some jurisdictions the terms are used interchangeably). Note that preventive detention can be administratively ordered, and administrative detention can have preventive objectives. Administrative detention is about which authority may authorise the detention, whereas preventive detention is about the goals to be obtained.

In 2007 more and more countries are considering the enactment of provisions to legalize preventive detention as States expect preventive detention to be

39) AI, 1997, *Israel and the occupied territories: Administrative detention: Despair, uncertainty and lack of due process*.

40) See AI, 2005, *United Kingdom: AI's briefing on the draft Terrorism Bill 2005; United Kingdom: Human Rights. A broken promise*.
41) AI, 2002, *Rights at risk: Amnesty International's concerns regarding security legislation and law enforcement measures*, p. 18.
42) See AI, 1997, *Israel and the occupied territories: Administrative detention: Despair, uncertainty and lack of due process; in 2002, Israel and the occupied territories: Mass detention in cruel, inhuman and degrading conditions; in 2005, Amnesty International News service 221/ 2005, Israel/Occupied Territories: Administrative detention cannot replace proper administration of justice*.
43) HRC, General Comments No.8, para. 4.

an effective measure against terrorism and consider the normal safeguards too stringent to permit successful prosecutions. In the United Kingdom, a draft Terrorism Bill proposed an extension of the maximum time limit allowed for detention in police custody, without charge or trial, from 14 days to three months. In the face of opposition, this limit was cut to 28 days in the final legislation.[40] However, in 2007 the new government announced plans to extend the limit to 56 days.

Administrative as well as preventive detention, often carried out *'in communicado'*, often lack the safeguards that are integral to the criminal justice system. In its 2002 report *Rights at risk* Amnesty International sums up the commonalities of many administrative detention systems: "The decision that a person is a ''suspected terrorist'' who is to be detained is frequently made by an executive official in a secret process. An accused person is likely to be unaware that the process is even occurring and cannot defend him or herself. The evidence will probably include material inadmissible in a criminal prosecution (for example, evidence which is hearsay, rather than something that the witness has heard or seen directly) and the decision made on a lower standard of proof. Although an appeal to a judicial body is permitted, the process frequently still involves secret evidence and anonymous witnesses, thereby denying people facing extremely serious allegations and consequences the right to defend themselves effectively."[41] Israel and the Occupied Territories provide an example where Amnesty International has repeatedly stated its belief that the practice of administrative detention violates fundamental human rights and is often used to circumvent fair trial requirements.[42] Amnesty International has also opposed the administrative detention of illegal immigrants and others that have not committed a criminal offence.

For administrative detention to comply with human rights principles it needs to be executed 'on such grounds and in accordance with such procedures as are established in law', which in itself is in accordance with international human rights standards. The two crucial criteria for assessing its legitimacy are lawfulness of the grounds for such detention and its duration.

The UN Human Rights Committee issued a General Comment on the lawfulness of preventive detention in 1982: "If preventive detention is used, for reasons of public security, it must be controlled by the same provisions, i.e. it must not be arbitrary, and must be based on grounds and procedures established by law, information of the reasons must be given and court control of the detention must be available as well as compensation in the case of a breach. And if, in addition, criminal charges are brought in such cases, the full protection of article 9 (2) and (3), as well as article 14, ICCPR, must also be granted."[43]

Working Group on Arbitrary Detention

In 1991 the UN's Human Rights Commission established the 'Working Group on Arbitrary Detention' (WGAD) tasked to investigate cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards

set forth in the Universal Declaration on Human Rights or in the relevant international legal instruments accepted by the States concerned, provided that no final decision has been taken in such cases by domestic courts in conformity with domestic law.[44] WGAD carries out visits to detention centres upon invitation. By mid-2007 it had visited more than 25 countries. Its mandate includes the investigation of cases on receipt of individual complaints.

WGAD's most recent reports all discuss the Working Group's concerns regarding detention, sometimes administratively ordered, in the context of the 'war against terrorism'.[45] Basically WGAD formulates two distinct concerns in this respect. The first is about security legislation aiming to legalize wrongful behaviour such as allowing persons to be detained indefinitely or for very long periods, without charges being framed, without the detainees being brought before a judge and without remedy to challenge the legality of the detention. The second concern is about definitions of "terrorism" and "terrorists" being so broad and vague that any political opponent can be targeted, thus effectively broadening the scope of those that can be detained and restricted in the enjoyment of their rights.

6.5. Lawful arrest and detention in practice

6.5.1. Introduction
"The greatest risk of torture and other forms of ill-treatment to individuals is in the first phase of arrest and detention, before they have access to a lawyer. This risk persists as long as the investigation lasts, irrespective of where a suspect is being held."[46] Despite all the safeguards provided in the law and in other regulations, police do commit many unlawful acts. Unlawfulness of arrest can take many forms, the most common and widespread of which is to detain the arrested person in custody without producing them before a magistrate or other judicial authority. The arrest is often not shown in police records. It is during this period of illegal detention that people are most often subjected to torture and ill-treatment. There are numerous examples of people being picked up by police from their homes, taken to police stations, held illegally and subjected to brutal treatment as a means of extorting confessions, recovering stolen goods or extracting money. Many of those detained in this way are poor and deprived. In many countries, police often illegally detain relatives of suspects who they are unable to detain as a means of persuading the suspects to surrender.

The subsequent Sections discuss how relevant human rights standards could be put into practice to prevent human rights violations.

6.5.2. How to carry out a lawful arrest
According to the Body of Principles every "alleged commission of an offence" could warrant the arrest of the person responsible. In police practice though, not every "alleged commission of an offence" will lead to an arrest.[47] The decision as to whether or not to arrest a person depends on many factors, such

as the actual offence, the behaviour of the suspect, as well as the experience and skill of the police officer. In some countries a warrant is required, while in others it is left to the police officer's discretion. In some countries national laws give very wide discretionary powers to the police, which may be open to abuse. As with all police powers, the exact practices and legal requirements vary from country to country. As a general rule the law should be clear and specific about when it is acceptable to carry out an arrest (with and without a warrant), who is allowed to carry out arrests, how arrests should be carried out – including what information should be provided to the person being arrested – and how arrests should be reported.

An arrest represents a situation in which the State demonstrates its power in one of its most distinct ways. An arrest is an uncomfortable situation for any person. The arrest may cause resistance, both verbal and physical, from the person being arrested. Police officers must be aware of this and the feelings an arrest may invoke, such as fear, shame, loss of control, anger and aggression. As an arrest tends to be a 'physical situation' – the police literally laying their hands on the arrestee – an arrested person is extremely vulnerable to abuse during an arrest.

An arrest must be based on a reasonable, lawful, suspicion that a person has committed, or is planning to commit, an offence defined as unlawful in law. It must be in compliance with the basic principles of proportionality, subsidiarity, legality and necessity. Compliance with these principles requires an officer to know the law and procedures as well as to have the correct attitude and aptitude and the appropriate professional technical and social skills. Training and experience are needed to develop the capacity of police officers to distinguish between different situations and adapt reactions to the circumstances of the situation at hand. Police should be trained thoroughly in how to make use of open- and closed-hand techniques and equipment such as handcuffs and pepper sprays, so that their use does not cause additional stress to the arrestee. It is a common observation that those police officers using disproportionate force tend to be those who feel insecure or are less competent than their colleagues who use less force. It is important to regularly assess and evaluate how arrests are carried out. Excessive use of force and complaints of excessive use of force, especially when these are recurrent, should be discussed in performance appraisals with police officers. New methods or equipment should always be carefully monitored and evaluated.

The police should be allowed to arrest a person without a warrant only when the suspect is caught 'in the act' *(in flagrante delicto)* or immediately thereafter. This represents the great majority of all arrests. Note that *in flagrante delicto* is differently interpreted across jurisdictions. In Mexico 72 hours after the crime was committed is still considered *'in flagrante'* and in Brazil drugs trafficking is considered a permanent crime making arrests possible at any time (clearly this is not in accordance with the spirit of this principle). In general *'in flagrante'* is understood to be at the most several hours after the actual crime happened.

44) Resolution 1991/42 of 5 March 1991.
45) The Working Group used to publish its annual reports to the Human Rights Commission, and will for the time being, report to its successor the Human Rights Council. WGAD's reports can be found on: http://www.ohchr.org/english/issues/detention/annual.htm
46) Giffard, C., 2000, *The torture reporting handbook*, p.17.
47) Rover, C. de, 1998, *To serve and to protect*.

In all other circumstances a warrant of arrest should be required, in which case the arrest can be planned in advance. The following questions could be considered when planning an arrest:

- What kind of person is the arrestee?
- Has he or she been arrested before? If so, how did he or she react then?
- What is the experience of colleagues with this person?
- Is the person expected to try to defend him/herself?
- What are the charges against him or her?
- Where will the arrest take place?
- What to do with people around, e.g. children, family members?

Sometimes the police are required to use force in effecting an arrest. Obviously such force should conform to principles of proportionality, necessity and legality. In principle, police should always use the minimum force possible. If injury is caused by such use of force the police should ensure that assistance and medical aid are rendered to the injured or affected person at the earliest possible moment. Firearms may only be used when arresting a person suspected of perpetrating a particularly serious crime involving grave threat to life and only when less extreme means are insufficient to achieve these objectives – this will rarely be so.

Sometimes force can be foreseen; for example if the police know the suspect from previous arrests and/or when the arrestee is known to carry arms. In such situations special provisions can be made to prepare the actual arrest, so as to prevent the situation getting out of control. Such special provisions could involve the use of more officers, dogs, special arrest squads, etc. Requests to authorize the use of these special provisions should be made to the appropriate hierarchical level in the chain-of-command – the greater the force foreseen, the higher the level.

Arrest Squads

Some countries use so-called arrest-squads for situations where a violent response is foreseen. Officers deployed in such squads receive extensive training on arrest techniques and how to deal with potential reactions. Arrests carried out by such squads are typically characterised by speed. The arrestee is caught by surprise, for example early in the morning or in situations where he or she does not expect to be arrested (such as when driving on the motorway). A bag is sometimes put over their head so as to disorientate them. Arrest squads tend to use rather aggressive techniques, aiming to prevent and avoid further use of force. If arrest squads do make use of additional force it must be authorised by a judicial authority. If arrest squads have been used, their actions should be recorded in full to ensure accountability.

Additional force can sometimes be avoided by changing tactical methods. Catching a suspect by surprise (e.g. when he or she is still asleep) is sometimes seen to be effective. However, a planned arrest should be as unintrusive as possible under the circumstances – there is no need to create additional stress. For example, if the person to be arrested person has small children it should be considered how to avoid making the arrest at their home. As well as the obvious ethical reasons, there is also a practical reason for doing so: by avoiding tension and showing consideration to the suspect it is more likely he or she will be more co-operative in the suspect interview that usually follows an arrest.

A suspect is entitled to know his or her rights.[48] The police should make sure that the arrested person knows and understands these rights. At the time of the arrest, the arrested person must be notified:

- Of the reasons for the arrest as well as any charges there are against him or her, in a language he or she understands
- Of the right not to confess, not to testify against him- or herself, the right to remain silent
- Of the right to legal assistance (of his or her own choosing or to have free legal assistance assigned to him or her)

Furthermore the arrested person has the right:

- To be presumed innocent
- To an interpreter
- To examine, or have examined, witnesses against him or her as well as witnesses on his or her behalf
- To adequate time and facilities to prepare his or her own defence

The police officer must bring the suspect before a judicial authority immediately after arrest.[49] In some jurisdictions the first judicial authority to which the arrestee is brought is a senior police officer performing a quasi-judicial function who can authorise the first six hours of the detention, after which the detainee must be brought before a 'real' judicial authority independent of the police.

An arrest is often followed by a body search. "Effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex."[50] A body search can be carried out as an investigative method to find information, or evidence, or as a means to prevent violence if there is a concern that the arrestee has weapons or other devices that can be used as weapons, on him or her. Indeed, there are different types of body searches, with varying levels of intrusiveness, hence requiring different levels of authorisation. The least intrusive is patting down someone's clothes. The next is scanning someone's clothes. Far more intrusive is requiring the arrested person to undress and undergo a strip search. Most intrusive is a search of the body's orifices, which usually happens when searching for drugs. Note that the UK's ACPO website, referred to

48) Principle 13 of the Body of Principles states that arrested persons should have their rights explained to them.
49) "More precise time limits are fixed by law in most States parties and, in the view of the Committee, delays must not exceed a few days." HRC, General Comment No.13.
50) HRC, General Comment No.16, para.8.

previously, contains a *Stop and Search Manual* comprehensively discussing various aspects of searches.

The police can be held to account for the way they carry out an arrest. As referred to under 6.2.1 above, they must duly record
- The name of the arrested person
- The place of the arrest
- The time of the arrest
- The reason for the arrest and charges against the arrested person
- The identity of the concerned police officer
- Information on the place of custody, including its exact location
- Details of the first appearance of the arrested person before a judicial or other authority

These records should be shared with the arrested person and/or his counsel.

6.5.3. How to carry out lawful police detention

As referred to above, the Standard Minimum Rules specify rules for accommodation, personal hygiene, clothing and bedding, food, exercise and sport, and formulate articles concerning staff and management of all detention centres. This includes police detention. In the section on 'Prisoners Under Arrest or Awaiting Trial' (part II, section C), Rules 84-93 formulate particular principles for police detention. We recommend that the reader take note of the full text of these Standard Minimum Rules. We also recommend that readers study the full text of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment in relation to police detention.

In some countries, due to a lack of prisons, police detention facilities are used *as if* they are prisons. Needless to say, in such situations these facilities should comply with the requirements set out in international law. Our focus in this Resource Book however, is on pre-trial police detention.

When in police detention following arrest, a person has not yet faced trial and as such is still to be presumed innocent and therefore treated as such. Only detainees that are expected to be in the police cell for a short period of time (one or two days) should stay at the police station, while detainees who are expected to stay detained for a longer period of time, should be taken to an official detention facility, for example a separate wing in a prison. Police detention is not a punitive measure, but should be used only for the sake of the investigation or to prevent the suspect escaping trial. Often detention – deprivation of liberty – is accompanied by deprivation of other rights as well. Most notably the right to privacy is at risk, but also the rights not to be discriminated against, the right to education, to freedom of religion, and expression and the right to information are also in jeopardy. This is often justified as being a natural consequence of being deprived of liberty. However: "this is neither correct nor are they allowed. Only the imposition of measures which are 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 good order in the place of detention is admissible."[51]

51) Rover, C. de, 1998, *To serve and to protect*, p. 243.

52) HRC, General Comments No.21, para.4.
53) Body of Principles, Principle 20.
54) Body of Principles, Principle 12; Declaration on the Protection of All Persons from Enforced Disappearance, Article 10; International Convention for the Protection of All Persons from Enforced Disappearance, Article 17 (not yet into force). The Standard Minimum Rules furthermore state minimum criteria for these transfers such as that this should not expose the detainees unnecessarily to public view (see Rule 44).
55) European Code of Police Ethics, Article 56.
56) Body of Principles, Principles 24-26.
57) Standard Minimum Rules, Rule 91.
58) Body of Principles, Principle 31.
59 Standard Minimum Rules, Rules 39, 40, 90; Body of Principles, Principle 28.
60) Standard Minimum Rules, Rules 41-42.
61) Standard Minimum Rules, Rule 89.
62) Standard Minimum Rules, Rule 87.
63) Standard Minimum Rules, Rule 88
64) Standard Minimum Rules, Rule 43.
65) Standard Minimum Rules, Rules 27-32; Body of Principles, Principle 30.
66) Standard Minimum Rules, Rules 33-34.
67) Basic Principles , Principles 9 and 16.

The basic presumption of human rights standards in general, but especially those relating to situations in which the individual finds him or herself at the 'mercy' of the all-powerful State (as in the case of detention), is that the State must treat those under their control with humanity and with respect for their inherent dignity. This is a fundamental and universally applicable principle that may not be made dependent on the material resources available in the State. This rule must be applied in a non-discriminatory manner.[52]

Some of the rights and obligations relating to police detention include the following:
- If a detainee so requests, he or she shall if possible be detained reasonably near her or his usual place of residence.[53]
- Places of detention must be recognizable as such. The place of detention shall be recorded, including all transfers .[54]
- The European Code of Police Ethics requires that "Police cells shall be of a reasonable size, have adequate lighting and ventilation and be equipped with suitable means of rest."[55] The value of these criteria is not to be underestimated, as police cells tend to be quite uncomfortable.
- Article 6 of the UN Code of Conduct states: "Law Enforcement Officers shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to ensure medical attention whenever required." The detainee has the right to a proper medical examination upon arrival. Thereafter, medical care shall be provided when necessary, free of charge. She or he has, upon conditions, the right to a second medical opinion. A record shall be kept of the medical examination, the name of the doctor and the results.[56] The detainee may choose to be treated by her or his own doctor or dentist, at his or her own expense.[57]
- Minor dependants of the detainee who would otherwise be unsupervised shall be assisted or given appropriate care.[58]
- Men and women should be kept separately, insofar as possible. Similarly, the officers in charge should be of the same sex, insofar as possible.
- Detainees have the right to receive educative, cultural or informative material as well as be informed about important news.[59]
- Detainees have the right to manifest/practice their religion.[60]
- Detainees should have the opportunity to work if they choose and to be paid for such work.[61]
- Detainees have the right to have their own food procured at their own expenses from outside.[62]
- Detainees have the right to wear their own clothes, and if a uniform, it shall be different from the uniform of convicted prisoners.[63]
- Detainees have the right to retain property.[64]
- Disciplinary procedures against the detainee are required to be specified in law or legal regulations.[65]
- Instruments of restraint shall never be used for punishment. Chains or irons shall not be used.[66]

68) Body of Principles, Principle 34.
69) The text in this box is based on personal communication with Mr. G.P Joshi, CHRI, Police Program Coordinator, India. The court case is known as the 'D.K. Basu Case'. For more information we refer the reader to the full text of the court ruling. Writ Petition (Criminal) No.539 of 1986, with Writ Petition (Criminal) No.592 of 1987, Decided On: 18.12.1996. D.K. Basu v. State of West Bengal.

- Firearms shall not be used against detainees, except when strictly unavoidable to protect life[67] – this will be rare in police detention situations. Use of force or firearms must always be reported and subject to review. In case of death, or disappearance, of the detainee, while in detention or shortly thereafter, a judicial or other authority shall hold an inquiry.[68] Indeed, some countries have incorporated such a requirement for an independent inquiry into their national legislation.

Note that police detention can lead to an increased risk of detainees attempting to commit suicide. Police detention facilities must not facilitate this. There should be no objects to which someone may hang him or herself, and clothes that may be used to aide suicide (such as shoe laces, belts, sheets etc.) should be removed.

Supreme Court of India

In 1997 an important judgement was delivered by the Supreme Court of India seeking to provide safeguards for those arrested and detained.[69] The judgement made it mandatory for the police officers to:

- Bear accurate, visible and clear identification and nametags with their designations at the time of arresting a citizen;
- Prepare a memo of arrest mentioning the date and time of arrest and attested by an independent witness and countersigned by the arrested person;
- Inform the arrested person of his right to have a friend or relative informed about his arrest and the place of custody and to inform the friend or relative if he lives outside the district or town;
- Make an entry in the diary at the place of arrest and detention;
- Get the arrested person, if he so requests, medically examined at the time of arrest and record his injuries in an Inspection Memo and to give a copy of the Memo to the arrested person;
- Subject him to medical examination every 48 hours during his detention in custody; and
- Send information of the person's arrest and detention to the police control room in district and state headquarters.
- Send copies of all documents including the arrest memo to the area magistrate for their record.

6.6. Summary

Human rights oriented policing also means carrying out arrests and detentions where necessary in accordance with human rights principles, the most important of which are non-arbitrariness, the presumption of innocence, 'fair trial' and 'equality of arms' and the absolute prohibition of torture and other cruel, inhuman or degrading treatment. The period just following arrest and detention is when a detainee is most at risk from police abuse. It is for this

reason that oversight by independent committees that regularly visit places of detention is considered an important preventive measure. It should be clear that arrest and detention are only lawful when these are carried out within the framework of law; police actions causing additional harm (such as the use of shackles), or that lead to additional punishment (such as preventing someone from exercising his or her right to religion) are prohibited as the person is still presumed to be innocent and as such may only be subject to those restrictions necessary to the ongoing investigation.

In recent years there have been concerns about an increase in legislation that facilitates administrative and preventive detention as a means of addressing terrorism. These are often accompanied by *in communicado* detention and lead to human rights violations. Such forms of detention are only lawful if these accord with the respective principles set out in international human rights law.

A lawful arrest means the arrestee is promptly informed of all his rights, receives the information necessary to prepare for a defence, and is treated with minimal force. This requires careful preparation of the arrest, and well-trained officers whose conduct is evaluated regularly. Police detention, which is only to be carried out if the investigation so requires, should be short. Detainees are to be presumed innocent and should be treated as such.

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

Article 7, International Covenant on Civil and Political Rights

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

Article 14 (2), International Covenant on Civil and Political Rights

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

Article 17 (1), International Covenant on Civil and Political Rights

Every law enforcement official is part of the criminal justice system, the aim of which is to prevent and control crime

General Assembly Resolution 34/169 adopting the UN Code of Conduct for Law Enforcement Officials, 17 Dec. 1979

7. Criminal Investigation

7.1. Introduction

One the main objectives of policing is to detect crime. Depending upon the jurisdiction, a criminal investigation can be initiated by police themselves or it can be ordered by a prosecutor. Similarly, a criminal investigation can take place under judicial authority (a prosecutor or an investigative judge) or can be carried out under police authority and subsequently handed over to the prosecution services for trial.[1]

The international legal framework specifies minimum rights and formulates fair trial guarantees, thereby defining the limits of State power in relation to its citizens. However, it does not provide clues as to how criminal investigations should be carried out or specify their objectives.

In Section 7.2. of this Chapter we will first discuss the international human rights principles relevant to criminal investigations. In Section 7.3. we will look at what the international human rights standards do not say about criminal investigations. Section 7.4. looks at criminal investigation as part of police practice. It discusses various methods of investigation and how police decide when to choose what method. In Section 7.5. we focus on suspect interview as an investigative method as it is during suspect interviews that human rights violations often occur. We will close with a brief summary.

Note that the focus of this Chapter is on police investigation of crimes committed by members of the public. Obviously the same principles apply when investigating criminal offences (including human rights violations) committed by police officers themselves.

English terminology:

1) Article 11 of the UN Guidelines on the Role of Prosecutors: *"Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest."*

- The terms 'suspect' and 'accused person' are sometimes, wrongly, used interchangeably. 'Accused person' requires the person to be formally accused. Police tend to use the word 'suspect'. The media sometimes refer to a 'criminal' or an 'offender' rather than a 'suspect', thereby violating the principle of the presumption of innocence.

- The terms 'interrogation' and 'suspect interview' are used interchangeably. The term 'suspect interview' more appropriately reflects the use of interview as a professional policing tool. The term 'interrogation' tends to have a more negative connotation. The phrase 'questioning a suspect' is often used as a synonym for suspect interview. In relation to this, it is important to distinguish between the arrest and the suspect interview: The suspect interview is an investigative method to collect information that can be used at trial. An arrest is one step within the legal process of bringing someone

to trial for an offence. A suspect interview can take place prior to the arrest, after arrest or the arrest can take place during the interview itself.

7.2. Key human rights principles relevant to criminal investigation and suspect interview

- **Presumption of innocence**.[2] "By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is therefore a duty for all public authorities to refrain from prejudging the outcome of a trial."[3] The right to remain silent is inherent to the presumption of innocence.[4]

- **Absolute prohibition of torture and other cruel, inhuman or degrading treatment**.[5]
  "No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his/her capacity of decision or judgment."[6] Information obtained through torture or other forms of coercion is not to be accepted as evidence in court.[7] The UN Human Rights Committee has made clear that anyone involved in torture or cruel, inhuman or degrading treatment "whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible. Consequently, those who have refused to obey orders must not be punished or subjected to any adverse treatment."[8] Torture should be a criminal offence under national law.[9]

- **The right not be compelled to testify against himself or to confess guilt**.[10]

- **Non-arbitrariness**.[11] The offence to be investigated must be defined as criminal in national law and the police may use their investigative powers only insofar these are covered by law and in accordance with the legal provisions, stated in national and international law. Investigative methods used must be used lawfully.[12]

- **Right to privacy/confidentiality**.[13] "(…) law enforcement officials obtain information which may relate to private lives, or may 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 (…)."[14] And: "(…) no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the [ICCPR]".[15]

- **Right to a fair trial**.[16] A suspect is entitled to a fair trial, based on the principle of 'equality of arms' between the parties in a case (see also section 6.2.1). To have a fair trial, a professional investigation needs to have taken place. A suspect is entitled to know his/her rights:
  - To know charges against him/her
  - To an interpreter
  - To adequate time and facilities to prepare her/his own defence
  - To legal counsel
  - To be brought before a judge promptly

  Police officers responsible for the suspect interview must explain these rights to the suspect prior to the interview. In some jurisdictions this should (also) be done by a prosecutor or a judge.

- Trial **without undue delay**.[17] As the trial must be held within a reasonable time, this can be taken to mean that the investigation needs to be conducted promptly and swiftly. This is a relative matter of course. Investigations may take many months (or years), and consequently suspects may, lawfully, be in pre-trial detention for a long period of time.

- The right to lodge **complaints** against ill-treatment and other abuses and the right to **compensation** must be recognised in domestic law.[18] Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.[19] The Human Rights Committee further states that statistics on the number of complaints and how they have been dealt with should be recorded.[20]

- **Recording of interview characteristics and location**. The identity of the interviewers and other persons present shall be recorded.[21] The time and place of all interviews shall be recorded and this information shall also be available for purposes of judicial or administrative proceedings.[22] Provisions should be in place to avoid *in communicado* detention. Any place of detention must be free from any equipment liable to be used for inflicting torture or ill-treatment.[23] The duration of the interviews as well as the intervals between them shall be recorded.[24]

- **Non-discrimination** is at the heart of all human rights principles. More specifically access to justice and the right to a fair trial, including the right to be presumed innocent, are to be enjoyed by women on equal terms with men.[25] Women must have direct and autonomous access to the courts, to act as witnesses and have access to legal aid, including in family matters.[26]

- **Review and monitor**. *"Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices (…)."*[27] Compliance with this far-reaching article requires there to be a systematic method for police interviewing in place that is taught to the interviewers and is regularly assessed.

- International standards require the State to **investigate particular types of crime** including:
  - Racism/discrimination. These crimes are to be made punishable. This implies that police ought to investigate offences of this nature.[28]
  - Women trafficking and exploitation of women for prostitution.[29]
  - Abuse, exploitation and illicit transfer of children.[30]
  - Extra judicial, arbitrary and summary executions.[31]
  - Enforced and involuntary disappearances.[32]

2) ICCPR, Article 14 (2); Body of Principles, Principle 36.
3) HRC, General Comments No. 13, para.7.
4) AI, 1998, *Fair Trials Manual*, Chapters 9 and 16. Note that Article 55(2)b of the Rome Statute (establishing the International Criminal Court) states that remaining silent will not be *"a consideration in the determination of guilt or innocence"*.
5) CAT; ICCPR Article 7. CAT defines torture in its art. 1.
6) Body of Principles, Principle 21(2).
7) CAT, Article 15; Principle 27 of the Body of Principles states: *"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."*
8) HRC, General Comment No. 20, para. 13.
9) CAT, Article 4.
10) ICCPR, Article 14 (3)g.
11) ICCPR, Article 9.
12) Body of Principles, Principle 9.
13) ICCPR, Article 17.
14) UN Code of Conduct, Commentary to Article 4.
15) HRC, General Comment No.16, para. 3.
16) ICCPR, Article 14.

17) ICCPR, Article 14 (3)c; Body of Principles, Principle 38.
18) CAT, Article 13 and 14; Body of Principles, Principles 33 and 35.
19) CAT, Article 13; (HRC) General Comment No.20, para.14.
20) HRC, General Comment No. 20, para. 14.
21) Body of Principles, Principle 23 (1).
22) HRC, General Comment No.20, para. 11.
23) Ibid.
24) Body of Principles, Principle 23 (1).
25) CEDAW. Article 15.
26) HRC, General Comment No. 28, para.18.
27) CAT, Article 11.
28) CERD, Part I, Articles 4-6.
29) CEDAW, Article 6.
30) CRC, Articles 11, 34, 35.
31) Principles of Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions
32) Declaration on the Protection of All persons from Enforced Disappearance.

33) Basic Principles, Principle 20.

34) The Rome Statute (Article 18(1)) mentions that the prosecutor must have 'a reasonable basis' to commence an investigation. Jurisprudence will need to develop as to what is considered 'reasonable'. Note that there is jurisprudence available relating to regional and national courts.

35) The Rome Statute does have such a provision (Article 55(2)d): *"to be questioned in the presence of counsel"*.

36) ICCPR, Article 14 (e).

37) For example, the Rome Statute, in Article 66(3), states: *"In order to convict the accused the court must be convinced of the guilt of the accused beyond reasonable doubt"* but gives no further guidance.

38) "Even with regard to interferences that conform to the [ICCPR], relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law, and on a case-by-case basis. Compliance with article 17 requires that the integrity and confidentiality of correspondence should be guaranteed de jure and de facto. Correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment."

- In **training** special attention should be given to issues of police ethics and human rights, especially in the investigative process.[33]

Prosecution and punishment of criminal offences related to an armed non-international conflict are covered by Article 6 of the 2nd Protocol of the Geneva Conventions, which reiterates the principles of fair trial.

7.3. What the standards don't say

The international human rights standards formulate key principles for how police should carry out criminal investigations. However, questions remain, including:

- There is no guidance on **when** a person may lawfully be considered a suspect.[34]
- Though the suspect has a right to legal counsel, it is nowhere stated that legal counsel should be **present** at the suspect interview.[35]
- There is a right for the suspect to hear witnesses against him or her as well as witnesses on his **or her behalf** (à charge and à décharge)[36], however there is no requirement that the police must actively seek witnesses on his or her behalf or in any other way seek counterevidence.
- Though the law in most countries prohibit the use of evidence obtained under torture in court, there is no guidance on what may be considered **sufficient evidence** for someone to be proven guilty 'beyond reasonable doubt'.[37] Of course, this is not a matter for the police as such. However when a confession is sufficient for an accused person to be found guilty, this may trigger the police to secure confessions at any cost. Note that in such situations lobbying for legislative changes may prove more effective than targeting police behaviour.
- There is no guidance on **what investigative methods** the police may use and under what conditions, beyond references to the rights to privacy, liberty, presumption of innocence and the overall requirement to be treated humanely. General Comment 16.8 of the Human Rights Committee makes some remarks on electronic and other forms of surveillance as well as searches of persons and property and is worth reading.[38]

Rome Statute (establishing the International Criminal Court)

In relation to some of the above-mentioned issues, the Rome Statute is more specific than the international human rights standards. However, it should be emphasised that the Rome Statute covers investigations into very specific crimes (genocide, crimes against humanity, war crimes and the crime of aggression, committed after 1 July 2002) taking place under the jurisdiction of the International Criminal Court (ICC). For more information see the ICC's website at: http://www.icc-cpi.int

7.4. How to carry out criminal investigation

7.4.1. Introduction

As indicated above, international human rights standards say what the police are not allowed to do, but are quiet when it comes to what police can do. This gap can be filled with national regulations, Standard Operational Procedures (SOP's) and training. Particularly in relation to criminal investigations of a more complex nature, police sometimes simply do not know how to conduct an investigation professionally. Below we will discuss some principles of professional investigation. For obvious reasons we will be concise.

7.4.2. Aim of the investigation

The aim of any investigation should be to gather information aimed at obtaining the truth about what has happened. The information gathered provides so-called 'tactical clues': pieces of information that can be used tactically to guide the investigation. Examples of tactical clues include: the type of shoes the suspect wore, various details of the scene of crime and information that is only known to the offender. Tactical clues are not necessarily the same as evidence: evidence is only that part of all available information used in court for proving someone's guilt. For information to be used as evidence it needs to meet the legal requirements as stated in law necessary to convince the court of the suspect's guilt. Needless to say the suspect does not have to share this objective of truth-seeking; indeed criminal investigation typically involves two (or more) parties with opposing interests.

Countries differ in their requirements in relation to evidence. These different requirements are generally set out in legal 'rules of evidence'. This Resource Book will not include the extensive detail of laws of evidence and related issues of standards of proof and burden of proof, which are clearly related to police investigation practices.

As a general rule one could say: "one piece of evidence is not evidence." A confession, however convincing, should never suffice as evidence. Any piece of evidence always needs to be backed up by at least one other source of information. This is especially important for evidence obtained during (suspect or witness) interviews as such information is easily manipulated (i.e. interpreted falsely, twisted, or obtained in such way that it impaired the interviewee's "capacity of decision or judgement") and should therefore always be verified. It needs to be proven 'beyond reasonable doubt' that the suspect is the offender. In some jurisdictions, for example in the Netherlands, there is an additional requirement that evidence needs to be 'lawful and convincing'.

Rules of evidence as formulated in the Model Code of Criminal Procedure

The Model Code of Criminal Procedure (see introduction to Part III of this Resource Book) includes the provision that the mental and physical elements of a criminal offence must be proven "beyond reasonable doubt". It also states

that the burden is on the prosecutor to meet the requisite standard of proof (i.e. beyond reasonable doubt). The Model Code of Criminal Procedure provides that a confession will not be admissible evidence if it can be proven that the confession was obtained through torture, cruel, inhuman or degrading treatment or through coercion. The underlying reason for the inclusion of this particular rule is the fact that the use of confessions obtained through torture has often been found to be a pervasive practice in post-conflict states. Another provision requires that the judge or judges, in deciding upon the criminal responsibility of an accused person, must not base their determination of criminal responsibility solely on a confession. The court must rely on other evidence to substantiate a finding of "criminally responsible". The accused is granted the right to call or have called and examined witnesses in his or her favour. Where he or she has engaged defence counsel, or has been assigned defence counsel through free legal aid, counsel may call witnesses in defence of the accused person.

7.4.3. Start of an investigation

An investigation starts with a reasonable suspicion a crime has been committed. It requires police to have knowledge about the alleged act and, even more important from a human rights perspective (especially when advocating that police perform with due diligence), it requires the police to know what acts are to be considered a crime. This is as much a legal issue as it is a cultural attitudinal matter. If police perceive something as 'common behaviour' they will not be inclined to label it a crime, nor will they feel the need to act upon it. This is especially relevant in the context of policing vulnerable groups and violence against women. Many such crimes are simply not labelled a crime, resulting in a passive police response.

Note that a passive response, or rather inaction, is sometimes actively sought through bribery or other means. Indeed, organized crime networks, and others, spend major resources on ensuring that police turning a blind eye to crime. Such corrupt practices should be of equal concern as other forms of police passivity from a human rights perspective.

Police know an alleged crime has been committed through:
• Observation
• A victim or witness reporting a crime
• An offender turning himself in
• 'Silent evidence' (for example, broken shop windows, a dead body)

The police do not investigate all crimes. Some crimes are allowed to go ignored, either because society does not consider them crimes (see above), or because they have ceased to be crimes (e.g. public drunkenness), because they aren't a priority for police (e.g. petty crime) or simply because police lack the time to initiate an investigation.

In some jurisdictions the decision to initiate an investigation lies with the

police or prosecution service. In other countries, an investigation must be initiated whenever police are made aware that a crime has taken place. The role of the prosecutor also varies in different jurisdictions. In the accusatorial (or adversarial or common law) system, including the US, UK and many former British colonies, the police conduct the investigations under their own authority and hand the evidence over to the prosecution when the investigation is complete. In the inquisitorial system, which includes France and many other continental European countries, the police conduct an investigation under the authority of the prosecutor or an investigating judge who has an active role in supervising the (legality of the) investigation as well as the investigative methods used, before the case is brought to trial. In the accusatorial system the prosecutor's role is limited to the actual prosecution itself: bringing the case to court. Note that the difference between the two systems has been discussed also in Chapter 2.

Organized crime

In more and more countries both police and the public are confronted with an ever growing influence of organized crime, typically involved in crimes such as drugs and human trafficking, money laundering and weapons smuggling. As the revenues for organized crime networks are immense, so are their efforts to keep them going. The best way to ensure against prosecution is to simply prevent police from initiating an investigation at all. Indeed, corruption is a major problem in this regard, as organized crime networks tend to be able to afford large sums of money, and other services, with which to bribe police and prosecution officials and/or witnesses. They also tend to have various means available to threaten both police and public and prevent interference in their activities. Indeed, corruption and obstruction of justice, and hence the necessity for witness protection, are all included in the UN Convention against Transnational Organized Crime, as adopted by the General Assembly in 2000 and which entered into force in 2003.[39] Organized crime networks can be a serious threat to the rule of law, the maintenance of public order and ultimately to the continuity of the State itself.

39) Resolution A/RES/55/25.

7.4.4. Methods of investigation
7.4.4.a. Gathering information

In reality, any method that leads to the collection of relevant information can be termed an investigative method. This information may be 'overt', available from 'open sources' accessible to all members of the public (such as newspapers, telephone books, internet etc.). The police may also use covert sources such as the municipal administration and information retrieved through methods (lawfully) used only by the police, such as secret informers. Examples of investigative methods are (in an arbitrary order):
• Witness interview
• Door to door inquiries
• Crime reconstructions
• Confrontation (with photographs of potential offenders or in a line-up)

- House search
- Suspect interview
- Body search
- Wire tap (telephone, fax, e-mail, internet)
- Undercover agents
- Surveillance
- Informers
- Forensics

Investigative methods differ in how effective they are in securing information and in how intrusive they are. There are two general rules of thumb:

- The requirement for authorisation to employ a particular investigative method should increase in proportion to the degree of intrusiveness. In the case of intrusive investigative methods their lawfulness may require the independent assessment of a judge (either prior or subsequently). Note that under the inquisitorial system, criminal investigations take place under the authority of an investigative judge who authorises police actions, including the use of particular investigative methods.
- An investigative method should only be used for a particular purpose, i.e. obtaining information about a certain crime, specified in advance. It should be carried out in such a way that it causes minimal harm to person and property (for example if police are looking for a certain piece of paper, a house search will be carried out more rigorously than when looking for something large such as an automatic gun). Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment.[40]

PLAN principles referred to in Chapter 5 are applicable to investigative powers of the police. Police should ask themselves: is the investigative method used proportionate to the offence committed, is it lawful and is it necessary to obtain the information, and is their no method available that is less intrusive (subsidiary)? Moreover, can the police be held accountable for the method used and how was it implemented?

7.4.4.b. The use of forensics
Forensic information covers photographs, fingerprints, ear prints, DNA, traces or imprints of devices used for a particular crime, IT-techniques, chemical analyses, fire investigation etc, in fact any kind of 'physical' information about the actual offence not taken from suspect or witness interviews. Police officers with special technical training usually carry out basic forensic investigations (fingerprints, traces etc.). The collection of this kind of information is often restricted to the **scene of crime** but this need not be.

In many developing countries, forensic science is not used much to help investigations, partly because of lack of faith on the part of investigative officers that the use of such methods will help them in solving the case speedily and

partly because of lack of skill and a lack of forensic science facilities at police station levels.[41] Moreover, in some countries courts do not accept forensic data as evidence. Human rights advocates often recommend an increased use of forensic information (i.e. enhancing forensic skills and facilities) as a means of preventing over-reliance on suspect interviews. Indeed, forensic information tends to be more objective and less susceptible to manipulation. However, as always, it depends on how police deal with this kind of information. If forensic information is only sought to confirm that the suspect is the offender (i.e. only used à charge) it doesn't support the principle of a fair trial. So-called 'silent' forensic evidence is rarely sufficient to explain entirely what happened; it needs interpretation to explain cause and effect relationships and hence to establish the identity of an offender (as we will see later in this Chapter when discussing suspect interview).

In relation to specific forensic techniques (such as medical examinations), police often seek the help of experts. These experts are not by definition impartial: sometimes they work for the police, sometimes they are appointed by a court. Experts may cover any field appropriate to a particular investigation. These may include academics, psychologists, accountants, IT specialists but in some cases even graphologists and telepathists may be requested to help obtain new information or help in interpreting available information. Again, forensics may be used to guide the investigation, or may be used to build up evidence. When the latter is the case, the suspect should be entitled to request a second opinion on the interpretation of evidence.

7.4.4.c. Scene of crime
This is how police refer to the actual location where the crime was committed or where evidence is to be gathered. As such, there may be more than one scene of crime for one crime (e.g. someone might be murdered at home but the body removed to another place). The scene of crime is vital for collecting evidence, as it is here that shoeprints, fingerprints, DNA material such as hair etc, can be found that may give clues as to what happened and who was present. As such it is of utmost importance that the scene of crime is secured while police are carrying out their investigation. Securing the scene of crime means nobody, including the police, walking through it, touching anything or in any other way destroying or interfering with potential evidence. It is common practice to cordon off the scene of crime and protect it as long as the investigation continues. The first minutes are the most important as traces disappear rapidly. Not surprisingly, it is in this area that there is often much to gain by improving criminal investigation techniques of police. The value of forensic, 'hard', information cannot be overstated.

7.4.5. When to choose what to do
Police work within a legal framework, telling them what acts to investigate (set out in the Penal Code) and how to do so (set out in the Criminal Procedures Code). As argued above, the more intrusive an investigative method is (not just for suspect but also his family and others) the stricter should be the regulations to which the police must adhere.

40) HRC, General Comment No. 16, para.8.

41) Based on personal communication with Mr. G.P Joshi, Commonwealth Human Rights Initiative, Police Program Coordinator, India.

Within this framework established in law, the police make tactical decisions as to what investigative method is expected to be effective. Even when it is acceptable legally to use a certain investigative method, it may tactically still not be wise to use it, for example because it may result in the suspect knowing he or she is 'under investigation'.

Finally, police must be skilful at carrying out these tactical decisions, they must be well trained in social, technical and legal skills, and evaluate their experience regularly. In other words: a police officer may lawfully be allowed to arrest a suspect and bring him to the police station for a suspect interview, and may consider it tactically the appropriate time for doing so, but he or she also needs to know *how* to do so.

The figure below visualizes how police actions are 'framed' by law, tactics and skills. Police effectiveness is dependant on how these three relate, i.e. how the police implement the tactical decisions bound by the legal framework.
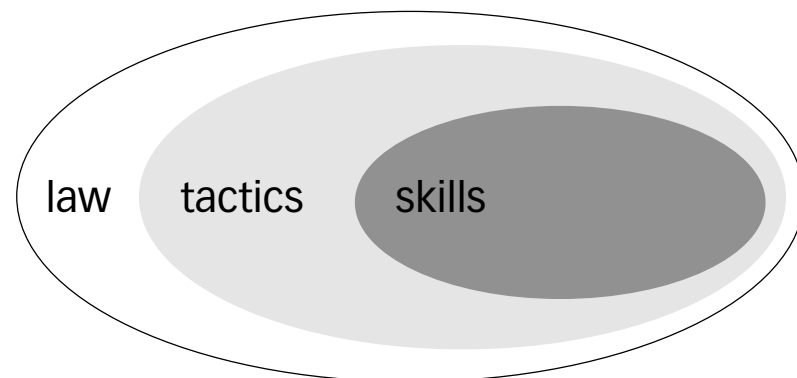
7.5. How to carry out a suspect interview

Suspect interviews are often shrouded in mystery and secrecy; reinforced by the scarcity of police literature about the actual practice of suspect interviewing (note that Amnesty International's *Fair Trials Manual* has a (brief) Chapter (Chapter 9) on suspect interview focusing on the rights of the interviewee). Police tend to consider skills in suspect interviewing as part of the craftsmanship of a police officer: you either "have it" or you don't. Maybe this also explains why police tend to think they are far more successful in suspect interviews than they are in reality. Police tend to think they are more competent than others in detecting whether someone is lying – which they are not.[42]

First and foremost a suspect interview is a professional tool that should be based on good investigation and proper use of communication skills. 'Tricks' are often more counterproductive than helpful.[43] A suspect interview's

first objective is to collect information to uncover the truth. As such, it is an investigative method just like those discussed above. Still, many police officers tend to think that the aim is to extract a confession from the suspect (regardless of what the truth is). An important and convincing argument against this line of thinking is that when the wrong person confesses, the real offender is still out on the streets, potentially committing other crimes. Secondly, a suspect interview is not meant to humiliate or punish someone.

In order for a suspect interview to achieve its objective, it is vital that the suspect can make his or her statement freely, without coercion, or as stated in the Body of Principles: without impairing the interviewee's "capacity of decision or judgement."[44] Indeed, during suspect interview the suspect is still to be presumed innocent and should be treated as such.

Police officers may sometimes argue that the 'use of force' is needed – and thus proportionate – in a suspect interview to extract the relevant information, reasoning that it is therefore not 'torture'. Obviously such reasoning can never be acceptable. However, it should be noted that some police sincerely do not know how to obtain information from a suspect without relying on force. The following section therefore seeks to provide some guidance on how a suspect interview can be carried out lawfully and professionally. Please note that there are numerous different methods and theories concerning suspect interview. The guidance given below is not given as a blueprint but rather aims to demystify suspect interviews and erode the assumption on the part of some that a degree of force is always necessary.

Taking 'undue advantage' of the interview situation is prohibited, as stated in Principle 21 of the Body of Principles. However, a suspect interview is, by its very nature, an extremely unpleasant situation for the suspect. This in itself will create pressure on the suspect, which the police will make use of for tactical reasons. The question is where this level of pressure becomes unacceptable pressure as defined by CAT. The Human Rights Committee has not drawn up a list of prohibited acts or established sharp distinctions between acceptable and unacceptable acts: the distinctions depend on the nature, purpose and severity of the treatment applied.[45] For further reading into this topic we refer to Amnesty International's *Combating Torture: A manual for action*.

In carrying out a professional suspect interview, police make use of what is sometimes referred to as 'internal pressure' (as opposed to external pressure', which is pressure that is inflicted by someone else, often resulting in torture or any other form of cruel, inhuman or degrading treatment). Internal pressure is pressure a suspect builds up internally: 'within his or her own head' so to speak. In order to carry out an effective suspect interview the investigator must have sufficient and adequate information acting as 'tactical clues'. These can be used to increase the internal pressure 'within' the suspect. The aim of the interview is to verify these clues and get the suspect to make a statement about them as well as to collect new information. Therefore, the ultimate 'success factor' for a suspect interview lies with the investigation *prior* to the

42) Hartwig, M., P.Anders and A.Vrij, 2005, "Police interrogation from a social psychology perspective.".
43) The contents of this Chapter are for a large part based on the author's personal expertise as a former trainer of criminal investigators.

44) Body of Principles, Principle 21(2).
45) HRC, General Comment No. 20, para.4.

46) Hartwig e.a., 2005, "Police interrogation from a social psychology perspective."

interview, as this is when the investigator gathers the information (including tactical clues), which guide further investigations. These tactical clues are used in the suspect interview to (verbally) confront the suspect with and to test whether he or she is telling the truth. Such confrontations will increase the internal pressure – rendering external pressure (hitting, kicking, switching lights on and off; the list is endless) unnecessary. If the investigation prior to the interview hasn't been conducted properly there will be insufficient tactical clues, limiting the interviewer's opportunities to lawfully (and professionally) confront the suspect. Moreover, if the investigation has been carried out properly, there is sometimes sufficient information to make a suspect interview unnecessary altogether. Indeed, the added value of suspect interviews tends to be greatly overestimated by police officers.

Preparing the interview, including preparation of when to use what clues, is essential, but again this rarely happens, as police tend to (mistakenly) rely on their presumed craftsmanship.[46]

Professional suspect interviewing can best be explained with an example:

Case: There has been a bank robbery. The police have found the fingerprints of someone called Peter on the glass that divides the clients from the bank employees (the fingerprints as well as their exact location are tactical clues). They know Peter doesn't bank with this particular bank (which is also a tactical clue).

Let's say, for our example, that Peter was indeed the bank robber, something the police will have to find out. Below we will describe an example of unprofessional interviewing, followed by an example of how police could carry out a professional suspect interview.

An unprofessional way to deal with this suspect would be to go and pick up Peter, tell him he is charged with bank robbery and confront him with the fact that the police have found his fingerprints. "That proves it!"

It would be more professional if the police picked Peter up only after having prepared for the easiest answer Peter may give explaining the fingerprint: saying he indeed visited the robbed bank legitimately to collect money. They must try to make it impossible for Peter to get away with such false statements. So, during the interview they ask Peter what he's been doing over the past week (ideally the police should know the last time the bank was cleaned, say Saturday, and ask Peter what he has been doing since Saturday). They ask him where he usually gets his money. Does he always go the same bank, or does he visit different banks? Questions like these are referred to as 'surrounding the evidence'. Suppose Peter says he always goes to the (robbed) bank, but hasn't been there since Saturday. Or Peter may say: he always goes to the same bank, not being the robbed one. Or he may say that last week he was ill and didn't leave his home.

Then the interviewers will confront Peter with the fingerprint: "If you haven't been to this bank the past month, then how is it possible that we have found your fingerprint on the glass window?" Only if this particular tactical clue has been surrounded properly does it make sense to confront, in the sense that it will lead to an increase in internal pressure. No doubt Peter will start to feel very uncomfortable.

The example shows what professional interviewing encompasses:
- The collection of relevant tactical clues (i.e. the investigation)
- The preparation of questions to 'surround' the tactical clues so as to prevent the suspect from evading the evidence
- The preparation of 'confrontations'. When confronting, police will always have to 'give away' some information available to them. This is a matter of tactics. Careful consideration must be given to what information can be given away and what not

Of course this is an overly simplified image of the suspect interview, but it does show the essence of professional interviewing. Its value is determined by the amount of information the police have collected prior to the actual interview. When interviews go wrong, it is almost invariably due to a lack of preparatory investigation, leading to too few clues, resulting in a suspect that can easily 'get away with it'.

The police should collect tactical clues throughout their criminal investigation, verify these, collect additional information to increase the value of the tactical clues (such as when the bank is being cleaned), foresee ways in which the suspect may attempt to evade the tactical clues they have against him, and prepare the surrounding questions that follow from this. This preparation may lead to the conclusion that they do not have enough information against the suspect. This means further investigation is needed, and there is no point in calling the suspect for interview until the police are ready.

Suppose that Peter, in our example, is a truly innocent suspect. Suppose he answers the 'surrounding' questions in line with the truth. This may result in new tactical clues for the investigators, which they again will have to investigate in order to verify them.

Suppose that Peter is truly guilty and confesses. He walks into the room saying: "Yes, I admit, I did it." That still doesn't mean the work is done for the interviewers. It is good practice that they ask Peter what he did exactly, where, when, how, why etc. After all, Peter might withdraw his confession at a later stage in trial. However, if he mentions specific details of the crime that have been verified and confirmed by the investigators, withdrawing his confession will not help him. Peter might also be innocent but wishing to take responsibility for the crime. A confession in itself should never be enough to convict someone; it should always be supported by other evidence.

There are several *safeguards* to ensure that a suspect interview doesn't derail. Some have been discussed already. Additional safeguards are:

- As a rule of thumb it is best practice for the interviewers to have the same amount of rest as the suspect being interviewed and should not be replaced by 'fresh' colleagues.
- The interviewers should record their own identity and those of others that are present.[47]
- The entire interview should be taped (on audio-, but preferably videotape).[48]
- The interview should usually be carried out by two officers. 'The good cop/bad cop' is no longer considered professional. Both officers are to behave professionally, meaning friendly but objective. There is no benefit in offending or frustrating the suspect in any way. He or she should be allowed to sit down and have something to eat and drink as per the relevant local custom.
- It is advisable that there should be at least one female interviewer present when women are interviewed.
- When the detainee is outside the interview room, this should not to be considered 'interview time'. Statements made by the detainee outside the interview room are in principal 'off the record'. The interviewers should not question the suspect outside the interview room (for example in his cell). However, when the suspect makes a statement voluntarily, and is aware of his or her rights, the interviewers will no doubt use this information in the actual interview, as it may provide valuable tactical clues.
- It is recommended that police officers responsible for the welfare of detainees differ from the officers responsible for the investigation.
- The officers responsible for the interview, who keep a record of the interview, should also record when they have supplied the suspect with food and drinks and at what time they've fetched the suspect and returned him or her. Similarly, the officers responsible for detention should record when they have supplied the detainee with meals and other requirements.

Professional interview techniques such as the one described here can be used against any suspect, whether guilty or innocent, and regardless the nature of the crime. They are neutral and objective and can be used for police officers suspected of human rights violations, for men suspected of domestic violence as well as for those said to have committed terrorist crimes. Professionalism in questioning requires the interviewer to keep in mind that the interviewee might be guilty, but might be innocent as well. The interviewer must be self-confident yet open to alternative options. If he or she were in constant doubt, the suspect interview would become impossible.

47) Body of Principles, Principle 23; HRC, General Comment No. 20, para.11.
48) According to the Rules of Evidence and Procedure of the Rome Statute (adopted 3-10 September 2002. ICC/ASP1/3. Rule 112) questioning is required to be audio- or videotaped.

Remarks of the European Committee for the Prevention of Torture (CPT) relating to suspect interview [49]:

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.

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.

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.

49) CPT, 2002, *12th General Report on the CPT's activities,* para 37-39.

7.6. Summary

In this Chapter we have taken a closer look at criminal investigation, one of the core functions of the police. Criminal investigation, aimed at finding the truth, is a complicated matter requiring the professional, social, tactical and technical skills of police officers as well as their thorough understanding of the criminal procedures involved. The presumption of innocence is at the heart of the principles protecting suspects. Police are to respect this principle as long as the suspect has not been found guilty by an independent judge. Moreover, suspects are entitled to a fair trial and the prohibition to torture is absolute and knows of no limitations.

Police have many investigative methods at their disposal, the application of which is dependant upon skills, tactical considerations and legal boundaries. An important and often neglected field concerns forensic information, i.e. all physical pieces of information for which no (suspect, witness or victim) interview is needed. However, the most neglected field remains the preparation of the suspect interview, which should be part of the investigation itself. Too often police commence the suspect interview without having enough information to confront the suspect with, triggering police to resort to unlawful means of pressurising the suspect rather than confronting him or her with the findings of their lawful investigation.

Principles and methods for investigating crime are the same irrespective of the crime: whether the suspect is an alleged thief, an abusive husband or a police officer suspected of human rights violations. As such, the issues discussed in this Chapter can be useful for human rights advocates commenting on investigations into police misconduct as well as when commenting on police negligence in investigating crime and providing redress to victims of crime.

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Part IV. Enhancing Police Professionalism

Enhancing Police Professionalism: Introduction

The basic premise throughout this Resource Book has been that in order to work effectively on policing issues and to seek to enhance police compliance with human rights standards, one needs to have an understanding of what policing is all about: What role do police have within the State system? How do they relate to the other security and justice institutions? What objectives do they have and how can they accomplish these? Armed with this background information and the tools to apply it to police in any target country, we believe it will be easier to design a strategy for intervention that is tailor-made to enhance police professionalism and that takes into account contextual and professional realities.

Many authors, international donor programs and human rights advocates who seek to improve human rights compliance by police, stress the importance of improving or empowering a range of accountability mechanisms. There is usually a strong focus on independent oversight and complaints mechanisms. 'Accountability' seems to have become a buzz-word: everyone understands its importance and agrees on its potential effectiveness. However, not many truly seem to understand what accountability really is and how it can be achieved in practice. This could very well be due to the fact that the concept is so imprecise, encompassing a number of different issues and masking many varied assumptions about the police and its role within the State.

Another buzz-word used in relation to the improvement of policing is 'training'. Training is often referred to as if it is the key to success. 'If only police knew what human rights were and how policing could be carried out in conformity with human rights principles! If only police could be trained adequately, human rights violations would cease to take place!' Indeed, many reports by Amnesty International underline the importance of police training.

This part of *Understanding policing* seeks to take a closer, and critical, look at these two concepts that are so key to many intervention strategies. We will explore these concepts in detail and seek to highlight their drawbacks as a means of enhancing their effects as intervention strategies in the future.

The final Chapter of this Resource Book will look at how human rights NGOs, both international (like Amnesty International) as well as local, can engage with policing issues. The Chapter builds on some of the issues discussed in Chapter 1, and tries to suggest solutions to the inherent problems that surround NGO engagement with state agencies such as the police. At the end of the Chapter a three-step approach is presented that seeks to help human rights advocates who are considering work on policing to develop an effective and realistic intervention strategy.

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8. Police Accountability

8.1. Introduction

Individual police officers typically have wide discretion in using police powers: when and how much force to use, when to arrest, whom to search and whom not to etc. This discretion at the individual level and operational independence at institutional level are fundamental preconditions for fair and effective policing (as discussed in Chapter 4). In order to balance these powers, and prevent their abuse (for example using these powers to serve selfish or partisan interests rather than the public interest), it is essential for police to be accountable to the law, the State and its citizens.

A simple definition of **accountability** is 'having to explain one's actions or conduct.'[1] Accountability entails "a set of normative prescriptions about who should be required to give account, to whom, when, how and about what."[2] Accountability is closely related to concepts like responsibility and liability as it means relating an act (or the omission of an act) to a person or institution. Moreover, accountability implies a requirement to remedy misconduct. Effective accountability requires the availability of effective complaints and redress procedures to members of the public who have been victimised by police abuse or negligence.

A note on terminology

The word 'accountability' comes from the world of finance; it used to be related to accounting for one's financial state. It has only fairly recently been adopted in the human rights context. Please note that in many languages the word cannot be translated at all, or the translation relates to this financial aspect. In fact in many languages the word translates as *responsibility,* which is not entirely the same as accountability. As a result, for example in Francophone countries, people may not always understand what accountability measures seek to achieve and may be reluctant to discuss implementation of accountability measures. Be aware of this when referring to the concept and always verify what other people mean by the term.

Each State Party to the present Covenant undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy (…)
International Covenant on Civil and Political Rights , Article 2(3)

Every law enforcement agency should be (…) accountable to the community as a whole
General Assembly Resolution 34/169 adopting the UN Code of Conduct for Law Enforcement Officials,17 Dec. 1979

Effective mechanisms shall be established to ensure the internal discipline and external control as well as the supervision of law enforcement officials. Particular provisions shall be made (…) for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of these provisions shall be made known to the public
Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials

1) Chambers 21st Century Dictionary, 1999.
2) Stenning, as quoted in: Bruce, D. and R. Neild, 2004, *The police that we want: a handbook for oversight of police in South Africa,* p. 18.
3) Bayley, D., 2001, *Democratizing the police abroad: What to do and how to do it,* p.14-15.

Accountability and transparency go hand in hand: "Police activity must be open to observation and regularly reported to outsiders. This requirement applies to information about the behaviour of individual officers as well as to the operations of the institution as a whole, especially whether the police are achieving the results expected in a cost-efficient manner."[3] This transparency, given effect by reporting procedures, should go beyond the police's institutional boundaries. Accountability to oversight institutions, independent of ruling regimes, which may include courts, legislatures, the media and complaint

4) Lewis, W. and E. Marks, 1997, *Civilian police and multinational Peacekeeping - A workshop series. A role for democratic policing.*
5) Bayley, D.H., 1997, "The contemporary practices of Policing: A Comparative view."
6) See European Code of Police Ethics, Article 60.

review boards, is an important underpinning of democratic policing.[4] Human rights oriented policing requires police, both as individuals as well as the institution, to recognize the importance of being watched and second-guessed by outsiders; police don't have to like being scrutinised, but they must understand it is a precondition for legitimacy.[5]

Police accountability involves:

- *Individual officers* at all hierarchical levels being individually accountable to their supervisors for their own conduct. Their conduct must accord with the national law and with professional codes of ethics and discipline. In the case of criminal conduct, all officers are accountable to the courts.
- *Superior officers* are accountable, through reporting, supervision and disciplinary procedures, for the conduct of those under their command.
- The *police agency* is accountable to society at large for their success in maintaining order and security and controlling crime. As an organization, the police should be accountable to independent oversight agencies set up by law and open to scrutiny by the public, including to democratically elected representatives, non-governmental organizations and the media.

Accountability is usually understood in its narrow sense of police accounting for some misconduct that has already happened. This is called *a posteriori* accountability (subsequent accountability), in the European Code of Police Ethics. Recommendations formulated by Amnesty International in its country reports almost invariably address the failure of police to take responsibility for acts, resulting in effective impunity. However, in order to be able to assess responsibility after an act has occurred, one needs to know what the directives were prior to the act. Someone did something, but why did he or she do it that way? How could it have been prevented? Indeed, accountability also implies direction, control or diligence exercised before or during any operation to ensure that it is carried out according to the law and policies in use and with respect for human rights. This is called *a priori* accountability.[6] **Oversight** refers to continuous accountability, before, during, as well as after operations have taken place. Oversight can be direct, or at a distance, can be based on samples or can (in theory) include every police action and can be independent or internal to the organization.

Accountability by:	The police institution and individual officers
Accountability to:	The State, the law and the people served
Accountability for:	Actions and omissions
Accountability through:	Directives and preventive measures, oversight, sanctions for infringement and compensation to victims

Effective accountability requires a system of multiple actors carefully keeping

each other in balance. Of these actors the internal actors (i.e. those within the police institution) tend to receive little attention from human rights advocates. Yet the internal aspect is crucial to ensuring accountability, since any external mechanism requires internal commitment to be effective. If police managers turn a blind eye to police misconduct, external measures to address misconduct will have little effect because they will face obstruction at the stage of investigation or implementation of recommendations. This is noted in a paper formulating recommendations on police reform in Mexico: "The truth of citizen oversight mechanisms is that they have not proven sufficient by themselves to bring about the institutional changes needed. (…) A complaints bureau will almost certainly be necessary (…) but its recommendations would have much greater impact if the internal systems were in place to deal with them (…)"[7] For an internal system to be effective it needs to be backed up by a competent judicial system and a political environment that is at least permissive but preferably supportive and have mechanisms for providing accountability to the public (including systems for receiving complaints from members of the public), independent oversight bodies and police commissions. Internal and external aspects of the accountability structure should mutually reinforce each other to ensure maximum effect.

The main aim of this Chapter is to increase understanding of police accountability mechanisms in all their aspects:

- both the individual officer's actions and omissions and the overall performance of the police agency
- both *a priori* and *a posteriori* elements
- both internal and external mechanisms
- … and how these all relate to one another

As such we will use a broad interpretation of the concept of accountability, as opposed to a more narrow interpretation that has been common amongst many human rights advocates.

We start in Section 8.2 with a more thorough discussion of accountability as an intricate system of checks and balances involving many different players. Subsequently we will present an overview in Section 8.3 of what the international standards say on accountability and what they do not say. We will then focus on a variety of police accountability instruments in practice, in Section 8.4, categorised in four different areas. We will present a table in Section 8.5 for assessing police accountability, in which all the different mechanisms discussed are grouped together. Accountability is a matter of finding a proper balance between the different institutions in the field. The table helps to assess this balance and identify gaps and weaknesses. We finish with a brief summary.

7) Varenik, R.O., 2003/04, *Exploring roads to police reform: six recommendations*, p. 12.

Police Accountability and the Quality of Oversight

Altus, a global alliance of six NGOs working across continents and from a multicultural perspective to improve public safety and justice, organised a conference on Police Accountability in October 2005. The conference stated, "Police accountability is a challenging subject even in the best of times. Increasing public concern about crime, highly visible incidents of use of force (which are often excessive) and the allocation of scarce public resources can lead politicians, the media, and others to raise the most basic questions:

- For what are police accountable?
- To whom are police accountable?

Police officials also have questions about oversight:

- Will it be objective and fair?
- Will it be managed professionally?
- Will it recognize good policing as well as highlight deficiencies?"

The conference examined a developing set of global norms and standards. Papers were presented on Brazil, Chile, India, Latvia, Mexico, Russia, UK and the USA which can be downloaded from the website www.altus.org.

In 2008 Altus will publish a guide, in joint cooperation with the UN Office of Drugs and Crime, drawing on conference (and other) material that examines examples of good practice in contemporary police accountability mechanisms around the world. The volume will be published in English, Spanish, Portuguese, Russian, and French.[8]

8.2. "A balanced system of multiple actors": Four areas of accountability

In Chapter 4 of this Resource Book we discussed how police relate to their political environment and the communities they serve. We've typed policing as a 'political' activity in that it needs to find a balance between State, community, as well as professional interests. Indeed, police actions should not seek to serve selfish or partisan interests but should rather seek to serve the public interest. Similarly, for accountability to be effective it should involve police being accountable to the law, the State and its citizens, indeed: "to multiple audiences through multiple mechanisms."[9] Just as it is unwise to vest all powers and discretion entirely with the police, relying entirely on their professional judgment, it is just as unwise to vest all powers to control the police with one other single body, be it the executive or the community or anyone else for that matter. This would simply replace the locus of trust with these other institutions responsible for oversight and control: how can one be sure that the executive organs, or political institutions, parliament, community forums etc, are more reliable (i.e. acting in the public rather than partisan, private or own community interest) than the police? Indeed, accountability is always a matter of balancing the power and influence of various players involved.[10] A system is needed where oversight and control are spread across communities and their representatives, executive agencies and legal institutions including the law. Of course all three are interrelated: communities

are represented by politicians, who in turn are responsible for the law-making process; the major political party is usually part of the executive. Note that special attention is required to ensure accountability towards communities that are marginalised and tend to be under-represented, both in parliament as in the executive.

Police accountability in Commonwealth countries

The Commonwealth Human Rights Iniative (CHRI) published a report in 2005 on police accountability: *Police accountability; too important to neglect, too urgent to delay.* In addition to describing some of the problems of police misconduct across the Commonwealth, the report provides a comparative overview of accountability arrangements, highlights good practice, and gives recommendations for reform to assist governments, police officials, and civil society in the development and strengthening of effective accountability regimes as part of the move towards truly democratic policing. It argues that an effective system of police accountability is based on the principle of multiple levels of accountability: to the government, to the people, and to independent oversight bodies; within a supportive legislative and policy framework.

As systems of accountability involve multiple actors, some categorisation is required to analyse and assess their effectiveness. For our purposes here we will focus on four different areas of accountability:

1. Internal accountability
2. Accountability to the State, divided into three branches of the State:
   - *The executive*: This includes accountability to various government departments including the department directly responsible for policing (usually the Interior and/or Justice Ministry)
   - *The judiciary* (legal accountability)
   - *The legislature:* Democratic accountability (overlapping with accountability to the public)
3. Public accountability
4. Independent external accountability and oversight

The categories vary in their distance from the police as an institution. As with any categorisation, this is to be regarded as a helpful tool rather than a stable reflection of reality. The different categories overlap: the demarcation between internal accountability and accountability to the executive is not always clear as in fact police are part of the executive. In some countries the police cannot be clearly delineated from the relevant Ministry, e.g. in situations where police officers are employed by the Ministry, or when the Chief of Police is also a top Ministerial official. This affects how responsibilities are directed, sometimes leading to serious problems in relation to operational independence. Similarly, the legislature is responsible for making laws under which the judiciary and the police operate. Moreover, the legislature represents the people and as such this category strongly

8) For further information visit: www.altus.org
9) Bayley, D.H., 1997, "The contemporary practices of Policing: A Comparative view.", p. 5. See also: Stone, C. and H.H. Ward, 2000 "Democratic policing; a framework for action."
10) In relation to the Ipperwash Inquiries in Canada a paper was drafted by Kent Roach on this issue in 2004, titled *Four models of police-government relationships.*

overlaps with that of 'public accountability'. We suggest this categorisation be used as a model to analyse and assess the complex arena of police accountability – to which we will return in the last Section of this Chapter.

1. Internal accountability
Internal accountability includes individual and chain-of-command accountability. Police officers at all levels are individually accountable for their conduct to their superiors through the internal hierarchy.

2. Accountability to the State:
- *To the executive:*
  Police leadership of the institution and the political direction that the executive branch of government may give the police are two related, yet different things. In most countries police fall under the Ministry of the Interior and/or Justice and are accountable to these ministries and their inspectorates. The national Chief of Police usually reports to the Minister of Interior, who in turn ultimately reports to parliament. In more decentralised systems the (local) Police Commissioner often also reports to the civil administration at the local level, such as a Mayor or Prefect who is the local representative of the Executive (sometimes an elected official), who in turn is accountable to the local council. This reporting includes performance assessments of the police institution as a whole, measuring the success of police in achieving their core objectives.
- *To the judiciary* (also called 'legal accountability'):
  Police must obey the law and accept the independence of the judiciary. They are bound to act within the law under which they operate and must use their powers in accordance with both the Police Act and other relevant legislation. Officers who are suspected of committing crimes in the course of their duties must be brought before a court to account for their actions. They may also be sued in the civil courts.
- *To the legislature* (also called 'democratic' or 'political accountability'):
  Passing laws is the prime responsibility of parliaments and they may question the police's performance in general as well as in relation to specific actions.

3. Public accountability
Public accountability entails police agencies being accountable to the community they serve, either directly or through representation. Academics, NGOs and the media can promote transparency and observance of the law and standards, but police are not accountable to them.

4. Independent external accountability and oversight
Independent accountability mechanisms may be divided into general (non police specific) human rights bodies, and police-specific bodies. Both of these can again be divided into those looking at overall police policy and strategy, and those that examine individual complaints. Additionally there are a variety of both *ad hoc* and systematic mechanisms for overseeing the police.

Accountability structures in Africa
There is an interesting website on police accountability and oversight in 16 African countries that can be found at http://www.policeaccountability.co.za/Organograms/. Organizational charts are given of police agencies in these countries along with their respective accountability structures. The focus is on accountability within the Executive pillar but independent mechanisms, where these exist, are also given.

8.3. What the standards say about accountability

8.3.1. Accountability and the right to remedy
Accountability as such is not mentioned in the binding international treaties. However, a basic notion underlying the international legal framework is the right to remedy when people's rights are violated, laid out in the ICCPR and other treaties. Article 2(3) of the ICCPR states: *"Each State Party to the present Covenant undertakes:*
(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
(c) To ensure that the competent authorities shall enforce such remedies when granted."

Regional jurisprudence
Do note that there is a large amount of jurisprudence from both the European and Inter-American courts on the subject of ensuring individual responsibility of State agents (in most cases police officers) for ill-treatment and unlawful killings as well as responsibility for proper planning and control of individual operations and proper legal frameworks for use of force and firearms.

8.3.2. UN Code of Conduct & the Basic Principles
The UN General Assembly Resolution adopting the UN Code of Conduct for Law Enforcement Officials (UN Code of Conduct) emphasises accountability to the community as a whole, accountability to the law, internal discipline and the need for thorough monitoring. It states:[11]
"… like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole;
… the effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws;
… every law enforcement agency … should be held to the duty of disciplining

11) General Assembly Resolution 34/169 adopting the UN Code of Conduct for Law Enforcement Officials,17 Dec. 1979.

itself in complete conformity with the principles and standards herein provided and that the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency;

… standards as such lack practical value unless their content and meaning, through education and training and thorough monitoring, become part of the creed of every law enforcement official …"

In addition, Articles 7 and 8 of the UN Code of Conduct require police to oppose and combat corruption and to oppose and report any violation of the UN Code of Conduct internally or to *"other appropriate agencies or organs vested with reviewing or remedial power"*. The commentary to Article 8 refers to the need to report violations within the chain of command but, if no other remedies are available or effective, to take lawful action outside the chain of command, and, as a last resort, to the media.

"Representative of and responsive and accountable to the community as a whole"[12]

Responsiveness and accountability are generally understood to be the two identifying elements of democratic policing around the world.[13] They are also fundamental to human rights based policing.

A *responsive* police agency is accessible and helpful to members of the public. Responsiveness requires the police to take action in response to the public's needs, rather than to solely act on the State's or government's wishes.[14] Responsiveness also entails being responsive to changing conditions and requirements of society and to new dimensions of crime and criminality. The Milan Plan of Action of the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders, states: "The criminal justice system should be fully responsive to … the constantly evolving conditions of society."[15] Moreover, being responsive makes the police more effective as it facilitates police access to information about crime and other relevant matters held by the public. Responsiveness will also make the public more inclined to accept police powers. Note that some would argue the opposite: that police should keep their distance from the communities they serve and should carry out tasks objectively and impartially as neutral State representatives.

A police agency runs the risk of being less likely to be "responsive and accountable to the community as a whole" if it represents only one political or social group. A *representative* police agency is drawn from society and should strive to represent women and men from all regions and social groups. In any event it should be responsive to the needs of all sectors of society and also actively account for its actions to all sectors of society. Note that in order to be responsive to all sectors of society, representation is not by definition necessary nor is it necessarily sufficient. Police officers should be able and

12) Ibid.
13) Bayley, D.H., 1997, "The contemporary practices of Policing: A Comparative view."
14) Ibid.: "A democratic police force is organized to be responsive downward; an undemocratic police force is organized to be responsive upward." p.4.
15)The Plan urges States to improve "criminal justice systems so as to enhance their responsiveness to changing conditions and requirements in society and to the new dimensions of crime and criminality..." Adopted by the General Assembly resolution 40/32, 29 Nov. 1985, para 4-5.

willing to professionally (i.e. impartially and objectively) apply the law, which in itself should be in accordance with human rights standards. Again, some would argue that representativeness is an obsolete requirement since the State should neutrally and objectively carry out State obligations – the (ethnic, gender, religious etc.) background of the State representative being irrelevant. See also Chapters 3 and 9.

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles) contain several principles for accountability in relation to the use of force and firearms:

- Principle 22 calls for an *"effective review process"* and states that independent administrative or prosecutorial authorities should be able to exercise jurisdiction in appropriate circumstances. Cases of death and serious injury or other grave consequences must be reported promptly to the "competent authorities responsible for administrative review and judicial control."
- Principle 23 states that persons affected by the use of force and firearms, their legal representatives and dependents shall have access to an independent process including a judicial one.
- Principle 24 requires that superior officers should be held responsible *"if they know, or should have known"* that their subordinates *"are resorting or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use."*
- Principle 25 requires that officers who refuse to carry out illegal orders to use force and firearms and who report such use do not suffer criminal or disciplinary sanction.
- Principle 26 states that officers may not claim that they were obeying superior orders if such orders are manifestly unlawful and if they had a reasonable opportunity to refuse to carry out the orders. In any case, the superiors who gave the unlawful orders should be held responsible.

8.3.3. The European Code of Police Ethics
Twenty-three out of the 66 Articles that make up the European Code relate directly to the issue of accountability. Even though the Code has been developed for those countries within the jurisdiction of the Council of Europe we do recommend reading it in full. We will briefly summarise here.

Section II, Articles 3 - 5: Police should be established in law. Laws relating to the police should accord with international standards to which the country is a party and they should be clear and accessible to the public. The police should be subject to the same legislation as ordinary citizens.

Section III, Article 8, states: *"[i]t must always be possible to challenge any act, decision or omission by the police which affects individual rights before the judicial authorities."*

Section IV, Articles 12 to 17, require that the police must be organized with a view to earning public respect; they must be under the responsibility of civilian authorities; they should normally be clearly recognizable; they should enjoy *"sufficient operational independence"* and should be accountable for this; police personnel at all levels *"shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates"*; there should be a clear chain of command and "it should always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel."

Articles 19 to 21 state that the police shall be ready to give objective information on their activities to the public; the agency *"shall contain efficient measures to ensure the integrity and proper performance of police staff, in particular to guarantee respect for individuals' fundamental rights and freedoms"*; there should be effective measures to combat corruption.

Articles 33 and 34 state that disciplinary measures brought against police staff shall be subject to review by an independent body or a court and that the public authorities must support police personnel who are subject to ill-founded accusations concerning their duties.

Section V, Articles 38 and 39 and 46 concern the duty of police to verify the lawfulness of their intended actions and to refrain from carrying out orders which are clearly illegal and to report such orders "without fear of sanction". They must also report acts of corruption.

Section VI deals with accountability in particular. Articles 59-63 require that the police are: accountable to the state, the citizens and their representatives; subject to efficient external control; state control shall be divided between the legislative, executive and judicial powers (see box below); public authorities shall ensure effective and impartial procedures for complaints against the police; accountability mechanisms based on communication and mutual understanding between the public and the police, shall be promoted; codes of ethics, based on the principles set out in the European Code, shall be developed in member states and overseen by appropriate bodies.

Finally, Article 66 requires that implementation of the Code be *"carefully scrutinised by the Council of Europe."*

Article 60 of the **European Code of Police Ethics** reads as follows: *"State control of the police shall be divided between the legislative, the executive and the judicial powers."*

Its Commentary states:
In order to make the control of the police as efficient as possible, the police should be made accountable to various independent powers of the democratic state, that is the legislative, the executive and the judicial powers.

In a simplified model, the *legislative* power (Parliament) exercises an *a priori* control by passing laws that regulate the police and their powers. Sometimes the legislative power also perform an *a posteriori* control through "justice and interior commissions" or through "Parliamentary men", who may initiate investigations, *ex officio* or following complaints by the public concerning mal administration. The *executive* power (government: central, regional or local), to which the police are accountable in all states, perform a direct control over the police as the police are part of the executive power. The police receive their means from the budget, which is decided by the government (sometimes approved by the parliament). Furthermore, the police receive directives from the government as to the general priority of their activities and the Government also establishes detailed regulations for police action. It is important to emphasise that the police should be entrusted with operational independence from the executive in the carrying out their specific tasks (see also Article 15). *The judicial* powers (in this context comprising the prosecution and the courts) should constantly monitor the police in their functions as a component of the criminal justice system. The *judicial* powers (in this context the courts), also perform an *a posteriori* control of the police through civil and criminal proceedings initiated by other state bodies as well as by the public. It is of the utmost importance that these powers of the state are all involved in the control of the police in a balanced way.

8.3.4. What the standards do not say
The international standards focus on *a posteriori* accountability principles, in which the *a priori* aspect is implied but not given explicitly (the only exception is the European Code of Police Ethics). Amnesty International's recommendations too tend to focus on the *a posteriori* aspect of accountability. This approach is too narrow. A more holistic approach would be to explicitly include the *a priori* preventive aspects of accountability.

The standards do not specify any particular method or structure for ensuring accountability. It is up to each jurisdiction to develop regulations and operational procedures for carrying out police functions in a way that respects and protects human rights.

8.4. Four areas of police accountability
In Section 8.2. above, we stressed the importance of spreading accountability functions between more than one player in order to prevent any one party ultimately gaining control over the police and their actions. A system is required in which various players and stakeholders are kept in balance. In this Section we will discuss the various instruments and mechanisms available.

8.4.1. Internal accountability
Internal lines of accountability, including the internal police hierarchy, are of utmost importance in seeking to achieve respect for human rights. If police go unpunished for human rights abuses and their superiors don't care, why

should they? Internal accountability starts with good leadership: managers should monitor their teams and individual officers and carry out evaluations on a continuous basis. Police managers should know what their people are doing and express clear opinions on how police should operate (beforehand), and how an operation has been carried out (afterwards). Moreover they should cooperate with (external) oversight mechanisms.

Internal oversight primarily involves the chain of command responsibility – the continuous oversight process – which has both an *a priori* as well as an *a posteriori* element to it. To deal with police misconduct there are disciplinary (and/or criminal) procedures, complaints procedures (to process complaints from members of the public) and of course reporting procedures. We will discuss some of these elements in more detail.

8.4.1.a. Chain of command responsibility

Everyday discipline within the police relies on the chain of command. The chain of command refers to the internal hierarchy, necessary for achieving discipline and control. In all police agencies there is a chain of command running from the Chief of Police, through Department and Unit Heads to the newest recruit in the service. As police personnel at all levels are personally responsible and accountable for their individual acts and omissions[16], it should always be possible to identify who is responsible to whom and the superior responsible for the officer's actions must be clearly identifiable as well.[17] A clear chain of command, as well as effective supervision, is crucial to internal accountability, i.e. maintaining discipline and control and preventing impunity. Police are expected to obey orders from their superiors and are also expected to refrain from carrying out illegal orders.[18]

Supervisors (any officer who has responsibility for the supervision of others) are responsible for:

- *Supervision of individual officers*, for example: ensuring welfare; giving guidance and encouragement; ensuring that procedures are followed correctly; and carrying out regular performance assessments
- *Supervision of operations* by giving appropriate instructions before an operation and evaluating it afterwards and taking any necessary follow-up action
- *Reporting* on their own work and that of their subordinates - including on the correct use of discretionary powers - to their own superiors up the chain of command

The importance of management and leadership cannot be stressed enough. Their impact on police culture and the establishment of an ethos that respects human rights, as well the establishment of open communication, standard-setting and monitoring, is crucial.[19] Good chain-of-command management and supervision ensures job satisfaction, early identification of problems and improved effectiveness. They are key to the effective functioning of internal controls. Professional policing often goes together with extensive attention to leadership issues, thus recognising their role in upholding human rights values.

Reform of any kind is doomed to fail if there is no true commitment from police leadership from the top down that is clearly visible.[20] For this reason, the appointment process is crucial too: appointments must be credible and generate confidence in the disciplinary system.[21]

For the internal chain of command to be effective in upholding ethics and discipline, it must also have the inherent mandate to act upon misconduct when appropriate. Placing the mandate to decide on sanctions for misconduct outside the scope of police leadership – as is suggested in some recommendations as well as in some proposals for oversight instruments – removes the responsibility from police leadership, leaving them vulnerable to charges of impotence and providing them with an opportunity to avoid taking responsibility. On the other hand, granting this mandate to police leadership requires them to be truly committed to correcting misconduct and initiating sanctions to address it; otherwise it may indeed lead to police covering up their own misbehaviour. Police managers should receive information on complaints against police they are responsible for and the outcomes of investigations into these complaints. Disciplinary records should be taken into account when deciding on promotion or transfer.[22]

8.4.1.b. Reporting procedures

Police work, by definition, requires a fair amount of discretion for individual officers since most of the work is carried out without being observed by superiors and without the ability to ask superiors for orders. Hence, adequate reporting procedures are essential for ensuring accountability through supervision and chain-of-command control. The international standards rarely refer specifically to reporting procedures.[23] However, compliance with many of the provisions in international standards can only be ensured if reporting procedures are in place.

Most police agencies require officers to fill in reports after carrying out actions such as arrest and detention, searches or use of force and firearms. It is also common in professional policing to keep a daily record ('journal') of actions undertaken by police that didn't require the use of police powers (for example discussions with members of the community on how to tackle a certain problem). It is not always possible for superiors to ensure that these reports are accurate, but detailed report forms serve to 'walk' the officer through the procedures and constitute a record to hold the officer accountable for his or her decisions.

8.4.1.c. Mechanisms for receiving and dealing with complaints from members of the public

There should be a clear and well-publicised independent system to receive complaints from the public about the behaviour of police officers. In Section 8.4.4. below, we will discuss such independent complaints mechanisms in further detail. However, we note here that the fact that the public should also be able to file complaints directly at police stations is sometimes overlooked.

16) CAT, Article 2 (3): *"An order from a superior (...) may not be invoked as a justification of torture"*. Though not stated explicitly, personal liability is an implication of Principles 10- 11, and 24-26 of the Basic Principles; Article 5 of the UN Code of Conduct.
17) Basic Principles, Principle 24.
18) Article 39 of the European Code of Police Ethics.
19) European Code of Police Ethics, commentary to Article 20.

20) Bayley, D., 2001, *Democratizing the police abroad: What to do and how to do it.*
21) WOLA, *Themes and debates in public security reform. A manual for public society - Internal Controls and Disciplinary Units and External Controls.*
22) Ibid.
23) Exceptions include the Commentary c) to Article 3 of the UN Code of Conduct and Basic Principles 6 and 11(f) requiring that a report be made every time a firearm is discharged; and the Body of Principles require that details of interrogations be recorded (Principle 23).

Processes for receiving complaints should be clear and non-discriminatory and should not prevent complainants from filing complaints in any way, including:[24]

- It should be possible to file complaints both in person and over the phone
- It should be possible to file complaints at any police station (i.e. not just at head quarters)
- The concerned police officer should be required to accept all complaints (i.e. it should not be left to his or her discretion whether or not to accept the complaint)
- The complainant's security must be guaranteed; a complainant must not be threatened or intimidated not to file a complaint

Moreover, there should be mandatory record keeping and tracking systems for all complaints to prevent police officers from dismissing or covering up complaints.

'Early Warning Systems'

In some countries police have established so-called Early Warning Systems (EWS), or Early Intervention Systems, where records are kept of complaints against police officers (both number and type of complaints) in order to identify at-risk personnel who are the subject of numerous complaints. In some police departments in the USA for example these EWS generate automatic reports to the police chief when more than a set number of complaints are received. Even if complaints are groundless, the accumulation of a large number of complaints against a particular officer does tend to indicate there is a problem with his or her individual style of policing. Records typically also include the times a particular officer encounters violent resistance during arrest, the number of injuries in police-public contacts and the number of times an officer has used his or her firearm.[25]

A complaint can be the start of a disciplinary or criminal procedure. Note that not all complaints require a thorough investigation. In fact, sometimes a simple apology by the respective police officer suffices.

Filing complaints directly with the police obviously depends on public confidence in the police. Police agencies that are under-resourced, face high levels of crime and lack adequate leadership or training are usually reluctant to introduce effective complaints systems. It is therefore important to underline the benefits of these systems: complaints allow the police to improve their standards and the mere fact that people complain shows they trust the system. After all, if people don't trust the police they are not likely to have faith in the complaints system and wouldn't bother to file a complaint as a consequence. Indeed, the first result of implementing an effective complaints mechanism is often an increase in the number of complaints, rather than a decline.

Complaint or strategy?

Complaints are sometimes filed for reasons other than seeking justice. Criminal suspects may file complaints with the aim of slowing down a criminal investigation, or blocking it altogether; people being fined may file complaints as a means of avoiding payment of penalties; complaints may be filed because a person feels his or her request for police intervention has not been respected (for example a person filing a complaint because police have refused to help repair his or her flat tyre, which obviously is not a police officer's job). Interestingly, sometimes the police themselves apply the same tactics, filing a complaint against a particular member of the public to prevent him or her filing a complaint against the officer. Investigation of complaints can be a difficult undertaking with many different interests involved.

Malicious complaints make police reluctant to receive complaints and this further increases the distance between public and police. On the other hand, large numbers of malicious complaints do imply that public confidence could be improved. Malicious complaints are sometimes seen in countries that have gone through transition; from authoritarian policing to more responsive policing. They may indeed reflect the public's wish to test the system and seek maximum liberty at the cost of law enforcement.[26]

The European Code of Police Ethics recognizes that police often face malicious complaints and urges that police agencies provide support for police accused of misconduct including through the judicial system.[27]

8.4.1.d. Disciplinary procedures

Disciplinary proceedings, being administrative law, relate to the conduct of police as employees. Just as any employer in any organization has the right, and the duty, to act upon misconduct whenever it occurs (whether based on a complaint or not) so does the police manager. Misconduct can be minor, such as coming in late, not being dressed properly, smoking where this is prohibited etc, but it can also involve major offences including human rights violations. Generally speaking, the more minor offences will be dealt with under disciplinary procedures whereas the more serious offences (criminal offences) will be subject to criminal proceedings (see below).

Disciplinary procedures should ensure adequate impartiality but in many police systems this is not the case. In systems which do have some regard for impartiality the investigative procedures are carried out by officers from a different province or area or by a specialist unit, such as an ethics and discipline department (often called Bureau of Internal Affairs) – these are usually called upon for more serious offences, with minor infractions (e.g. rudeness, being late) left to the discretion of the officer's supervisor. Internal Affairs Units must be adequately staffed with appropriately trained investigators. The investigations should be carried out by an officer with equal or a superior rank to the officer under investigation.[28] Some systems permit

24) WOLA, *Themes and debates in public security reform. A manual for public society - Internal Controls and Disciplinary Units.*
25) Ibid. See also www.policeaccountability.org, a website containing best practices type information and resources on Civilian Review Boards, Citizen Oversight of Police, Racial Profiling etc. within the USA.

26) Uildriks, N. & P. van Reenen, 2003, *Policing post-communist societies. Police-public violence, democratic policing and human rights.*
27) The European Code of Police Ethics, art.34: "*Public authorities shall support police personnel who are subject to ill-founded accusations concerning their duties*".
28) WOLA, *Themes and debates in public security reform. A manual for public society - Internal controls and disciplinary units.*

a superior officer to appoint ad-hoc disciplinary panels, with or without an opportunity for the defendant to challenge the composition of the panel.

When is an offence serious enough for investigation?

"Distinctions between lesser and serious misconduct must be made with great care and examined to ensure that "lesser infractions" are not so broadly or vaguely defined that any offence but the most serious can be dealt with outside the formal disciplinary process. For example, if a police officer fails to investigate a case properly because of racial or political prejudice, there is a danger that this could be interpreted as poor performance instead of unlawful discrimination."[29]

In most systems, police facing disciplinary sanctions above a certain level are allowed to appoint someone to act in their defence: either a fellow officer or an independent lawyer. Police unions, where these exist, can provide defence counsel or fund professional legal advice. Systems that do not permit the accused to choose her or his defence counsel arguably violate the right to defence. The results of disciplinary procedures for infractions above a certain level are normally submitted to senior levels of management; for example the Commander in Chief may be required to make a final decision in cases where a disciplinary panel has recommended suspension or dismissal. There should be a possibility for appeal. Though the procedures for appeal may differ from country to country, it usually involves written submissions contesting the findings of the disciplinary hearing. The European Code of Police Ethics requires that disciplinary decisions be subject to review by an independent body or a court.[30]

Disciplinary procedures should be both thorough and fair, in order to protect the rights of the complainant or victim and the police officer. They should take place within a reasonable time period. It is true that there are many examples of failing disciplinary procedures where police management let human rights violations go unreported and unpunished. The opposite is true as well; disciplinary procedures are sometimes unfair towards the respective police officer, leading to disciplinary punishments for alleged acts for which there is little evidence. Indeed, police officers' rights are violated by many internal disciplinary systems. A lot of internal systems are institutional control mechanisms that senior officers use to punish insubordinate lower ranks. In some cases there are serious issues of denial of rights and punishments being imposed prior to any finding being made (suspension with no pay during an investigation that may last for months for example).

Policing the police

An important issue to consider is who carries out the investigations against a police officer. In most jurisdictions the police investigate crimes against their own agents. Criminal, or disciplinary, investigation requires specific

29) Ibid., p.4.
30) Article 33 of the European Code of Police Ethics: *"Disciplinary measures brought against police staff shall be subject to review by an independent body or court."*

competencies, as well as experience, typically held by police officers. Independent investigation bodies also often draw their expertise from former police officers. This fact doesn't have to make the investigations less effective, nor is it automatically a recipe for partiality, vengeance or impunity, but it does necessitate adequate checks and balances (i.e. authorisation of the investigation, prosecution and trial) to guarantee impartiality and objectivity.

8.4.1.e. Criminal procedures

Police officers are subject to the national law. Whenever there is information that an infraction may amount to a criminal offence, the alleged offence should be reported immediately to the appropriate investigation and prosecution authorities. Information about a police officer being involved in a crime may emerge

- during a disciplinary procedure
- during a criminal investigation into another matter
- from a report by a fellow officer or a complaint by a member of the public

If there is information that a criminal offence has been committed but the criminal investigation authorities find that there is not enough evidence to charge the suspected officer, he or she may still be subjected to disciplinary procedures.

Police accused of criminal acts should have the same rights of defence as any other citizen including the right to be presumed innocent, the right to be informed of the charges against them, to nominate defence witnesses and question prosecution witnesses, to be assisted by chosen legal counsel and to appeal against the verdict and sentence.

Witness protection

It may be necessary to develop an effective system of witness protection of those filing complaints against police or in any other way acting as witnesses.

In Brazil it is explicitly acknowledged that the police are in an ambiguous position when having to protect witnesses giving testimony against police. For this reason a witness protection program (called PROVITA) is run in every state by a local NGO (and overseen at a national level by a national NGO). They are funded jointly by state and federal funding. The scheme has been important in ensuring that police involved in human rights abuses - notably extrajudicial executions and organised crime - are brought to justice. Note that the project aims to protect the 'evidence' rather than the individual. Thus the relative of a victim killed by the police, who may be under threat because they are calling for justice, would not be given protection as they do not have any evidence to provide. The collaboration between state and civil society has been controversial with many NGOs.

8.4.1.f. Disciplinary or criminal procedures?

Misconduct involving criminal offences should be dealt with under criminal law (but may *also* lead to disciplinary sanctions such as dismissal); all other misconduct can be dealt with under disciplinary proceedings. When disciplinary investigations reveal information about criminal offences a criminal investigation must be initiated. In some jurisdictions, e.g. in the Netherlands, disciplinary investigations can take place alongside the criminal investigation, though in others a disciplinary investigation cannot take place pending a criminal investigation: when a disciplinary investigation leads to a criminal investigation the disciplinary procedure must be 'frozen' till the results of the criminal investigation are available. In any event, when the offence under investigation is found to constitute a criminal act, it should be handed over to the criminal court.

As indicated above, ensuring that disciplinary procedures are fair and thorough is essential. Disciplinary procedures are similar to (criminal) trial procedures but the rules of evidence are not as strict and there are lesser safeguards to protect the suspect's rights than there are under criminal proceedings. Under criminal law, liability for the offence must be proven beyond reasonable doubt, whereas under disciplinary procedures it suffices to meet the 'balance of probabilities': proving it probable that the offence happened and was carried out by the particular officer is sufficient to establish guilt. It is up to the officer to prove otherwise. Moreover, a complaint that has not been proven can still be registered in the officer's personnel file (though sometimes only for a limited period). Also, the accused officer has no right to remain silent – on the contrary, his or her supervisor may order a subordinate to speak and their pocket-book records are not their own private property for example. As such, the presumption of innocence can be less effective and officers may find themselves in a situation in which they incriminate themselves (this is also the reason why in some jurisdictions, disciplinary and criminal proceedings are not permitted to take place at the same time). On the other hand, the sanctions applicable in a disciplinary process – ranging from verbal warnings to dismissal – are not as serious as criminal sanctions (although some disciplinary systems do allow for administrative detention e.g. Angolan disciplinary regulations allow for up to 30 days' detention).

Some police agencies sometimes initiate proceedings by carrying out a so-called 'exploratory investigation' after hearing about police misconduct. This exploratory investigation, usually carried out with great confidentiality, is meant to gather information on whether an investigation is needed at all and if so, which form is most appropriate: criminal or disciplinary. In inquisitorial legal systems the police are required to inform the prosecutor if criminal proceedings are initiated, but may carry out disciplinary proceedings themselves; in accusatorial legal systems the police can carry out both types of investigations on their own (see Chapter 2 for a discussion on the differences between the accusatorial and inquisitorial system). Usually the disciplinary procedures dictate who takes the decision to pass the information to the criminal authorities. Often this is the person in charge of the disciplinary proceedings.

The advantage of conducting an exploratory investigation is that it can guide decision-making and prevent damage to a police officer found to be innocent. However, such damage control can obviously also be counterproductive in that it can lead to no investigation being initiated at all, resulting in effective impunity.
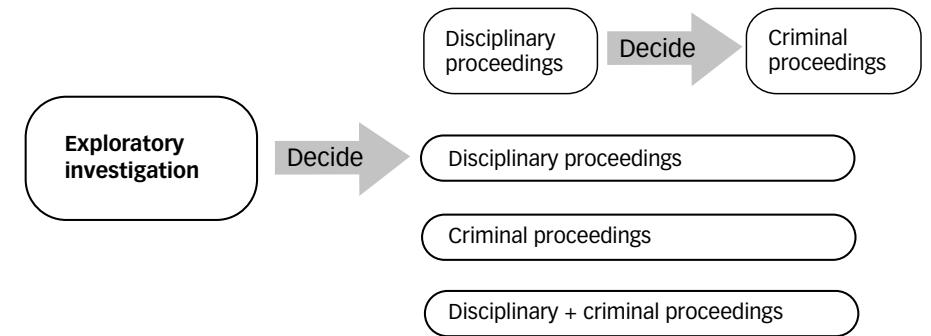
8.4.1.g. Whistle-blowing

Article 8 of the UN Code of Conduct states: *"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."* Its commentary states that 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." 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."

'Blowing the whistle' is a very difficult thing for most police officers to do. Police culture cherishes loyalty, sometimes at the cost of integrity towards the public (the 'blue wall of silence').[31] As misconduct tends to persist in situations of ineffective supervision and as such always involves ineffective leadership, supervisors (themselves part of police culture) often have personal interests in keeping malpractice hidden. This is especially problematic as policy usually requires the whistle-blower to first report illegal orders or practice through the chain of command, which is often where the problem originates, and only allow for whistle blowing when the internal lines of complaint have *proven* to be ineffective.

31) See for example Reenen, P. van, 1997, "Police integrity and police loyalty: The Stalker dilemma."

Measures are in place to prevent State officials from disclosing information of a confidential nature. This is recognized in Article 4 of the UN Code of Conduct, which states: *"Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise."* The commentary to this Article states: "(…) 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."

The dilemma is clear: internal systems can prevent whistle-blowing, and permit the continuation of abuses, by labelling information as confidential. It is for this reason that the UN Code of Conduct in its commentary allows for State officials, "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."

In order to avoid the persistence of a police code of silence, and its devastating effect on transparency and accountability, good leadership, an independent internal complaints system and appropriate measures to protect "whistle-blowers" are fundamental. The UN Code of Conduct states: "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" which implies a requirement to protect and respect the whistle blower.

Rotten apple or rotten orchard?[32]

What happens after internal investigations is not always clear. The officer under investigation may be punished, ranging from a verbal warning (under disciplinary procedures) to penal detention (under criminal law). In most cases abuses are treated as isolated incidents. Once this one incident is solved, once the rotten apple is removed, the problem is believed to be tackled. This is rarely a realistic assumption. In many situations the abuse takes place because the entire system of checks and balances, indeed the entire (internal) accountability system, was not functioning properly. The absence or inadequacy of operational and/or administrative procedures, negligent supervisors and a culture fostering 'brotherhood' principles rather than professionalism, often contributes to or causes the abuse. Indeed, those investigating abuses often encounter a whole range of system failures that have led to the persistence of abuses. It is therefore crucial that lessons are drawn from case-based investigations which can then contribute to reforming and strenghtening the system to prevent future abuses and end bad practice.

Note that "much human rights case work focuses on individual acts of abuse and seeks accountability in those cases against the oficers responsible. Human rights analyses also document systematic abuses against political and ethnic sectors, but often have little way in knowing which specific aspects of

32) Punch, M., 2003, "Rotten Orchards: `Pestilence`, Police Misconduct and System Failure."

police leadership, regulations, practice and culture are the most problematic contributors to abuse and therefore should be key foci in any reform effort."[33]

8.4.2. Accountability to the State
8.4.2.a. Executive
In most countries the national Chief of Police reports to the Minister of Home Affairs/Interior, who in turn reports to the Head of Government who in turn reports to the parliament. In decentralised systems a regional/local police commissioner is accountable to regional or local representatives of the State, such as a Mayor or Prefect, who in turn is accountable to a local council. It is not always clear who is responsible for the appointment and management of Chiefs of Police, for disciplinary procedures, for policy direction and for monitoring compliance with policies. In most countries however, such responsibilities lie within the competence of the relevant Ministry, with police responsible for implementation and reporting. As executive oversight should not interfere with operational independence it is crucial to have clear delineation of roles, responsibilities and relationships between police and ministries that are laid down in law.[34]

The executive usually sets policy guidelines, identifying goals and targets for the police (which usually require approval by parliament). An important function of the executive is to formulate (or authorise) **codes of conduct** and **codes of discipline** and **standard operational procedures** which operationalise law (the regulatory basis of accountability):

- *Codes of Conduct* usually include human rights principles - such as the prohibition of torture - and usually contain a provision that officers should not obey orders that are clearly illegal. Some Codes of Conduct are extremely specific while others are very general.

  Sometimes Codes of Conduct are classed as confidential, with the result that NGOs and the media may not be aware of how the police are supposed to behave nor whether these codes conform to international human rights standards. Human rights oriented policing requires States to disclose their rules and regulations governing police behaviour. Moreover, these Codes should be legally binding; either as part of the Police Act or in separate laws. Statutory Codes of Conduct may then be invoked in a civil or criminal case.

  Codes of Conduct, sometimes called **Codes of Ethics**, may include matters not directly relevant to human rights abuses, such as police dress, obedience to superiors, and rules concerning participation in political or trade union activities. These regulations are important for police themselves however, as they tend to restrict the rights of police officers. Those involved in advocacy and engagement with police should try to keep an eye on police officer's rights; it may ease tensions and can help to establish a mutual agenda.

33) WOLA, *Themes and debates in public security reform. A manual for public society - Internal controls and disciplinary units*.
34) CHRI, 2005, *Police accountability; too important to neglect, too urgent to delay.*

- *Standard Operational Procedures* (SOPs), also known as 'instructions', 'regulations', 'operational codes', or simply 'rules', are used in different countries to describe procedures for carrying out police functions, particularly in relation to arrest and use of force. Standard operational procedures are usually drafted by staff of relevant Ministries but may also be developed from the bottom up and be subsequently authorised by a Ministry – once proven effective in practice. SOPs should be based on national law, international human rights standards, national Codes of Conduct/Ethics and general concepts of police practice. For example, national laws may allow property searches to be made without a search warrant if there is a danger of evidence being lost through any delay. SOPs should provide precise guidance on the conditions under which such a search may be made and the required reporting procedures. SOPs are not usually in the form of law. However, they may be taken into account by a court as evidence of how police officers are expected to behave.

- *Disciplinary codes* usually establish:
  - Norms to which officers should comply; these tend to be rather abstract, such as behaving in a 'decent manner' and acting 'diligently';
  - Forms of reward for good work and behaviour and sanctions for infractions of the disciplinary code;
  - Procedures for reporting breaches of the disciplinary code or the law;
  - What officer may order a disciplinary procedure (this is usually the manager of the person suspected of a breach of discipline);
  - Various panels and investigative mechanisms that are established to hear complaints;
  - The rights of police facing disciplinary procedures, including the right to appeal.

Most countries also have a Police Inspectorate, typically within the Ministry of the Interior. For example in France, "on behalf of the Minister of the Interior, Internal Security and Local Rights and the Minister for Overseas Territories, the Inspector General of the Adminstration (IGA) exercises 'the highest level of supervision' over all personnel, departments, bodies or institutions reporting to both these ministries. It also conducts disciplinary investigations."[35] Another example is Her Majesty's Inspectorate of the Constabulary in the United Kingdom. Its Statement of Purpose states: "To promote the efficiency and effectiveness of policing in England, Wales and Northern Ireland through inspection of police organizations and functions to ensure agreed standards are achieved and maintained; good practice is spread; and performance is improved. Also to provide advice and support to the tripartite partners (Home Secretary, police authorities and forces) and play an important role in the development of future leaders."[36]

Police Inspectorates usually evaluate police performance and the effectiveness of strategies and (internal) policies, often on an annual basis. Some don't investigate individual cases but rather aim to identify patterns of police

activity. Those working within the inspectorates are often former police officers themselves as it is considered that they will understand police realities better. Though this is undoubtedly true, it is strongly recommended to have both police and civilian staff within inspectorates, as a means of facilitating transparency and accountability.

8.4.2.b. Judiciary: legal accounability

The legal framework of a police agency includes constitutional provisions, criminal codes and criminal procedure codes, as well as one or more statutes laying down the purpose, structure, competencies and responsibilities of the agency (usually called a Police Act). As was noted by the Commonwealth Human Rights Initiative in its 2005 report on Police Accountability, these Police Acts sometimes originate from long before 1948, when the UDHR was adopted. Reviewing whether such legislation is in accordance with current international human rights standards is recommended.[37] The legal framework also includes the ethical and disciplinary codes and other statutory instruments. The statutory framework that governs police operations, including ethical and disciplinary codes, should be accessible to the public, both in terms of availability and clarity.[38] Obviously a police officer is also bound by international law. For example the prohibition on torture is absolute, and a police officer is required to know about this. However, this absolute prohibition is meaningless in many countries if a police officer doesn't know there is such a thing as international law in the first place, let alone that he or she is bound by it. Police officers are typically not well acquainted with international law; they are guided by national law and it is the responsibility of national legislators to ensure national law conforms to international law.

Other legislation also governs police operations. Notably so-called security legislation (see also Chapter 2) that more often than not increases police powers and lowers the standards of human rights protection for those suspected of 'terrorism'.[39] Security legislation should be examined in relation to its ability to facilitate impunity and establish obstacles to prosecution or victim compensation and civil suits for police wrongdoing.[40]

Police, like other citizens, are accountable to the judicial authorities. Police must explicitly accept this judicial independence and comply with judicial orders. In all jurisdictions an independent and impartial judicial system is an essential prerequisite for ensuring fair trials but also for addressing police misconduct. In India for example, a number of significant judgments have been passed by the higher courts that prescribe safeguards or guidelines to regulate police conduct during arrest, interrogation and other stages of investigation (see Chapter 6).

The role of the judiciary is important not just when police are under investigation themselves, but also in directing and overseeing police investigations. If independent authorisation is required to employ particular investigative methods, police are obliged to comply accordingly. Police should also be transparent about how they have carried out an investigation so that

35) The text is taken from the website, which is also in English. See http://www. interieur.gouv.fr/.
36) The text is taken from the website. See: http:// inspectorates.homeoffice.gov. uk/hmic/.

37) CHRI, 2005, *Police accountability; too important to neglect, too urgent to delay*.
38) Article 4 of the European Code of Police Ethics states: *"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"* and 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."*
39) AI, 2002, *Rights at risk: Amnesty International's concerns regarding security legislation and law enforcement measures*.
40) CHRI, 2005, *Police accountability; too important to neglect, too urgent to delay*.

41) General Assembly Resolution 34/169 adopting the Code of Conduct, of 17 December 1979.
42) WOLA, *Themes and debates in public security reform. A manual for public society, External controls.*
43) See: http://www.parc. info/reports/.

their methods are open to judicial scrutiny and review. Finally, police are accountable to the prosecutor (or investigative judge) and sometimes (in the inquisitorial system) work under his or her authority.

8.4.2.c. Legislature: Parliamentary oversight of the police

Parliaments pass the legislation that defines police functions (see above). Communities, through their elected representatives, should ensure that the laws governing the police are *"well-conceived, popularly accepted and humane"*[41], that standards are upheld and that the government provides adequate resources for the police.

Parliamentary control in most countries would include the right of members of parliament to question members of the government, including those responsible for the police, and to obtain any necessary cooperation from public bodies that would assist them in their work. *Ad hoc* parliamentary committees are sometimes set up to investigate scandals or incidents relating to the police (see below). Some parliaments have human rights committees that consider issues relating to police behaviour. Countries with decentralised systems sometimes also have city councils, or provincial parliaments, with the same function.

A crucial parliamentary role is to review and approve the policing budget. This provides an annual opportunity to question the police on a range of issues. Unfortunately these are often rubber-stamping exercises exacerbated by the limited information provided by police and the lack of parliamentary expertise in reviewing and questioning what certain data means. Often the police are simply questioned on the crime rate, on the assumption that they are able to control it. Policy is often understood solely in terms of providing more money and legal powers and political grandstanding takes precedence over substance. This lack of expertise by parliamentarians is sometimes counterbalanced when there are public hearings or when they are willing to receive input from NGOs and independent experts.

In some countries police tend to resist parliamentary oversight: "The most common police response is to accuse parliamentary efforts to reform legislation or increase oversight of public security policies of being an unwarranted political interference."[42]

Independent inquiries

There are many examples of independent inquiries into police misconduct, sometimes initiated by parliament, government or local elected bodies. Examples include:
- The Mollen Commission investigated allegations of police corruption and the anti-corruption procedures of the New York City police department in the USA. Its report was submitted on July 7, 1994.[43]
- In the Netherlands a parliamentary inquiry was initiated in 1994 into the investigative methods of police in fighting organized crime. The

commission (the "van Traa Commission") submitted its report in 1996, concluding (a.o.) that police should be bound by clear and effective legislation and that their actions should be under strict judicial supervision.[44]
- The "Commission Dutroux", a parliamentary inquiry, was established in 1996 in Belgium following widespread criticism of the handling of criminal investigations into a series of kidnappings and murders. Two reports - the first providing the facts of the case and the second seeking to explain institutional failings and formulating recommendations for reform of the police structure and its accountability mechanisms - were published in 1998.[45]
- Sir William Macpherson inquired into the criminal investigation (or rather lack thereof) of the murder of a black teenager in London, UK in 1993. His report, published in 1999 (known as the "Macpherson Report"), spoke of institutional racism within the criminal justice system in the UK and made numerous recommendations to address this.[46]
- The "Patten Commission" in Northern Ireland (official titled the Independent Commission on Policing for Northern Ireland) was established with a broad mandate after the 1998 Belfast Peace Agreement to look at the role of the police. The Commission's 1999 report *A new beginning, Policing in Northern Ireland* is often cited in publications on police and human rights.[47]

8.4.3. Public accountability

As noted above, while the UN Code of Conduct requires that police are accountable to the people they serve, it is not specific about how that accountability is to be achieved. The resolution adopting the UN Code of Conduct states: *"Every law enforcement agency should (…) be held to the duty of disciplining itself in complete conformity with the standards and principles herein provided and that the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency."*[48]

44) See: http://www. burojansen.nl/traa/e.htm
45) See (also in French): http://www.dekamer.be/kvvcr/ pdf_sections/comm/dutroux/ 49K0713006.pdf
46) See: http://www.archive. official-documents.co.uk/ document/cm42/4262/sli-00.htm
47) See: http://www.belfast. org.uk/report/fullreport.pdf
48) General Assembly Resolution 34/169, adopting the UN Code of Conduct, 17 December 1979.
49) ACPHR, Resolution on police reform, accountability and civilian police oversight in Africa, adopted at its 40th Ordinary Session held in Banjul, The Gambia, from 15 - 29 November 2006.
50) Article 59, European Code of Police Ethics.

The African Commission on Human and Peoples Rights adopted a resolution in 2006 urging State Parties to the African Charter to "establish independent civilian policing oversight mechanism where they do not exist which shall include civilian participation." [49]

The European Code of Police Ethics states that the police should be *"subject to efficient external control".*[50] Public accountability, both *a priori* and *a posteriori*, entails police agencies to be accountable to the community they serve, either directly or through representation. NGOs and the media can promote transparency and observance of the law and standards, but police are not accountable to them.

8.4.3.a. Community responsiveness

Enhancing some form of public accountability of the police is often linked to community policing, as discussed extensively in Chapter 3 of this Resource Book. Community policing is a policing philosophy that seeks to increase the police's sensitivity to the needs of the public and often results from a recognition that police lack public consent. It entails a form of policing that goes beyond reactive policing and involves working with the community to solve public security problems. It seeks to increase public access to the police as well as encourage more responsive policing. This, it is argued, will increase public confidence in the police and encourage members of the public to cooperate with the police. When these systems work well they contribute to police efficiency and also to police accountability. Communities, directly or through representation, should be able to oversee policing in some form. Such public oversight is an important accountability tool.

Police are directly accountable to the people they serve. People approach the police with issues of concern, complain to police officers about what they perceive to be miscarriages of justice, and provide feedback on overall, and specific, police performance. Obviously, these random public-police contacts take place only when the public has trust in the police agency as a whole, and regards the maintenance of security as a joint effort for which everyone bears responsibility. This kind of accountability is sometimes referred to as 'informal accountability', a concept we recommend avoiding as it may imply it is of lesser importance or value than the 'formal' types. It should be clear that direct public-police contacts are crucial for a well-functioning police agency and are a prime parameter for measuring public confidence.

Enhancing public accountability: the Police Station Visitors Week

In November 2006 Altus, a global alliance of six NGOs working across continents, organized the first Police Station Visitors Week. Members of the public visited their local police station to assess the quality of the services available. In total over 1500 people visited more than 450 police stations in 23 countries worldwide (including Belgium, Benin, Brazil, Canada, Chile, Germany, Ghana, Hungary, India, Latvia, Liberia, Malaysia, Mexico, the Netherlands, Niger, Nigeria, Peru, Russia, South Africa, South Korea, Sri Lanka, United Kingdom and the United States):
- Giving members of the public opportunity to observe their police stations and become better acquainted with the police
- Giving the police the opportunity to benefit from the visits as to further improve their service
- And giving the police the opportunity to gain insight in 'good practices' and how their station compares with others in the region and around the world

For this Police Station Visitors Week small teams of visitors (3-8 people), with one team leader, were put together, carrying out brief, planned visits (around

1 hour). After the visit each team was asked to share impressions and fill out a form, which was subsequently uploaded and processed via the internet through a specially designed website. The form contained of 20 universal questions to facilitate the evaluation process, categorized on 5 themes; community orientation; physical conditions; equal treatment of the public without bias based on age, gender, ethnicity, nationality, minority status of sexual orientation; transparency & accountability; and detention conditions. In 2007 Altus organized the Police Station Visitors Week again, this time with some 3,500 visitors visiting over 800 police stations. For further information visit: www.altus.org.

8.4.3.b. The media, NGOs and academics

In some countries one of the most vigilant police watchdogs is the media.[51] Especially in countries where the media enjoy a wide measure of freedom, it can have enormous reach and power. Any violation of human rights, occurring anywhere in the country, can be known to the rest of the country in no time, if the media takes up the story. Moreover, some media, especially modern electronic media, sometimes use sting operations, catching police officers accepting bribes or indulging in other misconduct. However, the reverse happens too: the media's coverage is sometimes inadequate and selective and guided by motives of profit. In addition, bias and a lack of sensitive appreciation of the issues involved have affected the quality of media coverage, the selection of subjects and contents. The effect of the media can be twofold. The media *can* make an important contribution to accountability, but this requires a free, professional media with journalists who are well informed about police ethics and functions. Only then are media reports on human rights violations by police an important source of information for internal or independent complaints authorities as well as for NGOs. The UN Code of Conduct considers that the media may be regarded as performing complaint review functions (see also Section 8.4.1.g.).

NGOs addressing human rights violations by police can also make an important contribution to accountability. In Chapter 10 we will explicitly discuss opportunities for human rights NGOs to influence police conduct. However, the relationship between police, the media and human rights groups is a complicated one (see Chapters 1 and 10). In situations of rising crime levels for example, which are often heavily reported by the (local) media, the public tends to take the side of politicians and the media who advocate tough-on-crime policies, some of which lower human rights standards. The resulting polarisation between human rights on the one hand and security on the other may complicate demands for human rights oriented policing.[52] It should be stressed once more that responsive policing, enhanced through public accountability mechanisms, does not mean the police simply does whatever the public wants them to do.

51) Based on personal communication with Mr. G.P Joshi, CHRI, Police Program Coordinator, India.
52) Cavallaro, J.L., 2003, *Crime, public order and human rights*.

In some countries, such as the USA and UK, a lot of research is carried out by academics into policing practices as well as public confidence in the methods and philosophies used. The provision of access to information on policing to academics who are carrying out research into policing is itself an important measure of the police's transparency.

Police sometimes invest heavily in establishing public relations offices. Police public relations offices can contribute to accountability. In addition to responding to media enquiries, some provide regular reports on crime trends as well as advice about crime prevention. Some police agencies have a more transparent attitude to their internal disciplinary procedures and are willing to disclose information about internal investigations and their results. This demonstrates their commitment to opposing unethical behaviour. Moreover, human rights groups or the media can challenge police claims. Unfortunately the opposite behaviour is also seen: public relations offices that are primarily concerned with avoiding disclosure of any kind and keeping the public, including NGOs, away.

8.4.4. Independent external accountability mechanisms

In Section 8.4.1.c. we referred to the fact that members of the public should be able to file complaints directly with the police. In addition to this there should be independent mechanisms established where the public can file complaints and which investigate and monitor police actions. Such independent mechanisms are obviously necessary when there is a lack of public confidence in the police, but even when such confidence is present, independent mechanisms are essential to ensuring scrutiny of the police (and the broader executive powers). The principles for filing complaints directly with the police as discussed in Section 8.4.1.c. equally apply to independent complaints bodies.

Independent accountability mechanisms may be divided into those that look at the broad picture, including overall police policy and strategy, and those that examine individual complaints. Independent mechanisms include statutory bodies such as a national human rights commission. These usually look into misconduct by any State official, police just being one of them but may also be police specific, i.e. only receive complaints about the police. Independent mechanisms seek to serve as a voice for the public, ensuring police responsiveness and taking on responsibility for their activities. All these bodies, though funded by the executive and authorised by law, are to establish a position that is independent and impartial. The bodies need adequate powers to investigate complaints and to ensure that appropriate remedial action is taken. They also require sufficient resources and staff of a high reputation, both in skills and expertise.

8.4.4.a. National Human Rights Institutions (NHRIs)

National human rights institutions, including institutions such as **ombudspersons** for the defense of human rights, can be distinguished from non-governmental human rights organizations by their very establishment as

a quasi-governmental agency occupying a unique place between the judicial and executive functions of the state, and where these exist, the elected representatives of the people. The aim of their establishment is to promote and protect human rights, through effective investigation of broad human rights concerns and individuals' complaints about human rights violations they have suffered, and through making recommendations accordingly. However, the establishment of a NHRIs should not be seen as an end in itself - NHRIs should be judged on their results in effecting improvement in the human rights situation in the country, and in ensuring investigations and remedies in individual cases.

The so-called *'Paris Principles'* lay down the principles that guide the status and functioning of NHRIs, stating that their mandate should be "as broad as possible."[53] These NHRIs typically deal with misconduct of all State officials and as such are much broader than just the police. According to the Paris Principles, the responsibilities of an NHRI should include submitting, upon request or own initiative, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights; relating to any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights; any situation of violation of human rights which it decides to take up; the preparation of reports on the national situation with regard to human rights in general, and on more specific matters; drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the government. The composition of the NHRI should reflect the plural society and guarantee independence. They should freely consider any questions falling within their competence, hear any person, obtain any information necessary to make an assessment and publish their opinions and recommendations.

A national human rights institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. NHRIs may seek to settle the conflict through conciliation or may refer and/or advise the complainant about the next steps to take. Moreover, they may make recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations or administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

As an illustrative example, the El Salvadorian Human Rights Ombudsman Office has field offices throughout the country where people can file complaints. They can determine the accessibility of the complaint, conduct investigations and issue findings. They have the right to have access to all necessary

53) Adopted by the General Assembly Resolution 48/134, 20 December 1993.

documentation from the authorities accused and if they refuse to provide the requested information, their refusal permits the Ombudsman to presume that the allegations are true. For each case the Ombudsman may formulate recommendations as to how to prevent the abuse happening again.[54]

National human rights institutions forum
This is an international forum for researchers and practitioners in the field of national human rights institutions. At their website, http://www.nhri.net, you will find:
- Key global and regional documents
- Documentation on the work of global and regional fora
- Information on and from national human rights institutions
- Bibliography and research materials
- Capacity building and training resources

In 2001 Amnesty International published recommendations on national human rights institutions, based on the Paris Principles.[55] We recommend that readers of this Resource Book refer to this report.

Amnesty International's recommendations on National Human Rights Institutions (NHRIs)[56]
NHRIs frequently have a broad remit and scarce resources. It is therefore important to assess priorities through consultation with those affected, and work on priorities strategically, ensuring that those goals are met before ending work on the issue. Priorities should include those grave human rights violations under international law, such as extrajudicial and other unlawful killings, torture, ''disappearance'', war crimes and crimes against humanity. However, NHRIs should also be empowered to take action on violations of other rights particularly social, cultural and economic rights. As such, NHRIs are to take international law, rather than national law, as reference for their work.

Investigations should focus both on individual cases and on wider patterns, aiming to discover root causes and persistent problems. Findings should be open to public scrutiny. In carrying out investigations NHRIs should pursue all available sources of information. These may include statements from victims, witnesses and alleged perpetrators; medical reports; police investigation files; court files; media reports; information from NGOs, families of victims and lawyers. This is particularly important as investigations that, for example, simply constitute an examination of an existing police investigations file, may lead to a repetition of failures in investigation and in such cases, this may promote or contribute to impunity. NHRIs should have access and be allowed to make use of additional (forensic) expertise. NHRIs should have full and effective access to mechanisms to ensure that witnesses, complainants, or others providing evidence to the NHRI are given appropriate protection. Investigations may be initiated at own initiative or upon complaints from members of the public. The

fact that a complainant has been charged and a criminal prosecution is under way should not be a pretext for stopping NHRIs from acting on a complaint, or taking any other action within their mandate to address human rights concerns.

A clear line should be drawn between appropriate roles for the NHRI and the judiciary. The NHRI should be able to investigate, but should not have judicial powers. The result of the NHRI's investigations should be referred to appropriate judicial bodies without delay so that they can take appropriate action. Where the NHRI finds evidence that the police have made an inconclusive or otherwise unsatisfactory investigation (failed to protect human rights), or that certain individuals may have been responsible for committing human rights violations or for ordering, encouraging or permitting them (failed to respect human rights), the facts of the case should be investigated promptly, effectively, thoroughly and impartially by authorities empowered to bring criminal prosecutions, and if appropriate, those responsible should be brought to justice in legal proceedings which respect internationally-recognized rights to a fair trial. NHRIs should have powers to recommend that superior officers are brought to justice for acts committed under their authority and should be mandated to closely follow subsequent legal proceedings in the case, by monitoring trials, or if necessary appearing before the court to make legal submissions to press for appropriate legal action to be taken within a reasonable time. If the NHRI, in the course of its work, is able to identify short-comings in the law whereby it is not possible to hold such officers accountable, the NHRI should make recommendations for legal reform that would ensure that domestic law does not facilitate impunity.

Although it is important to maintain independence of function between the judiciary and the NHRI, the NHRI should monitor whether its recommendations are followed up. NHRIs should not stand by in silence where recommendations to investigate and bring prosecutions are ignored. In such cases, the NHRI should continue to request that the authorities take up the case, if necessary through domestic and international publicity, or where possible, to bring judicial review action challenging the decision of the prosecuting authorities. NHRIs should not be complicit with impunity. The government should undertake an obligation to respond, within a reasonable time, to the case- specific as well as the more general findings, conclusions and recommendations made by the NHRI. The government's response should be made public.

8.4.4.b. Police specific oversight bodies
The Guidelines for the effective implementation of the UN Code of Conduct for Law Enforcement Officials have a heading 'Complaints by members of the public', stating: *"Particular provisions shall be made, within the mechanisms mentioned under [internal discipline and external control mechanisms], for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of these provisions shall be made known to the public."*[57] Indeed, many countries have specific independent police complaints bodies that operate alongside a NHRI as well

54) WOLA, *Themes and debates in public security reform. A manual for public society, External controls.* This issue of the *Themes and debates* evaluates review mechanisms in use in El Salvador, Brazil and Colombia.
55) AI, 2001, *Amnesty International's recommendations on national human rights institutions.*
56) This text is based on AI, 2001, *AI's recommendations on NHRIs.*

57) Resolution 1989/61 adopted by the Economic and Social Council, 24 May 1989 and endorsed by the General Assembly in its Resolution 44/162 of 16 December 1989.

as the possibility of filing complaints directly with the police. Systems in use in different countries include telephone lines that may be used at little or no cost and letter boxes at police stations. Some systems have offices where people can go to register their complaints in person. In any event, the complainant should not *have to* make the complaint at the police station where the alleged offender is stationed; there should always be a possibility of filing the complaint somewhere else. Nor should there be any fee attached to making a complaint. In Sudan for example, a complaint has to be submitted through a lawyer and there are fees for registering a complaint.

In general the principles as discussed under the previous Section equally apply to specific police complaints bodies. For any system to be effective it is important that:

• The procedures of the complaints office are widely publicised;
• The complaints procedures are easily accessible;
• The complainant does not feel threatened;
• The complainant is informed of what to expect and how to keep track of the complaint (this can include the complainant being given a reference number and the name of the officer dealing with the complaint);
• The complainant has access to witness protection if required;
• The system includes opportunities to settle disputes between police and members of the public in an informal way (often a dispute can be settled by a simple apology);
• Members of the public trust the system.

Trust can be encouraged through the publication of reports giving statistics and information about action taken against police officers who violate human rights (while protecting the identity of victims). Another method is to provide a measure of independent oversight, for example by giving one or more respected public individuals access to the files and powers to question any aspect of the way the complaint is handled and to bring problems to the attention of the Chief of Police.

Two often cited examples: the UK and South Africa
Independent complaints mechanisms as established in the UK and in South Africa are often referred to in reports on police accountability. The following information is taken from their own respective websites.

The Independent Police Complaints Commission (IPCC) of the UK, established in 2004, is a Non-Departmental Public Body, funded by the Home Office, but by law entirely independent of the police, interest groups and political parties and whose decisions on cases are free from government involvement.[58] The IPCC oversees the whole of the police complaints system. It can choose to manage or supervise the police investigation into a case and independently investigate the most serious cases. A member of the public can make a complaint if he or she:

• Has been the victim of the misconduct by a person serving with the police. Misconduct could include a police officer or member of police staff being rude or using excessive force. It could also include unlawful arrest or an abuse of someone's rights.
• Was present when the alleged misconduct took place, or close enough to see or hear the misconduct, and as a result suffered loss, damage, distress or inconvenience, or was put in danger or at risk.
• Is a friend or relative of the victim of the alleged misconduct, distressed by the effects of the incident on the victim.
• Has witnessed the alleged misconduct.
• Is acting on behalf of any of the above.

As the IPCC has only recently been established it is too early to comment on its effectiveness.

The South African Independent Complaints Directorate (ICD) is a government department that was established in April 1997 to investigate complaints of brutality, criminality and misconduct against members of the South African Police Service (SAPS), and the Municipal Police Service.[59] It operates independently from the SAPS in the effective and efficient investigation of alleged misconduct and criminality by SAPS members. Its mission is to promote proper police conduct. The ICD investigates the following:

• Deaths of persons in police custody or as a result of police action (such as shooting, assault).
• The involvement of SAPS members in criminal activities such as assault, theft, corruption, robbery, rape and any other criminal offences.
• Police conduct or behaviour that is prohibited in terms of the SAPS Standing Orders or Police Regulations, such as neglect of duties or failure to comply with the police Code of Conduct.
• Dissatisfaction/ complaints about poor service given by the police
• Failure to assist or protect victims of domestic violence as required by the Domestic Violence Act.
• Misconduct or offences committed by members of the Municipal Police Services.

Amnesty International has formulated comments regarding the ICD. Though there are certainly positive elements, important weaknesses have undermined its effectiveness and independence. These weaknesses have to do with the position of the ICD under the Ministry of Safety and Security rather than reporting directly to parliament; its limited resources; and the police not being obliged to report torture cases to the ICD.[60] In 2006 there has been an independent review into the ICD. The report states that the ICD has been struggling with budget constraints and management problems, and has failed to meet the demands of its caseload. It suggests the need for prioritisation. Moreover, lack of cooperation from the SAPS is identified. As the report states in its summary: "Co-operation by the police with ICD investigations and issues of compliance by the police with ICD recommendations regarding disciplinary action or remedial measures is problematic. The situation is compounded by

58) For more information see www.ipcc.gov.uk.

59) For more information see www.icd.gov.za.
60) AI, 2002, *Policing to protect human rights: A survey of police practices in countries of the Southern African Development Community, 1997-2002*, p. 60-61.

the lack of sanctions for non-compliance by the police and the weakness of existing measures of recourse available to the ICD in the even of lack of co-operation."[61]

Note that some countries have independent police oversight bodies that are not involved in handling complaints. An example is Northern Ireland, where – following the Patten Commission – it was decided to establish the Northern Ireland Policing Board. This Board does not look into complaints; for this there is a separate Police Ombudsman for Northern Ireland. However, the Policing Board does have a wide mandate covering general oversight. Indeed some argue that the Northern Irish police is the most closely observed police service in the world today. As stated on their website, the Policing Board exists "to make sure the police in Northern Ireland are effective and efficient." They can hold the Chief Constable to account for his actions and those of his staff, set objectives and targets for police performance (in consultation with the Chief Constable) and monitor progress against these, as well as monitoring trends and patterns in crimes committed in Northern Ireland and making arrangements to facilitate public cooperation in crime prevention. They monitor whether systems – including internal disciplinary procedures - function appropriately, and monitor operational compliance with the Human Rights Act and the Code of Ethics. They also appoint Independent Custody Visitors and manage the Independent Custody Visiting Scheme. In addition they have a range of powers in the field of recruitment, selection and training. [62]

Creating an International Network for the Independent Oversight of Policing (INIOP)

INIOP is a new international network being setup for organizations involved in the independent oversight of policing. As is stated in the leaflet introducing the network: "The independent oversight of the policing is a highly specialised activity. Where bodies have been set up to carry it out there are few if any similar organisations within their own jurisdiction with which they can discuss the challenges they face. In order to remain independent these bodies must maintain an arms length relationship with government, the agencies they oversee, and other interested groups and individuals affected by their work. Because their work can be controversial they may also face political pressures which threaten to compromise their independence."[63]

Bearing this in mind INIOP's aims are twofold:
• To champion the principle of effective, independent oversight of policing
• To create opportunities for existing oversight organisations to share knowledge and learning

Work on developing draft membership criteria and a constitution for the network continues. The official launch of the network is planned for late 2008. For more information visit www.iniop.org.

61) Mistry, D. and M. Lue-Dugmore, 2006, *An overview of the independent complaints directorate (ICD) in the light of proposals to restructure the directorate*, p.5.
62) For more information on the Northern Ireland Policing Board please visit www. nipolicingboard.org. uk. For more information on the Police Ombudsman for Northern Ireland please visit www.policeombudsman.org.
63) "Together we can make it work", Version 2, November 2006. Download from INIOP's website: "Introduction to the development of the network".

8.4.4.c. Other forms of independent oversight
Some police agencies are inspected by independent auditors who monitor aspects of policing with the objective of improving policy and general performance (not individual performance). Auditors interview representatives of target groups such as detainees, street children and police officers, all of whom give information on the basis of strict confidentiality.

Other systems of public accountability include "lay cell visitors schemes" through which a group of civilians or an NGO has access without prior warning to police cells to ensure that detainees are properly treated. Usually these schemes are composed of ordinary civilians having expertise in particular issues such as medics, construction and social care. Obviously for them to be effective there has to be an obligation on the receiving police officer to grant immediate access – something that is not always easily obtained. Chapter 6 discusses oversight in relation to detention more in-depth.

8.5. Police accountability: an integral picture
In this Chapter we have aimed to give an overview of the various mechanisms involved in police accountability. We have argued that for accountability to be effective, a system is needed involving multiple actors keeping each other in check. We have chosen a categorisation in order to make this complex topic accessible and comprehensible. This categorisation is partly arbitrary – there are other ways to visualise the variety of players involved – but it follows a categorisation with which many human rights advocates will hopefully be familiar.

In the table presented on page 222 and 223 we have summarised the various aspects of police accountability as discussed in the previous Sections of this Chapter.

The four columns follow the four areas of accountability as discussed in Section 8.4.:
1.   Internal accountability
2.   Accountability to the State (executive, legal and legislative)
3.   Accountability to the public
4.   Independent external oversight

Within each column we have put the institutions working in the four respective domains in **bold**. These institutions include:
Ad. 1.   The police agency itself
Ad. 2.   The ministries responsible for policing; the law and the judiciary, but also prosecution; legislative bodies, such as the parliament and city councils
Ad. 3.   Members of the public; the media; NGOs and academics
Ad. 4.   Independent external accountability bodies, such as NHRIs.

Under these institutions we have listed the separate organs within it, underlined. Under these institutions and organs we have, in *italics,* divided the *a priori* and *a posteriori* elements of their responsibilities in relation to police operations. Where relevant we have also formulated what institutions do while operations are ongoing ('ongoing') such as for example supervising police actions.

Example:
Under Accountability to the State, we have put accountability to the Executive. Hereunder we have put, in bold, the **Ministry of Interior**, under which we have placed the Police Policy Making Directorate and the Inspectorate. In italics we have described their activities; what is it these institutions do and how it relates to accountability. So, within the Executive we have the Ministry of Interior *setting strategic objectives for the police* and *deciding on resource allocation.* Both these activities take place before police operations occur and are therefore *a priori* activities. The Ministry also has a continuous oversight function *(monitoring)* taking place during operations and its Inspectorate can *inspect policies and administration.* Finally, the Ministry can *assess, take corrective action, make budgetary changes, change regulations and propose legislative changes* following police operations *(a posteriori).*

We have similarly described all institutions playing a role in police accountability. For a proper understanding of policing, both as a function and as an activity of individual officers, it should be realised this takes place within this large and intricate framework involving many different players and many different interests. In other words, police conduct, or police outcome, can seldomly be assessed in isolation – a full analysis of all these other institutions and how they carry out their tasks is essential for being able to adequately identify who is (co-)responsible and where corrective measures may have maximum effect.

In sum: The table helps human rights advocates identify what the framework is in which police operate, whether it indeed is "a balanced system of multiple actors", and whether these are engaged in *a priori*, *ongoing* and/or *a posteriori* functions of oversight. It should help identify where the weaknesses are if the system is not properly balanced (i.e. who has most power over the police). After having 'filled out' the table for the target country (i.e. checked whether the institutions as described are in place – for example: is there a NHRI?) it can be used to make a qualitative assessment of how these institutions and players are functioning. For this qualitative assessment the information presented in this Chapter provides the relevant background information.

8.6. Summary
Police misconduct, from minor offences to gross human rights violations, should never go unpunished. Police accountability can only ever be

effective if there is clear political will and government commitment. Establishing effective accountability mechanisms is crucial. However, for such mechanisms to be effective, and in order to prevent the locus of power simply being replaced to another institution, a structure is needed that encompasses a range of accountability mechanisms and that reflects a number of values: public responsiveness; compliance with policies, regulations and laws; respect for the judiciary; transparency with regard to media, academics and NGOs; and an open and cooperative attitude towards independent oversight bodies. What's more, all this needs to be supported, in theory and in practice, by police management. Effective lines of command, and leadership that are dedicated to establishing an ethos of respect for human rights, is an essential prerequisite for upholding human rights standards. In addition, an assessment is needed of police directives and regulations as these were given beforehand as well as after the event: accountability should encompass both *a priori* and *a posteriori* elements.

1. Internal accountability	2. Accountability to the State			3. Public accountability	4. Independent external accountability
	EXECUTIVE	LEGAL	LEGISLATIVE		

1. Internal accountability

Police agency

<u>Management (chain of command)</u>

A priori:
- *Make suggestions for regulations and resources*
- *Set operational objectives/ plan operations*
- *Ensure disciplinary foundation within police with system for reporting problems up chain of command*

Ongoing:
- *Ensure operational independence in exercising police powers*
- *Interpret and execute government policy*
- *Supervise chain of command*
- *Monitor operational performance and individual behaviour*

A posteriori:
- *Evaluate police performance*
- *Implement reforms that address human rights violations as well as corrective action in individual cases*
- *Ensure corrective action within disciplinary (or penal) regulations*

<u>Internal investigative body</u>

A posteriori:
- *Investigate complaints against police internally and make recommendations for corrective action*

<u>Internal Police Complaints Department</u>

A posteriori:
- *First port of call for number of complainants. Deal with minor complaints against police and refer complaints to other bodies*

<u>Police public relations department</u>

A posteriori
- *Discloses information on police performance and specific police actions as well as on incidents*

2. Accountability to the State

EXECUTIVE

Relevant Ministry (Interior / Justice / Home)

Can include <u>Police Policy Making Directorate</u> or <u>Inspectorate.</u> In some countries police are (also) accountable to a <u>Mayor or Prefect</u>.

A priori:
- *Set strategic objectives for police*
- *Allocate resources*
- *Formulate Code of Conduct, SOPs, disciplinary codes*

Ongoing:
- *Monitor police performance*
- *Oversee police policy and administration*

A posteriori
- *Assess overall police performance*
- *Initiate necessary legal or administrative reform and/or budgetary changes*
- *Take corrective action*

Prosecution

Ongoing:
- *Independent oversight over police operations requiring significant powers (incl. arrest, detention, certain investigative methods, certain means of force)*

LEGAL

Law

A priori:
- *Set legal framework and guidelines within which police are to operate (most notably Police Act, Criminal Code, Criminal Procedures Code; security legislation)*

A posteriori:
- *Civil and criminal proceedings initiated by other state bodies and public*

Judiciary

A priori:
- *Require police to abide by judicial rulings relevant to police operations*

Ongoing:
- *Independent oversight over police operations requiring significant powers (incl. arrest, detention, certain investigative methods, certain means of force)*

A posteriori:
- *Undertake judicial inquiries*
- *Assess compliance with laws and regulations during criminal, civil and administrative proceedings*

International legal obligations

A priori:
- *Ensure compliance of laws and regulations with international legal obligations*

LEGISLATIVE

Legislative/representative bodies

<u>National Parliament, Provincial,/Local council</u>

A priori:
- *Pass legislation*
- *Set objectives for police*
- *Approve resources*

Ongoing:
- *Monitor police performance*
- *Question relevant members of government, responsible for the police*

A posteriori:
- *Assess police performance*
- *Make recommendations (budgetary, legislative changes)*

<u>Relevant parliamentary/council committees</u>

Ongoing:
- *Monitor police performance*

A posteriori:
- *Assess police performance*
- *Make recommendations (budgetary, legislative changes)*

3. Public accountability

NGOs, Members of the public

A priori:
- *Formulate demands from police*

Ongoing:
- *Direct dialogue with police on issues of concern*
- *Monitor police performance*

A posteriori:
- *Document human rights violations*
- *Pursue complaints against police*

The media

A priori:
- *Reflect and present demands and expectations of police*

Ongoing:
- *Monitor police performance*

A posteriori
- *Report on police performance including human rights violations*

Academics

A posteriori
- *Report on/evaluate police performance*

4. Independent external accountability

Statutory independent oversight bodies

<u>NHRIs</u> (incl. Ombudsman), <u>independent police complaints mechanisms</u>, <u>independent auditors</u> etc.

Ongoing:
- *Monitor/review police actions and policies*

A posteriori
- *Investigate cases and patterns of human rights violations*
- *Recommend remedies*

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 (…)

Preamble, Universal Declaration on Human Rights

9. Recruitment, Selection and Training

9.1. Introduction

Many would argue that human rights compliant policing starts with the selection of the right people to become police officers and the exclusion of those who fail to uphold human rights values and attitudes. Decisions about who becomes a police officer and who doesn't are based on recruitment and selection criteria. Selection and training are two sides of the same coin, the aim of which is to ensure police agencies are staffed by people able and willing to respect and protect human rights. Some attributes are difficult to instill if they are not already instilled in a person – others can easily be taught. As such the challenge for selection bodies is to recognize the distinction. Training is designed to ensure that those professional skills and knowledge that are not yet present are acquired and to further shape future behaviour.

Recruitment, selection and training are often seen as important tools to improve respect for human rights in its broadest sense.[1] However, in practice these tools are often underdeveloped, or even completely absent, due to various reasons but most importantly due to either a lack of resources or a lack of understanding of their importance. Indeed, some countries have no developed recruitment and selection processes, and training is cut to an absolute minimum. Illiterate police officers are still no exception.

Even where these tools are adequately developed, their impact is often still minor. Police practice tends to be resistant to change and regards innovations (which tend to go along with training) with some unease. Moreover, many human rights violations are not caused by inadequate recruitment, selection and training per se but by inadequate policies and procedures guiding these. In other words, the problem is usually not with too little training, but with not knowing *what* to train, which is an issue that cannot be solved by police academies but rather by police authorities.

In Section 9.2. we will start by exploring what the UN standards say about recruitment, selection and training. After that we will discuss recruitment and selection in Section 9.3. and training in Section 9.4. respectively. We will describe how these tools are used in practice, and what the general principles are for their implementation as an aid to improving compliance with human rights standards. In Section 9.5. we take a critical look at what the effects are in practice of recruitment, selection and training. We will close with a brief summary in Section 9.6. Note that both Amnesty International membership chapters, as well as local NGOs, often focus their police engagement efforts on human rights training programs. This issue will be discussed separately in Chapter 10 as the current Chapter deals with basic training carried out by the police themselves.

1) See for example: O'Rawe, M. & L. Moore, 1997, *Human rights on duty;* WOLA, *Themes and debates in public security reform. A manual for public society - Training.*

English terminology:

The terms 'recruitment' and 'selection' are often used together, and sometimes even as synonyms – which they are not. Recruitment is the process of encouraging members of the public to apply to work with the police, aiming to establish a representative pool from which future police candidates can be selected. This next step – selection – should be transparent and fair. Selection criteria should aim to achieve a representative police agency of high integrity, in which officers meet set criteria.

To some, 'police training' refers to basic professional training (learning police skills); to others it may refer to any educational activity carried out by the police. 'Education' is sometimes used as opposed to 'training', the first referring to theory and the second to practical skills. Similarly 'teacher' and 'trainer' are used. However, nowadays the concept of 'trainer' is increasingly used to cover every sort of educational activity, be it theoretical or skills related. We will therefore only use the word 'trainer' encompassing both theory and practical skills. We will specify when we refer to basic police training for new recruits, and when we refer to in-service training for serving police officers.

9.2. What the standards say on recruitment, selection and training

The principle of non-discrimination is laid down in binding and non-binding international standards. It therefore follows that police recruitment, selection and training methods should be non-discriminatory: everyone meeting basic criteria should have the opportunity to apply for the police and pass selection tests. The resolution adopting the UN Code of Conduct for Law Enforcement Officials (UN Code of Conduct) includes the following precept: *"That, like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole."*

The preamble to the UDHR states that every individual and every organ of society *"shall strive, by teaching and education, to promote respect for these rights and freedoms"*. This call can be applied to police education. Police officers do not so much need to know the exact human rights articles relevant to their work and where to find them, but rather they need to be taught the essence of these articles: what do they mean for police practice? As the resolution adopting the UN Code of Conduct states: *"That standards as such lack practical value unless their content and meaning, through education and training, and through monitoring, become part of the creed of every law enforcement official."*[2]

Article 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires each State Party to 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." Article 11 further requires States to *"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."* It is essential that reviews feed back into training, as a means of preventing human rights violations.

The Guidelines for the effective implementation of the Code of Conduct[3] formulate general principles including:

- *"The selection, education and training of law enforcement officials shall be given prime importance. Governments shall also promote education and training through a fruitful exchange of ideas at the regional and interregional levels."*
- *"Governments shall adopt the necessary measures to instruct, in basic training and all subsequent training and refresher courses, law enforcement officials in the provisions of national legislation that is connected with the Code as well as other basic texts on the issue of human rights."*

Within the Basic Principles on the Use of Force and Fire Arms there is a chapter on 'Qualifications and Training', containing the following articles:

- Article 18: *"Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review."*

- Article 19: *"Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use."*

- Article 20: *"In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents."*

3) Resolution 1989/61 adopted
by the Economic and Social
Council, 24 May 1989 and
endorsed by the General
Assembly in its Resolution
44/162 of 16 December 1989.

Note that these principles can also be seen as formulating the right of police officers to proper training in the use of firearms. Police officers may not only violate others right to life, but also lose their own life as a result of inadequate training and equipment.

9.3. Recruitment and selection

9.3.1. Introduction
Good policing starts with having the right people to do the job. This requires effective recruitment and selection procedures, ensuring that people are aware of vacancies and are willing and able to apply for jobs with the police. Of course recruitment and selection are closely connected, as recruitment will aim to target those (potential) applicants expected to meet the selection criteria. However, recruitment and selection are separate steps in the hiring of new personnel and as such are discussed separately here.

9.3.2. Recruitment
9.3.2.a. General principles
Recruitment is the process of encouraging new recruits to apply to work with the police. The way recruitment procedures are set up (or are not set up) is often indicative of internal organizational values. For example, if a recruitment message communicates an image of police in which their powers to use force are highlighted (e.g. pictures of police in combat uniforms and heavily armed), this is a totally different message about the police than one conveyed by a picture of a police officer in civil uniform talking with small children. Indeed, recruitment practices often reinforce police culture and practice, rather than seeking to achieve change.

Police recruitment should demonstrate a commitment to human rights oriented policing: "that is, recruitment should be guided by criteria designed to produce a police force that is civilian, professional, rights-oriented, effective and honest. In different national contexts other criteria may also be fundamentally important, such as ensuring representation."[4] In practice, recruitment criteria often focus on someone's physical fitness to do the job rather than attitudinal aspects (selection criteria will be discussed in the next Section).

In some countries police recruitment is largely based on self-selection, for example on the basis of ethnicity or religion (sometimes it is a family tradition for family members to join the police), rather than a process that seeks to draw on as diverse a group as possible to apply for the police. In many countries police are largely made up of one particular class or group, or ethnicity, in society. Recruitment procedures are often poorly developed due to a lack of resources or recruitment not being seen as a priority, or both. The corruption of recruitment processes poses distinct challenges.

A police agency should be aware of and sensitive to the needs and feelings of all sections of the community. The overall principle for recruitment should be that it targets all sectors in society. Nevertheless, in practice there few, if any, police agencies that are indeed truly representative of their community. Police officers tend to be predominantly men, mainly from the dominant ethnic/social group. This of course does not necessarily mean they will always be insensitive to the needs of other groups. Enhancing sensitivity to diversity issues, rather than establishing numerical representation, may in fact be just as, or even more, effective in improving community responsiveness. The issue of representativeness is also discussed in Chapters 3 and 8.

This having said, a representative police agency is effectively part of the community and is more likely to be regarded as such by the public.[5] Amnesty International and other organizations have fairly consistently called for minority, religious, gender and other representation within police agencies as a means of addressing discrimination.[6] Seeking to establish a police agency that is truly representative of its people, means sending out recruitment messages using a wide range of channels, including radio, newspapers, posters etc., targeting a wide audience and also using those channels that can target specific groups such as newspapers targeting certain communities and radio commercials. Recruitment messages should reach all groups and communities in society. More specifically:

- Representation should be at all levels within the police agency
- Targets should be set and maintained for the recruitment of ethnic groups, minorities and women
- Causes for low recruitment of minorities and women should be evaluated
- Measures should be taken to depoliticize the culture and symbols of the police force as a means of encouraging members of diverse communities to apply
- Accessibility of recruitment offices – there should be some way for people in rural areas to apply
- The application process should not cost too much (some countries require various medical and administrative certificates (such as proof of residency) that cost money to obtain
- Recruitment policies and selection criteria should be regularly re-assessed

Re-assessing recruitment and selection policies and practices means that their discriminatory impact on certain groups should be evaluated, together with an assessment of how crucial these are for carrying out police function. For example in many countries the law and all official policies and documents are published in the country's official language. As such it only seems logical to require recruits to understand that language; *even if* such a requirement can be discriminatory towards certain (ethnic) groups, since ignoring this language criteria is likely to result in police officers being unable to access their professional regulations and standards and therefore failing to comply with them.

4) WOLA, *Themes and debates in public security reform. A manual for public society- Recruitment,* p.1.

5) Article 25 of the European Code of Police Ethics states: *"Recruitment procedures shall be based on objective and non-discriminatory grounds, following the necessary screening of candidates. In addition, the policy shall aim at recruiting men and women from various sections of society, including ethnic minority groups, with the overall objective of making police personnel reflect the society they serve."*
6) AI - Netherlands, 2004, *Amnesty International's recommendations on policing. A review and guide* provides many examples of recommendations AI has made in this respect.

The example of Haiti

In Haiti there is a requirement that all recruits speak French – making it impossible for 80% of the population to apply. However, in Haiti the legal system still runs in French and there would be real challenges if police officers could not speak the language adequately. Requiring French speakers has created a certain class difference and urban bias in police personnel (who disliked rural assignments and saw themselves as better than "paysan" which was also a problem). There has been discussion about the creation of "agents rurales" but the idea of creating a second class police force for second class citizens has been controversial.[7]

All in all, the general rule should be that lowering standards is not the answer. Instead consideration should be given to how these target groups can be reached and better prepared so that they can meet the criteria. Clearly, there should be absolutely no discrimination in favour of or against any group or community as part of recruitment; the best of those available should be recruited. Moreover, as suggested before, police should carry out their functions neutrally and impartially. Having a representative agency may help to achieve this, but should in fact not be absolutely necessary for it.

Diversity as a means of improving improving community relations?

Human rights advocates tend to stress the importance of a representative police agency. There are several additional requirements (including under international standards) that certain police tasks should be carried out by specific officers. For example, the carrying out of body searches should be done, in so far as possible, by officers of the same sex. Similarly, female victims should, in so far as is possible, have the opportunity to report sex offences and other forms of violence, with female officers. Also, as a means of enhancing community contacts, it is often believed that it would help to have police officers of that particular community within the police, implying these would be responsible for such contacts. However, there is an ongoing debate about whether members of minority and vulnerable groups who are recruited to the police should indeed be asked to perform such specific, gender and or community- related, policing functions. It should not be the general rule and can in fact be counter-productive as it can result in the formation of specialized units dealing with sensitive issues, while leaving a dominant discriminatory police culture intact in other parts of the police agency. Moreover, it can lead to stereotyping of these particular police officers who come to be regarded as representatives of their 'groups' rather than as police officers seeking to fulfill their individual professional aspirations.

9.3.2.b. Recruiting police leadership

Recruiting police leadership poses a distinct challenge. As was discussed in Chapter 8 on accountability, the effect of leadership on police practice and an agency's ethos should not be underestimated. In most countries police leadership follow either of the leadership structures given below:

- They work their way through the ranks of the agency, starting at the lowest rank moving up through the hierarchy
- They follow separate recruitment and selection paths requiring that they meet higher selection standards and undergo a higher level of training (sometimes at university level, on the assumption that those with academic qualifications have a broader understating of society and its complexities)

Police leadership is also recruited from outside the agency, though this is still quite rare. Indeed, leadership often reinforce existing values and practices rather than taking the lead for change.

9.3.2.c. Recruitment in situations of reform

There are several issues regarding recruitment that are particular to situations of police reform following political transition from a military or other regime to democracy.[8] The first has to do with how to establish recruitment criteria and whether (and under what conditions) former military and/or security personnel (in particular those that had served the interests of the previous ruling elite, such as the *Securitate, Stasi*, or the former South African Police) may enter the new police agency. Particularly when seeking to establish a civilian police agency, taking in large numbers of military may undermine the process of democratization and lead to public distrust of a police agency associated with the former military and authorities. For this reason, the taking on of former combatants and other 'former officials' within the police, should be guided by fair and transparent policies. In some situations it can be argued that the best option would be to entirely replace the former security agencies, including the police. However, this is usually simply impossible, as it creates a dangerous security vacuum. Indeed, during times of political transition, an upsurge in crime is often experienced, requiring quick and effective deployment of police personnel. This often necessitates the acceptance of former (military) officers into the police, though under strict conditions (see also Section 9.3.3.b.).

A second problem relates to the recruitment of qualified police leadership that are able and willing to sustain reform objectives. In situations of transition, the 'old leadership' is often entirely replaced (above a certain rank). Taking on new leaders may be a fundamental condition for the success of reform, as the former leadership is often characterized by corruption, authoritarianism and politicization. In situations where an entirely new police agency is created, leadership has to come from outside the agency and therefore lacks practical experience and expertise. This reality may lead to pressure to accept former military commanders as leaders, with relevant experience. If it indeed proves impossible to exclude former military officers from a new police agency, the Washington Office on Latin America (a human rights NGO working on Latin American countries) urges adherence to the following principles[9]:

- Incorporation should be done on an individual basis;
- Military officers should meet the same criteria as non-military;
- Any military officer should undergo rigorous screening to ensure they have never violated human rights;
- All former military personnel should receive thorough training emphasizing civilian policing techniques and practices.

A third problem has to do with how standards and processes for recruitment can be structured to reflect different aspirations and priorities of the police. When establishing an entirely new agency this in itself poses tremendous challenges for a situation in which large numbers of new recruits are required while still meeting necessary criteria of quality and professionalism.

9.3.3. Selection
9.3.3.a. General principles
Recruitment aims to establish a representative pool from which future police candidates can be selected. This next step – selection – should be transparent and fair. Selection criteria should aim to achieve a representative police agency of high integrity, in which officers meet set criteria. What selection criteria are used is very much limited by a country's resources. Developing reliable tests is a time consuming and costly exercise that not many countries can afford. Moreover, not all countries are in a position to be able to select, as there are simply too few applicants.

Selection, which really aims to predict future behaviour, is a complex process involving many factors. This is true for the technical process of selection itself and is often further complicated by various political interests that seek to influence the future of police agencies. Obviously selection should be based on merit rather than on political background or the payment of bribes. Selection should be a neutral and objective process aiming to establish a police agency that is skilled, professional, representative and respects human rights.

In most countries the reality is different, with selection criteria for the police focusing on, and limited to, physical criteria, typically including height, weight and the passing of practical tests. Usually officers are required to be of a certain age (for example between 17-30 years). Most countries require individuals to have undergone some minimal education (for example a minimum of ten years). Some countries also use more elaborate intelligence and personality tests. Personality tests typically focus on such aspects as skills in coping with stress and emotional balance.

Human rights advocates will often stress the importance of evaluating the attitude of new police recruits towards human rights. They are required to have "appropriate moral qualities". It is usually not clearly specified what exactly is meant by such requirements nor how this requirement could be assessed in practice. In some countries work is going on to develop and validate tests to measure integrity. However, this has proven to be a very complicated factor to measure in any reliable way. Interviews during which questions are asked

to assess ethical attitudes and past behaviour are more common. So, while measuring integrity with a test may be difficult, one can still ask what kind of ethical dilemmas someone has come across in the past six months and how they have been solved.

Selection criteria for individual officers should minimally include:
- Background checks for criminal records (usually those convicted of a criminal offences are ruled out, especially when these involve violence. Minor offences like speeding are sometimes accepted);
- Background checks for human rights violations (these should never be accepted);
- Background checks for active discriminatory behaviour (this should not be accepted). Moreover, recruits should be assessed for their sensitivity in relation to discrimination;
- Physical fitness (particularly necessary for those recruited to perform basic police functions);
- Literacy (a minimum level of schooling is a requirement for understanding policing functions);
- Language abilities (ability to speak and understand the country's main language). Knowledge and understanding of minority languages could also be an advantage. Each police agency should have officers within its ranks speaking such languages;
- Willingness to vow an 'oath' that should, as a minimum, stress respect for human rights principles and to abstain from corruption.

Note that selection criteria can be discriminatory in themselves. For example, physical criteria, requiring a certain height and strength as well as condition (e.g. the ability to run 100 meters within so many seconds) are often more easily met by men than women. Moreover, educational criteria can be discriminatory against those groups deprived of education. In some situations this may require lowering the standards for certain groups to ensure representation requirements are met, though this easily backfires against these groups ("she was only accepted for being a woman") and as such requires sensitive communication to other officers and society at large. For this reason some police agencies have chosen to offer additional training for recruits that do not meet certain criteria – for example language skills - until they do.

'Job hopping'
An additional criterion for selection, when the applicant is a police officer from another agency, should be that he or she should not have a disciplinary record for offences over a certain threshold. In some countries police officers who have been convicted for human rights or other violations return to a similar job in another police agency. Records should be kept of convicted officers (both criminal and disciplinary convictions) and these should be referred to and taken into account in cases of transfer and/or promotion.

9.3.3.b. Vetting

When recruiting and selecting new police officers, especially in situations of political transition, problems can arise in preventing the entry into the agency of those who have been corrupt or committed human rights violations, or who are otherwise lacking in integrity. Establishing a selection process that 'weeds out' these individuals is referred to as 'vetting' (defined as "Integrity assessment for determining suitability for public employment"[10]). "Vetting usually entails a formal process for the identification and removal of individuals responsible for abuses, especially from police, prison services, the army and the judiciary."[11] The (Northern Irish) Committee for the Administration of Justice (CAJ) has commented that, "(…) while some previous police misconduct can be corrected by retraining, counselling and early warning systems – steps must be taken to ensure that those who have abused human rights are not dealt with impunity."[12] Apart form preventing impunity, a second reason for vetting is that in order to effectively achieve change within the police and establish a new human rights compliant ethos, the creation of a new police apparatus (selecting out the old offenders) sometimes is absolutely necessary.

In order for vetting to be carried out in a fair and effective way, the following issues need to be considered:
- Vetting should be carried out independently. Human Rights Watch have formulated the following principles with reference to the vetting process for police in Northern Ireland:[13]
  - The establishment of an effective and credible vetting unit;
  - Vetting should be made a requirement for being a police officer;
  - Procedural safeguards should be such as to protect the due process rights of all officers, including rights of appeal etc.;
  - An open process by which the vetting process is explained in detail to the public and methods for public participation are developed and advertised.
- The source and accuracy of information used in vetting processes: the thoroughness of vetting depends on the availability of full and reliable information, as well as a willingness to act on this information to exclude those accused of illicit activity.[14] Human Rights Watch suggests using the following sources of information: classified government documents; civil actions, including out of court settlements in cases of police abuses; evidence of illegally obtained confessions; inquest depositions; official complaints; investigative files of the Director for Public Prosecutions; Personnel files; Community consultation; Input from expert domestic and international NGOs.[15]
- The standard of evidence required for exclusion: if the burden of proof is too high, human rights abusers may well enter the new police force; but if it is too low individuals may be unjustly excluded on the basis of rumour or circumstantial evidence that would not withstand legal scrutiny.[16]

Additionally it is recommended that officers should have a probationary period during which they may be dismissed if they fail to demonstrate aptitude and

possibly if members of the public provide credible information about their past or ongoing abuses. This is especially important in post-conflict settings in which vetting may be very difficult to achieve in practice.

9.3.4. Promotion/career development

Recruitment (and training) of new personnel are of course very important but not sufficient in themselves. There are other important personnel issues such as appointment, transfer, reward, punishments etc. In many countries transfer of police officers is a 'weapon' frequently used by politicians to persuade officers to do their bidding. In such countries the mechanisms for reward and punishment are also often used as incentives or disincentives to favour 'ones own men' and sideline the honest ones.

Political influence over senior police appointments is a reality in most countries and reflects the reality of democratic control over the executive (including the police). However, it can also be a manifestation of weak operational independence. At a minimum, policies for recruitment, appointment, removal, transfer and tenure should be transparent, objective and impartial. Awareness of human rights issues and respect for human rights principles in the performance of duty should be an important element in the appraisal of individuals in the police service. Performance monitoring - i.e. performance assessments - should be carried out on a regular basis so as to ensure that promotion results from merit rather than political or economic influence or other factors not involving police competence.

Recruitment, retention and promotion strategies

In 1997 the Committee on the Administration of Justice (CAJ), an NGO in Northern Ireland, published *Human rights on duty: International lessons for Northern Ireland.*[17] The report discusses findings of research into police transition and the management of change in policing in Canada, Belgium, the Netherlands, Australia, Spain, El Salvador and South Africa. It contains chapters on representative policing and training. With regard to achieving representation it refers to various recruitment, retention and promotion strategies that are used in different countries including:
- Outreach: using a wide range of channels, and recruitment materials
- Bridging schemes: to help people from deprived communities to reach the standards set
- Target setting
- Lateral entry-schemes: so that qualified recruits from under-represented groups can enter higher up the occupational ladder
- Mentoring schemes: to identify potential recruits from under-represented groups who then work with a mentor to achieve the standard needed for recruitment at different levels
- Fast-tracking: for promotion of candidates from under-represented groups identified as high achievers
- Selection procedures controlled independently (i.e. by training institutes) rather than police

10) International Centre for Transitional Justice in collaboration with UNDP, 2004, *Vetting and institutional reform in countries in transition: an operational framework.*

11) UN Secretary-General's Report, 2004, *The rule of law and transitional justice in conflict and postconflict societies*, p.17

12) O'Rawe, M. and L. Moore, 1997, *Human rights on duty*, p.245.

13) HRW, 1999, *Briefing Paper for the Independent Commission on Policing for Northern Ireland: Recommendations for Vetting the Police Force in Northern Ireland.*

14) WOLA, *Themes and debates in public security reform. A manual for public society - Recruitment.*

15) See note 13.

16) See note 14.

17) O'Rawe, M. & L. Moore, 1997, *Human rights on duty*.

- Tie-breaks: if two candidates are equal, the one from the under-represented group is chosen
- Screening: for cultural sensitivity etc.
- Quotas

It also noted that symbols and names of and within the police should reflect a commitment to representation and responsiveness. CAJ makes it clear however, that changing the rules and implementing such strategies is not sufficient. Organizational culture needs to be addressed as well – and legislation under which police operate should itself be non-discriminatory and unbiased.

9.4. Police training

9.4.1. Introduction

In this Section we will discuss basic training for new recruits. The reality of police training varies immensely. In certain countries there is no such thing, or at least not for all officers. In Costa Rica for example, in 2003 only one out of three police officers had passed the basic police training course.[18] Some countries lacking basic resources have to accept illiterate police officers and those who lack the basic skills and knowledge necessary to carry out policing in accordance with any standards. This Section will first briefly discuss how police training is set up in a number of countries. We will pay particular attention to training in the use of force and firearms and training of investigative skills, as these often receive minimal attention in training practice. We will then discuss some criteria for assessment purposes: What are indicators for an effective police training program?

9.4.2. Police training in practice
9.4.2.a. Basic police training in practice

In most countries there is general agreement that police training needs to encompass both theory and practice. The usual pattern is a period of training at a training institute for a period of between three and 18 months, often followed by a period of field training under the guidance of a senior police officer.[19] Preferably this senior police officer is specifically trained to guide new recruits, though this is not always seen in practice. In most situations the time the student spends in field training is geared towards learning how existing officers do their jobs. In this way, learning is in fact often limited to imitation. It is (partly) for this reason that police culture and practice are difficult to change as the mentoring paradigm makes it difficult to instil the new skills and attitudes required when adopting new methodologies. Any break from the past is difficult in such a learning environment. Police tend to be rather cynical about training and training institutes, as they perceive that the theory doesn't relate to the practice. It is common for new recruits entering a police agency to be told: "Forget everything you were taught at the academy." This having been said it should be noted that police training in many countries has undergone major change during the last decade as it is increasingly reflecting community policing efforts.[20]

18) Eijkman, Q., 2006, *Around here I am the law! Strengthening police officer's compliance with the rule of law in Costa Rica.*
19) See for example: AI, 2003, *The democratic republic of Timor Leste. A new police service, a new beginning;* AI, 2003, *Afghanistan. Police reconstruction essential for the protection of human rights;* WOLA, *Themes and debates in public security reform. A manual for public society - Recruitment.*
20) WOLA, *Themes and debates in public security reform. A manual for public society - Training;* AI, 2002, *Policing to protect human rights: A survey of police practices in countries of the Southern African Development Community, 1997-2002.*

21) This text is based on personal communication with Mr. G.P Joshi, CHRI, Police Program Coordinator, India.
22) Oakley, R., 1998, *Police training concerning migrants and ethnic relations. Practical guidelines.*

In many countries, theoretical training includes subjects like law, crime statistics, criminology, police administration, crowd control principles, communication strategies, conflicts, social disorder etc. However, sometimes the theoretical part of basic police training is limited to the law. This is often achieved by making the students learn articles of the National Police Act, criminal law and the accompanying Criminal Procedure Code by heart. Indeed, unfortunately explanations of the law's implications for police practice, let alone an explanation of the 'spirit of the law' are often absent. In the same way, theoretical training in many countries takes place in the form of one-way communication (rather than being interactive) where the trainer explains the principles and the participants 'sit back and listen'.

In many countries the practical part of police training focuses on sports, driving, marching and firearms training. Training in the use of force and firearms is very often limited to the technical use of these, without addressing the considerations that should be taken into account when using force in a specific situation. Furthermore, 'practical' police training often deals with specific policing situations such as writing up a fine, regulating the traffic, ordering members of the public not to do something etc.

An aspect that is sometimes badly handled is that of training in cultural awareness.[21] Many countries have a highly pluralistic and heterogeneous community, with a population that is diverse in its ethnic and cultural composition. Though in theory the police are required to treat all persons equally, in practice discrimination does take place. It is therefore important to design training strategies that will help in developing in a police officer the understanding and attitudes required to respond to the requirements of policing a culturally pluralistic society in a professional manner. Police officers must have a good understanding of the culture of communities to which they do not belong but which they are required to police. They should not merely be aware of cultural diversity but also appreciate the fact that all people have equal rights, and discrimination of any type on the basis of colour, caste, religion etc is prohibited.

Suggested objectives for 'cultural awareness' training

The Council of Europe has designed Practical Guidelines for police training on cultural awareness.[22] These Guidelines have identified the following six basic objectives for such training:
- To advance the knowledge and understanding of the police officer in the field of human relations
- To develop better communication skills, especially in the multi-cultural context (i.e. how to avoid misunderstandings in intercultural situations)
- To enhance the capacity of the police to provide a high quality of service to the public
- To respect all individuals irrespective of their origins
- To strengthen the confidence of the police in fulfilling their functions in a multi-cultural society

- To improve police officers' knowledge of the law and regulations relevant to immigrants and racial discrimination

Some of these objectives can be kept in view while designing training programs to deal with the problems of policing a pluralistic society.

The majority of police trainers are police officers themselves. Sometimes they have received additional training on teaching methods but this need not to be the case. Apart from these police trainers it is increasingly common practice to also have social scientists as trainers, dealing with issues such as communication skills, crowd psychology and personal emotions. Moreover, as a result of community policing efforts, more and more training institutes involve community representatives in training.

In some countries training institutes are part of the police system and are under the same hierarchy. However, sometimes they are placed under the Ministry of Education. Though many countries – as part of their implementation of community policing programs – are relocating their training institutes closer to communities, in many countries police training institutes remain isolated from the 'real world'. Very often training takes place in compounds, where cadets are also accommodated. They are drilled, rather than encouraged to come to their own conclusions. Indeed, typically, a lot of time is spent on 'marching' skills. All in all, police training rarely reflects what is expected from recruits when they have completed their training. For example, while police are entrusted with discretionary powers and expected to employ them in a large percentage of their work, this is rarely reflected in training programs. Cadets are rather told to do what their superiors and teachers tell them to do. This indeed reflects the reality for those countries that have authoritarian policing systems where police discretion in the lower ranks is very limited but ignores the fact that some discretion is always there as it is so inherent to a police officer's job.

Some countries differentiate between basic police training at police schools, and management training at police colleges. In quite a few countries it is common for senior officers to have to study law as a precondition. In other countries every recruit enters at the same level.

After this basic training, police are sometimes offered additional training courses on a range of issues, including human rights. Typically, international donors, but also national and international NGOs, provide a range of courses to police agencies on issues such as violence against women, integrity and ethics, management, etc. These are often one-off ad hoc courses rather than being integrated into wider plans and policies. As such, the effect of these courses tends to be limited, even when large numbers are involved (this issue will be discussed more extensively in Chapter 10).

Problems with traditional training methods

In *Human rights on duty*, see Section 9.3.4., five problems with traditional training methods are listed:

1. Closed institutional training settings
2. Inadequate or non-existent community involvement
3. Discrepancies between theory and practice
4. Marginalisation of human rights and cultural awareness training
5. Limited evaluation and external scrutiny

9.4.2.b. Training in the use of force

In practice training in the use of force and firearms is often limited to the use of firearms (the actual shooting and handling of a gun) rather than how to prevent their use. This is clearly is not sufficient. The principles of proportionality and necessity must be discussed, and practiced, extensively as these are the basis for preventing potential violent situations from escalation and may prevent the actual use of (lethal) force.

As referred to above, the Basic Principles on the Use of Force and Firearms incorporate the right of police to receive adequate training on the use of firearms since police officers may not only violate the right to others but may also lose their own lives as a result of inadequate training and equipment. Training must give special attention to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and methods of persuasion, negotiation and mediation, as well as to technical measures, with a view to limiting the use of force and firearms. Officer safety should be included in the training as well, as these reduce the officer's sense of threat and the likelihood of resorting to force. Police and training institutes should review their training programs in the light of particular incidents where force has been used.

It is important that training in the use of force and firearms, as well as training in public order management, includes role-plays and other case study-based types of training methods. Recruits should be able to practice deciding when to use what means of force – and be able to discuss how they reached such decisions. When assessing police training it is important to note whether any attention is paid to the PLAN principles (discussed in Chapter 5) and to any alternative intervention techniques.

Firearms training

Firearms training should be as realistic as possible. In some countries trainers use a methodology where recruits are given a weapon that is connected by laser to a screen on which a film is projected showing an incident to which the recruit must respond. The recruit, acting as the police officer in that particular situation, must decide what to do and account for his or her decisions. For example the case might involve a fight between two armed individuals, one carrying a knife and the other a gun. The recruit can for example decide to

draw a gun, point it at the individuals and fire. For each step (drawing, pointing, firing) the trainer can discuss why the recruit has chosen to do so, and how his or her choice relates to national and international standards of proportionality, necessity and legality. The video also shows what the consequences are of decisions taken. So if for example the recruit decides to shoot, the video will (if he hit the target) show a wounded or maybe killed civilian. However, if the recruit decided not to shoot, the video will show the consequences, which could be that the recruit him- or herself is shot at.

No officer should be carrying a firearm if he or she has not been trained on how to use it and passed a test successfully. Whenever new weapons are introduced, officers should be retrained accordingly. Their continued fitness to perform these functions should be subject to periodic review.

Mock villages
Similar to firearms training as discussed in the previous box, some police training institutes use mock villages where they can simulate all sorts of public order situations such as peaceful demonstrations, football hooliganism and riots. Such simulations sometimes involve a variety of police disciplines like mounted police, riot control units, dog units etc. These simulations are typically recorded on video and subsequently evaluated in class.

A subject that often receives little attention, particularly in this context, is how police are trained in conflict management. For a large part police work involves being called on to intervene in (minor or major) conflicts. When these interventions get out of control, force is sometimes needed to restore order and tranquility. However, often force could have been avoided if the police understood how to deal with emotions and how conflicts can escalate. Training in communication and conflict management skills could serve this objective.

9.4.2.c. Training in investigative skills
Despite the requirement under Article 10 of the Convention Against Torture, training in investigative skills, and more specifically the suspect interview, is not well developed in most countries. This is often used to justify police torture as if resort to violence is a result of not knowing any other way to make the suspect tell them what he or she knows. Without seeking to support this justification, it is true that one of the remedies to torture can indeed be in teaching police officers how to conduct an investigation (including suspect interview) in a professional way that respects human rights. In order to develop and offer such training to police, the knowledge (discussed in Chapter 7) needs to be available.

Training investigative skills
Some police academies make use of professional actors to train recruits in investigative techniques. Recruits are asked to prepare a suspect interview, in

class or individually, and subsequently are confronted with the 'real suspect' (the actor) and have to conduct the suspect interview in full. Everything is recorded on tape and subsequently discussed – from the perspective of communication, tactics and legality.

Similarly, recruits should be able to practice any investigative method. House searches can be imitated, witness and victim interviews can be conducted with actors. They can all be practiced in fictional real-life situations with trainers and actors giving feedback on how these methods were put into practice.

Training in investigative skills should make it very clear that there is an absolute prohibition on torture and that police officers have the right and the duty not to obey superior orders to commit torture. A discussion should be held on what constitutes torture and what measures are acceptable to increase the pressure on a suspect (as discussed in Chapter 7). Methods for suspect interview that are used in practice should be evaluated on a regular basis and these evaluations should feed back into future training programs.

That said, training in investigative skills should make it clear that the suspect interview is but one of several investigative methods available. Recruits should learn what other methods there are in order to avoid an over-reliance on the suspect interview as the crucial information-gathering exercise. Recruits should learn how to conduct house searches, body searches, location of witnesses and witness interview, line-ups, the need for rapid response and prompt investigation of the crime scene, use of physical evidence and forensics (see Chapter 7).

A particular topic that often receives little attention in training, yet is crucial for an effective prosecution, is how police record the process and findings of their investigations. Indeed, recording their findings in a manner that is lawful and able to be used at trial is crucial in meeting fair trial standards and to accountability more generally.

Training is obviously not the sole answer to preventing human rights violations when it comes to criminal investigation. Many human rights violations occur for other reasons such as an inadequate judicial and legal system and the absence of forensic facilities. Such issues are not training issues but should be dealt with by the police leadership and other authorities first. Indeed, for training to be effective at all, internal commitment, especially of police leadership, is essential. This commitment must guarantee that new recruits are stimulated and facilitated in practicing their newly taught techniques and skills. Too often, new recruits don't get a chance to practice what they were taught and are rather told to 'do as the others do', thus preventing change.

9.4.3. Assessing police training from a human rights perspective
In many countries human rights training, if available at all, is conducted as an isolated part of basic police training and often severely restricted in time.

Indeed, it is not uncommon that recruits are offered a separate module on human rights – often strongly focusing on international standards and rather learning these by heart than understanding and discussing what they mean in terms of police practice. Modules on human rights are often not tied in with other more practical modules, thereby suggesting that the two are not related and that human rights training is simply something one has to 'endure' in order to become a police officer. Indeed, human rights is often taught in classroom settings rather than in practical exercises, and in some situations by trainers other than police officers, again suggesting that it is an isolated subject.

However, human rights training cannot be regarded as a mere add-on to the existing curriculum; it must be treated as being at the core of the training program for all ranks. There is a common perception amongst many police personnel that human rights are an encumbrance, an obstacle to effective policing. An important aim of a training program should be to change this perception.[23] Note that in Chapter 10 we will explicitly focus on the issue of human rights training as delivered by human rights NGOs. In this Section we will focus on human rights as it is incorporated in the police's basic curriculum as well as in its field training.

In 1998 Amnesty International issued *'A 12-Point Guide for Good Practice in the Training and Education for Human Rights of Government Officials'*.[24] This guide, though applicable to all governmental officials rather than merely police, sums up important principles for human rights training to be an effective tool for enhancing human rights awareness and compliance amongst governmental officials. Probably the basic principle underlying all 12 principles is that human rights training should never be a 'one-off' stand alone activity. It should be adapted to the situational (including organizational) context, integrated in the curriculum and relate to operational practice, and most importantly it should receive follow-up in practice. We recommend that readers take note of these principles.

Amnesty International's 12 Point Guide for Good Practice in the Training and Education for Human Rights of Government Officials

1. Prior assessment of the human rights situation is absolutely vital.
2. Human rights education should be one step towards achieving greater accountability.
3. Officials should commit themselves to implementing the training program as an essential part of their profession.
4. The training program must be coordinated with other human rights activities in the institution and the community.
5. Non-governmental organizations should play a key role at all stages of the training program.
6. Target groups for training and the goal of the course need to be carefully identified.

7. Trainers should have some connection with the target group.
8. The teaching methods used should respect the local cultural and religious realities as well as reflect the human rights aims of the training.
9. The training should be practically oriented and involve participatory learning techniques.
10. The teaching materials should be practically oriented.
11. Follow-up must be integrated into the training program from the beginning.
12. There must be continuous evaluation of the impact of the program and revision in light of identified shortcomings and new opportunities.

Amnesty International-Netherland's 2004 *'Review and guide'* which reviewed the organizations's recommendations on policing proposed to add three principles to the existing 12:[25]

13. Human rights training programs should incorporate international, regional and national human rights standards as well as contextualising such information within the human rights context of the country.
14. Human rights should be integrated across the training curriculum.
15. Training and assessment should be a continuous process.

As a general rule human rights need to be integrated into all police training. Two words are important is this phrase: 'integrated' and 'all'. There is debate amongst police trainers as to whether human rights and police ethics should be covered in separate modules, making it possible to pay considerable attention to these topics, or rather integrate the topics into lessons dealing with police work, such as 'public order', 'investigation', 'the role of the police' etc. resulting in human rights being less clearly visible in the curriculum, but taught in a more practical and effective way. Human rights training could for example be integrated into lessons on the use of force while discussing principles of proportionality and necessity, without even using the word 'human rights'. The debate will no doubt continue (one problem being that if human rights is integrated into other lessons, police can be accused of failing to pay proper attention to human rights). The best solution is probably to do both: Police need to hear about international human rights law as well as its underlying principles and how it relates to national law, but should also be provided with the practical and behavioural tools to protect and promote human rights in action. Though there may often be no need to use the term "human rights" it is important that all police from the top level of leadership understand that human rights lie at the core of policing and hear that message explicitly. Indeed, the visibility of human rights or police ethics in the curriculum is not a measure of its value or its effectiveness. Many countries have included modules on human rights in their curriculum, giving the impression that a lot of time is spent on this issue. This does not say anything about the effectiveness of the training.

23) Based on personal communication with Mr. G.P Joshi, CHRI, Police Program Coordinator, India.

24) AI, 1998, *AI's 12 Point Guide for Good Practice in the Training and Education for Human Rights of Government Officials*. Please note that though NGOs should play a key role at all stages of the training program, this does not necessarily mean they should also deliver the training.

25) AI - Netherlands, 2004, *Amnesty International's recommendations on policing. A review and guide*.

In some countries human rights training is only given to new recruits, excluding senior colleagues and managers.[26] Obviously, the impact of such training is seriously hampered if new recruits note that their senior colleagues and superiors are not given such training, nor do they seem to value or practice it.

Police training should reflect the kind of police one wants to have. If the police is required to respond to the needs of communities, they should be in a position to come into contact with these communities through trainers, resource persons, or simply because they live in these communities. If the police are expected to responsibly exercise their discretionary powers, they should get a chance to experience this in their training. If police are to be representative of their communities, police trainers should be representative of these too. If police are expected to account for their actions, police training institutes should be willing to account for the way they train their recruits.

A list of questions has been formulated below that may be of help when assessing basic police training from a human rights perspective. We have formulated these as open questions.

1. Who receives basic police training?
Police training should be offered to all police officers carrying out policing functions, with no exception.

2. How long is basic training?
In principle the answer is: the longer the better. Obviously this is too easy an answer. The duration of training varies from a couple of weeks to four years. Some say that 12 months is necessary to acquire professionalism.[27] It seems reasonable to expect that more training will have a higher chance of achieving those objectives human rights advocates are looking for if, and only if, this training conforms to human rights principles. Indeed, four years of training could perfectly well focus on technical skills while ignoring underlying principles and values. Therefore, answering the question on duration should always go together with answering the next questions dealing with other aspects of police training such as content, teaching methods and background of the trainers.

3. What is the background of police trainers?
There should be a balance between trainers with a police background and non-police trainers, as the latter can help prevent embedding a police culture that is totally inwardly focused. These non-police trainers can be academics as well as others (e.g. sports trainers). Moreover, training must be delivered by a variety of people so that the diversity of the community that is to be served is reflected in the training process itself.[28] Those training the police should be qualified trainers, whether having a police or non-police background, with knowledge of teaching methods and how to enhance the transfer of knowledge and skills to practice.

4. To what extent do members of the public participate or contribute to police training?
Members of the public can contribute to training in various ways: as trainers, as feedback groups monitoring the training, as resource persons for certain assignments etc. Training should be set up in such a way that it reflects responsiveness, representativeness and accountability principles. Police training should preferably not take place on isolated closed compounds where everyone is police.

5. Good training always addresses knowledge, skills and attitudes.
Police work is practical work. That doesn't mean that theory can be left out but it does mean explaining how theory (including law) relates to practice. In role-plays and skills training, theory and practice should come together. Knowing the law by heart but not being able to relate it to practice makes the law ineffective. Legal principles should be applied to practical examples. Participatory techniques should be used, as these tend to enhance learning (including the transfer of knowledge and skills from training to practice). Moreover, police training shouldn't be restricted to teaching law (which is invariably about police powers) but should incorporate those aspects of policing which do not require police powers or indeed are meant to prevent the use of such powers. An important and often undervalued topic is the training of communication skills since it is these skills that can help to de-escalate a situation and prevent resort to force.

6. What topics are included in training?
As an illustration, we suggest the following topics (listed in random order) should be included in the curriculum:[29]

a. The importance of impartiality in police actions
b. Non-discrimination
c. The importance of being responsive to communities
d. Cultural and gender awareness and sensitivity
e. Observance of proper procedures for the use of force, arrest and detention: proportionality, legality, accountability and necessity (PLAN)
f. Application of non-violent means first
g. Investigative skills, including interview techniques (including suspect interview)
h. Rights of detainees and suspects, including the right to be presumed innocent
i. Victims of crime (violence against women should be part of basic police training in order to increase overall sensitivity. However, there may be established specialized units for dealing with such violence)
j. Vulnerable groups and their specific rights (i.e. women, children, minorities)
k. The absolute prohibition of torture and the right not to obey an order to torture, also in the context of anti-terrorism legislation (if applicable)
l. The importance of oversight and accountability, including disciplinary procedures

26) AI, 2002, *Policing to protect human rights: A survey of police practices in countries of the Southern African Development Community, 1997-2002*.
27) WOLA, *Themes and debates in public security reform. A manual for public society - Recruitment*.
28) O'Rawe, M. & L. Moore, 1997, *Human rights on duty*.

29) See also: AI, 2002, *Policing to protect human rights: A survey of police practices in countries of the Southern African Development Community, 1997-2002*.

30) O'Rawe, M. & L. Moore, 1997, *Human rights on duty,* p. 93.
31) Ibid.

Additional topics for police leadership should include:

m. The effect of leadership on establishing an ethos of respect for human rights

n. Operational independence and democratic oversight and the dilemmas involved

o. Supervision, evaluation and performance indicators

7. Is there any follow-up to basic training? Is there a policy of 'on-the-job-training'? On what aspects is further training offered?
As was recommended by CAJ: "Training must not be restricted to new recruits but must continue throughout the career of police officers. There has to be effective support from senior management for good training practices and the philosophy and practices of lifelong learning."[30]

8. Is there some kind of (repetitive) certification procedure to ensure that technical and other skills are kept up to date?
In most countries police receive a diploma 'for life' upon successfully completing police training. However, for some aspects of policing, especially the use of force and firearms, certificates should be used rather than diplomas; certificates that need to be renewed at regular intervals. Not passing the test should result in the removal of powers and equipment until the respective officer has shown that he or she has the required aptitude, skills and attitude to resume. Indeed, Article 18 of the Basic Principles on the Use of Force and Firearms requires police to have *"their continued fitness to perform these functions [to be] subject to periodic review."*

9. Is training evaluated?
Evaluation of all training should be routine. To be truly effective it should also involve people from outside the police.[31]

Acquiring human rights training competencies
In order to conduct training about human rights principles one needs to know about them. Many donor programs focusing on training commence with so-called train-the-trainer programs, with (usually foreign) police trainers training local police trainers in training police skills and methodologies. Sometimes local police trainers are invited to visit donor police academies to see and learn how training is carried out there. Any train-the-trainer program faces the problem of how to relate to the local realities of the target country. Trainers from donor countries typically come from a very different cultural system, with very different attitudes towards police and policing, and often with much better resources. This having been said, opening the door to other realities can prove a useful tool.

9.4.4. Follow-up to basic training
As noted previously, training should not be restricted to new recruits. It is important to pay attention to whether human rights are incorporated into all police training, including training courses offered after new officers have started working and for those that have been working for some time. Subsequent training includes training on new methods of use of force, additional training relating to the introduction of new policing philosophies and methodologies as well as training for those moving up the hierarchy. Police management training should clearly pay attention to the role police managers can play in establishing an ethos and practice which respects of human rights. Indeed, all training should pay attention to human rights principles and should integrate these into their curricula.

9.5. The effects of recruitment, selection and training
The importance and potential impact of using recruitment procedures targeting all sectors in society, defining selection criteria which reflect human rights principles and offering training that addresses human rights oriented skills, theory and attitudes, should not be underestimated. However, it should not be overestimated either. Both international donors and human rights advocates tend to overvalue the importance as well as the effectiveness of recruitment, selection and training in addressing human rights problems while at the same time ignoring the complexities inherent to developing effective selection and training instruments and ignoring institutional causes for human rights violations. Challenging and dealing with these institutional problems is far more difficult and requires long-term commitment, whereas training can seem like a quick-fix solution that is easily implemented. It could be argued that international donors like to conduct training as it can be done almost anywhere without rocking the boat too much. It is politically uncontroversial precisely because it does not necessarily change anything.

It is difficult to develop effective recruitment and selection methods and measuring their effects is a challenge. Moreover, the effect of training is dependant upon its reinforcement in practice. Training that is not enforced in practice, training that is not embedded in a broader policy framework, training that does not receive the full support of police leadership "reflected in police standing orders and in day-to-day instructions received by superiors"[32], is deemed to be an ineffective way to change behaviour and as such is in fact a waste of resources. In many situations in which police are violating human rights one should question whether training is the most effective starting point for change. For example, if human rights violations result from laws not meeting international standards, campaigning for legal changes is likely to prove more effective than campaigning for improvements to police training. Deciding whether training is the most effective starting point obviously requires a careful analysis of the respective situation.

Police managers may be tempted to stress the importance of training in achieving change as it leaves out their own role in these processes and places

32) AI, 2002, *Policing to protect human rights: A survey of police practices in countries of the Southern African Development Community, 1997-2002.*

the responsibility outside their own scope of competence and responsibility. Human rights advocates should consider campaigning for improved management training rather than rank-and-file officers training as a means of ensuring that human rights principles are enforced at leadership level.

Police Culture

It is one thing to recruit and select police from all sectors in society, thereby ensuring that police are representative of the people they serve; it is quite another retaining them. The impact of police culture, with its (often) dominant male and majority group characteristics, should not be underestimated. Three aspects of police culture are visible in most police agencies worldwide: the 'blue wall of silence', 'us versus them' and police cynicism.[33] These three characteristics, together with the police often being fairly conservative[34], make police extremely resistant to change and counteract efforts to improve police-community relations as well as the integration of minorities and women within police agencies .

"Don't betray your colleagues": The 'blue wall of silence' refers to the code of silence that is frequently practiced by police. The code results from police work being perceived as dangerous and the necessity of total reliance on colleagues in order to survive (literally). As such, loyalty is paramount within the police. This may lead to moral dilemmas when having to choose between loyalty and integrity, for example when deciding whether to disclose something that happened that was clearly wrong, or stay loyal to ones colleagues.[35]

"They don't understand us". A second characteristic is known as 'us versus them'; us being police and them being the public. Community policing is one of the new philosophies that will help to bring the two closer and create more mutual understanding.

"It doesn't help anyway." Police are confronted on a daily basis with difficult dilemmas and choices. What's more, they are confronted with the limited results and effects of their work. Crime persists, some people are never caught, and police managers sometimes seem to be busier managing their own careers than supporting their staff. As a result, many police turn cynical after having worked for some years.[36]

not embedded in a broader policy framework, training that does not receive the full support of police leadership, is deemed to be an ineffective way to change behaviour and as such is in fact a waste of resources. To reap the benefits of good training, there need to be methods of reinforcement and an ongoing visible commitment in practice, both by senior police officers but even more so by police leadership. Therefore the training of police leadership needs special attention and careful monitoring. Moreover, an assessment of the causes of police misconduct may very well lead to the conclusion that alternative intervention strategies could be far more effective than a focus on training.

9.6. Summary

Recruiting a representative section of society and from these selecting those with high moral standards and values is a fundamental challenge for police organizations. Some aspects of policing cannot be trained and needs to be inherent in individuals; others however – most notably practical skills and knowledge – can be trained. Recruitment, selection and training are equally important when seeking to establish a police agency that respects and protects human rights. Yet, though certainly important preconditions, they are never sufficient on their own. Training that is not enforced in practice, training that is

33) There are many articles and reports describing police culture. See for example the Mollen Commission that investigated corruption in the New York Police Department. Its 1994 report described the police culture and how it facilitated corruption within the agency. Download from: http://www.parc.info/reports/
34) Crow, M., e.a., 2004, "Czech police officers. An exploratory study of police attitudes in an emerging democracy. "
35) Reenen, P. van, 1997, "Police integrity and police loyalty: The Stalker dilemma."
36) See note 34.

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Amnesty International's vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration on Human Rights and other international human rights instruments. In pursuit of this vision, Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of these rights
Amnesty International's vision and mission

When engaging with law enforcement officials, members may use the full range of techniques unless doing so in a particular context would impede or constrain Amnesty International's ability to denounce human rights violations
Decision 20 of Amnesty International's 2003 International Council Meeting

10. Engagement with Policing

10.1. Introduction

Since Amnesty International, and indeed many human rights NGOs, for long focused solely on the police as human rights violators, the relationship between the organization and the police was often characterised by animosity rather than trust. As a consequence, both staff and membership of Amnesty International felt more comfortable in an oppositional role rather than one seeking points of mutual interest. However, there has been a paradigm shift resulting in the police being seen as human rights protectors as much as human rights violators. In some countries, most notably those in which police are not involved in systematic human rights violations, this has presented the opportunity for a common agenda and reflection on the establishment of contacts with the police, or **engagement** as it has become known.

In Chapter 1, we discussed the dynamics of the field of Police and Human Rights. Throughout this Resource Book we have argued that when seeking to create change regarding policing some basic understanding of policing realities and dilemmas is a precondition. Chapters 2-9 have sought to present background information regarding policing issues that can be used in making a contextual analysis of the police in a target country, for which a tool is presented in appendix A.

In this Chapter we will focus on various approaches human rights NGOs can take, and have taken, when seeking to influence police conduct. These approaches range from confrontation to co-operation, based on an assessment of the respective human rights situation. In Section 10.2 we will start with looking at how Amnesty International conducts its research and develops its accompanying intervention strategies. One of these is an engagement strategy, which will be explored in more detail, as it is a relatively new approach, in Section 10.3. We will look at the dilemmas involved in engagement work and present possible solutions. Engagement is often characterised by human rights training initiatives for the police. In Section 10.4 we will look more closely at this particular type of engagement. Section 10.5 presents a three step approach on how to organise various approaches and decide when to do what in order to effectively influence the police in a target country. We close of with a brief summary.

Not one type of NGO

It should be noted that there is no one 'type' of human rights NGO. On the contrary, they differ immensely. The focus of their work can range from the international to the very local; their funds can be based on membership fees, (foreign) government contributions or non-governmental donors (such as

the Ford Foundation, Mac Arthur Foundation, Open Society Institute etc) or a combination of these – each of these creating a particular dynamic. Their work can focus on one specific aspect of human rights, or can focus on a broad variety of themes. They can work closely with the target government or focus on campaigning to oppose policies. In this Chapter we will, wherever relevant, specify what kind of NGOs we are referring to.

10.2. Amnesty International's work in practice

10.2.1. Introduction

Amnesty International is well known for its country and thematic reports as well as for its actions and campaigns. In the following Sections we will explain briefly how these activities are carried out, i.e. how Amnesty International gathers its information and what it does with it, and how this relates to policing. This Section therefore strongly focuses on Amnesty International's internal policies and procedures.

10.2.2. Gathering information: research and Work On Own Country
10.2.2.a. Research carried out by the International Secretariat

Amnesty International's work is based on information about human rights realities in countries all over the world, assessed against human rights requirements under international law. Work on a particular country starts with knowledge of certain cases of human rights abuses suggesting an underlying pattern of systematic violations. Amnesty International's researchers receive their information through a variety of open sources (newspapers, internet) as well as through personal contacts with local NGOs, opposition leaders, academics and others. Visits to countries (known as 'missions') are carried out on a regular basis, during which Amnesty International staff verify and seek further information and seek a dialogue with State representatives. Country reports are published on a regular basis. Reports always include recommendations to improve the human rights situation. Country reports sometimes focus on a specific theme, for example conditions in detention centres, security legislation, abuse of force by security officials, violence against women etc. Amnesty International also publishes thematic reports covering more than one country.

In recent years the International Secretariat (IS) has developed some detailed research and action projects involving a variety of techniques (such as engagement, human rights education, advocacy of policy, publicity) on policing in particular countries, including on Afghanistan, Jamaica, the South African Development Community (SADC) countries, Timor Leste, the United Kingdom, Brazil, Malaysia and the United States of America, and on particular issues, such as the use of force and firearms, in consultation with police experts.

10.2.2.b. Research carried out by Amnesty International sections and structures

Staff working at Amnesty International's national sections and structures used to refrain from conducting research into individual human rights violations themselves – whether on their own or on other countries. However, this policy has recently been removed and research on own country, known as WOOC research (WOOC meaning Work On Own Country), is now undertaken in several sections. In 2005 the International Council Meeting (the organization's highest decisive body) decided that WOOC projects "are meant to contribute to the relevance of AI as a local actor as well as maximising AI's research potential (…)"[1]

Some sections are currently undertaking work on policing in their own countries. For example Amnesty International-Switzerland has issued a report in June 2007 on police abuses including 'points of departure' for improvement[2] and Amnesty International-USA has been doing work on policing for some time, particularly focusing on Lesbian, Gay, Bisexual and Transsexual (LGBT) rights and racial profiling.[3] Such work can facilitate both working on and engaging with the police.

10.2.3. Campaigns and actions
10.2.3.a. Introduction

Based on research gathered by Amnesty International, coordinated follow-up activities are planned aimed at improving the human rights situation in the target country or campaigning to bring those suspected of having committed human rights violations (amounting to crimes under international law) to trial. The research information and campaigning strategies produced at the international level of Amnesty International have always been the basis for national campaigning strategies and action carried out by sections and structures. Amnesty International is traditionally associated with its letter-writing to authorities all over the globe. Obviously the organization has more campaigning techniques at its disposal such as petitioning, speaking tours, public events and protests, home government lobbying, contacts with embassies, celebrity support and so forth. *AI's Campaigning Manual*, last published in 2001, gives an extensive overview of campaigning strategies and techniques used by the organization. It states: "learning to use the right tools for the job at hand is part of the trade of campaigning – as is developing new tools for new problems."[4] Indeed campaigning, like research, is a continuously evolving competency for which there are no fixed methodologies.

10.2.3.b. Police as allies

Police can be the target of campaigns but can also be allies in campaigns as is the case when police officers, who are members of Amnesty International or sympathetic to its goals, cooperate with the organization in order to enhance the organization's effectiveness. The *Campaigning Manual* includes a specific section on outreach to Military Security and Police (MSP) personnel stating clearly that such personnel can help Amnesty International in its campaigning work. Police members of the organization can assist in lobbying activities

1) 27th International Council Meeting, Circular 57, decisions of the 2005 ICM.
2) AI- Switzerland, 2007, *Polizei, Justiz und Menschenrechte. Polizeipraxis und Menschenrechte in der Schweiz*.
3) See AI - USA, 2004, *Threat and humiliation, racial profiling, domestic security and human rights in the United States*; 2005, *Stonewalled. Police abuse and misconduct against Lesbian, Gay, Bisexual and Transsexual people in the U.S.*
4) AI, 2001, *AI's Campaigning Manual*, p. 8.

(for example join in embassy visits), join research and campaign missions, conduct lectures at national police academies in their own country, train local membership on policing issues etc, in fact, any activity for which police expertise is useful or the presence of a police officer can help to 'open doors'.

Amnesty International's sections in countries where police are not involved in systematic human rights violations may decide to set up **professional police groups** – usually receiving administrative support from the section's secretariat. At this moment such groups exist in the Netherlands, Austria and Germany. Members of these professional groups write letters to police leadership in target countries, presenting themselves as fellow police concerned about the human rights abuses carried out by or against their colleagues. It is anticipated that receiving a letter from a colleague will impress more and hence be more effective than receiving one from a 'civilian'.

Clearly, setting up a professional police group is not always an easy task. Considerable time needs to be devoted to developing a common understanding of human rights in general and Amnesty International and its mission in particular, as well as on the tasks and responsibilities of the police group. Professional groups typically start with one or more enthusiastic volunteers; institutionalising the group within the section can sometimes be a challenging task requiring time to ensure sustainability.

Obviously it is not essential to have a professional police group in order to mobilize police officers as part of a campaign. Police officers may also participate individually in a particular research or campaign activity. Amnesty International-Netherlands has set up a network of (retired) senior police officers and other police experts for this purpose.[5]

10.2.3.c. Targeting police conduct

More often than not, governments are the target of Amnesty International's campaigns and actions, since under international law governments are responsible for implementation of and respect for human rights standards in their State territory (discussed in Chapter 2). Moreover, human rights violations committed by police are often not limited to the police: the ineffectiveness or lack of professionalism of other State agencies (both within and outside the scope of the security and justice domain) often contributes to or facilitates police misconduct. An example of this is when prosecution services pressurise police to gain confessions rather than evidence from suspects, leading to the use of torture by police. Hence the importance of carefully defining the appropriate target when seeking to create change in police conduct. Sometimes it is more effective to target other State organs influencing police actions either directly or even indirectly: for example when there are other national constituencies (ombudsman, parliament, research institutes, professional bodies, victims) which have an interest in reform. Relevant questions should include an assessment of their influence and how this can be harnessed. In situations of reform there are often international donors involved creating yet another potential target to approach.

In situations where police are targeted directly, campaigns tend to focus on the highest police management level as being responsible for their agencies. However, sometimes targeting middle or lower ranks can be an effective strategy as well, as these tend to be the levels where human rights violations are committed: receiving letters from all over the world can sometimes be an effective deterrent against future violations.

There are some issues to take into consideration when seeking to target police conduct with actions and campaigns. These include:

- **The launch of a country report.** Questions to consider are obviously where to launch it and whom to invite. It may be effective to invite a 'friendly police officer' for the launch. For example in Kenya a press conference was organized for the launch of a report and was attended by a police officer who had joined the mission on which the research for the report was based. In countries where funded police reform programs are in progress, it may be effective to organize a parallel launch in donor countries.

- **The campaign could focus on:**
  - Recommending amendments to laws and procedures relating to policing
  - Recommendations focusing on improving police training
  - Recommendations focusing on police detention facilities
  - Concentrating on a specific police division or unit
  - One or more types of human rights violation by the police
  - Dealing with one aspect of, for example:
    - Use of force and firearms, such as registering, reporting and accountability
    - Arrest and detention, such as oversight of police detention
    - Public order management policy, such as inadequate training; poor planning; deficient leadership; lack of concern for minimisation of the use of force; inappropriate weapons and equipment; lack of accountability

- **Campaigning methods** should have optimal effect on the targeted police conduct. Methods to consider, beyond the 'standard actions toolkit', include:
  - The involvement of professional police groups, e.g. in letter-writing
  - Lobbying with a (foreign) senior police officer
  - Drafting a memo to the police leadership on implementation of recommendations
  - Letter-writing to
    - The police directly
    - Those directing the police (e.g. Ministry of the Interior)
    - Those responsible for legislation (parliamentarians)
    - Donor countries

5) Please contact the 'Police and Human Rights Program' team of AI-Netherlands for further information.

- Lobbying
  - In the target country
  - In donor countries
- Coalition building
  - With (local) NGOs
  - With police unions
- Reaching out to police; focus on good examples, organize an event on 'police anniversary day' (which some countries have), carry out a needs assessment, support reform etc.

10.3. Engagement with the police

10.3.1. Brief historical overview of Amnesty International's position on engagement with the police

Identified as a potential target sector in the 1970s, Amnesty International's work with police has undergone relatively little development at either a policy or strategic level. At the same time, other areas of Military, Security and Police (MSP) work, such as equipment/training transfers, have become increasingly prominent in AI's campaigning and have been the focus of significant debate and a clear evolution of policy. In December 1987 the Secretary General and the IS issued a paper which initiated a movement-wide discussion on AI's work with military and police, resulting in an IS policy document *Involving the Military and Police in Human Rights Work: Suggested Guidelines*. This later policy document became the most elaborate guidance for AI sections. In 1998, the IS published the *10 Basic Human Rights Standards for Law Enforcement Officials*, a 10-point summary of international standards relevant for police in the context of human rights, and *A 12-point Guide for Good Practice in the Training and Education for Human Rights of Government Officials.* Like the 1987 *Suggested Guidelines,* these documents have formed the main starting point for work by the IS and sections on outreach to police and military officers and institutions over the past years.

Various Amnesty International sections have set up number of engagement efforts with police, including in Spain, Ireland, Slovenia, Venezuela, Peru and the US. AI-Netherlands, as part of its Policing and Human Rights Program, has helped sections develop many such projects (and supported many of the IS initiatives) and published a *Compilation of six experiences* in 2001 and a *Lessons learnt* document in 2003.[6] Also in 2003 there has been a review of *AI's Engagement Work with Law Enforcement Officials*, carried out by the Standing Committee on Research and Action (SCRA), a committee working on behalf of the International Executive Committee of Amnesty International. Anyone within Amnesty International, considering engagement activities with police, should read this review (hereafter referred to as the SCRA review).[7] Based on this review the 2003 International Council of Amnesty International (ICM) decided that: "when engaging with law enforcement officials members may use the full range of techniques unless doing so in a particular context would impede or

constrain AI's ability to denounce human rights violations."[8] Since then this has been the guiding principle for engagement initiatives.

Engagement has not been clearly defined within Amnesty International. The SCRA review refers to 'engagement' as opposed to 'outreach', stating 'outreach' is no longer sufficient as it implies a one-way relationship. The preferred approach to the police is one of "levels and types of engagement with different police institutions and actors. This covers a broad range of activities [lobbying, dialogue, positive influence, awareness raising and in some circumstances partnership & collaboration] suggests two-way dialogue and can also capture the necessity of "risk-assessment" and maintaining the ability to denounce human rights violations which is key to AI's credibility."[9]

There may be several factors for Amnesty International in deciding to initiate engagement with police:

- The police may encounter problems in respecting human rights; engaging with police may help to stimulate discussion and reflection within the police about human rights in order to improve their human rights record.
- Police operate in a complex environment, often facing high levels of crime and resulting in public call for policing which is 'tough on crime'. Engagement may help to define the challenges in human rights terms and may help in achieving innovative solutions.
- Where police respect human rights, engagement may help Amnesty International to enhance its knowledge and understanding of police work.

Engagement can be initiated by the police or by Amnesty International, or any other NGO, as can be seen in some of the examples of engagement initiatives developed within the Amnesty International movement given below (in chronological order):

Netherlands: Since 1986 there has been a *Professional Group of Police* in which some 150 police officers – as volunteers with Amnesty International – regularly take part in campaigns and actions. This professional group was set up by police officers, and is facilitated by Amnesty International-Netherlands.
In 1995 an additional group was established, at the request of the International Secretariat, consisting of police officers and experts – the *Police Resource Group* – to systematise the provision of advice on policing to the Amnesty International movement.
In 2000 the section established the *Police and Human Rights Program* supporting sections and the International Secretariat in their efforts to influence police conduct and initiate engagement efforts.

6) Both are internal documents, published by AI-Netherlands. Contact the Police and Human Rights Program-team for a copy.
7) 26th ICM, circular 22. The Standing Committee on Research and Action (SCRA), an IEC Committee, was established in 2001 and has been disbanded in 2005.

8) Decision 20, 26th ICM, circular 50, Decisions taken at the ICM.
9) Ibid. As is stated in the review: "Work with law enforcement officials is comparable to "company approaches" work.", p. 3-4.

Austria: As of 1999 Amnesty International-Austria has developed a strategy to raise human rights awareness within the police. The section established a *Professional Group of Police*, which aims to improve human rights awareness within the police by working on cases where the rights of fellow police officers have been violated. By doing so, the professional group of police seeks to overcome potential tensions between police and Amnesty International and focus on human rights rather than differences between the organizations.
Amnesty International Austria also lobbies for the implementation of human rights standards in police training and practice. The section also participates (informally) in an Independent Advisory Board on Human Rights which was established by the Ministry of the Interior, involving governmental representatives and NGOs alike.

Ireland: A joint strategy has been developed in which Amnesty International has supported moves by the Irish Police to enhance its respect for human rights. Since 2000 AI-Ireland has been an advisory member of the Garda Human Rights Working Group (Garda Síochána is the name of the Irish police) and has provided advice in relation to training programmes, a declaration of police ethics, and human rights awareness and auditing. The Working Group recommended that the Garda carry out a Human Rights Audit, which it did. The audit's report (the 'Ionann report') was published in March 2005; the Garda Commissioner publicly accepted all recommendations and promised full implementation. AI-Ireland in turn welcomed the Commissioner's response and urged the Ministry of Justice to share in its responsibility.

Slovenia: Contacts with the police started during Amnesty International's Campaign against Torture (2000-2001). In 2001 AI-Slovenia started working on reform of the police accountability system, which led to the establishment of long-term engagement contacts. AI-Slovenia has since been involved in commenting on legislation for reform of police complaints procedures, human rights education of police, raising of public awareness about the legal means to challenge police misconduct (including publication of a leaflet), monitoring of police detention facilities and has been involved in intensive lobbying against the use of electroshock weapons by police. In 2004 AI-Slovenia, with support from AI-Netherlands, published two reports on civilian oversight of police – one concerning the accountability system and another concerning the monitoring of places of dentition (both are also available in English).

10) Bayley, D., 2001, *Democratizing the police abroad: What to do and how to do it,* p. 40. See also Cavallaro, J.L., 2003, *Crime, public order and human rights* for a discussion around this issue.

Engagement is typically initiated at section level rather than by the International Secretariat (IS). It may however be part of a country strategy formulated jointly by the IS team and the respective section or structure. An example is Malaysia, where the IS team worked to influence an Independent Commission of Inquiry's report regarding police reform, and the Amnesty International structure in Malaysia carried out activities, including engagement, following the release of the Commission's report. In such a situation complementary activities at the international as well as the national level can add value.

Engagement implies a search for commonalities rather than differences. Indeed, engagement requires active and sincere efforts to define a mutual agenda. If police use their engagement relationship to avoid criticism, if they seek co-option rather than cooperation, they place a burden on the relationship that no NGO can afford to accept. However, the reverse is true too. If NGOs use their engagement relationship to ridicule police acts, they risk damaging what has been established.

A first step to introducing human rights to police work can be to discuss the rights of police officers themselves. As was mentioned in Chapter 1, respect for human rights starts from within. Police leadership should show a clear commitment to the rights of their officers, not by granting them impunity, but by giving them fair pay, proper working conditions and equipment, but also being aware of an officer's personal dignity and social position and respecting their input when making decisions on operational and policy matters.

10.3.2. Dilemmas involved in engagement
Engagement with the police poses two distinct dilemmas for Amnesty International - as it does for any human rights organization:

1. The first dilemma is about how to find a balance between engagement and criticism. In essence it is about how to avoid being co-opted: "Non-governmental organizations dedicated to protecting human rights must learn to work with, as well as against, the police."[10] Engagement should never jeopardize the NGO's ability to denounce human rights violations, something about which the NGO should be clear.

2. The second dilemma is about the core function of NGOs: State organs are responsible for implementing State responsibilities; NGO's monitor and comment upon this process, being observers rather than players. Yet engagement, especially in situations where NGOs support police reform, may blur this distinction and lead to situations where NGOs start playing a more active role and (are perceived to) depart from their observation roles, creating a situation in which NGOs tend to feel less comfortable.

Combining the two brings us to the fundamental dilemma of whether human rights organizations should continue criticising, or whether they should support (and to what extent) the State to overcome its ineffectiveness. Options range

from fundamental scepticism regarding State institutions' ultimate behaviour, to a basic confidence regarding the States' potential ability to solve societal problems. Obviously the challenge is how to combine both these positions; how and to what extent to cooperate *without* losing the ability to condemn abuses when officials commit them. NGOs need to reflect on what exactly they can and cannot do, since remaining uninvolved can hardly be considered an option – certainly not when States are making sincere efforts to improve the human rights situation.

It may be useful to study how these dilemmas are dealt with in contexts other than policing, for example when human rights NGOs (and environmental NGOs) engage with commercial companies. Engagement with police has many similarities with engagement with companies. Some sections within Amnesty International have units (often called Economic Relations or Business Relations) working on business and human rights. The dilemmas involved are very similar (how to establish trust while maintaining a certain distance) as is the conduct of the target for engagement. Police (should) worry about public confidence just like companies (should) worry about their image. Police may engage for purely instrumental reasons, just like companies. Companies need to learn to listen to their customers, just as police need to listen to the communities they serve.

The following matrix is used within this context of NGOs working on businesses. It helps to define what kind of NGO one is, or wants to be, in engagement contacts and how this facilitates or hampers such contacts.[11] The matrix distinguishes between those NGOs seeking to create and/or maintain a clear distance between themselves and their target and those seeking to collaborate, and secondly between those NGOs that discriminate between the good and the poorly performing companies and those that don't. This leads to four types of NGOs:

	Polariser	**Integrator**
Discriminator	**Orca** Scrutinises relative performance and attacks selected targets	**Dolphin** Scrutinises relative performance and selects appropriate targets
Non-discriminator	**Shark** Ignores relative performance and attacks most targets	**Sea lion** Ignores relative performance and works with anyone

11) The tool was first published in SustainAbility (1996) "Strange Attractor: A strategic review of BP's relationships with environmental non-governmental organizations." We've used the version as it was used by Chris Marsden and Jörg Andriof in "Towards an understanding of corporate citizenship and how to influence it."

Some companies – most notably those ignoring the environmental and social impact of their actions, and only responding when pressed to do so – require a shark-like approach. They will need clear rules and/or the threat of costly repercussions for them to change their behaviour. Other companies – for

example those that do make a strategic commitment to the environment based on pragmatism and vision – may benefit from a more dolphin-type collaborative approach where win-win solutions are mutually explored. Threats of public shaming may be counter-productive; the approach should rather seek to support and encourage positive behaviour. Yet, those companies that take on full responsibility are already closely aligned with chosen NGOs and join forces when campaigning against other companies. What's more, companies need NGOs to keep them in touch: "In fact, NGOs and large companies are made for one another, even though they may have yet to realise it (….) All powerful organizations, including large companies, need effective countervailing power to keep them performing effectively for their own benefit as well as that of wider society."[12] For this to become a fruitful relationship, companies should understand their potential for having a positive impact on their environments, and NGOs must better understand the realities and complexities of running a commercial enterprise. The conclusion is that NGOs cannot survive either being a strict *Polariser* nor a strict *Integrator*. It is necessary to develop a twin track approach where the NGO adapts its strategy to the target company.[13]

This model can be translated to engagement with the police almost exactly. Some police actively seek to engage with the communities they serve in a joint effort to solve the communities' problems, whereas other police agencies are still largely involved with keeping members of the public at a distance, including those representing their needs and interests, and may therefore require a more severe approach by the respective NGO seeking to influence their behaviour.

The approach of the human rights NGO should match police conduct and/or reform intentions. As long as the police do not violate human rights, or have proper correction mechanisms to address violations, the relationship between NGOs and police will not be too difficult. Things change of course when, during engagement, police do violate human rights and seek to avoid punishment. As a rule: if the police have committed human rights violations, they should be held accountable for them and sanctioned accordingly. However, at the same time, they may seek the help of NGO's to prevent violations from recurring. This may present a dilemma for the NGO, leading some authors to argue that working with the police may simply turn out to be incompatible with denouncing police abuses.[14] In any event, when engaging with the police, there has to be clarity on each other's roles, and these should be respected openly and transparently. If a human rights violation does take place, police need to deal with this first. Only after police have taken responsibility for their actions (accountability) can the NGO continue to engage without being compromised.

10.3.3. Possible solutions
As was mentioned previously, some of Amnesty International's sections and structures have already gained considerable experience in police engagement. In 2003 the Police and Human Rights Program of Amnesty International-Netherlands evaluated six of these engagement experiences and defined lessons learnt.

12) Ibid, p. 22.
13) Ibid.
14) Cavallaro, J.L. 2003, *Crime, public order and human rights* quotes the Director of CLEEN, a Nigerian NGO, stating: "It is very difficult for groups to work from different approaches in terms of relationship with the government. It is more efficient to address different issues and to maintain an exchange of information amongst rights groups." (p.36).

The prime lesson is that engagement requires careful preparation. This should include making a context analysis as well as 'self-analysis'. As the SCRA-review firmly states: "Any program of police engagement work must be grounded in solid contextual analysis taking into account both existing AI research on a country/region and further information about police structures, training and practices gathered by a section/structure and/or by the IS. This analysis should include both a risk assessment of potential engagement work by AI and consideration of any similar work with law enforcement by other NGOs."[15] In appendix A of this Resource Book an assessment tool is presented for making such a contextual analysis. Furthermore "any engagement should be based on a national strategy for police engagement work within the context of Work On Own Country policy & guidelines."[16]

Police work is often understood in simple notions about what they should do, often further encouraged by media reports about police failing in their duties to maintain order. Indeed, police tend to be praised for their action rather than for their restraint.[17] Not many people fully understand the complexities of police work in modern societies: "Human rights activists have far more experience with the workings of the courts than with the closed, sometimes military-dominated, and often-hostile police forces. Yet the police are on the frontline of crime fighting, and, despite research indicating that abusive and discriminatory policing reduces effectiveness, efforts to introduce community policing and other responsive and prevention-oriented approaches often collapse, criticized as being "soft on crime." The challenge of crafting reforms that can address both police accountability and effectiveness lies at the heart of human rights engagement with the need to confront both crime and ongoing state violence."[18]

Role of the media

It is clear that the media play a particular role. They influence public opinion regarding security matters and thus set the parameters against which 'human rights based policing' is measured.[19] As an example, many journalists refer to suspects as 'criminals', thereby undermining the fundamental right to be presumed innocent. The public often accepts police violence against such persons condemned as 'criminals', but condemn 'innocent' victims of police violence. In addition to the objective measuring of crime, most public debates are driven by perceptions. Measuring and managing perceptions is key in this area and a new challenge for many human rights activists.

In general, journalists tend to have little knowledge of human rights principles, resulting in the neglect of the human rights aspects of individual cases. This is exacerbated by the increasing time pressures that journalists operate under resulting in minimal checking of sources. Consideration needs to be given by NGOs as to how to engage with the media, including how the media influence public perception and expectations. It may be worth offering human rights training to journalists for example.

15) SCRA review, p.8.
16) Knowing the facts is a point that is stressed in many reports. See for example PolicyLink, 2004, *Organized for change, an activist's guide for police reform.*
17) Bayley, D., 2002, "Law enforcement and the rule of law: is there a tradeoff?"
18) Neild, R., 2002, "The new face of impunity."
19) Cavallaro, J.L., 2003, *Crime, public order and human rights.*

When engaging with the police it is important to realise that police officers will usually not use human rights vocabulary and will often not relate 'human rights' concepts to their work. The fact that police do not use human rights vocabulary (and are unaware of international standards) obviously does not mean that they will automatically violate human rights. Indeed, they may very well still act in accordance with human rights principles. There is a debate amongst academics about whether police officers should be given formal knowledge of human rights as such, or whether human rights principles should rather be 'disguised' under the umbrella of 'professionalism'. Another concept that is often used by practitioners seeking to avoid human rights terminology is 'ethics' or 'integrity'.

Police and human rights NGOs may have more in common than we think!

For any engagement initiative it is helpful to focus on similarities rather than differences. In fact, there are many commonalities between the police and human rights NGOs, including:

- Their work is about **moral matters**; both police and human rights advocates are working on issues that have to do with 'good' and 'bad'. Both may perceive the world in moral rather than neutral judgments.
- Both have an **abstract mission** that can never be fully achieved. The police seek to 'ensure security for all'; and human rights advocates strive for a world in which 'human rights violations cease to take place.'
- Because the objectives are abstract, there are **many different opinions about what the organization should do**. In the case of police, some will say they should 'catch thieves' whereas others will say they should work on crime prevention. In the case of human rights organizations such as Amnesty International, the discussion is about the scope of the mandate and mission.
- Balancing a **central versus a decentralised system**; any police officer knows and understands the problems of headquarters seeking to direct their work on the street. The similarity with Amnesty International's headquarters (the IS) and its membership structures is striking.

Setting up 'low level engagement' with police in a country where human rights violations do systematically take place requires caution and a proper risk analysis to ensure an NGO's independence and impartiality. However, even in such circumstances, setting up effective relationships with the police is possible and fruitful, as can be seen for example in Mozambique and Angola. In these countries, where there is no Amnesty International structure, research staff at the IS has been able to establish good contacts with the police. They aimed to show that Amnesty International understood policing and the challenges police faced and built a relationship based on mutual respect in which it was possible to hold constructive discussions about mutual interests and concerns. It is always difficult to assess the impact of such initiatives, but

they certainly provide insight into the policing situation in the country and there is reason to believe that face-to-face contacts increase the likelihood that the police will consider Amnesty International's recommendations more closely and take them more seriously.

Police and NGOs
Why and how human rights NGOs and police services can and should work together
A leaflet with this title was published in 2004 by the European Platform for Policing and Human Rights, in which both police and NGOs participate (including Amnesty International). The leaflet discusses the advantages and disadvantages for human rights NGOs in establishing engagement with police and vice versa. It also presents a template for police and human rights NGOs to co-operate effectively:

1. Build trust
2. Agree on aims and activities of the partnership
3. Agree on rules of engagement for the partnership
4. Identify what NGOs to work with
    Criteria: The NGO should be stable, accountable and able to add value to the police
5. Agree on the status of engagement in both entities
6. Agree on mechanisms of communication
7. Agree on monitoring and review arrangements to measure effectiveness
8. Resource the partnership

In sum, establishing engagement requires careful reflection on how to put a dual role into practice. There are several rules of thumb:
*   Engagement requires knowledge and understanding of police work.
*   Start by making a contextual analysis and a self-analysis.
    · This should include a risk-assessment.
    · Are police the appropriate target?
    · Sections and research teams at the IS should coordinate their activities.
*   Though work with the police may start from individual contacts it is important to ensure anchoring within the institutional level both within the police and within Amnesty International.
*   Is there sincere commitment on the part of police? Is it realistic to seek such a commitment?
*   What are the common interests? Is there a common agenda?
*   Be clear on what role your NGO has: AI supports efforts to introduce human rights principles to police practice while at the same time criticising human rights abuses. Having some joint interests does not mean all interests are shared.

*   Make sure everyone understands and preferably explicitly agrees on their roles.
*   Avoid internal police politics, but do be aware of different interests that are at stake.
*   The building of trust takes time

10.3.4. Local human rights NGOs and engagement
Thus far we have discussed engagement primarily from Amnesty International's perspective, be it the International Secretariat or the organization's national sections and structures. However, local NGOs are sometimes in a better position to work with the police than international NGOs like Amnesty International. Indeed, international NGOs may in fact be more effective when supporting and facilitating local NGOs and local human rights defenders rather than initiating engagements themselves.

The dilemmas and solutions discussed in the previous Sections are similar to those faced by local NGOs intending to initiate engagement with police. Seeking engagement with police may create resistance and meet opposition from fellow NGOs and from the NGO's membership. It is therefore crucial when considering engagement to be transparent about aims and intentions in working with the police. It is possible that there will be local NGOs, including those supporting victims of crime, already working with police agencies. In fact, human rights based policing requires police to engage with community groups, as police have to be *"responsive to the community as a whole"*.[20] As such it is important to be familiar with the work of other NGOs in this field and how those with a human rights agenda can complement one another, rather than compete.

NGO activities relating to the police are broadly of two types[21]:
1. Those concerned with violations of human rights committed by police officers.
2. Those concerned with reforms in the working of the police as an organization.
Both these activities require NGOs to have full knowledge of the organization and working of the police, their laws, rules and regulations, their plans and programmes and what needs to be done to bring about improvements.

The first group of activities include bringing police atrocities out into the open and putting pressure on the government to take action against the police. Police or government reaction to NGO allegations is usually that of denial. The government is generally reluctant to expose police abuse of power as the opposition could use it against them. However, where the documentation of human rights violations is authentic and supported by irrefutable evidence, governments can be forced to take action. Documenting human rights violations committed by police personnel poses a major challenge to NGOs. The task is quite daunting not only because of the intimidating nature of the work but sometimes also because of lack of expertise. Similarly, while working on police reform issues, lack of expertise among NGOs makes it difficult for

20) General Assembly Resolution 34/169, adopting the UN Code of Conduct, 17 December 1979.
21) The discussion on two types of NGO activities is based on personal communication with Mr. G.P Joshi, CHRI, Police Program Coordinator, India.

them to advocate successfully for concrete alternatives for restructuring the police or to recommend programmes for action within the existing legislative framework. In such situations, governments feel that although NGOs are ready and willing to condemn the police at the drop of a hat, they have no alternatives to suggest. It is therefore extremely important for NGOs to equip themselves with knowledge of police work and keep updating their knowledge.

Local human rights NGOs working in an environment where people feel insecure, due to (real or perceived) high levels of crime, face particular challenges.[22] In situations where the State is perceived to have lost control, the role of non-State actors becomes important. Non-State actors as diverse as human rights NGOs, but also citizen and business groups, security firms, vigilante groups, and the media, can influence the atmosphere in which the security debate takes place. Victims may feel anger and may formulate demands for retribution – often encouraged by those seeking political gain – that can be easily and quickly mobilised (as opposed to long term solutions to crime which require commitment). Politicians may manipulate public security issues for political gain. It is easy to talk people into feeling insecure, thereby paving the way for 'law and order' rhetoric and demands for the government to act accordingly. As a result, and frequently increased by media pressure, public opinion may view the defence of human rights as the defence of criminals, resulting in increased hostility towards human rights defenders.[23] What's more, the public may become so overloaded with security 'news' that they lose interest and withdraw from the debate altogether.

For these reasons it is very important for NGOs to work in a manner that does not lose them public support. This need not necessarily require them to compromise with the basic principles on which their work is founded. It is a question of designing suitable strategies to convince the public that adoption of short cuts by the police does not solve the problem of crime and doesn't increase a feeling of security.

How to resolve these challenges is not easy. It can be an effective strategy to co-operate with those that are responsible for security issues, such as the police, and aim to bring them in contact with the civil society giving the latter (back) a sense of control over the areas in which they live. A study carried out by the International Council on Human Rights Policy found that local human rights NGOs have adopted the following strategies and methods for dealing with situations of high crime and negative attitudes towards human rights[24]:

- **Oversight.** NGOs have adopted watchdog functions and trained others in doing so too. Many local NGOs explicitly only work for innocent victims as the public tend to be more sympathetic to such cases. If the victim is a 'criminal' they tend to stress the structural conditions that cause people to commit crime (low education, poverty etc) in order to increase understanding. If possible they publish statistics of human rights abuses. It is important to focus on those cases that can transform public opinion; working closely with the media is a

prerequisite. Establishing contacts with 'official' oversight bodies may help to facilitate access to State authorities. Moreover, in some countries parliamentarians seek input from NGOs when deciding on police related policies and resource allocations.

- **Cooperative efforts with State authorities.** This can take many forms, such as:
  - *Community policing;* civil society groups may cooperate with police in community policing programs helping the police to improve their contacts with the communities they serve. Note that community policing should never be interpreted as non-police entities taking over police responsibilities but should rather be taken as an effort in which civil society groups and the police seek to mutually address the needs and worries of the people so that the police can respond accordingly, assisted by communities. Indeed, community policing starts from the premise that police can never solve crime alone.
  - *Witness and victim protection;* controlling crime is hampered by witnesses and victims being unwilling to testify against organised crime groups and corrupt police officers. This unwillingness stems from, often legitimate, fear of retaliation if testifying, and a lack of trust in the criminal justice system. In some countries civil society groups are involved in the development and implementation of State-financed protection programmes.
  - *External oversight;* governments have established independent oversight bodies (called ombudsman, complaints review board, police oversight commission etc.) monitoring the work of security agencies in order to improve transparency and accountability. Very often these oversight bodies work in close cooperation with civil society groups. Their staff members and chairs often come from rights groups and it is from such groups that they frequently receive important information.

The initiative to engage with civil society groups may also come from the side of the police. Police may very well understand that solving crime requires cooperation with the public. In fact, some police in various regions of the world and from various backgrounds fully understand that not having access to communities is their core problem. Aiming to establish such cooperative relationships with communities often marks a government's departure from former periods of authoritarianism and is often seen in situations of reform where the government seeks to avoid adopting 'tough on crime' policies.

- **Broad engagement in the security debate**. For many human rights activists the security debate is sensitive and complex and largely uncharted. It requires further capacity building within human rights groups on issues where there is little experience. Security issues, including policing dilemmas, must be fully understood in order to

22) Cavallaro, J.L., 2003, *Crime, public order and human rights*, p.32.
23) Ibid
24) Ibid.

develop a position that goes beyond theoretical principles. It also requires critical self-reflection and the willingness to adopt a positive attitude towards police. Focusing on 'good practices' can help to establish contacts with police.

- **Police training**. This issue will be discussed elaborately in Section 10.4 below.

Organizations representing victims of crime may focus on victims of crime in general or may specialize on particular crimes, such as domestic violence, rape, discrimination, or particular victims groups, such as women or specific ethnic groups. In some countries victim groups and human rights groups find themselves in opposition. Victim groups sometimes support 'tough on crime' policies and practices, such as increased severity of punishment, mandatory sentences, and attacks on human rights defenders in the media. Some even believe that lowering human rights standards is necessary to combat crime. For example in Brazil, indiscriminate police violence against those living in the crime-ridden *favelas* is accepted and even welcomed by large sections of society, who believe, contrary to the evidence, that high levels of police killings are the only effective way of addressing violent crime. As a result, certain politicians and media regularly dismiss human rights defenders as being "defenders of criminals". As a consequence, police sometimes may feel more comfortable with victims groups than with human rights groups, furthering the gap between the two.

Different NGOs play different roles and the police conduct different functions. Police may have community police units that seek to engage with their communities, while their organized crime units may adopt harsh anti-crime measures. "In many societies, particularly in larger countries with significant internal diversity, it is not unusual to find several elements of both approaches [a collaborative effort and hard-line reactions to criminality] simultaneously. This fact complicates the choices for rights groups, adding many shades of grey to the decision to remain fully independent of state authorities or to work with them in designing joint, collaborative strategies."[25]

10.3.5. Engagement as part of police reform initiatives

An issue is whether Amnesty International and other human rights NGOs can and should support police reform, and if so what are the most effective means of doing so. Supporting reform can be an effective way of establishing a police agency that works within the human rights framework. Reform is often seen in countries with histories of police brutality, police corruption, or police ineffectiveness. Reform is most commonly initiated after a regime change from an authoritarian regime to a democratic government. As proof of the new status quo the new government seeks to prove that the police are no longer an instrument of the powerful elite, but will now serve the interests of the people. As such, Amnesty International often welcomes police reform efforts.

Supporting police reform can go together with engagement efforts but this need not be so. The dilemma for a human rights NGO remains: how can one encourage police reform while continuing to condemn abuses. "Unremitting criticism of the police can be counterproductive – distancing police from dissenting voices, making the police less willing to admit abuses, tainting reformers within the police as turncoats, and undermining the willingness of police officers to bring other officers to account. The exposure of abuses does not automatically lead to reform."[26]

When considering support for police reform some points should be kept in mind. These include: Who are those in favour of reform within and outside the police, and what are their records? How to identify and support those in favour of reform? Is there public agreement on police reform? If not, it calling for public awareness of issues of reform should be considered first, since the public sometimes create serious pressure for the police to be 'tough on crime'. Indeed: "If the incidence of crime is thought to be unacceptable or increasing, police reform will be inhibited."[27]

Civil society working together with police?

In 2006 Amnesty International - Netherlands organized a conference[28] on the role of civil society and NGOs in police reform. During the conference representatives from a range of NGOs shared their experiences and views. Participants were in agreement that there was scope for an increase in the amount of cooperative contact that NGOs could have with police, thereby opening up a whole range of innovative, and possibly more effective, forms of intervention than had been used thus far.

Since every country and situation is different, a sound contextual analysis should always be made at the start. This should also help to identify points of entry or leverage. The following possible points of entry or leverage for NGOs were discussed during the conference:
- Work with retired police chiefs.
- Know the right people (through accident, informally or formally). In some countries (e.g. where there is a strong culture of patronage) knowing the right people is a condition for getting things done.
- Keep an eye to the political interests of a country. For example countries wishing to enter the EU may be more open to initiating police reform.
- Seek partners who hold the carrots and sticks (e.g. OSCE, UNDP) of financial resources.
- Use the media.
- Seek to improve the quality of service output rather than naming and shaming.
- Use local NGOs as leverage for (inter)national NGOs and vice-versa.

26) Bayley, D., 2001, *Democratizing the police abroad: What to do and how to do it*, p. 40.
27) Ibid., p. 25.
28) For the conference report visit: www.amnesty.nl/policeandhumanrights

25) Ibid., p.27.

New tactics in human rights

While great advances have been made in human rights advocacy over the past 50 years, human rights abuses remain widespread and persistent. From a tactical perspective, the international human rights community has largely responded to human rights abuse in two ways:
- setting human rights standards (conventions and treaties)
- monitoring compliance with standards

Such tactics have set the stage for global human rights advocacy. But as our understanding of human rights issues deepen, so does the need to rethink strategies. The more tactics available to choose from, the more effective will be efforts to address human rights issues. Thinking strategically - and choosing the most appropriate tactics to fit within a strategy - is the challenge before us all. The New Tactics in Human Rights Project, led by a diverse group of international organizations and practitioners, promotes the use and sharing of as wide a range of tactics as possible. On their website a database of tactics can be found as well as discussion on some of them. Visit: www.newtactics.org

10.4. Engagement through training and human rights education (HRE)

In many of Amnesty International's sections and structures, engagement takes the form of, and is limited to, education-related work. Training is often viewed as the basis for future police behaviour, and thus considered a prerequisite for reform. It may be due to this assumption that many initiatives by Amnesty International's sections and structures regarding the police focus on training. There may also be a more instrumental reason behind this enthusiasm for training, as it is often perceived to be a relatively easy and efficient method of engaging with the police and improving human rights sensitivity. HRE work with the police should comply with the same principles as any other engagement activity discussed before. However, there are some additional principles that will be discussed in this Section.

Training as an engagement activity can include 'critically observing' and formulating recommendations regarding (basic) police training curricula and teaching methods, and/or can include the NGO providing training themselves to police and/or police trainers, be it for basic or in-service training. Note that Amnesty International's sections can decide to participate in police training but only insofar as it concerns human rights related training. Amnesty International should never train police officers in policing skills and knowledge as such training is always a government responsibility.[29] However, the line dividing training in human rights related matters and practical police training is sometimes thin. The SCRA review gives an elaborate interpretation of what HRE is acceptable and what not. Amnesty International can:
- Lobby for human rights being part of the police curriculum, that human rights should be integrated and practice-oriented;
- Monitor, evaluate and comment upon human rights components of police training;
- Bring together police and local human rights activists;
- Give advice and information;
- Perform as resource persons;
- Develop human rights training materials;
- Carry out train-the-trainer projects training police educators on human rights;
- Perform as guest lecturers.

These activities may imply a stamp of approval for police training, but this is to be avoided at all costs. Neither should Amnesty International act as an accreditor of police training. It is for this reason that Amnesty International should also avoid to engaging in day-to-day monitoring of policing.

Point 1 of Amnesty International's '12-point Guide for Good Practice in the Training and Education for Human Rights of Government Officials' (all 12 points are given in Chapter 9)[30] states: "Prior assessment of the human rights situation is absolutely vital." As indeed with any engagement activity, it should always be based on a proper wider contextual assessment as well as a needs assessment.

Unfortunately this point is too rarely complied with in practice, as was found when evaluating engagement experiences: "Too often AI starts Human Rights Education initiatives with the police without previous analysis and needs assessment of policing matters and practices. HRE should not be necessarily the first option to engage with the police – often, legal reform, accountability issues, structure and promotion, etc. require reform, before the introduction of human rights courses. At the same time human rights courses or lectures alone should not be perceived to be enough to stop human rights violations committed by the police. The developments of good policing practices (i.e. knowledge of how to carry out an interrogation without using force) go further in preventing violations than knowledge of human rights standards alone."[31]

Conducting a contextual analysis is essential in order to decide whether training is indeed the most appropriate strategy for solving the human rights problems at hand. For example: training police officers to bring suspects before a judicial authority within a reasonable time requires a judicial authority that is indeed capable of dealing with suspects. If that is not the case, lobbying to solve these problems might very well prove to be more useful than training the police.

As with any engagement initiative, for any training program to be effective it should be part of an overall strategy supporting the transfer of knowledge from training to practice. No matter how well established training projects may be, one-off occasional training sessions have little, if any, impact, even if large numbers of officers are involved. Indeed, very often the focus of HRE projects is on the number of participants, rather than on how the policing system will be affected. Training in itself cannot accomplish any major change. Training that is not enforced in practice, training that is not embedded in a broader policy

29) See both *AI's Campaigning Manual* as well as the SCRA review. The latter states: "The organization needs to acknowledge its limitations within the overall context of police training, much of which involves operational aspects and specialized knowledge well beyond AI's capacity or role" p.9.

30) AI, 1998, *12-point Guide for Good Practice in the Training and Education for Human Rights of Government Officials*.
31) AI -Netherlands Police and Human Rights Program 2000-2003, *Lessons learnt* p.9-10.

framework, training that does not receive full support from police leadership, "reflected in police standing orders and in day-to-day instructions received by superiors"[32], is deemed to be a waste of resources. We have emphasized this point when discussing (basic) police training but it is just as important when discussing human rights training carried out by, or supported by, NGOs. A demonstrable commitment from police management is a prerequisite. NGOs will need to know what the police management's attitude is towards follow-up initiatives and whether they are willing to organise these to ensure sustainability. Police officers can be transferred after having finished the training or may decide to leave the service altogether. However, they may also turn out to become valuable 'ambassadors' for human rights. The contextual assessment conducted prior to the training must include an assessment of any ongoing reform programs and a strategy will have to be developed for how the training may fit in.

Just as training needs to be embedded in a broader reform framework, Amnesty International's own input must in turn be embedded in a broader strategy for engaging with the police. Developing training programs and materials for police trainers should include developing a vision for how to move forward after the program has been completed. This should include an assessment of activities being carried out by other NGOs. Amnesty International can also play a role in bringing together (local) NGO's and police officials to further the professional development of both parties and to help build trust and understanding.

In order to decide whether participating in HRE activities is an effective way of spending resources, it is important to consider whether the section or structure has the necessary expertise, time and financial resources:[33]

- **Expertise:** the police are a very specific target group with very specific characteristics. Basic knowledge of the police and police training is essential when engaging with the police, in whatever capacity. It is essential to have an understanding of teaching methods and insight into their effects, since those parts of police training that deal with human rights are often perceived as being unrealistic and not relating to the police job at all. It is therefore important to relate these lessons in a very clear way to practical policing, preferably integrating them into police-related topics. Addressing human rights in separate modules is often less effective.

- **Time:** Time is a crucial success factor, both in volume as in duration. Seeking to influence police training and to implement human rights into training such that it supports reform is a long-term commitment.

32) AI, 2002, *Policing to protect human rights*.
33) Please note that the HRE team of AI has developed a workshop for sections and structures planning HRE work (not necessarily concerning the police).

- **Financial resources:** Amnesty International accepts government funding for HRE activities. However, we recommend careful consideration as to whether this is appropriate for police training (unless it is short-term, project based and preferably targets police trainers rather than police themselves).

10.5. How to organise approaches to police and decide what to do?

First of all there must be a reason to start working on policing. Amnesty International's work usually starts from case-based information. Based on this information the organization decides whether to carry our further research and develop a strategy with actions and campaigns and/or establish an engagement initiative. Engagement can be initiated as part of a campaigning strategy but can also start without case information of human rights abuses – most notably in countries without major human rights problems. In any event, any work on or with the police should always start with an analysis of the police in that particular context, based on which a strategy can be formulated that can subsequently be translated into a project plan.

Step 1: Analyzing the police
This analysis should include the following:

1. Contextual analysis:
- Situational analysis; including country reports by Amnesty International and other NGOs about the current human rights situation
- Legislation and policies under which police operate (including Police Act, Criminal Code, Criminal Procedures Code and other regulations governing policing)
- Accountability mechanisms (internal and external)
- Internal structure of the police

Note that in Appendix A of this Resource Book a list of questions and issues is presented to assist in making a contextual analysis.

2. Self-analysis
- SWOT analysis of the organization's own competencies and future goals and ambitions
- Assessment of what other NGOs are doing in this field in this country

3. Formulate main concerns and specify
- Who is responsible for implementation of recommendations (e.g. National Commissioner, Ministry of Interior, Parliament)
- Who may support implementation
- Who can effectively influence implementation (both positively and negatively)

4. Evaluate whether more information is needed and specify accordingly

Based on this analysis, you may decide that it is more effective to target authorities other than the police as police abuse may be triggered by other factors such as legislation. If that is the case, it may prove fruitful to join forces with the police in order to improve the framework within which they operate – thus seeking a common agenda. It is important to identify areas of joint interest. These do not have to be formulated in human rights vocabulary. As suggested earlier, a good starting point could be to discuss the rights of police themselves.

Step 2: Develop a strategy

Following on from this information-gathering phase, a strategy should be developed. This strategy should choose between a confrontational or a more collaborative approach. The choice should be e based on an assessment of whether there is some potential within the police to effectuate change at all. If there is none, if there are no points of common interest, if the police is involved in grave human rights violations without there being internal support to stop these, engagement is out of the question.

It can be helpful for Amnesty International sections and structures, as well as for local NGOs, to organize an internal workshop in which strategy and methodology can be further discussed with those involved. Inviting other partners, most notably fellow NGOs, can be useful. However, this can also be postponed until after an internal strategy has been developed. During the workshop, the following issues need to be addressed:

1. Identify main concerns
2. Identify overall goals
3. Are there points of mutual interest with the police? If so, specify
4. What is the national strategy for police engagement work (within the context of the Work On Own Country policy & guidelines)?
5. Draft a risk assessment of potential engagement work
6. What further expertise does the section need?
7. Are there sufficient resources (finance, time)?
8. Are there any established police contacts that may support reform and which could help to identify areas of intervention? As a rule, always verify these with other organizations affected (political opposition, other NGO's, journalists, etc.) or with individuals that are familiar with the situation (academics, prosecution, magistrates)
9. Decide: Is engagement viable?

It can be helpful to include making an assessment of the main pitfalls and seek ways to deal with them. For example, if a lack of commitment from police top management is signalled, a strategy needs to be developed to address this. Making use of 'friendly' senior police officers from other countries may be useful, as they may be able to open doors that would otherwise stay closed.

The result of this analysis may be that a collaborative effort is either too ambitious or simply inappropriate, e.g. because the police seem to be

systematically and institutionally involved in human rights violations. It can also result in the conclusion that other NGOs may be better equipped to engage with the police. Do note that when this assessment of contextual factors to determine whether value can be added through engagement leads to the conclusion that a program should not be initiated, this can create some discomfort with those that have conducted the analysis as considerable resources (time, commitment) have already been spent.

Step 3: Project planning: define objectives and how to achieve these

Based on the outcomes of steps 1 and 2, a project plan should be drafted formulating objectives, entry points, activities and resources required. The project plan should include the risk-assessment and how the risk should be dealt with, including how to avoid being co-opted. It may be useful to relate the engagement initiative to other projects and campaigns taking place within Amnesty International such as the Violence Against Women campaign and the Control Arms Campaign as this may help to ensure long-term attention and may facilitate the creation of more resources.

Note that the project plan may very well indicate that further information gathering is needed in order to be able to develop an appropriate and effective strategy and project plan.

10.6. Summary

In this Chapter we have looked at how NGOs and the police relate to each other. We started with a discussion of Amnesty International's activities regarding police agencies, undertaken both by the organizations' International Secretariat as well as its sections. One of the methods used to seek to influence police conduct is 'engagement'. Engagement requires a joint agenda where co-operation is expected to be more fruitful than confrontation or opposition. However, engagement creates some dilemmas for NGOs, most notably the dilemma of how to work together while keeping enough distance to permit criticism and how to keep roles clearly divided. The Chapter has defined some 'do's and don'ts' based on experiences within Amnesty International. Engagement is often characterised by training programs, or participation in these. The Chapter closes with some suggestions for how to decide what to do in relation to engagement. Any activity should always be based on information. Indeed a proper contextual analysis should always be the starting point. Based on this, Amnesty International can develop effective human rights strategies for particular situations and formulate project plans defining objectives and activities.

Appendices

Appendix A: Contextual Analysis & Assessment Tool

Introduction

Throughout this Resource Book we have underlined the importance of making a thorough analysis of the police in a target country, looking at the broader picture in which police operate (State context, security and justice domain, cultural factors, legislation, political influence etc.) as well as how the police are empowered to carry out their functions and what safeguards there are to ensure police conduct is in line with international human rights standards. Human rights violations can be fed by any of these factors, though will usually involve a combination of them. Intervention in police actions requires an assessment that covers the entire context in which police operate. Such an assessment is indeed the starting point whenever Amnesty International's Dutch Section's Police and Human Rights Program is asked to support the development of human rights strategies in target countries.

In Chapter 10 we presented a three step model to be followed to help decide on the most effective approach – confrontational or rather cooperative – targeting the most relevant issue or institution that is the cause of police misconduct. This should not have to be the police itself. It may very well be more effective to target the Ministry of the Interior, the prosecution services or maybe parliamentarians. The three-step model is as follows:

Step 1: Analyzing the police
- Contextual analysis:
  - Situational analysis; including country reports by Amnesty International and other NGOs about the current human rights situation
  - Legislation and policies under which police operate (including Police Act, Criminal Code, Criminal Procedures Code and other regulations governing policing)
  - Accountability mechanisms (internal and external)
  - Internal structure of the police
- Self-analysis
- Formulate main concerns and specify
- Evaluate whether more information is needed and specify accordingly

Step 2: Develop a strategy
Step 3: Project planning: define objectives and how to achieve these

In the following Sections a tool is presented to help undertake the contextual analysis. The tool consists of a series of issues, formulated as questions,

which we suggest should be considered as part of a thorough analysis of the causes of police behaviour and which should help identify points of entry for intervention. On this basis of this, an effective strategy can be developed. To help answer these questions, we refer the reader to the relevant Chapters and Sections of the Resource Book.

We recognise that this is a long list of questions, which may have the effect of deterring those wishing to initiate work on policing, since answering them can require significant commitment. However, we do believe that answering these questions will make any future work on policing more effective, since it will be based on an informed position. It should be noted that many of the questions are duplicated under different Sections. Moreover, many will be easily answered by human rights activists who are at all familiar with the country and its police.

Finding information

Finding the answers to the questions posed will not always be easy. In some countries police are (fairly) open to NGOs and may be able to provide useful information about (internal) procedures and policies. Some countries give access to all relevant information on the Internet, often through a specific police website (although the reliability of such information varies). Most information relating to police will only be available in the country's own local language. Where translations into English are available, they sometimes appear to be aimed primarily at donors.

Sometimes the problem is not so much governments seeking to withhold information, but rather trying to untangle the semantics in use in a particular context. For example different terms are used to describe Standard Operational Procedures (SOPs), including 'instructions', 'regulations', 'operational codes', or simply 'rules'. Note that SOPs in some countries are kept confidential, as this is considered essential to police operations. This makes sense for certain aspects of policing – for example how they use certain investigative methods tactically – but not for many others. For example, there is no reason why police should not disclose what their instructions are regarding the use of firearms, how to carry out arrests and detentions, search and seizures and any other policing situation where people have a right to know how police are supposed to treat them.

In some countries certain information simply does not exist. For example, not all countries monitor public confidence in the police or crime levels. Some countries do not have explicit policies on policing issues. And even though all countries (we know of) do have a Police Act, or some equivalent, not all police officers are familiar with it, nor with other relevant legislation such as criminal procedure codes.

Since information may not be available on paper (or on the Internet), it is sometimes easier to obtain the relevant information from direct contact with people through interviews.

At a local level it is worth exploring the following entry points:
• Defense lawyers often have good information about police misconduct
• Members of parliament
• Local NGOs

Less obvious, and sometimes neglected sources of information, both locally as well as internationally, include the following:

Local police training institutes
A good entry point can often be found through training institutes as these tend to have some distance from police operations and often have more contact with the outside world. Many countries have one centralised police training system. Others have a number of different training institutes.

Local and international academics
In many countries research into policing issues, as well as evaluative studies into public confidence and police conduct, is carried out at universities, typically within Law and or Social Sciences Faculties.

International donors/trainers
There is a large community of international trainers and consultants working with police agencies and training institutes all over the world. These can be a valuable source of information and as such are worth contacting. Also, training institutes tend to spend considerable resources on international projects aimed at supporting police agencies abroad.

International NGOs
The last decade has seen a range of programs supporting police reform in a number of countries. As such there are a number of NGOs and consultants that have built up expertise on police agencies and reform programmes in many countries of the world. NGOs specifically worth mentioning include:
• Open Society Justice Initiative, an operational program of the Open Society Institute, works on law reform activities including human rights policing and police reform. See: www.justiceinitiative.org;
• Commonwealth Human Rights Initiative, works primarily (in the area of police reform) on Ghana, East Africa and India.
  See: www.humanrightsinitiative.org;
• Altus, a coalition of six NGOs based in Brazil, Chile, India, Nigeria, Russia, and the United States. See www.altus.org;
• Washington Office on Latin America, has carried out various projects in the field of police reform in Latin America, and now includes the area of security. It also looks critically at the influence of US support for projects in this field and the human rights consequences.
  See: www.wola.org.

Please note that in Appendix G to this Resource Book we have included a list of NGOs working in the field of police and human rights with their websites.

Situational analysis

In order to undertake an adequate assessment of what the police do, an analysis of the environment in which they operate is essential for two reasons. First of all it can help to identify the context of police misconduct, necessary for developing an adequate and appropriate intervention strategy. Secondly it can help to identify entry points for change. To assess the environment in which police operate, it is useful to start with a study of country reports by NGOs such as Amnesty International and Human Rights Watch. UN bodies such as the OHCHR and UNDP as well as UN Special Rapporteurs, may also provide useful information. The following questions should be considered:

Overall country situation:
- Level of order and sense of security
- Crime level and types of crime; detection rates
  - Is crime monitored in a reliable way? By whom?
  - Do people feel 'safe and secure'? How is this monitored?
  - How is crime covered in the media?
  - What is the political/governmental rhetoric regarding crime/policing?
- Is there general agreement on the role and responsibilities of State institutions and agencies? Are there any sectors in society calling for changes in this domain?
- Is there a (police, judicial) reform process going on? What are the stated objectives? Do these address the problems appropriately? Who 'owns' the reform process? What is the visible support from politicians, public and police? Who are the donors?
- What is the role of the media? Is there freedom of press?

Social settings:
- Local government
- Range of economic and social conditions
- Local customs, cultural specificities
- Vulnerable groups
- NGOs (including those working on social and economic issues)
- Religious organizations

Rule of law attributes:
- Does the country have the 'rule of law' institutional attributes:
  - Laws that are publicly promulgated, fairly enforced and independently adjudicated, and which are consistent with international human rights norms and standards and comply with any international obligations (i.e. treaties ratified)
  - An independent well-educated judiciary with adequate facilities
  - Professional law enforcement agencies, including the police, with adequate facilities and training that are operationally independent
  - National human rights institutions
- How do you rate their effectiveness regarding:
  - Binding the government by law?
  - Ensuring equality before the law?

- Establishing and maintaining law and order?
- Providing predictable and effective legal rulings?
- Ensuring compliance of both law and practice with human rights standards?
- Is there public confidence in these institutions? Is this monitored (including monitoring of how particular ethnic, socio-economic groups in society relate to these institutions)? What is done with the results of any monitoring?
- How does the overall justice system and its institutions (judiciary, prosecution, correctional facilities) function? How do the police relate to this justice system?
- How is access to justice ensured (meaning all parts of the justice system including police, courts, legal assistance, legal aid etc)? Do all groups have access to justice equally?

The security system:
- What agencies are involved in the maintenance and restoration of security? How do the police (*de jure* and *de facto*) relate to:
  - The military
  - Internal Security Agencies
  - The private security sector
  - Traditional and informal security and justice arrangements

Legislation

Police work is always based on and bound by law. Law defines police tasks and functions, grants and limits police powers and sets accountability requirements. Law also defines how police relate to other agencies in the security domain, most notably the military forces. Any intervention in relation to policing should therefore always start with familiarisation with and assessment of the legislative framework within which police operate. An assessment of the compatibility of national law governing the police with international human rights law is also essential.

Legislation depends on those implementing it. An analysis of legislation should therefore always incorporate an analysis of the role of the judiciary and how they operate in practice. Are judges really independent, are they well trained and well equipped to carry out their functions adequately? These questions are found under 'rule of law attributes' (see 'situational analysis').

Study the following pieces of legislation:
- Constitutional provisions on security in general and policing in particular
- Police Act; what does it say regarding police functions, responsibilities and accountability?
- Criminal Code and Criminal Procedure Code
- Police codes of conduct and disciplinary codes (or civil service codes of conduct when these are absent)

- Standard Operational Procedures
- Acts governing military intervention in public order issues
- Acts governing other security agencies and how these relate to police
- Acts regulating private security efforts and how these relate to police
- Specific security legislation, including martial law
- Court rulings relevant to police practice

Accountability structures

It is essential to study who or what sets the conditions that dictate what the police may or may not do (i.e. the laws, resources, regulations, orders that must be established before police can act, so-called *a priori* accountability) and to whom the police are accountable after an action (to whom are the officers responsible, to whom do they report, who investigates allegations of police misconduct, so-called *a posteriori* accountability). Accountability structures, both internally and externally, are crucial. Note that in many countries there are several police agencies and the answers to the questions posed below may differ for different agencies.

Based on the accountability table, as presented in Chapter 8, the following issues should be considered:

Internal accountability mechanisms: Chain of command within the police agency
- Is there a clear internal chain of command, i.e. is it clear to whom every individual officer reports and vice versa? To whom does the Police Chief answer (mayor, governor, minister)?
- How are operational objectives set and operations planned?
- Feedback to the relevant organs within the Ministries: Are suggestions for changes in regulations and resources made?
- To what extent is decision-making delegated to lower ranks?
- How are operations monitored and evaluated?
- How is individual behaviour monitored and evaluated?
- What instructions do officers receive?
- Can the public lodge complaints directly at police stations? Do they? How is this facilitated (or not)?
- Do supervisors take corrective action within disciplinary (or penal) regulations?
- Do officers and supervisors report up the chain of command?
- How is implementation of the above policies ensured and monitored? Is there some form of internal oversight?
- Is there a public relations department? What are its objectives? How does it function?

The Executive: Ministry (Interior / Justice) and its local equivalents or counterparts, including Police Policy Making Directorates and Police Inspectorate
- What do the national policy guidelines regarding priorities and

objectives for police and security agencies state and how do these relate to local policies?
- How are resources allocated?
- What do SOPs look like? Who defines these and who monitors their implementation?
- How actively and how frequently are police operations and overall effectiveness monitored?
- How actively and how frequently are policies and police administration inspected?
- Do they initiate legal or administrative reform and or budgetary changes when necessary?
- Are corrective actions taken and how?
- Are the police operationally independent from the ministerial bodies?

Legal accountability
See also 'situational analysis - rule of law attributes' and 'legislation':
- In cases of police misconduct, how are civil or criminal proceedings initiated and conducted within the judicial system? Is there an independent judicial process in these cases?
- Who investigates police misconduct? Does the criminal justice system provide mechanisms ensuring that an independent and effective investigation is carried out into allegations of police misconduct (which in practice means at least ensuring that the members of the same police district that was implicated in the incident are not taking part in the investigation).
- Are criminal cases and civil suits against police monitored? How do the results feed back into the police organization (i.e. are any lessons learnt)?
- How are police operations requiring specific powers (including arrest, detention, certain investigative methods, certain means of force) monitored and/or authorised?
- How are investigative functions of the police monitored and/or authorised?
- How is compliance with the laws and regulations governing policing assessed?

Democratic accountability (or accountability to the public)
- What objectives have legislative/representative bodies (including national, provincial, local parliaments; relevant parliamentary/council committees; Community Forums etc.) set for police?
- How are resources allocated by them?
- How active and how frequently are police actions monitored by them?
- On what level of abstraction is police effectiveness assessed by them?
- What are their recommendations regarding budget and legislative changes based on?
- Are the police operationally independent from the representative bodies? What is the level of political interference? To what extent are the police independent from party politics?

Public Accountability
- How do the media voice demands and expectations of the police?
- How do the media monitor the police?
- How do the media report on police actions and inactions?

- How do academics conduct research regarding policing issues?
- How are these studies disseminated? Are they published?
- How do they affect policing?

- How do members of the public, including NGOs formulate and communicate demands?
- Are they in direct dialogue with the police on issues of concern?
- How do they monitor police actions and inactions?
- Can they, and do they, pursue complaints against the police?

Independent oversight
- How is independent oversight of police organized?
- Is there an independent police complaints body? What are its functions and powers?
- Do they investigate complaints and patterns?
- How many and what type of complaints are lodged against the police? What is their follow-up?
- Do they recommend remedies?

Internal structure of the police
The following issues should be addressed. They are presented in random order.

Facts and figures
- How many different police agencies are there? What are their functions? In what way do they (not) co-operate? Are the police centrally organised or decentralised? To whom do the police report? Who decides on policing objectives and resources? Draw an organizational chart of the police.
- Number of personnel (men/women, ethnic and other minorities); police/public ratio?
- Who decides on hiring, promotions and discipline? What are the procedures?
- Do police live on separate compounds, have separate sports facilities etc?
- How are police resourced and equipped, including:
  · Salaries (do police need to take on second jobs?)
  · Housing (do police live and work in the same place?)
  · Uniforms
  · Weapons, including non-lethal weapons, and self-defence equipment
  · Communication devices
  · Means of transport: vehicles, other
  · IT equipment

- How is the budget allocated among different activities? What are budget priorities? Where do resources come from?
- Is there an overall policing philosophy? Where community policing has been adopted, what is it they do? How is cooperation with community groups given effect?
- What are the agency's formal policies regarding:
  · Stop and search encounters
  · Dealing with vulnerable groups
  · Use of force and firearms
  · Injuries when in police custody
- What are the numbers of police shootings?
- How frequently do police use force, and what kind of force is used?
- How are rights of police officers ensured (including the right to life and security, working hours, leave, protection)?
- Is there a police union? How does it operate?

Effectiveness
- Are the police considered effective in achieving their objectives?

Responsiveness
- Are the police responsive to the communities they serve? How? Do the police cooperate with (local) NGOs? With churches and others?

Recruitment, selection
- What are recruitment methods and selection criteria? Are recruitment policies and selection criteria regularly re-assessed?
- Are there specific criteria for selecting police leadership?
- Are targets set and maintained for the recruitment of ethnic groups, minorities and women?
- Are recruitment and promotion criteria fair? As an example; the application process should not cost too much
- How do they affect representativeness? Are causes for low recruitment of minorities and women evaluated?
- Is performance regularly assessed?
- What are the promotion criteria?
- Are the police representative (women, ethnic and religious groups, age)? Is representation achieved at all levels within the police agency?

Training
- Who receives basic police training?
- How long is basic training?
- What is the background of the police trainers? Police/civilian? Are they trained as trainers?
- To what extent do members of the public participate or contribute to police training?
- Are the following topics addressed, and how?
  a. The importance of impartiality of police actions
  b. Non-discrimination

    c. The importance of being responsive to communities

    d. Observance of proper procedures governing the use of force, arrest and detention: proportionality, legality, accountability and necessity

    e. Application of non-violent means first

    f. Investigative skills, including suspect interview techniques

    g. Rights of detainees and suspects, including the right to be presumed innocent

    h. Victims of crime (violence against women should be part of basic police training in order to increase overall sensitivity. However, there may be specialized units established for dealing with such violence)

    i. Vulnerable groups and their specific rights (i.e. women, children, minorities)?

    j. The absolute prohibition of torture and the right not to obey an order to torture, also in the context of anti-terrorism legislation (if applicable)

    k. The importance of oversight and accountability, including disciplinary procedures

And for police leadership, additionally:

    l. The effect of leadership on establishing an ethos of respect for human rights

    m. Operational independence and democratic oversight and the dilemmas involved

- Is police training gender sensitive?
- Is there any follow-up to the basic training? Is there a policy of 'on-the-job-training'? On what aspects of policing is further training offered? Is this considered when evaluating performance?
- Is there some kind of continuous certification procedure (to ensure that technical and other skills with regard to the use of force and firearms and other procedures are kept up to date)?
- Is there a mechanism for evaluation of training?
- Are police colleges adequately resourced (library, mock village etc)?
- Does police leadership show commitment to training related issues? As an example, are they involved in and committed to training reform programs?

Vulnerable groups

- Are there special policies/action plans/strategies that address how the police deal with vulnerable groups (including women, children, ethnic, religious and cultural minorities and others?) For example: Is there a special policy, action plan, and/or strategy for dealing with violence against women?
- Are there specialist police personnel to deal with (categories of) vulnerable groups? How are these trained?
- Are there special legal or administrative provisions (including internal police guidelines) that address how police should deal with vulnerable groups and/or issues of discrimination? For example are there provisions for women wanting to report gender-based violence?

- Are police personnel provided with training on issues of discrimination and how to deal with vulnerable groups appropriately, and if so, what does this training involve?
- How do police respond to vulnerable groups and is this response monitored and action taken accordingly? For example: are statistics kept on violence against women, on violence against ethnic, religious, cultural minorities, on racist incidents? How about statistics regarding the subsequent police responses?
- What are the specific concerns of vulnerable groups vis-à-vis the police?
- Are members of vulnerable groups represented within police leadership / supervisory roles? How many?
- How are NGOs who represent vulnerable groups involved in policing?

Analysing police operations

Apart from an overall, generic, analysis of policing, it is important to look into specific types of human rights violations and the possible causes or contributing factors of these. Before this can be done however, a more general assessment is necessary. We therefore recommend that the previous questions should be considered in advance of tackling the following issues that relate to specific types of violations.

Use of force and firearms

Analyse policies relating to use of force including:

- Who is involved in formulating policy?
- What means of force are available to the police agency? Do they include less than lethal weapons?
- Who uses force and what kind of force? What equipment do ordinary officers carry? What self-defence equipment (e.g. bullet proof vests) do they have?
- Are there special units for rapid intervention/riot control? Are there special gun units/sharpshooters? Who decides on their deployment?
- How does management monitor and control the use of force? How is force usually justified?

Identify the reasons for unnecessary, disproportionate or illegal use of force, considering:

- Legal framework – Constitution, Police Act, Codes of conduct or ethics
- Standard Operational Procedures (if available)
- Operational independence of police agency
- Leadership, public statements by Interior Ministry or Chief of Police
- Training, including management skills
- Equipment (including transport and communications)
- Complaints and accountability systems
- Expectations of the public

Consider the chain of command control and inspection system:

- How are officers supervised? Do they receive clear instructions? Can they ask for advice?
- What are the reporting procedures and what is done with the reports?
- How often are inspections carried out and with what effect?
- How is use of force evaluated? How does the evaluation feed back into policy guidelines, SOP's and training?

Analyse the different situations in which force is used in accordance with the PLAN principles (Proportionality, Legality or lawfulness, Accountability and Necessity) including:

- Making an arrest
- Immobilizing a dangerous person or persons
- Restraining detainees or others who may resist police or who may need to be restrained for their own safety – this would include transporting prisoners
- Preventing a crime
- Crowd control
- Entering and searching premises for the purpose of arresting people or seizing evidence
- Self defence

Analyse the different situations in which firearms are used (use the same categories as above).

Look for patterns of abuse, for example in different parts of the city/country, in different policing situations.

Consider crime statistics: What is the level of violent crime? Are statistics used to 'justify' heavy-handed techniques or political use of the police?

How often do police become victims of criminals? How many are killed or injured when on duty?

Public order management
The following points are provided in addition to those relating to use of force and firearms (above) to help assess police abuses in the context of public order management (crowd control).

- In what situations do the police use force (type of incident, legal or illegal public order events, numbers involved, level of crowd violence, if any)?
- Are the laws on the right to assembly in conformity with international standards?
- In relation to specific situations:
  - What was the nature of the public order event (spontaneous gathering, lobby group etc. If the latter, what are their aims and their history; and what is the government policy towards them)?
  - What potential risks did the public order event pose for those participating in the incident including bystanders and police?
  - Could use of force have been avoided?
  - How did police prepare for the event – intelligence gathering, liaising with community groups?
  - What police resources were used (numbers of police, types of weapons and other equipment, including dress and defensive equipment)?
  - What kind of force was used (how much force; apparent intention; strategic or indiscriminate; PLAN)?
  - What differentiation tactics were used and what was the rate of escalation/de-escalation (warnings, cordons, less than lethal weapons, lethal force – PLAN)?
  - What was the outcome of the use of force (number and nature of casualties)?
  - In cases where one or more shots were fired or one or more persons injured, what did the police do (assistance to victims, protection of the scene for inquiry)?
- Consider whether attitudes towards the use of force are related to the type of police agency or the units deployed. A police agency which is organized along more military lines will emphasise its authoritative attitude and the need to prevent rioting, while another agency that sees itself more as a service may emphasise collaborative crowd-management.

Arrest and police detention
At the outset it is important to distinguish between arrest, detention and suspect interview. These are all different situations, aiming to achieve different things and governed by different legal provisions.

Arrest:

- Who has the power to arrest?
- Do the police have discretionary powers concerning arrest?
- Do the police need an arrest warrant?
- What are the standard operational procedures for arrest?
- Are these kept under systematic review?
- How are officers trained to make arrests? How are they trained to use
  - Handcuffs
  - Pepper sprays and other chemicals
  - Open- and closed hand techniques
  - Other means of force
- How much time in training is spent on social skills?
- How are de-escalation techniques trained?
- Are arrests ever evaluated? If so, what is done with these evaluations?
- Is the quality of an arrest discussed in performance appraisals?
- Who may authorise the use of special methods for the arrest (such as dogs, arrest squads etc)?
- Are there special provisions for arresting women?

- Are police officers 'monitored' on their attitude when arresting persons?
- How many complaints are registered after arrests? What is the content of these?
- What proportion of arrests are withdrawn?

Detention:
- Who is responsible for police detention?
- How is police detention organised?
  · At the police station
  · Elsewhere
- How are the rights of detained persons safeguarded? How are these communicated to the responsible officers?
- How are those responsible for police detention trained?
- Are there separate provisions for women, children, sick, mentally ill etc. Is there a special procedure in place for dealing with these groups?
- What do police cells look like?
- How many people are held in one cell?
- Do detainees have access to medical doctors? How is the access ensured in practice (presence of the police officers, are doctors independent from the police)? Are reports kept of this?
- Are detainees medically examined if injured?
- Are there facilities for private consultation with the detainee's legal representative?
- Are regulations for detention kept under systematic review?
- How many complaints are there about detention? What is the content of the complaints?
- Is there a system of independent oversight?
- Is a record (time of arrival, state of health etc) of detainees kept?

Criminal investigations
- Who is responsible for criminal investigations (is it 'general' police officers or is there a separate investigative agency?)? How are they trained?
- Who may initiate a criminal investigation?
- Under whose authority does criminal investigation take place?
- How do police deal with scenes of crimes?
- At what stage can someone be identified as a suspect?
- What kind of investigative methods are used, apart from the suspect interview? What is the legal basis for their use? How is their use accounted for? What happens when methods are used unlawfully (e.g. a house search)? Are methods used proportionately?
- Is forensic expertise available? How are these forensic specialists trained? Are they independent? Is there the option of a second opinion?
- Are there SOPs regarding how to carry out a suspect interview? Are any reviews of interview rules, instructions, methods and practices disclosed? How does this feed back into training and new instructions?

- How are officers trained to conduct suspect interviews?
- Are suspect interviews recorded?
- Are suspect interviews conducted by one or two (or more) officers?
- How effective are the police in investigating crime in general? What assists or hinders effective investigation?
- What is the role of prosecutors, judges, defence lawyers etc. in counteracting police abuse?
- What are the rules of evidence?
- What information is accepted as evidence?
- Is forensic evidence accepted in court?
- What forensic facilities are available?
- Can people lodge complaints about criminal investigations? How is compensation safeguarded?

After the contextual analysis

Based on the contextual analysis it is important to prioritise the main concerns. Moreover, it is essential to identify who may be allies and who might undermine reform. It can help to know who is ultimately responsible for the police, to whom the police chief reports (i.e. who controls the police) and who can support implementation. It can also help to specify the 'entry points for change', or who – or what – can leverage change (e.g. a legislative change may in some situations be easier to achieve than the establishment of an independent complaints mechanism). Identifying these entry points can also result in the conclusion that more information is needed first.

Having gathered sufficient information, a strategy can be formulated as to how to approach the police effectively. Such an approach can focus on police misconduct, likely to result in a rather confrontational approach, or can focus on how to strengthen the police's resistance to misconduct. The latter in particular creates opportunities for a focus on common interests, rather than differences, opening up the possibility for more long-term engagement. Combined approaches are clearly possible too; engagement should never mean that criticism is no longer possible. The following issues should be considered:

1. Identify main human rights concerns
2. Identify overall intervention goals
3. Are there points of mutual interest with the police? If so, specify
4. What is your policy for police engagement work?
5. Draft a risk assessment of potential engagement work
6. What further expertise do you need?
7. Are there sufficient resources (finance, time)?
8. Are there any established police contacts that may support reform and which could help to identify areas of intervention? As a rule, always verify these with other organizations affected (political opposition, other NGOs, journalists, etc.) or with individuals that are familiar with the situation (academics, prosecution, magistrates)
9. Decide what strategy to apply: Is engagement viable?

After having defined the strategy, the actual project plan can be drafted, formulating objectives and activities as well as a time line.

We hope this approach will help you formulating a project that is well grounded and likely to be effective when seeking to enhance police compliance with human rights.

Relevant readings

Over the last few years a number of works have been published on how to assess police agencies from a human rights perspective. These include:

Policing in a democratic society - Is your police service a human rights champion?

Published in 2000 by the Council of Europe's Joint Informal Working Group (in which both police and NGOs participate), this document sets out a number of indicators relevant to human rights oriented policing. It aims to offer basic guidance for day-to-day policing and as such addresses police officers directly and invites them to use it to assess their own police. 'Policing' is broken down into seven components: basic values, staff, training, management practice, operational policing, structure and accountability. Each component is represented in a statement that is generally agreed to reflect the principles of professional policing. Consequently 'tests' are formulated, the purpose being to stimulate reflection. With each test a set of performance indicators is given to be used as a sort of a checklist for a given police service. This guide has been translated in many different European languages. Contact the Council of Europe to find out about the language of your interest.

The police that we want. A handbook for oversight of the police in South Africa

This handbook for assessing police performance in countries undergoing democratic transition was published in 2005 by the South African Centre for the Study of Violence and Reconciliation in joint cooperation with the Open Society Justice Initiative. *The police that we want* identifies five areas of democratic policing and provides key measures for evaluating performance in each area. The five are: the protection of democratic political life; police governance, accountability and transparency; service delivery for safety, justice and security; proper police conduct; and the police as citizens. Written primarily for application in South Africa, the handbook follows international practices in policing and police oversight and can be adapted for use in other countries by all those supporting and overseeing police reforms.

Measuring progress toward safety and justice: A global guide to the design of performance indicators across the justice sector

The guide was published in 2003 by the Vera Institute of Justice and is written for programme managers responsible for improving the delivery of safety, security and access to justice anywhere in the world. This tool is useful for everyone interested in institutional reform in the safety and security sector.

It argues that the use of particular indicators must be dependent on the particular process of reform in a given country. The guide, which discusses all institutions within the safety and security sector of which the police is but one, describes what a specific institution is supposed to do, what traditional indicators are used to measure performance in this area, what additional indicators might be used and the strengths and weaknesses of these.

Human rights on duty

The Northern Irish Committee on the Administration of Justice (CAJ) published a 300-page report called *Human rights on duty- International lessons for Northern Ireland* in 1997. The report discusses findings of research into transition and the management of change in policing in Canada, Belgium, the Netherlands, Australia, Spain, El Salvador and South Africa. It has chapters on representative policing and training, accountability structures and transition. It concludes that policing problems are similar in different countries and differ more in degree than in nature. The report distils internationally recognized principles against which policing arrangements must be measured. The report can be ordered through CAJ's website at www.caj.org.uk.

Democratizing the police abroad, what to do and how to do it?

This document formulates some 87 lessons that have been learnt by observers and participants about the process of changing police organizations. A 'lesson' is generally agreed upon, based on experience and pertains to the goals of democratic development. For this document some 500 books and reports have been studied, resulting in an exhaustive bibliography that according to the author is 'the largest number of materials on efforts to change police organizations ever collected'. The document targets reform efforts to establish 'democratic policing'; democratic being used as a synonym for 'human rights oriented'. The document was developed for the US Department of Justice.

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United Kingdom: The Killing of Jean Charles de Menezes: let justice take its course. AI index: EUR 45/021/2006.

USA: Amnesty International's concerns on police abuse in Prince George's County, Maryland. AI Index: AMR 51/126/2002.

USA: Excessive and lethal force? Amnesty International's concerns about deaths and ill-treatment involving police use of tasers. AI Index: AMR 51/139/2004.

USA: Amnesty International's continuing concerns about taser use. AI Index: AMR 51/030/2006.

News:
Amnesty International News service 221/ 2005. Israel/Occupied Territories: Administrative detention cannot replace proper administration of justice. AI Index: NWS 11/221/2005.

International Council of Amnesty International (ICM) decisions and related papers

Please note that these are internal organizational documents not available to non-members

SCRA review on AI's Engagement Work with Law Enforcement Officials adopted by the 2003 ICM (Circular 22). AI Index: POL 34/003/2003.
(The Standing Committee on Research and Action (SCRA), an IEC committee, was established in 2001 and disestablished in 2005).

Decision 20, 26th ICM, Circular 50, Decisions taken at the ICM. AI Index ORG 52/003/2003.

27th ICM, Circular 57, decisions of the 2005 ICM, AI Index: ORG 52/002/2005.

Amnesty International – Netherlands section
Police and Human Rights Program

These documents are available through the Police and Human Rights Program, please contact amnesty@amnesty.nl.

Police and Human Rights Program. Compilation of six experiences (2001).

Police and Human Rights Program. Lessons learnt (2003).

Amnesty Internationals recommendations on policing; A review and guide (2004). Index: AINL 684.8(2).

Amnesty International – USA section

These documents can be downloaded from www.amnestyusa.org.

Threat and humiliation, racial profiling, domestic security and human rights in the United States (2004).

Stonewalled. Police abuse and misconduct against Lesbian, Gay, Bisexual and Transsexual people in the U.S. (2005).

Amnesty International –Swiss section

Polizei, Justiz und Menschenrechte. Polizeipraxis und Menschenrechte in der Schweiz (2007).

Appendix D: Human rights treaties and standards

United Nations

All of these are available through the website www.ohchr.org.

Basic Principles on the Use of Force and Firearms (Basic Principles)

Body of principles for the protection of all persons under any form of detention or imprisonment (Body of principles)

Code of Conduct for Law Enforcement Officials (UN Code of Conduct)
- Resolution adopting the code: Resolution 34/169 adopted by the General Assembly, 17 December 1979
- Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials. Resolution 1989/61 adopted by the Economic and Social Council, 24 May 1989 and endorsed by the General Assembly in its Resolution 44/162 of 16 December 1989

Code of Conduct for Public Officials
Resolution A/RES/51/59, accepted by the General Assembly on 12 December, 1996

Convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT)
- Optional Protocol (OPCAT)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Convention on the Rights of the Child (CRC)

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

Declaration on the Protection of All Persons from Enforced Disappearance

Geneva Conventions
- III Relative to the Treatment of Prisoners of War
- IV Relative to the Protection of Civilian Persons in Time of War
- Geneva Protocol I & II Additional to the Geneva Conventions

Guidelines on the Role of Prosecutors

International Convention on the Elimination of Al Forms of Racial Discrimination (ICERD)

International Covenant on Civil and Political Rights (ICCPR)

International Convention for the Protection of All Persons from Enforced Disappearance

International Covenant on Economic, Social and Cultural Rights (ICESCR)

'Milan Plan of Action' (of the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders. Adopted by the General Assembly A/RES/40/32, 29 Nov. 1985).

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. Resolution 1989/65 adopted by the Economic and Social Council, 24 May 1989.

Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules)

Universal Declaration on Human Rights (UDHR)

General Comments
General Comments are authoritative, though non-binding, interpretations of and general recommendations to the standards as set out in the international human rights treaties. The General Comments referred to in the Resource Book are mostly given by the Human Rights Committee but also by the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture and the Committee on the Rights of the Child. The General Comments referred to in this Resource Book can be found in the Compilation of General Comments and general Recommendations Adopted by Human Rights Treaty Bodies (HRI/GEN/1/ Rev.8, 8 May, 2006). Download from: www.ohchr.org/english/bodies/icm-mc/documents.htm.

Council of Europe
The European Code of Police Ethics.
Recommendation rec(2001)10 and explanatory memorandum. Adopted by the Committee of Ministers of the Council of Europe on 19 September 2001. Download from: http://www.coe.int/T/E/Human_Rights/Police/9._Network_Conference/07_codepoliceethics.pdf

Appendix E: Glossary

| Accountability | A simple definition of "accountability" is: "having to explain one's actions or conduct." It entails a set of normative prescriptions about who should be required to give account, to whom, when, how and about what. Accountability is closely related to liability. It means relating an act (or the omission of an act) to a person or institution. It implies a requirement to remedy misconduct. Accountability and transparency go hand in hand. For accountability to be effective a balanced system is needed involving the following actors and institutions: |

Internal
To the State
- *Executive*
- *Legislature (democratic)*
- *Judiciary (legal)*
Public
Independent
(International)

Accusatorial (common law)	Under the accusatorial common law system, also called adversarial system, both parties (defence and prosecution) have the same standing at trial and during trial are considered as equal parties in search of the ('subjective') truth. The judge, sometimes assisted by a jury, is there to mediate and safeguard the judicial process – as an impartial referee between parties. The purpose of the investigation for the prosecutor is to obtain information that will convince the judge or jury that sufficient proof exists to prosecute and convict the accused.
Adversarial	See: 'accusatorial'.
Amparo	See: 'habeus corpus'.
'Blue wall of silence'	A metaphor that is often used to describe an important aspect of police culture, which values loyalty over integrity. Police are supposed never to betray their colleagues, meaning they should never disclose any information about misconduct to others, especially not to the outside world.
Code of Conduct	These usually include human rights principles such as the prohibition of torture and usually contain a provision that officers should not obey orders that are clearly illegal. Some Codes of Conduct are extremely specific while others are very general. Human rights oriented policing requires States to disclose their rules and regulations governing police behaviour. Moreover, these Codes should be legally binding; either as part of the Police Act or in separate laws. Codes of Conduct are sometimes called Codes of (Police) Ethics (see below).

Code of Ethics	Codes of Ethics often include matters not directly relevant to human rights, such as police dress, timekeeping, not smoking etc. They are often believed to help police improve their professional ethos and pride. As such they are usually not statutory. However, sometimes a Code of Ethics refers to a Code of Conduct (see above).
Discretion	While on duty, a police officer typically has great discretionary power and can decide individually on which deviant behaviour to act on or not – obviously limited by such margins as laid down in national law and policy – as not every offence is worthy of police action nor is police action always the best solution for a problem.
Disciplinary codes	These usually establish: • Norms to which officers should comply • Forms of reward for good work and behaviour and sanctions for infractions of the disciplinary code • Procedures for reporting breaches of the disciplinary code or the law • What officer may order a disciplinary procedure • Various panels and investigative mechanisms that are established to hear complaints • The rights of police facing disciplinary procedures, including the right to appeal
Due diligence	States bear legal responsibility for respecting and implementing human rights standards within their territories and in territories where they have effective control and jurisdiction. This includes the obligation to prevent peoples' rights being violated or abused by State officials or others and to promote the full enjoyment of human rights. If private citizens threaten to abuse those rights, certainly the right to life and security of the person, a State is, under international law, obliged to prevent such from happening. If the abuse has taken place a State is, under international law, obliged to investigate and prosecute in accordance with international human rights standards. This principle is the basis of the legal concept of due diligence.
Engagement	Engagement implies a search for commonalities rather than differences, requiring active and sincere efforts to define a mutual agenda. Engagement has not been clearly defined within Amnesty International. The 2003 ICM stated that the preferred approach to the police is one of levels and types of engagement with different police institutions and actors, covering a broad range of activities, suggesting two-way dialogue, and also capturing the necessity of "risk-assessment" and maintaining the ability to denounce human rights violations which is key to Amnesty International's credibility.
Executive	Usually refers to the executive branch of the State system. Police are part of the executive. For police the term is also used to distinguish police officers ('executive officers') from civilian, typically non-uniformed, police personnel.
Forensic information	Covers photographs, fingerprints, ear prints, DNA, traces/imprints of devices used for a particular crime, IT-techniques, chemical analyses, fire investigation etc, in fact any kind of 'physical' information about the actual offence not taken from suspect or witness interviews. Police officers with special technical training usually carry out basic forensic investigations (fingerprints, traces etc.). The collection of this kind of information is often restricted to the scene of crime but this need not be.
General Comments	General comments are authoritative, though non-binding, interpretations of and general recommendations to the standards as set out in the international human rights treaties. The General comments referred to in the Resource Book are mostly given by the Human Rights Committee but also by the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture and the Committee on the Rights of the Child.
Habeus corpus	Meaning the arrested/detained person is entitled to take proceedings before a court, in order that the court may decide on the lawfulness of the arrest and/or detention (also referred to as Amparo). This principle is laid down in Principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
Inquisitorial (civil law)	Under the inquisitorial civil law system police and prosecution as well as judges are considered as neutral and objective 'servants of the law' working to find the objective truth. The pre-trial judge or investigating magistrate, assisted by the prosecutor, is primarily responsible for the criminal investigation, actively involved in determining the facts of the case, whereas one or more judges are in charge of the trial. The system is focused on the accused.
Internal disturbances	Situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterised by a certain seriousness or duration and which involves acts of violence. These latter can assume various forms, all the way from the spontaneous generation of acts of revolt to the struggle between more or less organised groups and the authorities in power. In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules (definition by ICRC).
Internal tensions	Usually encompass: • Situations of serious tension (political, religious, racial, social, economic etc.) • Sequels of an armed conflict or internal disturbance
Law Enforcement Officials	The term "Law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest and detention. 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 (definition from UN Code of Conduct for Law enforcement officials).

National human rights institutions	NHRIs are established to promote and protect human rights, through effective investigation of broad human rights concerns and individuals' complaints about human rights violations they have suffered, and through making recommendations accordingly. Such NHRIs can be distinguished from non-governmental human rights organizations by their very establishment as a quasi-governmental agency occupying a unique place between the judicial and executive functions of the state, and where these exist, the elected representatives of the people. The so-called 'Paris Principles' lay down the principles that guide the status and functioning of National Human Rights Institutions. NHRIs are also known as Ombudsperson or Ombudsman.
Ombudsman	See 'National Human Rights Institutions'.
Open- and closed hand techniques	Techniques not requiring the use of equipment such as a truncheon or handcuffs. Open hand techniques include for example police pushing someone aside with the palm of the hand, literally with 'open hands'; closed hand techniques are when a police officers uses his or her fists ('closed hand') for example in a fight. Hard empty hand techniques involve all sorts of techniques, including karate and judo techniques as well as holding someone's arm behind their back.
Operational independence	To ensure (political) impartiality and neutrality, and thus non-arbitrary lawful professional decision-making by the police – in other words to be able to operate in the public interest – police leadership must be authorised to decide, within the established budgetary and legal framework, how they allocate resources and how they respond to law and order situations. This is known as operational independence.

The European Code of Police Ethics states that operational independence should apply throughout the organization. In exercising their powers, the police should not receive any instructions of a political nature. Operational independence is an important feature of the rule of law, as it is aimed at guaranteeing that police operations are being conducted in accordance with the law, and when interpretation of the law is needed, this is done in an impartial and professional way. Operational independence requires that the police are fully accountable for their actions/omissions. |
| Order | A state of peaceful harmony under a constituted authority. Maintaining public order is one of the core police functions. |
| Oversight | Oversight has to do with continuous accountability, before, during as well as after police operations have taken place. Oversight can be direct, or rather at a distance, can be based on samples or can (in theory) include every police action and can be independent or internal. |

Places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority independent of the authorities in charge of the administration of the place of detention. The detainee is entitled to communicate freely and confidentially with these visitors (Standard Minimum Rules, Rule 55; Body of Principles, Principle 29).

Police	State officials entrusted with the powers to use force and to arrest and detain, tasked to: • maintain and restore order • prevent and detect crime • provide assistance to the public
Police agencies	Organizational structure of the police. Sometimes referred to as 'police forces' or 'police services'.
Police functions	It is generally accepted that the functions of police encompass: • prevention and detection of crime • maintenance of public order • provision of assistance to the public
Policing	What the police do (to ensure compliance with the law).
Policing by consent	The maintenance of order and provision of security are core functions and responsibilities of the State. However, the police and the public are interdependent in the maintenance of order and provision of security. 'Policing by consent' means there is public acceptance of the police agency carrying out police functions (most notably enforcing the law), and using police powers. Members of the public are in principle willing to comply with national laws, behave in an orderly manner and accept police intervention (or other corrective measures) if acting otherwise. If the public does not accept police authority – if they do not defer to it – police cannot perform their functions other than by reliance on force. The police on the other hand agree to comply with the laws under which they operate and perform their functions with due diligence. This is sometimes referred to as the 'social contract': a concept introduced by the French philosopher Rousseau that involves an agreement by the people to delegate certain responsibilities to the State.
Professional Police Group	Police officers who are also members of Amnesty International who organize themselves in a group to support the organization's objectives.
Profiling (ethnic, racial)	The targeting of individuals and groups by law enforcement officials, even partially, on the basis of race, ethnicity, national origin, or religion, except where there is trustworthy information, relevant to the locality and timeframe, that links persons belonging to one of the aforementioned groups to an identified criminal incident or scheme (definition by AI-USA).
Rule of law	The principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly

promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision making, legal certainty, avoidance of arbitrariness and legal transparency (definition by the UN).

Scene of crime

The actual location where the crime was committed or where evidence is to be gathered. As such, there may be more than one scene of crime for one crime (e.g. someone might be murdered at home but the body removed to another place). The scene of crime is vital for collecting evidence, as it is here that shoeprints, fingerprints, DNA material such as hair etc, can be found that may give clues as to what happened and who was present. As such it is of utmost importance that the scene of crime is secured while police are carrying out their investigation.

Standard Operational Procedure

This and other terms, such as 'instructions', 'regulations', 'operational codes', or 'rules', are in used in different countries to describe procedures for carrying out police functions especially when police powers are involved such as arrest and use of force. Standard operational procedures are usually drafted by staff of relevant Ministries but may also be developed from the bottom up and be subsequently authorised by a Ministry – once proven effective in practice. SOP's should be based on national law, international human rights standards, national Codes of Conduct and general concepts of police practice. For example, national laws may allow property searches to be made without a search warrant if there is a danger of evidence being lost through any delay. SOPs should provide precise guidance on the conditions under which such a search may be made and the required reporting procedures. SOPs are not usually in the form of law.

Subsidiarity

Police should try to employ the least intrusive methods (investigative methods, use of force methods) possible in the circumstances.

Traditional justice

Traditional justice systems, as opposed to State justice arrangements, sometimes support local communities in the maintenance of order and the resolution of conflicts. Very often traditional justice encompasses some kind of a court function where individuals (either elected or leaders through inheritance) solve conflicts and problems that may threaten the peaceful harmony of the community. This may concern marital disputes, thefts, violence etc. Traditional justice systems often combine both penal and civil law functions. For some countries the establishment of a formal judicial system in line with international human rights standards that is accessible to all may seem impossible to achieve. In those countries, where official agencies may be located hundreds of miles away, requiring days of travel to register a criminal act, traditional systems can fill the gap and address impunity. However, it should be noted that traditional systems can include aspects that themselves violate human rights; for example many are discriminatory towards women, children and juveniles.

Appendix F: Acronyms

ACPO	Association of Chief Police Officers
AI	Amnesty International
AINL	Amnesty International - Netherlands
CAJ	Committee on the Administration of Justice
CAT	Convention Against Torture and other cruel, inhuman or degrading treatment or punishment
CEDAW	Committee on the Elimination of Discrimination Against Women
CHRI	Commonwealth Human Rights Initiative
CPT	Committee for the Prevention of Torture
EPCTF	European Police Chiefs Task Force
ESC rights	Economic, Social and Cultural Rights
GA	General Assembly (of the UN)
GFN-SSR	Global Facilitation Network for Security Sector Reform
HR	Human Rights
HRC	Human Rights Committee
HRE	Human Rights Education
HRW	Human Rights Watch
IACP	International Association of Chiefs of Police
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRP	International Council on Human Rights Policy
ICM	International Council of Amnesty International (AI-terminology)
ICP	International Committee on Policy (formerly: SCRA) (AI-terminology)
IEC	International Executive Committee (AI-terminology)
IGO	International Governmental Organization
INGO	International Non-Governmental Organization
IS	International Secretariat (AI-terminology)
LEO	Law Enforcement Official
LGBT	Lesbian, Gay, Bisexual and Transsexual people
MSP	Military, Security and Police (AI-terminology)
NGO	Non-Governmental Organization
NHRI	National Human Rights Institution
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to CAT
PERF	Police Executive Research Forum
PLAN	Proportionality, Lawfulness, Accountability, Necessity
SAPS	South African Police Service
SARPCCO	Southern African Regional Police Chiefs Co-operation

	Organization
SCRA	Standing Committee on Research and Action. This term is no longer used. Now: ICP – International Committee on Policy (AI-terminology)
SOP	Standard Operational Procedure
SG	Secretary-General
UDHR	Universal Declaration on Human Rights
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Program
US	United States (of America)
VAW	Violence Against Women
WOLA	Washington Office on Latin America
WOOC	Work On Own Country (AI-terminology)

Appendix G: Relevant websites

NGOs and academic sites

www.altus.org	Altus, a coalition of 6 NGOs (including the Vera Institute, see below)
www.apt.ch	Association for the Prevention of Torture
www.cinat.org	Coalition of International NGOs Against Torture
www.caj.org.uk	Committee o the Administration of Justice
www.humanrightsinitiative.org	Commonwealth Human Rights Initiative
www.hrw.org	Human Rights Watch
www.icrc.org	International Committee of the Red Cross
www.ichrp.org	International Council on Human Rights Policy
www.justiceinitiative.org	Open Society Justice Initiative
www.cacole.ca	Canadian Association for Civilian Oversight of Law Enforcement
www.newtactics.org	New Tactics in Human Rights
www.nhri.net	National Human Rights Institutions Forum
www.parc.info	Police Assessment Resource Center
www.penalreform.org	Penal Reform International
www.policeaccountability.co.za	On police accountability and oversight in 16 African countries
www.policeaccountability.org	Police Accountability Resource site, University of Nebraska
www.saferworld.org.uk	Saferworld; a.o. on engagement with police and community based policing
www.ssronline.org	Security Sector Reform, Cranfield University UK
www.vera.org	Vera Institute of Justice
www.wola.org	Washington Office on Latin America (WOLA)

Council of Europe sites

www.coe.int	Council of Europe, homepage
www.coe.int/T/E/Human_Rights/Police/	Human rights, Police and Human Rights Program
www.coe.int/T/E/Legal_affairs/Legal_co-operation/	Legal Affairs, Legal Cooperation
www.grootaarts.nl/epphr	European Platform on Police and Human Rights (the Platform is not part of the Council of Europe but works to support the Council of Europe's Police and Human Rights Program)

Professional/government sites

	Please note that we have included these websites primarily as a means of finding additional background information. We cannot make any general statements about the reliability or the usefulness of their contents
www.acpo.police.uk	Association of Chief Police Officers (UK)
www.theiacp.org	International Association of Chiefs of Police
www.sepca-bg-org	Southeast Europe Police Chiefs Association

www.enp.nl — European Network of Policewomen

www.iawp.org — International Association of Women Police

www.cmc.qld.gov.au — Crime and Misconduct Commission, Queensland, Australia (targeting the entire public sector and specifically overseeing the police)

www.ncjrs.org — Documentation Center of the Ministry of Justice, USA (many full-text documents available)

www.cops.usdoj.gov — Community Policing Promotion and Resource site, US Dept of Justice

The Southern African Regional Police Chief Council Organisation (SARPCCO) and the European Police Chiefs task force (EPCtf) do not have their own websites

Appendix H: International law applicable to disturbances, tensions and armed conflicts

1) Crawshaw, R., e.a., 1998, *Human rights and policing. Standards for good behaviour and a strategy for change.*
2) A draft 'Code of conduct in the event of internal disturbances and tensions' and a draft 'Declaration of minimum humanitarian standards' can be obtained from the ICRC. Both texts aim to re-emphasize existing norms and values.

When armed conflict (international or non-international) breaks out, international humanitarian law, or the law of war, becomes applicable. The purposes of this branch of law are to regulate the conduct of hostilities and to protect victims of armed conflict. It is expressed for example in the four Geneva Conventions of 1949, and their additional Protocols of 1977.[1]
The great majority of the provisions of these treaties concern international armed conflict or wars between States. Article 3, common to all of the 1949 Geneva Conventions (Common Article 3) seeks to protect victims of non-international armed conflicts, as does Additional Protocol II, which extends and develops the protection offered by the Common Article. The latter instrument applies to those high intensity non-international armed conflicts where dissident armed forces control a part of the territory of the state (Article 1.1), whereas Common Article 3 applies to all forms of non-international armed conflict. It is specifically stated in the Additional Protocol (Article 1.2) that the Protocol does not apply to situations of internal disturbances and tensions.[2]

'Categories' of disorder or conflict situations:

Internal disturbance and tensions: — Human rights law applies.

Non-international armed conflict:
• Low intensity — Common Article 3 of the Geneva Conventions applies; human rights law applies.

• High intensity — Common Article 3 applies; 1977 Additional Protocol II applies; human rights law applies. Measures of derogation may be applied.

International armed conflict: — The full range of international humanitarian law applies; human rights law applies. Measures of derogation may be applied.

It should be noted that it is sometimes difficult to establish when the various "thresholds" have been crossed. For example when an internal **disturbance** has escalated into a non-international armed conflict. In day-to-day language the two concepts, disturbances and tensions, are often used together.

The International Committee of the Red Cross (ICRC) has formulated guidelines to define internal disturbances: "Situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterised by a certain seriousness or duration and which involved acts of violence. These latter can assume various forms, all the way from the spontaneous generation of acts of revolt to the struggle between more or less organised groups and the authorities in power. In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules."[3]

Internal tensions usually encompass:[4]
- Situations of serious tension (political, religious, racial, social, economic etc.)
- Sequels of an armed conflict or internal disturbance

The ICRC has drafted a list of characteristics of internal disturbances and tensions.[5] These are:
1. Mass arrests;
2. A large number of persons detained for security reasons;
3. Administrative detention, especially for long periods;
4. Probable ill-treatment, torture or materials or psychological conditions of detention likely to be seriously prejudicial to the physical, mental or moral integrity of detainees;
5. Maintaining detainees incommunicado for long periods;
6. Repressive measures taken against family members or persons having a close relationship with those deprived of their liberty mentioned above;
7. The suspension of fundamental judicial guarantees, either by the proclamation of the state of emergency or by a de facto situation;
8. Large-scale measures restricting personal freedom such as relegation, exile, assigned residence, displacements;
9. Allegations of forced disappearances;
10. Increase in the number of acts of violence (such as sequestration and hostage-taking) which endanger defenceless persons or spread terror among the civilian population.

Internal disturbances and tensions can lead to situations of armed conflict. As indicated above, in situations of non-international armed conflict Common Article 3 to the Geneva Convention applies as does Additional Protocol II. Common Article 3 defines those it protects as *"persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause. Such people shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or*

3) As quoted by Rover, C. de, 1998, *To serve and to protect*, p. 204.
4) Ibid..
5) Ibid.

6) The 'Protocol additional to the Geneva Conventions' (Additional Protocol II) does apply to victims of non-international armed conflicts. Its Article 1 states *"[the 2nd Protocol] shall apply to all armed conflicts which are not covered by article 1 of the [first] Protocol, and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol."* Do note that this means the Protocol does not apply to armed conflicts not involving State institutions nor does it apply to armed conflicts involving armed groups who do not exercise control over a certain territory. Article 3 however, does apply to such situations.
7) Article 43.3 of 1977 Geneva Protocol I.
8) These include the whole of 1949 Geneva Convention III Relative to the Treatment of Prisoners of War; many provisions of 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War; and provisions of 1977 Geneva Protocol I Additional to the Geneva Conventions.

wealth, or any other similar criteria." The Article then sets out a number of acts that are prohibited at any time and in any place whatsoever in respect of the people it protects. Prohibited acts include murder, torture, hostage taking, outrages upon personal dignity and the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court. The Article requires the wounded and sick to be collected and cared for, and the final provisions include one that allows an impartial body (such as the ICRC) to offer its services to parties to the conflict.

Additional Protocol II consists of 28 articles and, as indicated above, is more extensive than Common Article 3.[6] Article 4 states that all persons who do not take a direct part or who have ceased to take a part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They are to be treated humanely without any adverse distinction. A number of acts, such as violence to life, torture, collective punishments and hostage taking are totally prohibited.

If a non-international armed conflict develops into an international armed conflict all of the Geneva Conventions and Additional Protocol I apply. In the case of an international armed conflict the distinction between combatants and civilians is important. Broadly, members of the armed forces of a party to an international armed conflict (other than medical or religious personnel) are combatants, and any combatant captured by the adverse party is a prisoner of war. Such armed forces must be organised, placed under a command responsible to that party for the conduct of its subordinates, and subject to an internal disciplinary system that enforces compliance with the rules of international law applicable in armed conflict. A civilian is any person who does not fall within the category of combatant. Civil police forces are not armed forces, which means that civil police forces have civilian status and that members of those forces have civilian and not combatant status. Consequently they have all of the protections that other civilians have. Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify other parties to the conflict. In such cases police officials have combatant status.[7]

The 2nd Protocol to the Geneva Conventions also has provisions for those deprived of their liberty for reasons related to the (non-international) armed conflict (Article 5). Furthermore, there are provisions for the protection of people deprived of their liberty during international armed conflicts.[8]

USA

Costa Rica

Indonesia

China

Kazakstan

Brazil

Algeria

Uruguay

Turkey

Niger

South Africa

Egypt

Aruba

Iran

Australia

Vietnam

Croatia

Russian Federation

Netherlands

Democratic Republic of Congo