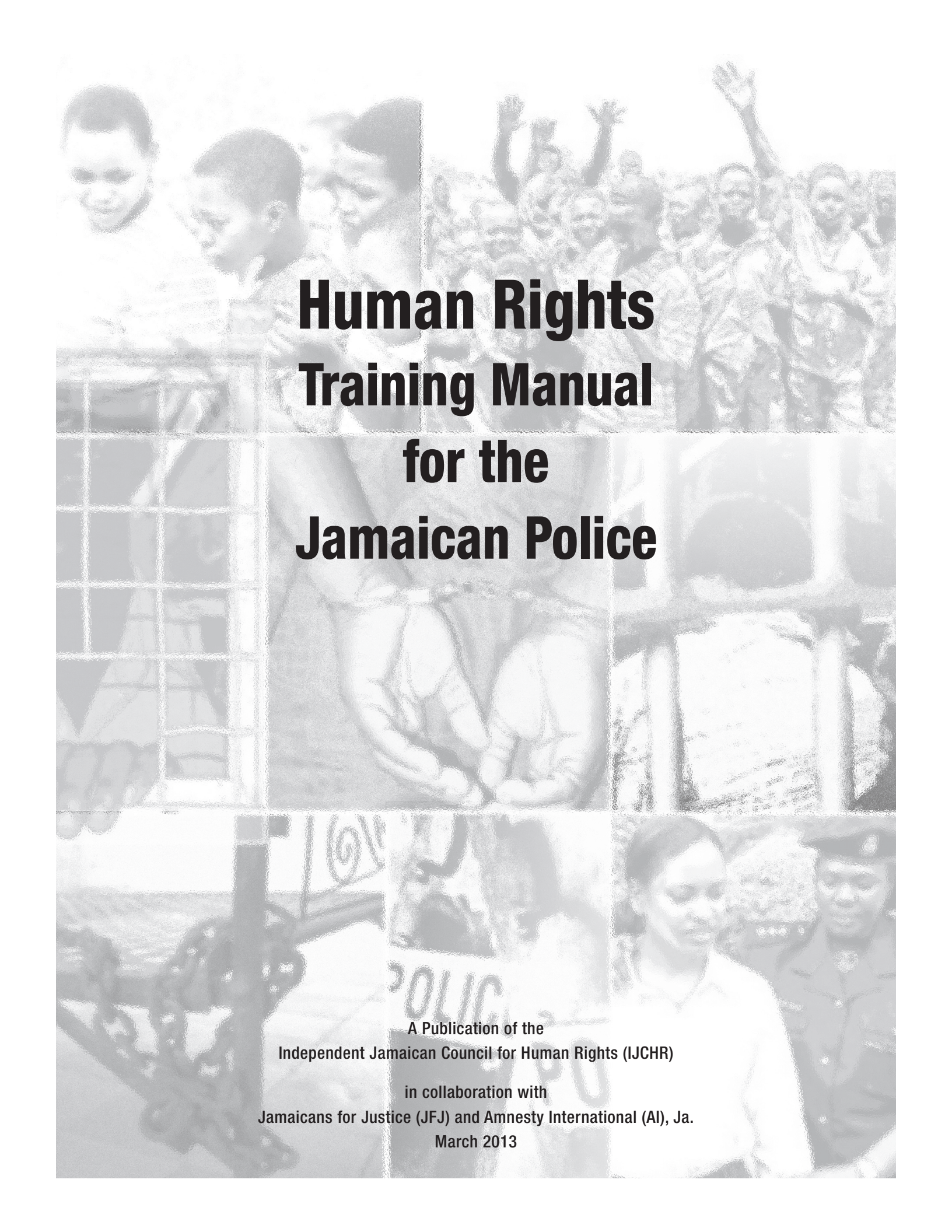




Human Rights Training Manual for the Jamaican Police

A Publication of the
Independent Jamaican Council for Human Rights (IJCHR)

in collaboration with
Jamaicans for Justice (JFJ) and Amnesty International (AI), Ja.

March 2013

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CHAPTER 1

Human Rights

RELEVANT INSTRUMENTS

National

- The Jamaican Constitution, Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011
- The Code of Conduct detailing Police/ Citizen Relations

Regional

- The American Convention on Human Rights.
- American Declaration on the Rights and Duties of Man.

International

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

INTRODUCTION

Human rights are universal. All people have human rights and may use them as long as the expression of these rights does not limit those of another person. Within law enforcement, the awareness of human rights is especially important as police officers, because of the nature of their duties, are permitted to act in a way that limits individuals from enjoying fully some fundamental rights. For example during arrest, a police officer deprives a citizen of the right to liberty and freedom of movement. It is necessary that police officers are knowledgeable of the importance and foundation of human rights, when they can be limited and the consequences of the violation of human rights.

This chapter is an introduction to the study of human rights. It covers the general definition, categories and principles of human rights as well as the development of human rights throughout history. We end the chapter with a discussion of the importance of human rights knowledge for police officers.

■ A. What are Human Rights?

Human rights can be defined as those basic standards without which people cannot live in dignity as human beings. Human rights are the foundation of freedom, justice and peace. Their respect allows the individual and the community to develop fully. The development of human rights has its roots in the struggle for freedom and equality everywhere in the world. The basis of human rights – such as respect of human life and human dignity – can be found in most religions and philosophies.

Human rights are proclaimed in the Universal Declaration of Human Rights. Human rights protect individuals and groups against actions by governments that interfere with fundamental freedoms and human dignity. Human rights law obliges governments to do some things and prevents them from doing others. Documents such as the International Covenants on Human Rights set out what governments must do and also what they must not do to respect the rights of their citizens. Many countries have also included reference to respect and protection of human rights in their Constitutions.

Characteristics of Human Rights

1. Human rights do not have to be given, bought, earned or inherited; they belong to people simply because they are human – human rights are 'inherent' to each individual. Human rights are inherent because we are born with them.
2. Human rights are the same for all human beings regardless of race, sex, religion, ethnicity, political or other opinion, national or social origin. We are all born free and equal in dignity and rights- human rights are 'universal'. Human rights are universal because they apply to everyone in the world.

OBJECTIVES

1. Define human rights and name the five categories of rights, giving examples of each
2. Identify important historical dates in the development of human rights
3. Express the basic underlying principles and philosophy of human rights
4. Discuss the importance of human rights for police officers and the ethical principles underlying this importance

3. Human rights cannot be taken away – no one has the right to deprive another person of them for any reason. People still have human rights even when the laws of their countries do not recognise them, or when they violate them – for example, when slavery was practiced, slaves still had rights even though these rights are being violated – human rights are ‘unalienable’.
4. To live in dignity, all human beings are entitled to freedom, security and decent standards of living concurrently – human rights are ‘indivisible’.

CATEGORIES OF RIGHTS

Human Rights fall into several categories

There are **civil rights** which are defined as the protections and privileges of personal liberty, such as life, liberty and security of the individual, fair trial, freedom of movement and the right to privacy.

Political rights are those that involve the right to take part in the government of the country, directly or indirectly, such as the right to vote, freedom of association and to demonstrate.

Social rights ensure that all persons have a reasonable standard of living and these include the right to education and health care.

There are also **economic rights** that deal with your entitlement to access resources such as land, labour, and money, which are important factors in producing goods and services for sale.

Cultural rights which describes our right to enjoy the diversity of cultural activities, such as participating in sports, music and dance, cultural development and other aspects of the cultural life of the country.

■ B. Historical and Philosophical Perspective of Human Rights

Since ancient times, there have been moral codes that include respecting the inherent human rights of individuals. The Code of Hammurabi was created in 1750 B.C. in Babylonia and the Old and New

Testament, along with the Koran, were also written centuries ago and still function as a moral code that enforces many of our human rights. There are:

Islam

- “You are all brothers and are all equal. None of you can claim any privilege or any superiority over any other.”

Judaism

- “He hath shown thee, O Man, what is good: and what doth the Lord require of thee, but to do justly, and to love mercy and to walk humbly with God.”

Christianity

- The very essence of faith is an understanding of revelation and the dignity of the human person.
- God not only took on human nature but gave himself for the salvation of all mankind, including those who murdered him and the thief on the cross.
- Jesus Christ likened himself to the dispossessed and errant- He was asked... Sir, when did we see you hungry and feed you? Or thirsty and give you anything to drink? Or a stranger and help you? Or naked and clothe you? When did we see you sick or in prison and visit you?” He answered – “When you did it to these my brothers, you did it to me!”

In later years, individual countries started to include human rights concerns officially as a part of national law. The English Bill of Rights was adopted by Parliament in 1689; the United States Constitution was adopted in 1787 and after the French Revolution; the Declaration of the Rights of Man and the Citizens was adopted. After the Second World War, there was need for an international consensus on human rights and The Universal Declaration on Human Rights (UDHR) was adopted by the United Nations General Assembly on December 10, 1948. The UDHR continues to be the premier reference for the human rights standards that should be upheld. (See Human Rights Timetable)

EXERCISE

Human Rights Timetable

Duration 30 minutes

The students will be put into groups and each group asked to choose two events from the timeline handout within a designated period that they believe is an important part of the history of human rights. These dates will be written on arrows and pasted on a prepared timeline while a representative from the group will explain why the particular event was chosen.

■ C. Principles of Human Rights

There are several underlying principles of human rights. These are equality, non-discrimination, inalienability, responsibility, universality, human dignity, indivisibility and interdependency.

Equality

The equality concept expresses the notion of respect for the inherent dignity of all human beings. As specified in Article 1 of the Universal Declaration of Human Rights, it is the basis of human rights: “All human beings are born free and equal in dignity and rights.”

Non-discrimination

Non-discrimination is integral to the concept of equality. It ensures that no one is denied the protection of their human rights based on some external factors. Reference to some factors that contribute to discrimination contained in international human rights treaties include: race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth, or other status. The criteria identified in the treaties, however, are only examples; it does not mean that discrimination is allowed on other grounds.

Inalienability

The rights that individuals have cannot be taken away, surrendered, or transferred.

Responsibility

Government responsibility: human rights are not gifts bestowed at the pleasure of governments. Nor should governments

withhold them or apply them to some people but not to others. When they do so, they must be held accountable.

Individual responsibility: Every individual has a responsibility to teach human rights, to respect human rights, and to challenge institutions and individuals that abuse them.

Other responsible entities: Every organ of society, including corporations, non-governmental organizations, foundations, and educational institutions, also shares responsibility for the promotion and protection of human rights.

Universality

Certain moral and ethical values are shared in all regions of the world, and governments and communities should recognize and uphold them. The universality of rights does not mean, however, that the rights cannot change or that they are experienced in the same manner by all people.

Human dignity

The principles of human rights are founded on the notion that each individual, regardless of age, culture, faith, ethnicity, race, gender, sexual orientation, language, disability or social class, deserves to be honoured or esteemed.

Indivisibility

Human rights should be addressed as an indivisible body, including civil, political, social, economic, cultural, and collective rights.

Interdependency

Human rights concerns appear in all spheres of life – home, school, workplace,

courts, and markets – everywhere! Human rights violations are interconnected; loss of one right detracts from other rights. Similarly, promotion of human rights in one area supports other human rights.

■ D. Why are Human Rights important for police officers?

Police officers are part of an inherently honourable profession the world over, occupying a very unique and significant position. They work with people who may be proved to have broken the law and to have abused other people's human rights. They work with victims and with families. When the police work generally, or when they deal in particular cases with members of the public police have a very important responsibility to respect, protect and promote the basic human rights of every person.

■ E. Ethical Principles regarding human rights that govern the police

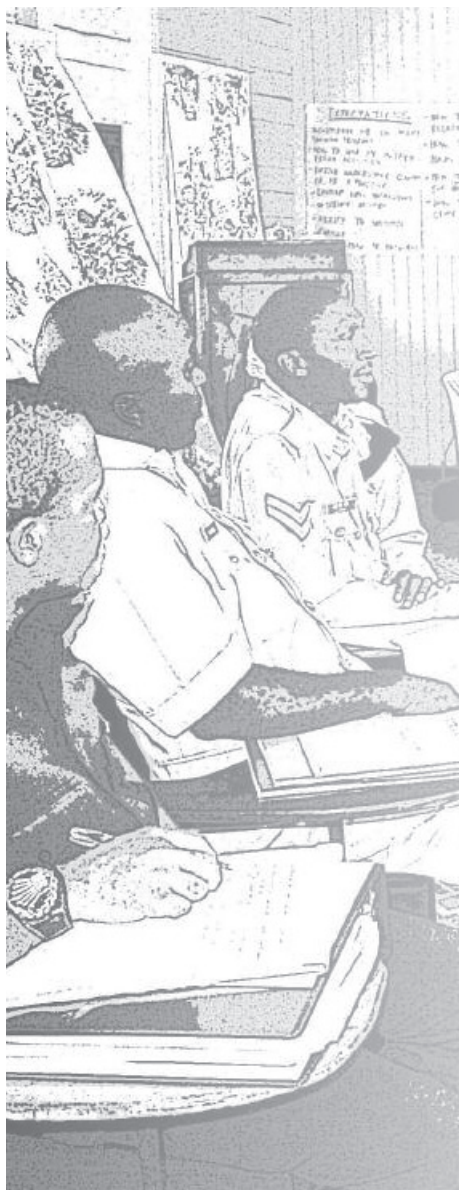
There are several ethical principles regarding human rights and the police.

These are: **Proportionality**, **Legality**, **Accountability** and **Necessity**. When rights are limited by the police, these principles have to be taken into account. Any limitations on rights should be only to the extent that is necessary and any actions taken should be legal, which means that is justifiable by reference to a valid law properly applying to the situation, and the use of any force or the extent of limitation should be proportional to what is lawfully being achieved.

QUESTIONS

1. What are human rights and what is their source? Discuss the historical background to human rights.
2. Name two principles of human rights and identify how they can be applied to law enforcement.
3. Why is international human rights law important for all policing?
4. What are the categories of human rights? Which do you believe is mostly limited by law enforcement officials?





CHAPTER 2

Source of Human Rights Law

RELEVANT INSTRUMENTS

National

- The Jamaican Constitution
- The Code of Conduct detailing Police/ Citizen Relations

Regional

- The American Convention on Human Rights.
- American Declaration on the Rights and Duties of Man

International

- The Universal Declaration of Human Rights
- The International Covenant on Economic, Social and Cultural Rights (ICESR)
- The International Convention on the Elimination of Racial Discrimination (the "CERD")
- The Convention on the Rights of Persons with Disabilities (CRPD)
- The Convention on the Rights of the Child (the "CRC")
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- The International Covenant on Civil and Political Rights (ICCPR)

Law is a rule of conduct established and enforced by the authority, legislation, or custom of a given community, State, or nation. International law is that body of rules that governs the relations between States and relate to the functioning of international institutions or organizations, their relations with each other and their relations with States and individuals. Furthermore, certain rules of international law extend to individuals and non-State entities insofar as their rights or duties are the concern of the international community of States.

Legislation are written laws made by Parliament or a provincial legislature (Acts) or by a person or body that has law-making authority, usually delegated by Parliament or a legislature and exercised by making regulations or other delegated legislation.

Subsidiary legislation refers to any orders, regulations, notifications, by-laws or instruments made under any Act, Ordinance or other lawful authority.

International, Regional and National Law

There are national, regional and international laws. National is limited to and or in the interests of a particular nation. Regional pertains to activities or economies at a scale greater than that of a single jurisdiction, and affecting a broad geographic area. International is from or between other countries. In Jamaica, there is a national Constitution, legislation, subsidiary legislation and judge-made law. Regionally and internationally, there are treaties, conventions, declarations and also judge-made law which Jamaica adheres to.

OBJECTIVES

1. Define law and explain rule of law
2. Indicate the regional and international conventions relating to human rights law
3. Identify the main features of the six covenants that Jamaica is party to
4. List the three declarations and covenants that make up the International Bill of Rights
5. Apply human rights categories to the Universal Declaration of Human Rights

INTRODUCTION

Human rights are legal rights, which mean that they are part of the law. It is therefore important to have a basic understanding of the legal system, especially aspects that affect human rights law. This chapter will explain the various international, regional and national instruments which guarantee specific rights and which provide for redress should such rights be violated. Human rights are, in addition, protected by the Constitutions and domestic laws in most countries of the world.

A Constitutional system is often codified as a written document, called a Constitution and establishes the rules and principles that govern an organization or political entity. In the case of countries, this term refers specifically to a national Constitution defining the fundamental political principles, and establishing the structure, procedures, powers and duties, of a government. Most national Constitutions also guarantee the rights to the citizens.

The Jamaica Constitution, 1962 was drafted by a bipartisan joint committee of the Jamaican legislature in 1961-62, approved in the United Kingdom and included as the Second Schedule of the Jamaica (Constitution) Order in Council, 1962 under the West Indies Act, 1962. It came into force with the Jamaica Independence Act, 1962 of the U.K. Parliament, which gave Jamaica political independence on August 6, 1962.

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on December 10, 1948. It is the basis for human rights protection and promotion around the world and has been endorsed by all countries. Many countries have included its provisions in their basic laws or Constitutions.

Those who drafted the Declaration had very much in mind the extremities of the human rights violations that had been perpetuated during World War II and the preceding years. The United Nations was all about promoting a better world through international cooperation, including in the field of human rights. In adopting the Declaration, the United Nations emphasized the inherent dignity of every person and that the recognition of human rights was the basis for freedom, justice and peace. It called on governments and individuals to promote respect for human rights through education and government policies.

Other International Covenants

The Universal Declaration for Human Rights provides general guidelines for the maintenance of human rights, covering

most aspects through different Articles. These are different from the UDHR in that the countries that ratify them are then bound in international law to comply with and implement them, and to ensure the protection of the rights they contain to their population. In addition to the ICCPR and the ICESCR, there are other conventions that focus more directly on specific issues and persons such as women and children. Jamaica is party to seven of these conventions:

- The International Covenant on Civil and Political Right (ICCPR)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The International Convention on the Elimination of Racial Discrimination (the "CERD")
- The Convention on the Rights of Persons with Disabilities (CRPD)
- The Convention on the Rights of the Child (the "CRC")
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The International Covenant on Civil and Political Rights

Overview

The International Covenant on Civil and Political Rights (ICCPR) was adopted in 1966 and came into force in 1976. As of May 8, 2006, 156 States have become parties to the Covenant. The Covenant also contains two Optional Protocols.

Article 1 deals with the question of self-determination. Article 2, deals with the obligation of State parties to undertake necessary steps to respect and ensure to all individuals the rights recognized in the Covenant. The rights should be ensured to all individuals without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3 deals with the obligation of ensuring the equal rights of men and women.

Article 4 deals with derogation principles. Article 5 deals with the obligation not to misrepresent any of the Articles of the Covenant in such a manner to undermine the rights and freedoms recognized in the Covenant. Articles 6 to 27 deal with the following specific rights:

- The right to life (art.6)
- Prohibition against torture or cruel, inhuman or degrading treatment or punishment (art.7)
- Prohibition against slavery, slave trade, servitude and forced or compulsory labour (art.8)
- Prohibition against arbitrary arrest or detention (art.9)
- Obligation to treat with humanity all persons deprived of their liberty (art.10)
- Prohibition against imprisonment merely on the ground of inability to fulfil a contractual obligation (art.11)
- The right to freedom of movement and freedom to choose a residence (art.12)

Monitoring Mechanism

Under the International Covenant on Civil and Political Rights, a Human Rights Committee has been established to monitor the compliance of rights recognized under the Covenant.

Committee has been established to monitor the compliance of rights recognized under the Covenant. The Human Rights Committee consists of eighteen independent experts who are elected from the State parties to the Covenant

Obligation of State Parties

Article 2 deals with the obligation of State parties to undertake necessary steps to respect and ensure to all individuals the rights recognized in the Covenant.

The obligation under this Article has two elements:

1. Obligation of State parties to undertake necessary steps to respect and ensure to all individuals the rights recognized in the Covenant.
2. The rights should be ensured to all individuals without distinction of any kind such as race, colour, sex,

language, religion, political or other opinion, national or social origin, property, birth or other status.

The obligation of State parties under the Covenant also includes development of special remedies, especially judicial remedies, for situations in which a right or freedom recognized in the Covenant is being violated (art.2 (3)).

Optional Protocols

Under the first Optional Protocol to the International Covenant on Civil and Political Rights, the Human Rights Committee is authorized to receive complaints from individuals claiming to be victims of violations of rights contained in the Covenant. The Second Optional Protocol to the International Covenant on Civil and Political Rights aims at the abolition of the death penalty.

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by UN General Assembly on December 16, 1966 and entered into force on January 3, 1976. As of May 8, 2006, 153 States have become parties to the Covenant. Unlike civil and political rights, economic, social and cultural rights are often viewed with 'suspicion, caution and scepticism'. At times even 'treated with an air of triviality'. In the human rights field, economic, social and cultural rights are most often accorded secondary status by governments and NGOs.

However, the economic, social and cultural rights are indivisible part of human rights. First, ESC rights have intrinsic value. They create the condition for enhancing a person's capability by eradicating deprivation. They expand the freedom to lead a life that we value. The potentialities of the human person may be expressed through civil and political rights but the unfolding of these potentialities requires adequate social and economic circumstances.

The concept of human dignity is the foundation for civil and political and economic, social and cultural rights. These

rights can neither be given nor taken away. Human dignity is denied when civil and political rights and economic, social and cultural rights are not guaranteed. Two common elements mediate both sets of rights - security and equality. Security of the person includes socio-economic security and equality before law encompasses equality of opportunities.

The development of international human rights law has shown the indivisibility of the civil, political and economic, social and cultural rights. For example, the Convention on the Elimination of All Forms of Discriminations Against Women and the Convention on the Rights of the Child incorporate protection of both sets of rights.

Violations of Economic, Social and Cultural Rights

The notion of violation applied vigorously to civil and political rights is normally not used regarding economic, social and cultural rights. The Committee on Economic, Social and Cultural Rights has developed the concept of 'minimum core obligations'.

The Committee developed this concept mainly to refute the argument that lack of resources hinders fulfillment of obligations. The Committee has stated that every State has a minimum core obligation to satisfy minimum essential levels of each of the rights of the Covenant. The Committee has clarified that a State party 'in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is *prima facie*, failing to discharge its obligations under the Covenant'.

Thus, it can be construed that failure to fulfill minimum core obligations will be a violation of the rights enshrined in the Covenant.

A State party will be in violation of the Covenant, *inter alia*, if:

- It fails to take a step which it is required to take by the Covenant;
- It fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfillment of a right;

- It fails to implement without delay a right which it is required by the Covenant to provide immediately;
- It wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- It applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant;
- It deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure;
- It fails to submit reports as required under the Covenant.'

Monitoring Mechanism

The Committee on Economic, Social and Cultural Rights was established in 1985 and is comprised of 18 members who are independent and serve in their personal capacity, not as representatives of governments.

The primary function of the Committee is to monitor the implementation of the

Covenant by States parties. Under Articles 16 and 17 of the Covenant, States parties undertake to submit periodic reports to the Committee-within two years of the entry into force of the Covenant for a particular State party, and thereafter once every five years-outlining the legislative, judicial, policy and other measures which they have taken to ensure the enjoyment of the rights contained in the Covenant. States parties are also requested to provide detailed data on the degree to which the rights are implemented and areas where particular difficulties have been faced in this respect.

Important Rights Under the Covenant

Article 6: The right to work

Article 7: Just and favourable conditions of work

Article 8: The right to form and join trade unions

Article 9: The right to social security

Article 10: Protection of the family

Article 11: The right to an adequate standard of living (food, housing)

Article 12: The right to health

Article 13: The right to education

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

Overview

In 1965, the General Assembly provided the world community with a legal instrument by adopting the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The Convention came into force in 1969. As of May 8, 2006, 170 States have become parties to the Convention.

Under the Convention, States parties are pledged:

- To engage in no act or practice of racial discrimination against individuals, groups of persons or institutions, and to ensure that public authorities and institutions do likewise;
- Not to sponsor, defend or support racial discrimination by persons or organizations;
- To review government, national and local policies and to amend or repeal laws and regulations which create or perpetuate racial discrimination;
- To prohibit and put a stop to racial discrimination by persons, groups and organizations; and
- To encourage integrationist or multiracial organizations and movements and other means of eliminating barriers between races, as well as to discourage anything which tends to strengthen racial division.

Monitoring Mechanism

Part II of the Convention established the Committee on the Elimination of Racial Discrimination (CERD). This Committee was the first body created by the United Nations to monitor and review actions by States to fulfill their obligations under a specific human rights agreement.

The Convention establishes three procedures to make it possible for CERD

to review the legal, judicial, administrative and other steps taken by individual States to fulfill their obligations to combat racial discrimination. The first is the requirement that all States parties to the Convention must submit periodic reports to CERD. A second procedure in the Convention provides for State-to-State complaints. The third procedure makes it possible for an individual or a group of persons who claim to be victims of racial discrimination to lodge a complaint with CERD against their State.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Overview

The Convention on the Elimination of All Forms of Discrimination Against Women is perhaps best described as an international bill of rights for women as it sets out in detail both what is to be regarded as discrimination against women and the measures that have to be taken in order to eliminate this discrimination. Women's rights are conceptualised as human rights and a "non-discrimination" model is adopted, so that women's rights are seen to be violated if women are denied the same rights as men.'

The Convention was adopted by the General Assembly of the United Nations on 18 December 1979. It entered into force on 3 September 1981. As of March 2, 2006, 182 states have become parties to the Convention (1 State is a remaining signatory). The Convention has one Optional Protocol.

The preamble recalls that the elimination of discrimination against women and the promotion of equality between women and men are central principles of the United Nations Charter and constitute binding obligation under it. It further states that discrimination against women violates the principles of equality and obstructs women's participation, on equal terms with men, in the political, social, economic and cultural life of their countries.

Monitoring Mechanism

Article 17 of the Convention on the Elimination of All Forms of Discrimination

against Women establishes the Committee on the Elimination of Discrimination against Women to oversee the implementation of its provisions. The Committee is composed of 23 experts and has since its inception, with only one exception, been composed entirely of women. Under Article 18 of the Convention, States parties are required to submit reports every four years to the Secretary-General of the United Nations on legislative, judicial and other measures that they have taken in accordance with the provisions of the Convention. These reports are for consideration by the Committee. The Committee has developed two sets of general guidelines for reporting in an effort to provide practical technical assistance to States parties.

Provisions

The provisions of the Convention are divided into six parts. The first four deal with substantive rights.

Part I

Articles 1 - 6 include the definition of discrimination against women. In addition, they also include legal, administrative and other measures that should be taken by State parties under the Convention.

Part II

Articles 7 - 9 contain obligations of States regarding the protection of women's rights in political and public life.

Part III

Articles 10 - 14 contain provisions regarding elimination of discrimination against women in the field of education, employment, health, and economic, social and cultural life. This part also includes obligation of States regarding special problems of rural women.

Part IV

Articles 15 - 16 contain provisions regarding affording equality of women with men before the law, in the exercise of their legal rights, and in marriage and family law.

Part V

Articles 17 - 22 deal with the establishment of a Committee on the Elimination of Discrimination Against Women to monitor the progress of the implementation of the Convention by State parties.

Part VI

Articles 23 - 30 deals with other procedural issues including provision for making reservation while ratifying or acceding to the Convention.

CONVENTION ON THE RIGHTS OF THE CHILD

Overview

The UN General Assembly adopted the Convention on the Rights of the Child (CRC) in 1989. The Convention came into force in 1990. An unprecedented number of States have ratified or acceded to the Convention. As of May 8, 2006, 192 States have become parties to the Convention (2 States are remaining signatories).

The Convention contains 54 Articles and encompasses the whole range of human rights - civil, political, economic, social and cultural. The Convention recognizes the indivisibility of rights. The Convention provides for the enjoyment of rights by children without discrimination of any kind. The Convention recognizes the child as a subject and guarantees the freedom of expression and participation in making decisions affecting their rights. The Convention takes into account the situation of children of minority and indigenous groups and deals with children threatened by drug abuse and neglect.

FUNDAMENTAL PRINCIPLES OF THE CONVENTION

Respect for the Child's Opinion

The corollary to children as subjects of rights is the principle that their opinion should be respected. It means that the child has the right to freedom of expression, freedom of thought, freedom of conscience and freedom of assembly.

Each Child has Rights

The recognition that children have equal value as adults implies that each child has rights. The principle that all children should enjoy rights is fundamental to the Convention. The principle is based on the notion that children are subjects and not objects of the rights. Moreover,

children should enjoy their rights without discrimination. It means that girls should be given the same opportunities as the boys. Similarly, disabled children and children of disadvantaged groups should enjoy the same rights as others.

Equal Value as Human Beings

An underlying principle of the Convention is that of according children the same value as adults. This principle stresses that childhood has value in itself. It is not merely a preparatory stage for adulthood. The implication of this principle is that the society has an obligation to create conditions for the child to enjoy his or her childhood.

Best Interests of the Child

While children have equal value as grownups they also need the protection and support from the society for enjoying their childhood. The principle of best interests of the child addresses this need. This principle is most clearly stated in Article 3 (1) of the Convention.

'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'

The interests of the child take precedent over the interests of parents or the state. The principle as stated in Article 3 (1) applies to 'all actions concerning children' and not restricted to legal or administrative proceedings.

Monitoring Mechanism

The Convention sets up a Committee on the Rights of the Child to monitor the State parties compliance of their obligations under the Convention. The Committee consists of eighteen independent experts. All State parties should submit a report within two years after the ratification or accession to the Convention. The initial report should be followed by reports every five years. The reports submitted by State parties are normally considered within a year of their submission. The Committee strives to achieve this deadline despite its enormous workload. State parties in preparing

their reports are expected to follow the guidelines provided by the Committee. The Convention is the only treaty that accords a role for NGOs in assisting the Committee to monitor the compliance of State parties obligations.

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Countries are to guarantee that persons with disabilities enjoy their inherent right to life on an equal basis with others (Article 10), ensure the equal rights and advancement of women and girls with disabilities (Article 6) and protect children with disabilities (Article 7).

OBLIGATIONS IMPOSED ON THE STATE

Countries must protect the physical and mental integrity of persons with disabilities, just as for everyone else (Article 17), guarantee freedom from torture and from cruel, inhuman or degrading treatment or punishment, and prohibit medical or scientific experiments without the consent of the person concerned (Article 15). Countries are to ensure equal participation in political and public life, including the right to vote, to stand for elections and to hold office (Article 29).

Countries are to promote participation in cultural life, recreation, leisure and sport by ensuring provision of television programmes, films, theatre and cultural material in accessible formats, by making theatres, museums, cinemas and libraries accessible, and by guaranteeing that persons with disabilities have the opportunity to develop and utilize their creative potential not only for their own benefit, but also for the enrichment of society. Countries are to ensure their participation in mainstream and disability-specific sports (Article 30).

Children with disabilities shall have equal rights, shall not be separated from their

parents against their will, except when the authorities determine that this is in the child's best interests, and in no case shall be separated from their parents on the basis of a disability of either the child or the parents (Article 23)

Limitations

The convention deals with how countries must protect the physical and mental integrity of persons with disabilities, just as for everyone else (Article 17), guarantee freedom from torture and from cruel, inhuman or degrading treatment or punishment, and prohibit medical or scientific experiments without the consent of the person concerned (Article 15) but the convention does not provide any

guidelines for the treatment of prisoners with physical or mental disabilities. The convention does not differentiate physical disability from mental disability.

Mechanisms for monitoring compliance

To ensure implementation and monitoring of the Convention, countries are to designate a focal point in the government and create a national mechanism to promote and monitor implementation (Article 33). A Committee on the Rights of Persons with Disabilities, made up of independent experts, will receive periodic reports from States parties on progress made in implementing the Convention (Articles 34 to 39).

THE INTERNATIONAL BILL OF RIGHTS

The 'International Bill of Rights' is the term used as a collective reference to three major human rights instruments namely:

- the Universal Declaration of Human Rights;
- the International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights

EXERCISE

Students should be able to differentiate between National, Regional and International human rights law. Using the table below, the students are to fill out which laws would fall under each section.

NATIONAL	REGIONAL	INTERNATIONAL



CHAPTER 3

International Human Rights Law and Law Enforcement

RELEVANT INSTRUMENTS

National

- The Jamaican Constitution
- The Code of Conduct detailing Police/ Citizen Relations

Regional

- The American Convention on Human Rights.
- American Declaration on the Rights and Duties of Man.

International

- The Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment
- United Nations Basic Principles on the Use of Force and Firearms
- United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- United Nations Basic Principles of Justice for Victims of Crime and Abuse of Power.
- The International Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Rights of the Child
- The Convention on the Elimination of All Forms of Discrimination against Women
- United Nations Declaration on the Elimination of Violence against Women.
- The Convention Relating the Status of Refugees
- The Rome Statute of the International Criminal Court 1998.

INTRODUCTION

International human rights law is also applicable to the law enforcement officials. The United Nations and other international bodies have developed several conventions, treaties and codes of conduct which direct the treatment of criminals and victims by the police as well as other aspects of their daily duties. In this chapter, we will review the treaties and conventions that affect law enforcement. In addition, we will review the enforcement of human rights law by looking at the structure of the Jamaican Court System as well as regional and international courts, tribunals and commissions.

CONVENTIONS

Convention as a generic term: Art.38 (1) (a) of the Statute of the International Court of Justice refers to "international conventions, whether general or particular" as a source of law, apart from international customary rules and general principles of international law and - as a secondary source - judicial decisions and the teachings of the most highly qualified publicists. This generic use of the term "convention" embraces all international agreements, in the same way as does the generic term "treaty". The term "convention" thus is synonymous with the term "treaty". Whereas in the last century the term "convention" was regularly employed for bilateral agreements, it now is generally used for formal multilateral treaties with a broad number of parties. Conventions are normally open for participation by the

OBJECTIVES

1. State the difference between treaties, conventions and declarations
2. Name the main features of the United Nations Code of Conduct for Law Enforcement Officers
3. Name the conventions and declarations that deal with prisoners, children, refugees and detention
4. Name the different sections of the Jamaican courts
5. Identify the main regional and international courts, tribunals and commissions

international community as a whole, or by a large number of states.

Treaties

The term “treaty” has regularly been used as a generic term embracing all instruments binding at international law concluded between international entities, regardless of their formal designation. Both the 1969 Vienna Convention and the 1986 Vienna Convention confirm this generic use of the term “treaty”. The 1969 Vienna Convention defines a treaty as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”. The 1986 Vienna Convention extends the definition of treaties to include international agreements involving international organizations as parties. In order to speak of a “treaty” in the generic sense, an instrument has to meet various criteria. First of all, it has to be a binding instrument, which means that the contracting parties intended to create legal rights and duties. Secondly, the instrument must be concluded by states or international organizations with treaty-making power. Thirdly, it has to be governed by international law. Finally the engagement has to be in writing. Even before the 1969 Vienna Convention on the Law of Treaties, the word “treaty” in its generic sense had been generally reserved for engagements concluded in written form.

DECLARATIONS

The term “declaration” is used for various international instruments. However, declarations are not always legally binding. The term is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations. An example is the 1992 Rio Declaration. Declarations can however also be treaties in the generic sense intended to be binding at international law. It is therefore necessary to establish in each individual case whether the parties intended to create binding obligations. Ascertaining the intention of the parties can often be a difficult task. Some instruments entitled “declarations” were not originally intended to have

binding force, but their provisions may have reflected customary international law or may have gained binding character as customary law at a later stage.

THE UN CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS

The United Nations Code of Conduct for Law Enforcement Officials was adopted by the United Nations General Assembly on December 17, 1979. It was developed by law enforcement experts from all over the world to serve as a guideline for all police agencies, within the framework of national legislation or practice.

Codes of conduct and codes of ethics are the basis for consistency of ethical police behaviour. Codes of conduct are not treaties; they belong to a category of instruments that offer authoritative guidance to governments on issues related to human rights and criminal justice. They are intended to provide guidelines on the desired behaviour, responses and attitudes when police fulfil their duties. The Code of Conduct reflects the standards and norms of conduct to be found in the common law system and the rules and regulations relating to the police. It states that the nature and of the functions of law enforcement in the defence of public order, and the manner in which those functions are exercised, have a direct impact on the quality of life of individuals as well as of the society as a whole.

The UN Code of Conduct consists of eight Articles with an explanatory commentary after each Article. The first Article states that “Law enforcement officials shall at all times fulfil the duty imposed upon them by law...” and law enforcement officials is defined as including all officers of the law, whether appointed or elected who exercise police powers, especially the powers of arrest or detention. Article 2 requires law enforcement officials, in the performance of their duty, to respect and protect human dignity and maintain and uphold the human rights of all persons. Article 3 limits the use of force by law enforcement officials to situations where it is strictly necessary and to the extent required for the performance of their duty. Article 4 states that the 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. Article 5 reiterates the prohibition of torture or other cruel, inhuman or degrading treatment or punishment. Article 6 relates to the duty to protect the health of persons deprived of their liberty and provide medical care whenever necessary. Article 7 forbids law enforcement officials to commit any act of corruption, and enjoins them to rigorously oppose and combat any such act. Article 8 is the closing provision urging law enforcement to respect the law and the present Code. They are urged to prevent and oppose any violations of the law or the Code. In cases where a violation of the Code is committed, law enforcement officials must report the matter to their superior authorities and, if necessary, to other appropriate authorities vested with remedial power.

Exercise

Students will be assigned Articles of the UN Code of Conduct for Law Enforcement Officials and will use the content of these Articles to develop scenarios which they will role-play for the rest of the class, to highlight the ways in which the Code influences police behaviour

Other Important Human Rights Instruments

In addition to the United Nations Code of Conduct for Law Enforcement Officials, there are several other important human rights instruments that are applicable to the police. These include instruments that are particular to the treatment of inmates, detainees, children, refugees and other non-Jamaicans. (See full treaties at end of manual)

- The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), and its Optional Protocol (2002).
- The United Nations General Assembly's *Code of Conduct for Law Enforcement Officials* 1979.
- United Nations *Standard Minimum Rules for the Treatment of Prisoners*.
- United Nations *Basic Principles on the Use of Force and Firearms*

- United Nations *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- United Nations *Basic Principles of Justice for Victims of Crime and Abuse of Power*.
- The *International Convention on the Elimination of All Forms of Racial Discrimination*
- The *Convention on the Rights of the Child*
- The *Convention on the Elimination of All Forms of Discrimination against Women*
- United Nations *Declaration on the Elimination of Violence against Women*.
- The *Convention Relating the Status of Refugees*
- The *Rome Statute of the International Criminal Court 1998*.

EXERCISE

Students will be placed in different groups and each group will be given an instrument which they will analyse and discuss how it applies to their daily activities

JAMAICA'S COURT SYSTEM

Jamaica's legal and judicial system is based on English Common Law. The judicial function is to interpret, apply and enforce the laws of Jamaica in cases

where the laws are infringed or alleged to be infringed, or where contention arises between different parties. The Judiciary is made up of: A Chief Justice and Puisne Judges in the Supreme Court and Judges of Appeal in the Court of Appeal Resident Magistrates in R.M. Courts, Coroners Court and Traffic Court and Justices of the Peace in Petty Sessions.

The Court System of Jamaica includes:

- **The Privy Council** - The Judicial Committee of the Privy Council sits in London, England. It is the final court of appeal for Jamaica. It is the final court of appeal for Jamaica as outlined in Section 110 of the Constitution.
The issue of the Privy Council being replaced by the Caribbean Court of Justice (CCJ) as Jamaica's highest court of appeal is being considered. The right of appeal to the Privy Council may be removed by a simple majority vote in Parliament.
- **The Court of Appeal** - Appeals are made to this Court when persons are disappointed with the outcome of a case from any of the courts below except the Petty Sessions Court. The Supreme Court Petty Sessions' appeals are dealt with by a Judge in Chambers.
- **The Resident Magistrates' Courts** - presided over by an appointed Resident Magistrate who have jurisdiction within a particular parish. Cases dealt with in this Court are

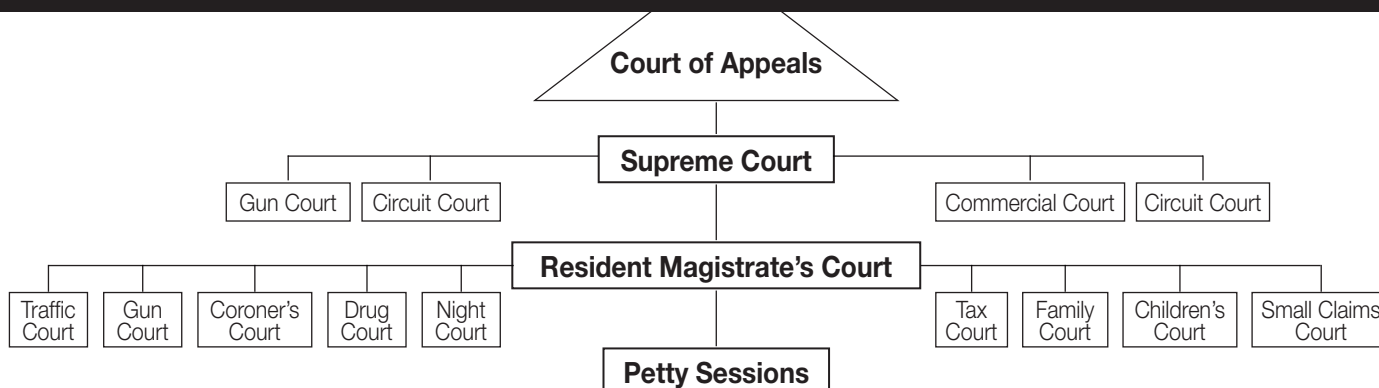
less serious than those dealt with by the Supreme Court but are more important than those presented in the Petty Sessions Courts.

- **The Petty Sessions Court** - A Justice of the Peace (J.P.) presides over this court. Justices of the Peace are persons appointed by the Governor-General on the recommendation of the Custos, (the parish representative of the Governor General). This court deals with minor offences that are punishable by statute law.
- **The Traffic Court** - this is a special court of the Resident Magistrates' Court. It deals specifically with traffic related offences.
- **Coroner's Court** - This is the court that deals with inquests on the deaths of persons who have died by violence or accident. Coroners' inquests are held in order to determine whether the death was natural or caused. It also deals with wrecks and treasure troves.

Questions

1. Provide examples of international and regional human rights codes and instruments applicable or relevant to the work of police officers.
2. What is the difference between treaties, conventions and declarations?
3. Describe the structure of the Jamaican Court system linking it to international tribunals.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL / CARIBBEAN COURT OF JUSTICE





CHAPTER 4

Human Rights and Police Ethics

RELEVANT INSTRUMENTS

National

- Laws of Jamaica

Regional

- American Convention on Human Rights

International

- UN Code of Conduct for Law Enforcement Officials
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

INTRODUCTION

Police officers are at all times expected to fulfil the duty imposed upon them by law, of serving the community and protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. How can police officers enforce the law if they do not themselves respect and adhere to the law? Public safety and public security would subsequently be at risk, with potentially devastating consequences for society. To that end law enforcement officials must develop personal attitudes and behaviour to a level that will enable them to perform their task in a correct manner.

■ A. Definitions

The term "Ethics" is generally understood to refer to:

...the discipline dealing with what is good and bad and with moral obligation.....a set of moral principles or values.....the principles of conduct governing an individual or (professional) group.....the study of the general nature of morals and of specific moral choices...the rules or standards governing the conduct of the members of a profession.....moral quality of a course of action; propriety.

■ B. Professionalism and ethical behaviour

A code of conduct provides the basis for professional and ethical behaviour of all law enforcement officials. All actions of police officers must be compatible with the following principles:

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

■ C. Measurement of Police Behaviours

What criteria might be used for the measurement of acceptable and professional police behaviour? The following principles, norms and values can serve as measurements for ethical and professional police behaviour: respect for liberty and equality of every person; respect for property; respect for life; service; and truth.

'LIBERTY AND EQUALITY OF EVERY PERSON'

Every person should be treated as free and equal before the law. Members of the

OBJECTIVES

1. Define ethics and legal action and explain the importance of a Code of Conduct
2. Name the three main duties of professional and ethical behaviour
3. Discuss the UN Code of Conduct for Law Enforcement Officials as the basis for ethical policing that is consistent with human rights
4. List the criteria for measuring acceptable and professional police behaviour and the internationally accepted norms and values

public should be protected from unlawful or arbitrary arrest and detention. Police should not make distinction in treatment between rich or poor, old or young, different religions, different races, male and female, etc.

‘LIFE’

Police should respect the life of every person. The principles of minimum force during the use of force and firearms should always be taken into account.

‘PROPERTY’

Police should respect the property of every person. They should always try to cause the least damage possible when doing their job.

‘SERVICE’

The police should provide a professional service to the community. Police agencies should constantly strive to improve their service delivery to the community and should implement measures to evaluate their service.

‘TRUTH’

Police should always seek the truth. This is guides the investigation of crime and the methods that are used.

■ D. Internationally Accepted Norms

Internationally accepted **norms** and **values** for police ethics are –

- honesty;
- integrity;
- accountability;
- fairness;
- civic duty;
- pursuit of excellence;
- loyalty; and
- comradeship with other officers.

In any democracy, although police agencies will be held responsible for the actions of police officers, police officers themselves are also individually responsible for their actions. The responsibility of police officers is also addressed in a number of international instruments.

Some examples of individual responsibility of police officers can be found in the following international instruments:

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CAT)

As Chapter 6 of this manual makes clear, there is an absolute prohibition on torture.

No police officer (public official or person acting in an official capacity) may commit any act of torture even if instructed by a superior officer. In Article 2 of the Convention it is stated clearly that, “An order from a superior officer or a public authority may not be invoked as a justification of torture.” This reflects a principle known in international law generally, applied since the 1945 Nuremberg and Tokyo war crimes trials. Therefore, an officer will be held individually responsible for their actions if they commit an act of torture. And the principle of “command responsibility” can lead to commanders being accountable for the acts of their officers in certain cases. Although Jamaica is not a signatory to this convention, the preservation of human dignity is still a fundamental aspect of the Universal Declaration of Human Rights.

UN Code of Conduct for Law Enforcement Officials

In Article 5 of the Code of Conduct the prohibition of torture and the personal responsibility of police officers is again repeated. It states that no law enforcement official may invoke superior orders as a justification of torture.

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

In the Basic Principles on the Use of Force and Firearms there are three principles that refer to individual responsibility of police officers.

Principle 24 requires governments and law enforcement agencies to ensure that superior officers are held responsible if they know, or should have known, that police officers under their command are resorting, or have resorted, to the unlawful use of force and firearms, and did not take all measures in their power to prevent, suppress or report such use.

Principle 25 requires governments and law enforcement agencies to ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

Principle 26 states that obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

■ E. Corruption

Police corruption can cause an enormous amount of damage to the reputation of any police agency. The Code of Conduct stipulates that law enforcement officials shall not commit any act of corruption, and that they should rigorously oppose and combat all such acts. Unfortunately, there are police officers all over the world who will find some excuse to commit and justify acts of corruption. One of the most popular excuses is that police are underpaid. Police corruption occurs when a police officer uses and abuses his or her position of trust and authority to his/her personal advantage. Police corruption may occur in a passive and an active form.

- Passive corruption occurs if a police officer is approached with a favour or a request. For instance, someone may offer money, gifts or liquor in exchange for a favour from the police officer, for example not to report a crime. In passive corruption, the police officer may receive an advantage without having specifically sought it. A police officer is ‘bought’ in such a case.
- Active corruption occurs if a police officer approaches a person with the purpose of selling a favour or a gift. This is done by intimidating a person, threatening or blackmailing him/her. In active corruption, the police officer is

the hunter who wants to force a favour onto someone. In this case the police officer wants to 'sell' his/her position of authority.

Both active and passive corruption are unethical. The community expects police officers to apply the law in an unbiased manner. When a police officer abuses his/her given authority for personal gain, he/she places himself/herself in a position in relation to the community such that he/she cannot serve it without prejudice.

Examples of police corruption include if a police officer -

- stops a private taxi at a roadblock or elsewhere and then, instead of charging the driver for a traffic violation, accepts money and lets the person go free;
- arrests a person for a traffic violation or a minor offence and then releases him/her in return for a sum of money;
- receives money or gifts in exchange for privileged treatment;
- ignores illegal gambling rooms or unlicensed bars in exchange for money or liquor;
- blackmails prostitutes in exchange for money or sex;
- sells drugs that have been confiscated; or
- gives false evidence for personal gain.

There are some examples of procedures and regulations that should be implemented to combat corruption:

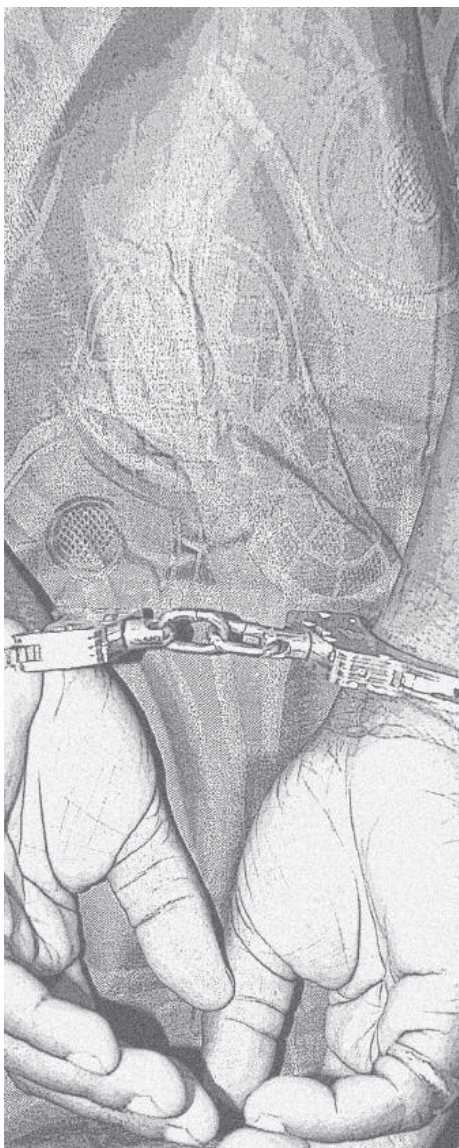
In many countries, police officers are not entitled to engage in any industrial, commercial or professional activities which were related to, or might be influenced by, their functions or duties.

- There are countries where the law enforcement officials are not allowed to accept any gift from third parties. In some countries even the act of offering a gift is regarded as bribery or attempted bribery.
- In some countries police officers have the duty to report any gift from third parties if the value of the gift exceeds a certain amount of money.
- In some countries, anti-corruption laws have been implemented that focus on government officials (including police officers).
- Special anti-corruption units or investigation offices have been implemented in some countries.
- Independent investigating procedures exist in some countries to examine allegations of corruption against law enforcement officials.
- Internal disciplinary procedures are normally followed to deal with corruption, with sanctions ranging from fines to reduction of rank, reduction of remuneration, dismissal, suspension or imprisonment.

It is therefore important for police agencies to implement procedures to combat and oppose corruption. Human rights-based policing cannot fully succeed in a climate of corrupt and unethical behaviour by police officers.

EXERCISES

1. Why is the UN Code of Conduct important for police officers?
2. What would you describe as professional and ethical police behaviour?
3. Provide five examples of unethical police behaviour.
4. Describe what corruption means within the police?
5. What do you do when you see a colleague violating one of the principles included in the Code of Conduct?



CHAPTER 5

Arrest

RELEVANT INSTRUMENTS:

National:

- Jamaican Constitution: Charter of Fundamental Rights and Freedoms, (Constitutional Amendment) Act, 2011
- Judges' Rules

Regional:

- American Convention on Human Rights

International:

- International Covenant on Civil and Political Rights
- Universal declaration of Human Rights
- Body of Principles for the Protection of All persons under Any Form of Detention or Imprisonment

INTRODUCTION

All human beings have the right to personal liberty and personal security and the right to have these rights respected.

Section 13(3)(a) of the Jamaican Constitution: Charter of Fundamental Rights and Freedoms, (Constitutional Amendment) Act, 2011 guarantees to every Jamaican the right to "life, liberty and security of the person and the right not to be deprived thereof except in the execution of a sentence of a court in respect of a criminal offence for which the person has been convicted." Article 3 of the Universal Declaration for Human Rights States that "Everyone has the right to life, liberty and security of person." This also is reiterated in Article 9.1 of the International Covenant on Civil and Political Rights. Arrest and/or detention are a deprivation of a person's right to liberty and therefore an arrest must in all cases be carried out in accordance with the law. Furthermore, deprivations of liberty must not be arbitrary. This means remand in custody, though pursuant to lawful arrest must not only be lawful but also reasonable and necessary in all circumstances. The Bail Act in Jamaica states that everyone is "entitled" to bail.

OBJECTIVES

1. Provide a human rights definition of arrest, detention and imprisonment
2. List the purpose and types of arrests as well as the rights of suspects upon arrest
3. Provide examples of the responsibilities of police officers upon arrest
4. Discuss the international guidelines applicable to arrest

■ A. Definitions

Arbitrary arrest or detention:

This is the deprivation of liberty, without legal reason or process, by an act of government or with its complicity, tolerance or acquiescence. Arbitrary arrest is:

- Unlawful
- Discriminatory
- Unduly intrusive vis-à-vis other rights

The definitions below on when deprivation of liberty is permitted are drawn from the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment:

Arrest

'Arrest' means the act of apprehending a person for the alleged commission of an offence by the action of a lawful authority. Arrest is a lawful method to secure the attendance of a suspected criminal at his or her trial.

Detention

'Detained person' means any person deprived of personal liberty except as a result of conviction for an offence. 'Detention' means the condition of detained persons as defined above.

Imprisonment

'Imprisoned person' means any person deprived of personal liberty as a result of conviction for an offence. 'Imprisonment' means the condition of imprisoned persons as defined.

■ B. Purpose of Arrest

"No person shall be deprived of his liberty except on reasonable grounds and in accordance with fair procedures established by law in the following circumstances:

the arrest or detention of a person
(i) for the purpose of bringing him before the competent legal authority on reasonable suspicion of his having committed an offence; or (ii) where it

is reasonably necessary to prevent his committing an offence”

—Section 14(1)(f) - Jamaican Constitution: Charter of Fundamental Rights and Freedoms, (Constitutional Amendment) Act, 2011

“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 of the International Covenant on Civil and Political Rights.

This provision makes it clear that the reasons for an arrest, as well as the procedures that should be followed during an arrest, must be found in the laws of the State. The prohibition in the second sentence of the International Covenant on Civil and Political Rights signifies an additional restriction to the deprivation of liberty. Therefore, it is not enough for deprivation of liberty to be provided by the law, but the law itself must not be arbitrary and the enforcement of the law in any given case must not take place arbitrarily. An arrested person must also be told, promptly, of the reason(s) for his arrest or detention.

In law enforcement, the usual purposes of arrest are to:

- prevent a person from committing, or continuing to commit, an unlawful act;
- enable an investigation to be carried out in relation to alleged unlawful act committed by the person arrested; or
- present a person before a court for consideration of any charges against him or her.

An arrested person is always presumed to be innocent until proven guilty in a recognised court of law. Arrest is not a punishment or a method to temporarily remove unwanted persons in society in order to clean up the area. Instead, an arrested person should be brought before a judicial authority for the purpose of having the legality of his arrest or detention reviewed without delay, and shall be released if the detention is found to be unlawful.

■ C. Types of Arrest

There are two types of arrest:

With warrant

A warrant is that formal legal document which authorizes someone to take arresting action. In this case, any individual magistrate, judge, judicial officer or, in certain instances, a senior police officer (depending on domestic legislation) can issue warrants to a police officer to carry out the arrest of a named individual.

Without warrant

Arrest without a warrant normally takes place when a person commits a crime – or attempts to commit a crime – in the presence of a police officer. There are also some specific exceptions depending on domestic legislation.

Whenever a person is arrested, it must be for the alleged commission of an offence. In law enforcement practice, not every alleged commission of an offence automatically leads, or should lead, to the arrest of the person(s) responsible. There are a number of factors which influence the decision whether to affect an arrest or not. The gravity and consequences of the offence committed, combined with the personality and behavior, at the time of apprehension, of the suspect(s), will be basic considerations. Inevitably, the quality and experience (that is, competence) of law enforcement officials involved will also have a bearing on the outcome of a particular situation in which the discretion whether or not to arrest is exercised.

■ D. Rights of persons upon arrest

Every person arrested has certain rights immediately upon arrest and also after arrest. This places an obligation on police officers to respect and protect the basic rights of people who are arrested.

Right to liberty/freedom and security of a person, and to freedom of movement (Section 13)(a)(f), Jamaican Constitution: Charter of Fundamental Rights and Freedoms, (Constitutional Amendment) Act, 2011

A person may only be arrested on such grounds and in accordance with such procedure as are established by law. This

is the principle of legality. The principle is violated if somebody is either arrested or detained on grounds which are not clearly established in, or which are contrary to, domestic law. A person may not be arrested or detained arbitrarily (without legal grounds).

Right to be treated with dignity and respect (Section 14(5), Jamaican Constitution: Charter of Fundamental Rights and Freedoms, (Constitutional Amendment) Act, 2011

The arrested person has the right to be treated with dignity and respect. Police officers should not, for example, swear or use abusive language towards the arrested person, because this infringes on the person's dignity.

Right to be informed of the reasons for arrest (Section 14(2)(b), Jamaican Constitution: Charter of Fundamental Rights and Freedoms, (Constitutional Amendment) Act, 2011

Every person that is arrested has the right to be informed, at the time of the arrest, of the reasons for his or her arrest.

Right to remain silent (this is linked to the right against self-incrimination)

An arrested person should have the right to remain silent. No one shall be compelled to confess or to testify against himself/herself. This right is affirmed by the fact that police officers may state that a person has the right to remain silent and that everything that they might say may be taken down and used afterwards as evidence in a court of law. This, however, does not mean that the suspect should not provide for example basic details like name, address and reasons for being at a specific place.

Right to be informed of the charges against oneself (Section 14(2)(c) & Section 16(6), Jamaican Constitution: Charter of Fundamental Rights and Freedoms, (Constitutional Amendment) Act, 2011

An arrested person also has the right to be promptly informed of any charges against him or her. There is no clear definition as to what is meant by 'promptly', and this period may differ according to domestic legislation.

The right to be informed of one's rights

Although suspects have basic rights upon arrest, they also have the right to be informed about such rights by the police officer who arrested him or her. Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his or her arrest, detention or imprisonment, respectively with information on and an explanation of his/her rights and how to avail himself or herself of such rights.

The right to be presumed innocent

(Section 16(5), Jamaican Constitution: Charter of Fundamental Rights and Freedoms, (Constitutional Amendment) Act, 2011

Every arrested person has the right to be presumed innocent until proven guilty according to the law in a public trial at which he/she has had all the guarantees necessary for his or her defence. It is for the court to decide if a suspect is guilty. This can only be done after all the evidence has been heard and the person has been Proven guilty beyond reasonable doubt.

Right to be brought to a place of custody

Persons should only be detained in legally accepted places of custody.

Right to apply for bail

Persons have the right to apply for bail when they have been charged for committing an offence that is (under local laws) bail able.

Right to be brought promptly before a judge or other officer authorised by law

(Section 14(3)(b)), Jamaican Constitution: Charter of Fundamental Rights and Freedoms, (Constitutional Amendment) Act, 2011

Anyone who is arrested shall be brought promptly before a judicial authority. This is a right to be brought to a place of custody and to be brought promptly before a judge or other officer authorised by law to exercise judicial power, who will decide on the lawfulness and the necessity of the arrest (ICCPR, Article 9.3; Body of Principles, Principles 11 and 37). The time period for a person to be brought before

a court may differ from country to country. This period is more commonly referred to and known as police custody. The period that follows it is what is known as pre-trial detention.

Right not be tortured or treated in a cruel, inhuman or degrading way

(Section 13(6)), Jamaican Constitution: Charter of Fundamental Rights and Freedoms, (Constitutional Amendment) Act, 2011

The prohibition against torture applies to persons under any form of arrest, detention or imprisonment. Police officers are explicitly prohibited from taking advantage of the situation of a detained person to obtain by application or threat of force or harm a confession, to incriminate himself or herself or to testify against others.

Right to a fair trial within a reasonable time

(Section 16(1)), Jamaican Constitution: Charter of Fundamental Rights and Freedoms, (Constitutional Amendment) Act, 2011

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

Right to notify family members and other appropriate persons about the detention

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

Right to legal assistance and to communicate with legal representative

(Section 14(2)), Jamaican Constitution: Charter of Fundamental Rights and Freedoms, (Constitutional Amendment) Act, 2011

An arrested person has a right to the assistance of a legal counsel and must be provided with reasonable facilities to exercise this right. Legal counsel must be provided by a judicial or other authority if the arrested person has no legal counsel of

his or her own choice, and free of charge if the arrested person does not have sufficient means to pay.

The following are the rights that support the right to legal representation: to receive prompt and full communication of any order of detention, together with the reasons therefore.

Right to legal assistance and to communicate with legal representative

An arrested person has a right to the assistance of a legal counsel and must be provided with reasonable facilities to exercise this right. Legal counsel must be provided by a judicial or other authority if the arrested person has no legal counsel of his or her own choice, and free of charge if the arrested person does not have sufficient means to pay. The following are the rights that support the right to legal representation. Arrested persons and their legal representatives have the following rights:

- to receive prompt and full communication of any order of detention, together with the reasons therefor;
- to communicate with each other and have adequate time and facilities for consultation in full confidence and without delay or censorship;
- to communicate with each other within the sight but not within the hearing of a law enforcement official: such communications to be inadmissible as evidence against the detained person unless connected with a continuing or contemplated crime;
- to have access to the recorded information on the duration of any interrogation, the intervals between interrogations, and the identity of the officials who conducted the interrogations and other persons present;
- to have effective opportunity to be heard by a judicial or other authority;
- to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of the detention in order to obtain the release of the detainee, if it is unlawful; and

- to make a request or complaint regarding the treatment of the detainee, particularly in the case of torture or other cruel, inhuman or degrading treatment, to the administrative or higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

■ E. Duties of the police upon arrest

It is the duty of every police officer to ensure that the rights guaranteed under the Jamaican Constitution: Charter of Fundamental Rights and Freedoms, (Constitutional Amendment) Act, 2011 are recognised and respected as s/he carries out his/her duties. Officers have the duty to protect the right of the citizen in accordance with the aforementioned Charter of Fundamental Rights and Freedoms.

1. To inform the suspect of his/her rights

This means that the police officers should inform the arrested person of his/her rights and how to avail him or herself of such rights.

This means that the police officers should inform the arrested person of his/her rights and how to avail himself or herself of such rights. It is especially important for police officers to inform arrested persons of the following rights:

- the right to remain silent and not to admit guilt, and that silence will not be interpreted as an admission;
- the right to communicate with and be visited by a spouse, partner or family member, religious counselor and medical professional of his/her choice;
- the right to contact a legal representative and communicate with him or her confidentially;
- the right that a legal representative will be appointed if the suspect is unable to pay for a lawyer;
- the right to be brought before a court within a reasonable time (as stipulated in the law of each country);
- the right to be questioned in the presence of a legal representative, unless the right is waived; and, if the suspect is a foreign national,

- the right to contact diplomatic or consular officials of his or her country.

2. To keep a record of relevant data

Police officers must keep record of the following data:

- The reasons for the arrest;
- The time of the arrest;
- The time transferred to a place of custody;
- The time of appearance before a judicial or other authority;
- The identity of the law enforcement officials concerned;
- Precise information concerning the place of custody;
- The details of questioning or interrogation; and
- The property of the detained person kept by the police.

To this should be added:

- The date and time that the individual was brought into custody;
- Their medical condition;
- Each visit by detention officers, lawyers, doctors and family or friends;
- Exercise periods; and
- Time and date of transfer to detention facility or release.

3. The arrest record shall be communicated to the detainee, or to his legal counsel, and where necessary, an interpreter shall be provided during interview.

■ F. The international guidelines applicable to arrest

From international standards and practice, it is possible to identify the following list of guidelines for police officers.

- Review regularly, for a clear understanding, the extent of their powers of arrest, and of the procedures to adopt upon and following arrest.
- Participate in training to develop and maintain the necessary interpersonal skills, and especially skills of communication, and the necessary technical and tactical skills to enable

the officer to effect arrests expertly, discretely and with due respect for human dignity.

- Where resistance is not evident, attempt calm, polite, disarming language when effecting an arrest, resorting to strong, authoritative tones only when necessary.
- Develop and maintain skills in use of handcuffs and other means of restraint.
- Development of self-confidence, including through self-defense skills.
- Seek an arrest order/warrant, whenever possible.
- Carry a small card in the uniform, setting forth the rights of an arrestee, and read those rights, verbatim, to the arrestee once he or she has been secured.
- Study conflict resolution techniques, through in-service training, or in available community educational programmes.
- Keep careful arrest records.

EXERCISE

During the pre-electoral period in Exland, you have begun to receive reports of a dramatic increase in arrests. You have been advised, by United Nations human rights monitors, that the vast majority of those arrested are political activists opposed to the current government, including two opposition candidates and dozens of campaign workers.

On further investigation, you learn that most of these arrests have been carried out at night, few were preceded by the securing of an arrest warrant by local police, and none of the arrestees has been released.

Mario X. is one of the arrestees. He is a well-known local religious leader of Highlandian ethnicity, 74 years old, and has lived in the same village for his entire life. He heads a local NGO known as the Foundation for God and Justice, which has been active in the

human rights movement and openly critical of the human rights record of the government. His organization had publicly endorsed a list of opposition candidates on the day before his arrest.

Also arrested was Thomas G., 23 years old, an assistant to Mario X. working for the Foundation. According to neighbors in the building, at approximately midnight two weeks ago a group of some 15 police officers broke down the door to Mario's apartment, dragged him from his bed, beat him and carried him to a waiting police vehicle. Mario's family and neighbors watched helplessly from the windows as he was driven away into the night by the silent police officers, screaming "What have I done, why are you arresting me?" Twenty minutes later, a group of men wearing masks and plain clothing appeared at the nearby home of Thomas, entered by force and took him away in an apparently civilian vehicle. One witness has indicated that, while the car was unmarked, it was of the make and model commonly used by the government. Few cars of this kind are owned by private persons. The police have responded to inquiries by stating that they had uncovered evidence of a plot among opposition figures to carry out subversive activities aimed at discrediting the government,

destabilizing the country further and returning the country to full-scale civil war. They claim that such people were using the electoral campaign as a cover for fomenting unrest and planning violent attacks. While they confirm the arrest of Mario, they insist that they know nothing about the whereabouts of Thomas.

The police further state that Mario is being held under certain special security laws in force since the beginning of the state of emergency, and that they will therefore not allow anyone to visit him. They claim that he will probably soon be charged with subversion, at which time "we will see if a judge is available to see him". They display an arrest record which states, simply, that Mario was arrested at 12:20 a.m. two Saturdays ago on the order of the local chief of police. No further information appears on the arrest record. Mario's family has tried to obtain further information but has been told that this is a "State security case" and that no visits will be allowed and no information given.

1. What are the arrest rights of Mario that appear to have been violated?
2. What about Thomas's rights? Why is his case particularly dangerous?
3. What action should be taken?

Questions for discussion:

- What is deprivation of liberty?
- What is the difference between an arrested person and a detained person?
- What is detention?
- What is arrest?
- Can a person be arbitrarily arrested by a police officer?
- What is imprisonment?

WORKSHEET

Students should be able to differentiate between the National, Regional and International instruments guiding arrest. Using the table below, the students is to fill out which policies would fall under the different instruments.

NATIONAL	REGIONAL	INTERNATIONAL



CHAPTER 6

Detention

RELEVANT INSTRUMENTS

National

- The Jamaican Constitution - Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011
- The Laws of Jamaica
- The Legal Aid Act

Regional

- The American Convention on Human Rights
- Charter of the Organization of American States

International

- International Covenant on Civil and Political Rights
- The United Nations Standard Minimum Rules for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment
- The Basic Principles for the Treatment of Prisoners.
- Convention on the Rights of a Child
- UN Rules for the Protection of Juveniles Deprived of their Liberty

INTRODUCTION

It is a fundamental principle that a person should only be detained and so deprived of his liberty by the proper exercise of a lawful authority, such as soon after an arrest, or following a criminal conviction in a court. Apart from national laws, there are also international instruments to which the Jamaican government is a signatory, that outline standards and guidelines set out to guarantee that the rights of detainees are upheld.

The International Committee of the Red Cross states: "those deprived of their liberty, whether lawfully or unlawfully, are entitled to the protection of the law, ensuring a treatment that is both humane and respectful of their inherent human dignity."

In relation to police, persons detained in police custody are to be presumed innocent and treated accordingly: they have not yet been convicted of any crime: this certainly affects their treatment. As for prison officers, aside from ensuring discipline, prison officers have no authority to add further suffering to the official punishment that a prison sentence represents.

■ A. Definitions

In the various human rights instruments relating to detention, a distinction is made between those persons who are awaiting trial and those who have been convicted for committing an offence. The former group is referred to as **detainees**, whereas the latter group is referred to as **prisoners**. Detainees who are in the custody of police officers are in most cases people who are suspected of committing a crime, whereas prisoners and those undergoing trial are usually in the custody of prison officials. Legally defined:

Detainee: a person deprived of his/her personal liberty pending trial (unconvicted)

Prisoner: a person deprived of his/her personal liberty as a result of conviction for an offence (convicted)

Jamaica no longer uses the term **prisoners** in its laws. Instead Jamaica uses the term inmate when referring to convicted persons in the correctional system.

Remandee: a person detained in custody by the court pending the trial of his/her case.

■ B. Treatment of Persons in Detention

Any person deprived of his liberty shall be treated humanely and with respect for the inherent dignity of the person.

—Section 14(4), Jamaican Constitution - Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011

OBJECTIVES

1. Explain the human rights of persons in detention, lock-ups and Correctional Centres
2. Explain the rights of detained persons who are convicted
3. Describe the international legal responsibilities of police towards persons under their care.
4. Explain the rights of children, the mentally-ill and the sick and the special steps that have to be taken for such detainees

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. —Article 10.1 of the International Covenant for Civil and Political Rights

The United Nations 1977 Standard Minimum Rules for the Treatment of Prisoners provides in some detail “what is generally accepted as good principle and practice in the treatment of prisoners and the management of prisons...on the basis of the general consensus of contemporary thought”.

The Basic Principles for the Treatment of Prisoners adopted and proclaimed by General Assembly of the United Nations of which Jamaica is a signatory includes the following:

- All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
- There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
- All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.
- Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.
- Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
- With the participation and help of the community and social institutions,

and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

Convicted / Sentenced Persons

Convicted persons as stated earlier are different from detainees and remandees in that the latter two have not yet been convicted of any crime. However, whether convicted or not, each person is guaranteed the same rights. All persons in the custody of the state have had their freedom of movement, for example, curtailed. Once the curtailing of that freedom is in accordance with the law, then they retain all the other rights guaranteed them and these must be protected by the State. The following additional principles are clear from the United Nations Standard Minimum Rules for the Treatment of Prisoners and various international standards:

- The prison system should not aggravate the punishment that the sentence represents. Discipline of prisoners for actual breach of prison regulations is permitted, but the system itself is not to allow individual officers delivering punishment merely because the persons are convicted persons.
- The prison system is primarily to protect society and punish offenders, but it is normally intended that these persons will re-enter the community. This rehabilitative and preparatory function should inform the approach taken by prisons officers to the rights of prisoners.
- Prisoners are to be segregated (eg by gender and by degree of likely suitability for return to society) and protected from abuse by other prisoners.
- Torture is absolutely prohibited and must be prevented and punished.
- Prisoners are entitled to work within prison, within regulations. Any labour that is part of the formal sentence, or part of prison regulations, must not be of an afflictive nature or unduly punitive.

- Prisoners are entitled to medical examination and treatment must be made available to prisoners on a regular basis.
- Prisoners are entitled to facilities for education and recreation, within disciplinary and other regulations and resources.

In Jamaica, the Correctional Rules, 1991, sets out the treatment of inmates in the island's Correctional Centres.

■ C. Basic Rights of Persons in Police Custody

The rights of detainees include:

Right to be informed of the reasons for being detained (Section 14(2)(b), Jamaican Constitution - Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011)

Every detained person has the right to be informed promptly of the reasons for detention. This should be done as soon as reasonably possible under the circumstances. If it can be done immediately, then it should be. A detainee shall as soon as is reasonably possible be allowed to communicate with and be visited by his spouse, partner, or family member, religious counsellor and a medical practitioner of his choice.

Presumption of innocence (Section 16(5), Jamaican Constitution - Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011)

Every detained person has the right to be treated humanely, with dignity and respect. Everyone, including those charged with a penal offence, has the right to be presumed innocent until proven guilty in a fair trial.

Treatment which is humane and respects the inherent dignity of the human person (Section 14(5), Jamaican Constitution - Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011)

Detainees shall be kept in as humane facilities as are possible, designed to accommodate human beings, and shall

be provided with adequate food, water, shelter, clothing, medical services, exercise and items of personal hygiene.

Access to justice

- The right to have the lawfulness of detention challenged in a court of law and to be released if successful. This can happen, for example, when the detained person makes an application for a writ of habeus corpus.
- Decisions about the duration and legality of detention should be made by a judicial or equivalent authority.
- A detained person shall have the right to defend him or herself, or to be legally represented. (Constitution, s. 20 Art. 6)
- All detained persons shall have access to a lawyer or other legal representative, and the opportunity to communicate with that representative. The Legal Aid Council provides the service of Duty Counsel to people who are being held at a police station, lock-up, correctional centre or any other place that he/she is being held or detained before a court appearance; Counsel gives legal advice to that person who is detained or accused of an offence; attend an identification parade if one is to be held; be present at the taking of a Cautioned Statement if one is to be taken or at a questioning by the police whether the questioning will be recorded by the Police or not; to make representation for bail at the lockup; and to represent the citizen as Counsel on his first appearance in court.
- The right to appear before a judicial authority, and to have the legality of the detention reviewed. Anyone who is arrested has the right to trial within a reasonable time, or to release. (Constitution, s. 20)
- No one shall take advantage of the situation of a detained person to compel him or her to confess, or to otherwise incriminate himself/herself or another person.
- The right to be free from all forms of violence from either public or private

sources. This involves not only a duty on police officers not to abuse detainees, but also a more positive duty on the part of police officers to ensure that systems are in place to prevent harm and abuse of detainees by other detainees.

- The right not to be subjected to torture or to other cruel, inhuman or degrading treatment or punishment, or to any form of violence or threats. (Constitution, s. 17)

Conditions of detention

- Persons should only be detained in officially recognised places of detention.
- Detainees shall be kept in as humane facilities as are possible, designed to accommodate human beings, and shall be provided with adequate food, water, shelter, clothing, medical services, exercise and items of personal hygiene.
- Detainees and remandees shall, except in exceptional circumstances, be kept segregated from convicted persons and shall be subject to separate treatment. Women must be separated from men. Children should also be kept separately from adults.
- A detained person shall be immediately allowed to inform his family of his detention, and shall be given all reasonable facilities for communicating with his or her legal representatives and family and friends.
- Detainees should normally be allowed to wear their own clothing if it is clean and suitable, to have their food procured at their own expense from the outside, and to procure at their own expense books, newspapers and writing materials.
- The right to have the religious and moral beliefs of detainees respected.

Respect for the special status and rights of women

Respect for the special status and rights of children

■ D. Practical Steps for Police Officers

In keeping with the preservation of human rights and dignity in custody, listed below are suggested practical steps from various international sources:

- Be aware of the minimum international standards applicable to detainees.
- Enrol in training programmes to sharpen counselling, riot-control, first aid, self-defence, conflict-resolution and supervisory skills.
- Study the entry review and assessment records of all detainees, to be aware of persons at risk.
- Facilitate visits by clergy, legal representatives, family members, inspectors and medical personnel.
- Study and employ modern best practice techniques for interviewing.
- Wear a clearly visible identity badge at all times.
- Not enter the detention facility carrying a firearm, except to transport a detainee outside.
- Carry out regular, periodic checks of detainees, to ensure their safety and security.
- Consult closely with medical personnel on all matters of diet, restraint and discipline.
- Report immediately any suspicion of mistreatment of detainees, physical or mental.
- Never use restraint instruments for punishment. They should only be used where necessary to prevent escape on transfer; on certified medical grounds; or on the order of the director, where other methods have failed, for the purpose of preventing injury to the detainee or others, or damage to the facility.

■ E. Special Inmates

Physically ill prisoners

At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a

psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.

The services of a qualified dental officer shall be available to every prisoner.

In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

Insane and mentally abnormal prisoners

- Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.
- Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.
- During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.
- The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.
- It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.

Children

"Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication."

—Article 10.2b, International Convention of Civil and Political Rights

Children detainees have all the same rights as adult inmates. The purpose however, of Article 10.2(b) of the ICCPR is to ensure that pre-trial detention for juveniles are kept as short as possible.

Article 37 of the Convention on the Rights of the Child (CRC) is very important to the treatment of children detainees. Under this convention, it is stated that:

- Torture and ill- treatment of juveniles is prohibited (as well as capital punishment and life sentences);
- To deprive juveniles unlawfully or arbitrarily of their liberty is prohibited;
- Juveniles deprived of their liberty must be treated with humanity, with

respect for their human dignity and in a manner that takes into account the special needs of persons of their age;

- Juvenile detainees are to be kept separate from adult detainees;
- Juvenile detainees have the right to maintain contact with their family; to be given prompt access to legal assistance, and to challenge the legality of their detention before a court or other competent authority.

Rules 17 and 18 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty are also of importance to law enforcement officials since they deal with juveniles under arrest or awaiting trial. Rule 17 stresses that where pre-trial detention is unavoidable, its duration should be kept to an absolute minimum. Rule 18 also stipulates the juvenile's right to opportunities to undertake work with remuneration, to opportunities for education and training, and to be provided with educational and recreational materials.

QUESTIONS

1. What is expected of law enforcement officials dealing with detainees?
2. What constitutes arbitrary detention?
3. What are the rights of detainees?
4. Name five responsibilities of police officers toward detained persons?
5. What does the 'presumption of innocence' mean in a detention context?



CHAPTER 7

Use of Force and Firearms

RELEVANT INSTRUMENTS

National

- The Jamaican Constitution - Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011
- The Laws of Jamaica
- The Jamaica Constabulary Force Human Rights and Use of Force and Firearms Policy

Regional

- The American Convention on Human Rights

International

- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Fire Arms
- International Covenant on Civil and Political Rights
- Universal Declaration of Human Rights

INTRODUCTION

Everyone has the right to life, security of person, and freedom from torture and cruel, Inhuman or degrading treatment or punishment.

—Article 3; Universal Declaration of Human Rights

The right to life is the supreme human right because without effective guarantees for it, all other human rights would be devoid of meaning. As such, one of the aims of the Constabulary Force as other law enforcement officials is to uphold and protect the human rights of all people by providing a high quality, effective policing service in partnership with the community and in co-operation with other agencies. But the legal authority to use force and firearms when necessary and unavoidable

for lawful law enforcement purposes, including the lethal use of the firearm, sometimes creates situations in which law enforcement officials and members of the community they serve may find themselves on opposing sides. Therefore, law enforcement officials have to be held to a very high standard of discipline and performance that acknowledges both the importance and the sensitivity of the tasks they are called to perform. According to national and international laws, law enforcement officials are to apply non-violent means before resorting to the use of force. The use of force should only be applied if other means remain ineffective and there is no realistic promise of achieving the lawful objective without exposing police officers or anyone whom it is their duty to protect, to a real risk of harm or injury.

■ A. Definitions

By definition, law enforcement requires that some coercive or forceful capability exists to ensure compliance with the law. Police are authorised to use force in certain circumstances, such as in effecting certain arrests, or in self defence. From a human rights perspective, when police have authority to use force, including firearms, the most important principle is of **proportionality using minimum force**. This means that if no force is needed, for example to arrest a person, an officer should not use any force at all; if any force is used, it should be only so much as is strictly necessary to effect the arrest of that person. Thus it is best that force should be differentiated from an excessive use of force.

Excessive Force: A law enforcement officer has the right to use such force as is reasonably necessary under

OBJECTIVES

1. Explain the standards set out in the UN Basic Principles on the Use of Force and Firearms
2. Provide examples to explain proportionality during use of force
3. Explain the different levels of force that can be used as tactical issues
4. Describe the procedures that to be followed before, during and after the use of firearms

the circumstances to make a lawful arrest. An unreasonable seizure occurs when a law enforcement officer uses excessive force in making a lawful arrest. Whether force is reasonably necessary or excessive is measured by the force a reasonable and prudent law enforcement officer would use under the circumstances. The principles of **legality, necessity and proportionality** are paramount. Police officers should also act in an ethical way, and should be held **accountable** for their actions. The principle of proportionality requires that the method which employs the minimum force to achieve a goal should always be chosen. The intentional use of lethal force may be used only when strictly unavoidable in order to protect life. Excessive force cannot be used to punish or terrorise persons.

Definition of 'use' with regards to firearms: According to the Jamaica Constabulary Force Human Rights and Police Use of Force and Firearms Policy, the issuing of a firearm to an officer does not, of itself, constitute a use of force. An officer is deemed to have used a firearm when the weapon is:

Pointed at another person, or

- Fired at another person in self-defence or in defence of another, whether or not injury or death results.
- Discharged in any other operational circumstances including unintentional discharge.

■ B. The Right to life

The right to life, liberty and security of the person and the right not to be deprived thereof except in the execution of the sentence of a court in respect of a criminal offence of which the person has been convicted.

—Section 13(3)(a), Jamaican Constitution - Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011

Article 4, American Convention

The Human Rights Committee made the following general comments with regard to the right to life:

"...It is the supreme right from which no derogation is permitted even in time of

public emergency which threatens the life of the nation... It is a right which should not be narrowly interpreted...

...The Committee considers that States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life.... And the protection of this right requires that states adopt positive measures to protect the right to life..."

Full compliance is therefore expected from law enforcement agencies as representatives of their states to give the highest priority to the protection of the right to life. What does this mean for law enforcement? As stated, there is an international and national prohibition on the State, the protector of life, itself depriving a person of their life arbitrarily (without any cause in law: a lawful justification would be self-defence or defence of others), through the official acts of a state official. Unnecessary and unlawful use of deadly force by a police officer would therefore constitute a violation of the right to life.

In addition, the UN *Code of Conduct for Law Enforcement Officials*, Article 3, provides simply as follows:

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

The right to life informs this Article. The official 'Commentary' to Article 3 explains how the 'necessity' element reinforces how law enforcement officials may be authorized to use force, but the use of force should be exceptional, and no force going beyond what is reasonably necessary may be used. The Commentary also notes that the use of firearms is to be considered an extreme measure and not used unless a suspected offender offers armed resistance or otherwise jeopardizes the lives of police and others, where less extreme measures are not sufficient to apprehend the suspect.

The Death Penalty and Human Rights

This topic is very emotive and very important as it is rooted in the first human right – the right to life.

It is important to take the time to deliberate rationally on this issue – to base our opinions upon informed considerations, consistent with our values and not assumptions.

The 2005 amendments to the Offences Against the Person Act have made substantial changes in the sentencing of persons convicted of murders. The amendments have the following effect on the law-

- The terminology "capital and non-capital" has been deleted, the circumstances that describe "capital murder" however remain;
- The sentence for a murder committed in the circumstances that formerly described "capital" is now death or life;
- The sentence for a murder committed in circumstances which would formerly have been classified as "non-capital" is now life imprisonment or a term of year, not being less than fifteen years;
- The trial judge when imposing a life sentence for an offence which formerly would have been "capital" murder shall specify a period, not less than twenty years, before the convict is eligible for parole;
- The trial judge when imposing life imprisonment for a murder previously designated "non-capital" shall specify a period being not less than fifteen years which the person should serve before becoming eligible for parole and 10 years for any other sentence;
- Before sentencing a person convicted of murder the court shall hear submissions, representations and evidence from the prosecution and the defence in relation to the issue of the sentence to be passed;

The much criticized principle enunciated in the case of *Pratt and Morgan* is that "a State that wishes to retain capital punishment must accept the responsibility of ensuring that execution follows as swiftly as practicable after sentence allowing a reasonable time for appeal and

consideration of reprieve.” Lord Griffiths, *Pratt and Morgan v. Attorney General of Jamaica* (1993) 30 J.L.R. 473 at page 488.

This principle was embraced in the recent decision of the Caribbean Court of Justice in the case of *The Attorney-General, Superintendent of Prisons and Chief Marshall v. Joseph and Boyce* (unreported) CCJ Appeal No. CV 2 of 2005 (8/11/06). In the joint judgment of Mr. Justice de la Bastide, President and Mr. Justice Saunders, at paragraph 15, their Lordships state:

“...the Crown conceded that, even if this appeal by the Crown were successful, it would not be appropriate for this Court to re-impose the death penalty on Joseph and Boyce. This concession was in our view rightly made. Over five years had elapsed since their conviction and sentence and the Crown made no attempt to challenge the applicability to them of the time-limit for carrying out the death penalty laid down in *Pratt and Morgan*.”

The public also needs to know that contrary to the belief that there is a “large holding population on death row”, presently there are only seven (7) men who are sentenced to death. All these men have appeals pending and cannot be hanged. (September, 2007)

In Section 13(8) of the Jamaican Constitution, Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011:

The execution of a sentence of death imposed after the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, on any person for an offence against the law of Jamaica, shall not be held to be inconsistent with, or in contravention of, this section by reason of –

a) the length of time which elapses between the date on which the sentence is imposed and the date on which the sentence is executed; or

b) the physical conditions or arrangements under which such person is detained pending the execution of the sentence by virtue of any law or practice in force immediately before the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment Act, 2011)

While the Caribbean region has retained the death penalty, except in those territories that are still aligned to the UK, the rest of the Americas, save for the US and Cuba have responded differently. There are countries in South America that abolished the death penalty more than a century ago. **Venezuela** was the first modern state to do so in 1863! **Costa Rica** has been abolitionist since 1887 and **Ecuador** since 1897. **Brazil**'s last execution dates back to 1855 and **Uruguay**'s to 1905. Today there are **88** countries and territories that have **abolished the death penalty for all crimes**;

- **11** countries have **abolished the death penalty for all but exceptional crimes** such as wartime crimes;
- **29** countries can be considered **abolitionist in practice**: they retain the death penalty in law but have not carried out any executions for the past 10 years or more and are believed to have a policy or established practice of not carrying out executions, making a total of **128** countries which have abolished the death penalty in law or practice.
- **69** other countries and territories **retain** and use the death penalty, but the number of countries which actually execute prisoners in any one year is much smaller.

When practiced legally, recourse to the death penalty is discriminatory in that in Jamaica, as well as around the world, the largest proportion of inmates comes from the most disadvantaged and poorest social groups, without the financial means to purchase an effective defence

The administration of justice is imperfect and the real possibility exists that innocent persons can be hanged. There are true

stories of Jamaicans condemned to death who have been later, thankfully before execution, been proved innocent.

Many people will remember the case of Randall Dixon who was sentenced to death in 1998 for the killing of a police officer during a robbery at a bank. A video tape of the robbers was not handed over by the police and when finally shown, it revealed that Mr. Dixon and his co-accused, Mark Sangster were not even there!

Mistakes occur much more often than people realize. Once a life is taken away, there is no possibility of returning it.

There are many relevant issues to consider with respect to the death penalty, including:

- The decisions affecting the death penalty - *Pratt and Morgan*, *Neville Lewis* and *Lambert Watson*;
- The death penalty and democracy;
- The death penalty and the administration of justice;
- Murder victims' families and the death penalty;
- The death penalty and deterrence;
- Alternative sentences replacing the death penalty;
- Consider of international treaties and Jamaica's obligations.

The death penalty is degrading – it disrespects society's first human right: the right to life. Yes, a killer does not respect this right, but the authorities should not adopt the code of criminals by killing them in turn in cold blood. Practicing the death penalty has a negative effect on a society's sense of morality and constitutes a negation of the democratic ideal founded on human rights. The fundamental principle underlying human rights is that they are inalienable. They are not granted for good behaviour and they may not be taken away even if a person has committed outrageous and brutal acts. The message of a society that believes in human rights is that these rights should never be violated. They apply to the worst of us as well as the best of us, which is why they protect us all.

EARLY DEATH PENALTY LAWS

Early Death Penalty Laws

The first established death penalty laws date as far back as the Eighteenth Century B.C. in the Code of King Hammurabi of Babylon, which codified the death penalty for 25 different crimes. The death penalty was also part of the Fourteenth Century B.C.'s Hittite Code, the Seventh Century B.C.'s Draconian Code of Athens, which made death the only punishment for all crimes, and the Fifth Century B.C.'s Roman Law of the Twelve Tablets. Death sentences were carried out by such means as crucifixion, drowning, beating to death, burning alive, and impalement.

In the Tenth Century A.D., hanging became the usual method of execution in Britain. In the following century, William the Conqueror would not allow persons to be hanged or otherwise executed for any crime, except in times of war. This trend would not last, for in the Sixteenth Century, under the reign of Henry VIII, as many as 72,000 people are estimated to have been executed. Some common methods of execution at that time were boiling, burning at the stake, hanging, beheading, and drawing and quartering. Executions were carried out for such capital offenses as marrying a Jew, not confessing to a crime, and treason.

The number of capital crimes in Britain continued to rise throughout the next two centuries. By the 1700s, 222 crimes were punishable by death in Britain, including stealing, cutting down a tree, and robbing a rabbit warren. Because of the severity of the punishment of death, many juries would not convict defendants if the offense was not serious. This led to reforms of Britain's death penalty. From 1823 to 1837, the death penalty was eliminated for over 100 of the 222 crimes punishable by death.

CHANGES IN DEATH PENALTY LAWS

Nineteenth Century

In the early part of the nineteenth century, many states in the United States reduced the number of their capital crimes and built state penitentiaries. In 1834, Pennsylvania

became the first state to move executions away from the public eye and carry them out in correctional facilities.

In 1846, Michigan became the first state to abolish the death penalty for all crimes except treason. Later, Rhode Island and Wisconsin abolished the death penalty for all crimes. By the end of the century, the world would see the countries of Venezuela, Portugal, Netherlands, Costa Rica, Brazil and Ecuador follow suit.

In 1838, in an effort to make the death penalty more palatable to the public, some states in the United States passed laws against mandatory death sentencing, instead enacting discretionary death penalty statutes. With the exception of a small number of rarely committed crimes in a few jurisdictions, all mandatory capital punishment laws had been abolished by 1963.

In April 1999, the United Nations Human Rights Commission passed a resolution supporting a worldwide moratorium on executions. The resolution calls on countries which have not abolished the death penalty to restrict its use, including not imposing it on juvenile offenders and limiting the number of offenses for which it can be imposed.

As of May 2007, 129 countries are abolitionist in law or practice, leaving just 68 countries active in the use of the death penalty. Of the almost 1600 known executions to take place in 2006, 91% were carried out by the China, Iran, Pakistan, Iraq, Sudan and the USA. (Amnesty International, 2007)

A list of countries with and without the death penalty, compiled and last updated by Amnesty International May 23, 2007 can be found at (<http://web.amnesty.org/pages/deathpenalty-countries-eng>).

Hanging

Until the 1890s, hanging was the primary method of execution used in the United States. Hanging is still used in Delaware and Washington, although both have lethal injection as an alternative method of execution. The last hanging to take place in the United States was January 25, 1996 in Delaware. Hanging is the only method

of execution in Jamaica. The last hanging took place on February 1988.

For execution by this method, the inmate may be weighed the day before the execution, and a rehearsal is done using a sandbag of the same weight as the prisoner. This is to determine the length of 'drop' necessary to ensure a quick death. If the rope is too long, the inmate could be decapitated, and if it is too short, the strangulation could take as long as 45 minutes. The rope, which should be 3/4-inch to 1 1/4-inch in diameter, must be boiled and stretched to eliminate spring or coiling. The knot should be lubricated with wax or soap "to ensure a smooth sliding action."

Immediately before the execution, the prisoner's hands and legs are secured, he or she is blindfolded, and the noose is placed around the neck, with the knot behind the left ear. The execution takes place when a trap-door is opened and the prisoner falls through. The prisoner's weight should cause a rapid fracture-dislocation of the neck. However, instantaneous death rarely occurs.

If the inmate has strong neck muscles, is very light, if the 'drop' is too short, or the noose has been wrongly positioned, the fracture-dislocation is not rapid and death results from slow asphyxiation. If this occurs the face becomes engorged, the tongue protrudes, the eyes pop, the body defecates, and violent movements of the limbs occur.

ARGUMENTS FOR AND AGAINST THE DEATH PENALTY

Deterrence

The death penalty prevents future murders

Retribution

A just society requires the death penalty for the taking of a life.

Innocence

The risk of executing the innocent precludes the use of the death penalty.

Arbitrariness & Discrimination

The death penalty is applied unfairly and should not be used.

QUESTIONS

1. Is the Constitution specifying the right to life in compliance with international law and principles?
2. What about in practice?
3. What changes can be made?

■ C. Guidelines for the Use of Force and Accountability

Although it is not possible to predict every possible operational situation that law enforcement officials shall face, it is still required of them to use well-reasoned discretion in determining the appropriate use of force in every incident.

The use of force

On the use of force, the following principles serve as guidelines for police officers:

- Everyone has the right to life, security of the person, and freedom from torture and other cruel, inhuman or degrading treatment or punishment.
- Non-violent means are to be attempted first.
- Force is to be used only when strictly necessary.
- Force is to be used only for lawful law enforcement purposes.
- No exceptions or excuses shall be allowed for unlawful use of force.
- Use of force is to be always proportional to lawful objectives.
- Restraint is to be exercised in the use of force.
- Damage and injury are to be minimized.
- A range of means for differentiated use of force is to be made available.
- All officers are to be trained in the use of various means for differentiated use of force.
- All officers are to be trained in the use of non-violent means.
- When police are required to use force to achieve a lawful objective (such as making a lawful arrest, acting in self-defense or protecting others) the method of applying force should be in

accordance with force instruction and training.

When determining whether or not to apply any level of force and in evaluating whether an officer has used appropriate force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
- Officer/ subject factors (age, size, relative strength, skill level, injury/ exhaustion and number of officer vs. subjects).
- Influence of drugs/ alcohol (mental capacity).
- Proximity of weapons.
- Availability of other options (what resources are reasonably available to the officer under the circumstances).
- Seriousness of the suspected offence or reason for contact with individual. Training and experience of the officer.
- Potential of injury to citizens, officers and suspect.
- Other exigent circumstances.

Accountability for the use of force and firearms

Authority to use force and firearms can lead to very serious infringements on people's basic human rights. Police officers should always be accountable for their actions. On the issue of accountability, the following principles serve as guidelines:

- All incidents of the use of force or firearms shall be followed by reporting and review by senior officials.
- Superior officials shall be held responsible for the actions of police under their command if the superior official knew or should have known of abuses but failed to take concrete action.
- Officials who refuse unlawful superior orders shall be given immunity.
- Officials who commit abuses of these rules shall not be excused on

the grounds that they were following superior orders.

Role play

When to use force and what is excessive force.

Use of Fire Arms

The use of firearms for the achievement of legitimate law enforcement objectives is to be considered an extreme measure. This is illustrated further by the rules of behaviour that law enforcement officials need to observe prior to their practical use. Basic principle 9, 10 and 11 of the Basic Principles of the Use of Force and Firearms states the circumstances when the use of fire arms is allowable and they are listed below.

■ D. Permissible circumstances for the use of firearms

The circumstances under which firearms may be used may differ from country to country. The following circumstances can be identified where the use of firearms is permissible:

- Firearms are to be used only in extreme circumstances.
- Firearms are to be used only in self-defense or defense of others against imminent threat of death or serious injury.
- To prevent a particularly serious crime that involves a grave threat to life.

OR

- To arrest or to prevent the escape of a person posing such a threat and who is resisting efforts to stop the threat.

AND

- In every case, only when less extreme measures are insufficient.
- Intentional lethal use of force and firearms shall be permitted only when strictly unavoidable in order to protect human life.

■ E. Procedures for the use of firearms

Basic Principle 10 of the Basic Principles of the Use of Force and Firearms states the following rules should be observed at all times:

- The officer is to identify himself or herself as a police officer.

AND

- The officer is to give a clear warning.

AND

- The officer is to allow adequate time for the warning to be obeyed.

BUT

- This shall not be required if the delay would result in death or serious injury to the officer or others, or would create a risk of death or serious harm to other persons, or if it is clearly pointless or inappropriate in the circumstances to do so.

The risk involved in the use of firearms in terms of damage and injury or death, as well as the lack of any real option afterwards make it all the more important to look at the methods to explain the proportionality of force and firearms.

Methods to explain proportionality

To know which method uses the minimum force, the potential force of each method should first be identified. Measuring the method on a points scale can do this. The potential levels of 'physical force methods' can be measured, for instance, on a point scale of 1-10. A relative point is allocated to methods which have fewer disadvantages for the community, for example 1, and a high point is allocated to methods which contain potentially serious consequences for the suspect, the community and the police officer.

This example will also explain the principle of proportionality and show the different levels of force that can be used during the arrest of a suspect. To give practical effect to the human rights considerations underlying use of force issues, these are the kind of issues that need to be emphasized alongside tactical and skills training on the use of force.

Potential force levels during arrest

Police officer's presence: Identification of authority

The first step is when a police officer identifies himself or herself as a police officer (visually and verbally) - being in

uniform and telling the suspect that he/she is a police officer.

1. Verbal directions

Giving verbal directions and commands of arrest to the suspect. For instance, when a police officer tells the suspect that he/she is under arrest, or when the officer verbally instructs or commands the person to do something. (Example: When a suspect tries to flee and the police officer shouts at him or her to stop.)

2. Empty hand control

a. Soft empty hand control

These are techniques which a police officer can use that have the minimal chance of injury. (Example: When a police officer touches the person on the shoulder and instructs him to come along, or takes hold of an arm, moving the suspect.)

b. Hard empty hand control

These are techniques which a police officer can use that have a probability of injury. (Example: If there is a certain amount of resistance, to use techniques to force the suspect to submit, like pressure points on the body, 'come along' techniques, 'take down' techniques and 'joint manipulation' techniques, such as bending arms and fingers.)

3. Motor dysfunction techniques

These are techniques which police can use, if there is more resistance, which are sure to cause some degree of injury. (Example: Lateral vascular neck restraints - if police officers have been trained in using these techniques - or foot/leg/arm strikes as dynamic application of pressure to nerve motor areas to cause temporary dysfunction of the limb and simultaneous mental stunning; other strikes resulting in temporary loss of mobility or mechanical control (Karate, Aikido, etc.)

4. Chemical agents

Chemical agents such as CO/OC gas (tear gas) or pepper gas should be used only if they have been approved by police headquarters and strictly in accordance with safety procedures by trained police officers, and in line with legal directives

controlling these agents. (Example: Tear gas should not be used in confined or closed areas.)

5. Batons and impact weapons

These impact weapons should be used only as departmentally approved and by trained police officers, and as part of a graded resort to force that is consistent with the threat level.

6. Use of firearms

Firearms should be used only as the last resort. Firearms may be used only when necessary for a police officer to protect himself/herself and innocent bystanders, and while affecting an arrest. Normally, firearms should be used only in self-defense or in defense of others against imminent threat of death or serious injury. At first, a warning shot or non-fatal body shot should be attempted. Remember the purpose of arrest is to get the suspect to appear in court.

EXERCISES

1. Are such permissible circumstances for the use of firearms subjective or objective?
2. Why is the use of firearm an extreme measure?
3. What are the implications of the use of force for education and training?
4. What are the alternative ways of handling conflict?
5. Why should the principles of proportionality be observed?

■ F. Consequences of the use of firearms

A **valuable hint** in relation to the above scheme is that the number of points for a method also suggests the amount of caution to exercise in relation to it. In other words, the higher the point the method has which the police officer wants to apply, the more cautious he or she has to be in applying it.

The principle of 'proportional use of force' should always be taken into account. Aside from the victim of the use of force, the reason for this is that, in addition to

consequences such as **post-traumatic stress disorder** on the police officer because he or she has killed someone, **criminal or disciplinary charges, or large civil claims** may also be laid against the police. It can also, to a large extent, strain community relations.

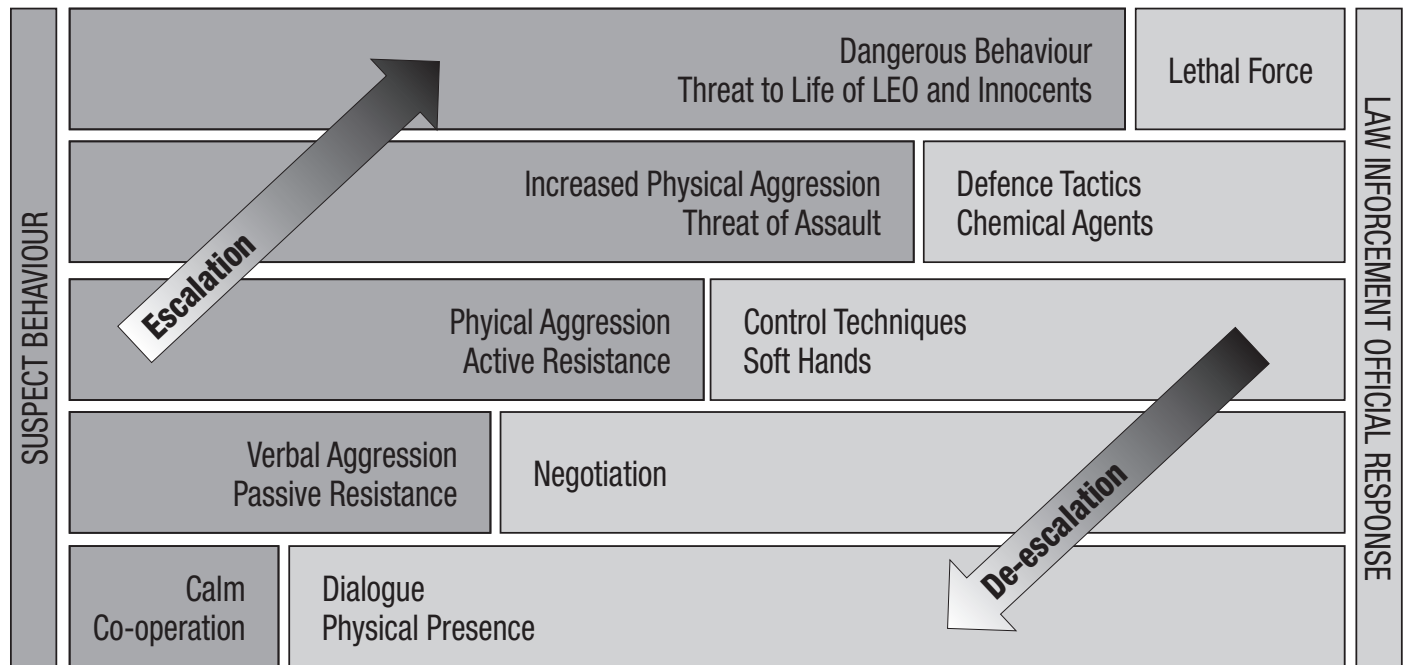
■ G. Use of force continuum

As noted above, when applying force, police officers should always take proportionality into consideration. The more the resistance, the more force one can reasonably use. This can be referred to as **escalation of force**. On the other hand, if the person submits, the police officers should stop using force or use less force. This is referred to as **de-escalation of force**.

The force used by the police officers should be in response to the behavior of the suspect.

EXERCISES

1. Provide examples to explain proportionality during use of force.
2. What is meant by the use of minimum force?
3. Describe the different levels of force that can be used during arrest, starting with minimum force and ending with maximum force.
4. Can you confidently apply the P.L.A.N principles to hypothetical factual scenarios?
5. Describe the procedures to be followed before, during and after the use of firearms.
6. What is meant by escalation and de-escalation of force?



Use of Force Continuum

To enable police officers to use proportional force and to de-escalate in situations that are under control, they need to receive proper training and equipment. Police officers should constantly practice the different techniques, for example, soft and hard empty hand techniques.



CHAPTER 8

Investigation of Crime in Human Rights Terms

RELEVANT INSTRUMENTS

National

- The Jamaican Constitution
—Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011
- Laws of Jamaica
- Legal Aid Act
- Judges' Rules

Regional

- The American Convention on Human Rights

International

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- Code of Conduct for Law Enforcement Officials

■ A. Introduction – Prevention and Detection of Crime

Crime appears to be inherent in everyday life, and although every law enforcement agency will do its utmost to eradicate the occurrence of crime from our societies, they are not likely to succeed. The prevention and detection of crime is an issue that impinges on all aspects of law enforcement- a fact which reflected in the chapters on Arrest, Detection and Use of force and Firearms. The investigation of crime therefore, plays a crucial role in the judicial process of the state. The detection of crime through investigation and gathering of evidence is the first step in the judicial process that can lead to the conviction and punishment of criminals. The responsibility for the prevention and detection of crime is assigned primarily to

law enforcement agencies. The effective prevention and detection of crime are critically dependent upon existing levels and quality of cooperation between a law enforcement agency and the community it serves, and are as much a private responsibility as a public one.

The right to a fair trial and the presumption of innocence should form the basis for investigating every crime. A lawful and ethical investigation can protect the right to a fair trial, whereas an unlawful or unethical investigation can subvert that right even before the trial commences. There are also practical reasons for proper investigation: to avoid the possibility of a conviction being lost because of procedural 'short cuts' taken by police.

There are different methods to investigate and solve crime. The collection of evidence forms an integral part of any police investigation. There is still a tendency in many countries to rely on confessions as the primary method to solve crime. Unfortunately, this can result in human rights abuses, especially when police officers use torture as a method to extract confessions. At the same time, this form of 'investigation' is not likely to be very reliable. Confessions – when extracted – are not proper evidence.

■ B. Purposes of investigating a crime

Adequate prevention and detection of crime must have its basis in lawful and non-arbitrary law enforcement tactics and practices. Investigations serve to identify victims; recover evidence; discover witnesses; discover cause, manner, location and time of crime; and identify

OBJECTIVES

1. Explain the purpose of the investigation of crime in human rights terms.
2. Discuss the responsibilities of police officers during the investigation of crime.
3. Discuss the basic human rights of persons under investigation.
4. Discuss the rights of witnesses.
5. Define torture and explain why it is absolutely prohibited.
6. Explain why confession obtained under duress or force is unreliable and no substitute for 'hard evidence' obtained by proper investigation

and apprehend perpetrators. The most important purpose of investigation of crime is to discover the truth.

The presumption of innocence

Every person charged with a criminal offence shall be presumed innocent until he is proved guilty or has pleaded guilty. —Section 16(5), Jamaican Constitution - Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011

“Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law”.

—Article 14.2, International Covenant on Civil and Political Rights

A primary task in law enforcement is to bring offenders to justice. However, it is not up to law enforcement officials to decide on the guilt and innocence of a person arrested for an offence. Their responsibility is to record, in an objective and correct manner, all the facts related to a particular crime committed. Law enforcement officials are charged with fact-finding, while the judiciary is charged with truth-finding.

The right to a fair hearing

“Whenever any person is charged with a criminal offense he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law”.

—Section 16(1), Jamaican Constitution - Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011

“... In the determination of any criminal charge against him (or her), or of his (or her) rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...”

—Article 14.1, International Covenant on Civil and Political Rights

Article 14.3 of the International Covenant on Civil and Political Rights lays down a number of minimum guarantees to ensure

that all persons receive the fair trial to which they are entitled.

“In the determination of any criminal charge against him (or her), everyone shall be entitled to the following minimum guarantees, in full equality”:

- a. To be informed promptly and in detail in a language which he (or she) understands of the nature and cause of the charge against him (or her)
- b. To have adequate time and facilities for the preparation of his (or her) defence and to communicate with counsel of his (or her) own choosing.
- c. To be tried without undue delay
- d. To have the right to defence: which can be divided into the right to defend oneself in person, to choose one's own counsel; to be informed of the right to legal counsel and to receive free legal assistance.
- e. To call and examine witnesses
- f. To have the free assistance of an interpreter
- g. Not to be compelled to testify against himself (or herself) or to confess guilt.

Section 16(6) of the Jamaican Constitution - Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 also sets out minimum guarantees to ensure a fair trial It states that every person who is charged with a criminal offence -

- a. shall be informed as soon as reasonably practicable, in a language which he understands, of the nature of the offence charged;
- b. shall be given adequate time and facilities for the preparation of his defence;
- c. shall be entitled to defend himself in person or through legal representation of his own choosing or, if he has not sufficient means to pay for legal representation, to be given such assistance as is required in the interests of justice;

- d. shall be entitled to examine or have examined, at his trial, witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e. shall have the assistance of an interpreter for free of cost if he cannot understand or speak the language used in court;
- f. shall not be compelled to testify against himself or to make any statement amounting to a confession or admission of guilt; and
- g. shall except with his own consent, not be tried in his absence unless –
 - (i) he so conducts himself in the court as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence; or
 - (ii) he absconds during trial

STANDARDS AND PRACTICES APPLICABLE TO INVESTIGATION OF CRIME

Although there are no specific international instruments which deal with investigation of crime, international legal standards such as are contained in the ‘International Bill of Rights’ (chapter 1 and annex) are applicable and relevant to the topic. During investigations, the interviewing of witnesses, victims and suspects, personal searches, searches of vehicles and premises, and the interception of correspondence and communications, the following rights should be respected and protected:

- the right to liberty and security of the person;
- the right to a fair trial;
- the right to be presumed innocent until proven guilty in a fair trial;
- the right not to be subjected to arbitrary interference with privacy, family, home or correspondence;
- the right not to be subjected to unlawful attacks on honour or reputation;
- torture and other inhuman or

degrading treatment is absolutely prohibited;

- victims and witnesses are to be treated with compassion and consideration;
- confidentiality and care in the handling of sensitive information is to be exercised;
- no one shall be compelled to confess or to testify against himself or herself;
- investigatory activities shall be conducted only lawfully and with due cause, and not for personal or bad faith purposes;
- neither arbitrary, nor unduly intrusive, investigatory activities are permitted;
- investigations shall be competent, thorough, prompt and impartial;
- investigations shall serve to identify victims; recover evidence; discover witnesses; discover cause, manner, location and time of crime; and identify and apprehend perpetrators; and
- crime scenes shall be carefully processed, and evidence carefully collected and preserved.

In the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 of the Jamaican Constitution, the following sections, among others, deal with the standards and practices applicable to investigation of crime:

- Section 13(3)(a) The right to life, liberty and security of person;
- Section 13(3)(g) The right to equality before the law;
- Section 13(3)(h) The right to humane treatment
- Section 13(3)(i) The right to freedom from discrimination
- Section 13(3)(j) Protection from search of person and property; respect for and protection of private and family life, and privacy of the home; protection of privacy of other property and of communication;
- Section 13(6) The right to freedom from torture;

- Section 14(2) The rights guaranteed if you are arrested and detained;
- Section 16(1) The right to a timely hearing;
- Section 16(5) The right to be treated as innocent until proven guilty;
- Section 16(6) The right against self-incrimination.

The rights of groups of people during investigation of crime

There are normally three groups of people involved during the investigation of crime. They are: victims; witnesses; and suspects.

The rights of witnesses

Witnesses usually play a very important role in solving crime. They are there to assist the police in finding out the truth, to solve the crime and eventually to assist them to find the perpetrator guilty. When interviewing witnesses, they should be treated with dignity and respect. They should not be abused by police officers. Unlike suspects, witnesses do not have the right to remain silent and they have an obligation to assist the police in solving crime. The court can also issue a material witness warrant for witnesses to be brought to court once certain facts have been established.

Witnesses too have basic human rights during investigation of crime. Some of these rights are as follows:

- Right to security of the person
 - Victims and witnesses are to be treated with compassion and consideration
 - Dignity and respect
- Every person should be treated with dignity and respect. Police officers should ensure that they treat witnesses as witnesses, and not as suspects.
- Right to be informed of their role in the legal proceedings.

The rights of suspects

The important thing to remember when dealing with suspects of crime is the fact that, during the investigation stage of the legal process, they are suspects only – they have the right to be presumed

innocent. All suspects have basic human rights that should be respected by police officers. Please note that the Judges' Rules lay out the manner in which suspects are to be questioned.

Some of the important rights described in international legal instruments are the following:

- Right to security of the person
- Presumption of innocence
- Dignity and respect: Every suspected criminal is still a human being and should be treated in a professional manner, with respect and with due regard to their dignity. No one shall be subjected to unlawful attacks on his or her honour or reputation.
- Right to privacy
- Right to a fair trial
- Right to be informed of the charge
- Right to be tried without undue delay
- Right against self-incrimination
- Right not to be tortured
- Investigatory activities shall be conducted only lawfully: In different countries there might be different procedures to be followed. Police should always ensure that they act in a lawful manner when conducting an investigation and follow the prescribed procedures. Neither arbitrary, nor unduly intrusive, nor bad faith investigatory activities shall be permitted.

The rights of victims

The rights of victims will be dealt with in detail in a later chapter.

■ C. Correct ways of gaining evidence

Police agencies in some countries have access to more sophisticated methods and equipment to investigate and discover evidence than others. The basic human rights applicable to investigation of crime are the same no matter where an officer works or what methods are used to collect evidence and to detect crime. There are different ways of gaining evidence after a crime. Below are some techniques used during an investigation:

- The most important thing to impart in training is that every suspect is presumed to be innocent until proven guilty in a court of law following a fair and just legal process. Therefore, the focus of any investigation should be to discover the truth. It is a fact finding mission that starts with an investigation of the scene of the crime, as well as the sites where that crime has left traces, for the purpose of gathering material evidence in relation to the crime committed.
- Crime scenes shall be carefully processed, and evidence carefully collected and preserved. These practical and scientific procedures have a human rights implication in terms of the fairness of the trial a suspect may receive.
- Subsequent attention should be focused on those persons who may have witnessed the crime as it was being committed, or who may have other relevant information. Only this dual investigative approach and an analysis of the information obtained thereby might enable the police, by assembling sufficient facts, to establish a reasonable suspicion against an individual as having committed this crime (if a suspect/suspects was/were not arrested in the act).
- The questioning of suspects requires preparation on the part of the law enforcement officials involved. These officials must have a clear picture of the facts that have been established so far, which help to determine the order of events as they happened. The purpose of an interview is clarification of facts already established as well as the establishment of new facts in relation to the crime committed.
- It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him/her to confess, to incriminate himself/herself otherwise, or to testify against any other person.
- No detained person while being interviewed shall be subjected to violence, threats or methods of

interview which impair his capacity of decision or his judgement.

- The duration of any interview of a detained or imprisoned person and of the intervals between interviews, as well as the identity of the officials who conducted the interviews and other persons present, shall be recorded and certified in such form as may be prescribed by law.
- Every interview must be clearly recorded. Statements by the suspect that contain a confession of guilt should be taken down as far as possible in his or her own words. The duration of the interview and the people present at it, as well as the length of time between two interviews, must also be clearly recorded.
- Furthermore, a suspect is entitled to withdraw or alter statements made during any stage of the proceedings. It is evident that in many situations, material evidence and witness statements will be more valuable than information obtained through interview of a suspect.
- Suspected and accused persons have a right to be presumed innocent until proven guilty in a court of law. Therefore, the interrogating law enforcement officials do not establish innocence or guilt through their questioning - their task is to establish facts.

EXERCISE

The Judges' Rules apply in Jamaica; Compare these Rules to the techniques listed above.

■ D. Methods to ensure that human rights are respected and protected during investigation

The personal awareness and attitude of police officers who are involved in the investigation of crime and their individual standards of behaviour is one of the most important safeguards to ensure respect for human rights. There are some mechanisms of internal monitoring and

supervision to ensure that police officers respect and protect the rights of persons under investigation. They are the following:

- Develop standardised procedures for the recording of information during investigations. When in doubt about the legality of an investigatory activity, enquire with superiors, where possible, before proceeding.
- Treat all suspects as innocent persons, politely, respectfully and professionally.
- Keep a detailed record of all interviews conducted.
- Enrol in in-service training to sharpen investigation skills.
- Always advise the victim, witness or suspect of his or her rights before interviewing.
- Before proceeding to any investigatory action, ask:
 - Is it legal?
 - Will it hold up in court?
 - Is it necessary?
 - Is it unduly intrusive?
- Never seek or rely on a confession as the basis for a case. Rather, the purpose of investigation should be to secure independent evidence.
- Seek a warrant, or court order, whenever possible, before conducting searches. Search without a warrant should be the exception, carried out only when reasonable and with due cause: when incidental to a lawful arrest; when free consent is granted; or when obtaining a warrant in advance would be impossible in the circumstances.
- Get to know and work with the community to which one is assigned: it can make investigation so much easier.
- Develop proactive strategies for preventing crime, including thorough awareness of risks existing in your community.

Also, Article 5 of the 1975 UN Declaration on Torture provides:
 “The training of law enforcement personnel and of other public officials who may be

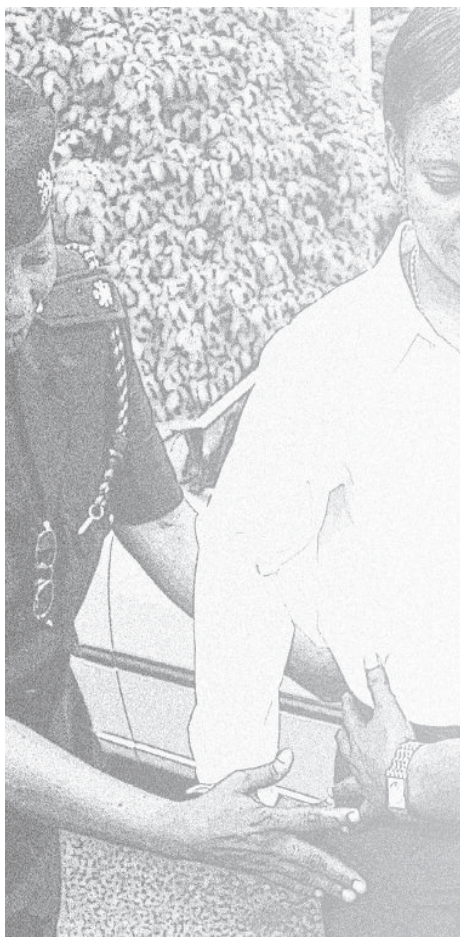
responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons.”

There are also guidelines for command and supervisory officials. They are as follows:

- Establish administrative mechanisms to expedite the investigatory process.
- Establish standing orders emphasising legal safeguards for investigations.
- Provide training programmes on legal standards and effective scientific techniques for investigations.
- Establish strict supervisory procedures for the management of confidential information.
- Establish, in concert with relevant social agencies, victim-support mechanisms.
- Establish policies which limit reliance on confessions.
- Develop community policing strategies, enabling police to be closer to the community and, therefore, to information vital to the prevention and solving of crimes.
- Solicit technical co-operation, including, where necessary, from international technical policing programmes, on current techniques and technologies for police investigations.
- Announce and enforce strict penalties for violations of regulations regarding the legality of investigatory practices.

EXERCISES

1. What is the role of law enforcement in the prevention and detection of crime?
2. What are the legal boundaries for law enforcement practices in investigations?
3. What constitutes a fair trial?
4. What methods and means of investigation are permissible?
5. What are the ethical implications of this topic of law enforcement?
6. What is the significance of the presumption of innocence for an investigation?
7. Is it ever justifiable for a police officer to commit a crime in order to solve another crime?
8. What is meant by the right not to incriminate oneself?
9. What is the purpose of investigation of crime?
10. Name three basic human rights of persons under investigation?
11. Name three responsibilities of police officers during investigation of crime.



CHAPTER 9

Search and Seizure

RELEVANT INSTRUMENTS

National

- The Jamaican Constitution - Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011
- Laws of Jamaica
- The Code of Conduct detailing Police/ Citizen Relations

Regional

- The American Convention on Human Rights.
- American Declaration on the Rights and Duties of Man.
- European Convention on Human Rights

International

- The Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights
- Singapore Declaration of Commonwealth Principles

INTRODUCTION

The procedures of search and seizure are integral actions undertaken by the police to investigate, prevent or detect crime. However, the conduct involved in such action has the potential for serious violations of the rights to security of the person and privacy. This chapter will deal with the processes of search and seizure in relation to human rights.

The Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 of the Jamaican Constitution states that everyone has a right to:

- protection from search of the person and property;

- respect for and protection of private and family life, and privacy of the home; and
 - protection of privacy of other property and of communication.
- Section 13(3)(j)

The Universal Declaration of Human Rights declares:

"No-one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."(UDHR Article 12)

This is echoed in other international human rights instruments such as the International Covenant on Civil and Political Rights and the American Declaration on the Right and Duties of Man as well as local standards governing the actions of the police force such as the Code of Conduct which details police/citizen relations.

The existence of these rights means that police officers may not search a person's home, body or property and cannot seize their belonging without justifiable cause. These rights are considered sacrosanct but are not absolute. The power to search persons, private property and buildings is a power that is essential to the detection and prevention of crime. Section 13(2) provides that "...save only as may be demonstrably justified in a free and democratic society" the right to freedom from search and privacy of property and communications are protected. This means that breaches of these rights must be for the protection of the democratic freedoms we enjoy-the legal standard is very high.

OBJECTIVES

1. Explain the responsibility of police officers during searches and the role of police officers in respecting and protecting the right to privacy.
2. Describe the rights of persons whose person, property or building are being searched
3. Explain the use of force during search
4. Explain the consequences of unlawful search

This chapter will address this authority of the police to search and seize property and proper procedure to do so with a focus on human rights. It details the application of the PLAN concept to search and seizure, warrants, unlawful searches and seizure of property. It also offers practical advice on the proper procedure to search a person, the proper use of force during search and seizure as well as ways to ensure the continuous respect for human dignity while carrying out a police investigation.

■ A. Searches

When searching a person or property, police officers should always follow the **PLAN** principle.

1. **Proportionality** - using only the minimum force or action that is required to solve or deal with each situation or problem.
2. **Legality** - acting within the law.
3. **Accountability** - the necessity to act in an ethical way as police officers will be held accountable for their actions.
4. **Necessity** - acting only when it is necessary.

■ B. Search with a warrant

When a police officer wishes to conduct a search he should normally have a pre-issued warrant to search.

Purpose of a warrant

- Safeguarding the rights of individuals and ensuring that the police act lawfully.

When to obtain a warrant

- At all times, except when a warrant may result in harm.

How to obtain a warrant

- Convincing a judge, magistrate or commissioned police officer that the situation merits one.

Procedures when effecting a search warrant :

The following procedures should be followed when effecting a search warrant:

- A warrant will normally be executed by day unless otherwise stated and where good reasons were given why it must be done at night.

- A warrant will normally be in force until executed, unless cancelled by the person who issued the warrant or a person with the same authority.
- After a search has been executed, all the items that were recovered should be listed on the warrant and a witness should sign the warrant. This will normally be the owner or occupier of the premises.
- A warrant should be executed only within the strict specifications mentioned within the warrant.
- A search must, as a general principle, be conducted in the presence of the owner or occupier of the premises.

There are, however, exceptions, which will be discussed under the following sections.

■ C. Search without a warrant

In light of the changes made to Chapter Three of the Jamaican Constitution and in keeping with the provisions in the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, a search without a warrant can be conducted on the following bases:

Reasonable suspicion

Reasonable suspicion requires that the police have more than a mere hunch, based on intuition gained by experience. They must be able to point to objective facts that support the suspicion. When possible, an objective third person should be consulted to arrive at the same conclusion when considering those facts. Reasonable grounds can be described as follows:

“A police officer will be considered to have ‘reasonable grounds’ (grounds or facts) to suspect something is necessary to achieve a particular lawful purpose only if any reasonable person in the same circumstances, and in the light of the grounds that exist, would have entertained the same suspicion or would have believed the same thing.”

Reasonable suspicion can sometimes exist for example if a police officer encounters someone on the street at night obviously

trying to hide something; this would clearly constitute conduct that might reasonably lead the police officer to suspect that stolen or prohibited articles are being carried.

■ D. Results of Unlawful Searches

Searching individuals and their property can be degrading to human dignity. The infringement of unlawful searches will only be tolerated if it is reasonable, justifiable and necessary.

Negative impact on civil society

Unlawful searches can amount to harassment of individuals or groups and can also undermine trust in the police. They may result in civil actions against the police, or even criminal charges against the police officer for common law crimes such as assault, malicious destruction to property and theft. He/she can also be charged with trespassing. Disciplinary action against the police officer who carried out the unlawful search may be possible.

Inadmissibility of evidence gathered

Evidence obtained during the course of an unlawful search may be deemed to be inadmissible in a court of law due to the fact that it was obtained in violation of an entrenched right and must, therefore, be excluded. Admission of evidence obtained in this manner would render a trial unfair and will be detrimental to the administration of justice. The result of an unlawful search can be the acquittal of the accused person.

■ E. Searching Persons

Searches should always be carried out having due regard to respect the human dignity of the person being searched.

Procedure for searching a person

Important things to remember when a person is being searched are: a woman must be searched by a woman only, personal searches must only be undertaken in private and the P.L.A.N. principles must always be taken into consideration.

■ F. Use of Force during Search and Seizure

Police who may lawfully search a person or property or who enter premises for the purposes of gaining evidence, may use the force necessary to overcome any resistance

against such search and entry to seize property. This means that police officers may use such force as may be reasonably necessary in the circumstances. The principles of proportionality and minimum force should lead the actions of the police.

Seizure of Property

Seizure of property should be conducted in accordance with domestic legislation taking into account the rights of the person whose property is seized.

The use of force during a search and to enter premises

Escalation of force and de-escalation of force should lead police actions. The more the resistance, the more force that can be used. If the person submits the police should immediately use less force.

Search of Premises and the Use of Force

- Do not cause unnecessary damage to property.
- If you do not need to use force, you should not use force at all.
- Search only in places where Articles may possibly be found.
- Inform the owner or occupier that you intend to conduct a search.
- Searches should normally take place in day-time prior to entering premises or upon consent

- Provide a copy of the search warrant to the occupier of the building upon request or after the search.
- Minimum force and proportionality should guide the actions of police officers.

Suggested Activities

- Group discussion on the right to privacy
- How does the P.L.A.N. concept apply to search and seizure?
- Evaluate the possible consequences of searching without a warrant.
- Role Plays of the proper procedure for searching someone. *When does searching a person cross the boundary and become a violation of the right to privacy?*
- STOP game- The correct ways to use force during a search given different scenarios:
 1. A homeowner is objecting to a search though the officer has a warrant.
 2. Search of a motor car suspected of carrying drugs.
 3. Search of a group of youth who are alleged to be carrying weapons.

EXERCISE

- Why is it good practice to obtain a search warrant before a search is undertaken?
- What can be the results of an unlawful search?
- May police officers search without a warrant?
- May police officers use force to conduct a search or to enter property to seize property? If so what principles have to be taken into consideration?
- Why may male police officers not search female suspects?



CHAPTER 10

Maintenance of Public Order

RELEVANT INSTRUMENTS

National

- The Jamaican Constitution, Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011
- Laws of Jamaica
- The Code of Conduct detailing Police/ Citizen Relations
- Jamaica Constabulary Force – Human Rights and Police Use of Force and Firearms Policy

Regional

- The Singapore Declaration of Commonwealth Principles
- European Convention on Human Rights

International

- Universal Declaration of Human Rights
- European Convention on Human Rights

the society in which they live”-

The Singapore Declaration of Commonwealth Principles, Point 6.

And as echoed in international human rights instruments such as the Universal Declaration of Human Rights and in regional instruments such as the European Convention on Human Rights and national laws such as the Constitution. It is the role of the police to secure, maintain, and, when disrupted, to restore peace and security to a country. This role is highlighted during election time when citizens become actively involved in the process of election campaigns, marches, assemblies and other activities and where they express themselves and associate with specific political parties or groups. To give effect to the rights of freedom of assembly, association and expression, it is important for police to be impartial and to allow people to express themselves, within the parameters of law. If people feel like the police are not enabling them to peacefully express themselves without fear, they may resort to more violent means of expression. Equally important to remember is that demonstrating peacefully does not mean that people cannot be loud, boisterous, taunting or enthusiastic. Many crowd control situations deteriorate because police seek to prematurely shut down peaceful but enthusiastic demonstrations. It is the duty of the police to maintain public order in a human rights context. The rights of citizens to peacefully demonstrate and enjoy freedom of expression require careful application of the PLAN concept to the maintenance of public order. The national, regional and international standards applicable to freedom of expression and the maintenance of human rights during public disorders must be known.

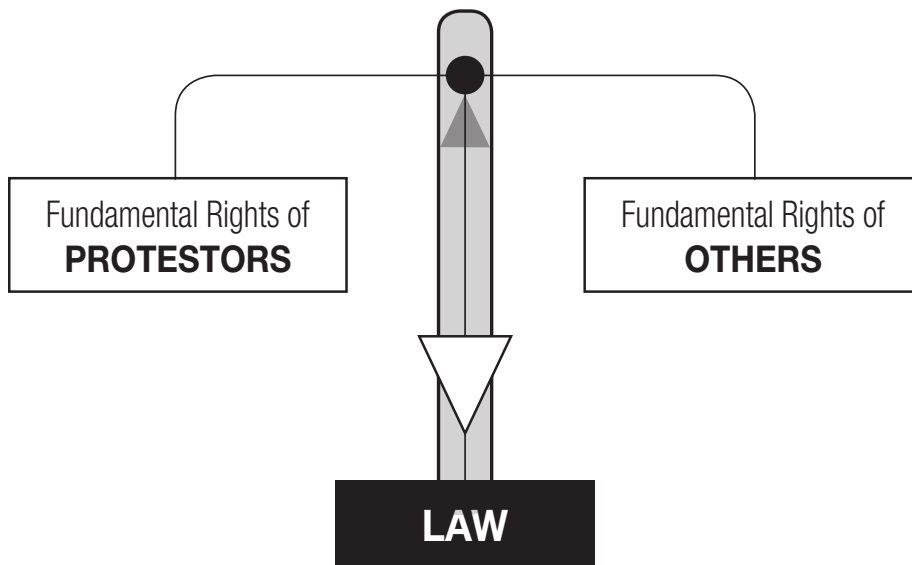
OBJECTIVES

1. To discuss the national, regional and international human rights instruments applicable to the use of force by police in maintaining or restoring order.
2. To explain the responsibilities of the police officers in maintaining public order within the framework of citizen's freedom to associate and demonstrate.
3. To describe the rights of people to peacefully demonstrate, assemble to express themselves.
4. To describe the legitimate limits of the above rights: how the exercise of basic expression and assembly rights might be limited, within the law, to protect the rights of others.

INTRODUCTION

People taking to the streets and expressing their feelings and opinions are logical, essential consequences of liberty and democracy and individual and collective freedom. They may occur spontaneously or be organized by certain citizens or groups. As long as they are conducted peacefully and in accordance with the law, freedom of assembly on matter of concern to citizens is necessary for the existence of an open, participatory democracy where people can contribute to the determining of the type of society that they live in. Such freedoms are founded on respect for human rights as laid out in the Singapore Declaration which states that

“We believe in the liberty of the individual [...] and in their inalienable right to participate [...] in framing



There should always be a balance between the rights of people to exercise their legal rights of expression and assembly, and the rights of non-participant members of the public not to be threatened, assaulted or have their property damaged.

■ A. National, Regional and International Standards applicable to the Maintenance of Public Order

The exercise of the rights as detailed in the above documents are not without limits. Restrictions on the exercise of these rights can be imposed on citizens, providing that:

- they are lawful; and
- they are necessary :
 - for respect of the rights or reputation of others; or
 - for the protection of natural security, public order, or public health or morals.

■ B. Maintaining law and order: The P.L.A.N. principle and the use of force

Sometimes force is required to maintain public safety and order. However, even when force is applied, human rights standards dictate the manner and extent of the force. The purpose of force is also informed by human rights – force is to be used not to punish, provoke or persecute protesters, but to protect the public and property.

Proportionality

Proportionality concerns the relationship between the means the police apply during a public order situation, and the end

sought to be achieved. The police should suitably equip members according to the circumstances before they are deployed. The police should determine which methods and equipment may be regarded as least forceful in the circumstances. This process should logically resolve in the decision to use the least forceful methods to attain the lawful goal of maintaining public order. When the use of force is unavoidable, it must cease immediately once police members attain the objective of the operation.

Legality

The police must have the legal authority to intervene in any action. The authority to intervene and the restrictions on such intervention must be clear to the police before they take any measures. The principle of legality requires a clear legal framework justifying intervention by the police.

Accountability

Police officer may expect to be held accountable in law for their use of force when it is not necessary to use such force, not lawful, or out of reasonable proportion to the threat.

Necessity

Necessity means ‘situation appropriateness.’ The principle of situation appropri-

ateness requires the police to assess the prevailing circumstances of any particular situation to be able to respond appropriately and within a framework of legality. Every situation will be different. Operational decisions should be based on the actions of the crowd.

■ C. Maintenance of human rights during public disorder

From the various international legal sources and guidelines, it is possible to compile a list of applicable human-rights related standards of police management of crowds.

- All measures for the restoration of order shall respect human rights.
- Restoration of order shall be achieved without discrimination.
- Any limitations on rights shall be only those determined by law.
- Any action taken and any limitations on rights shall be solely for the purpose of securing respect for the rights and freedoms of others, and for meeting the just requirements of morality, public order and the general welfare.
- Any action taken and any limitations on rights shall be only those consistent with the requirements of a democratic society.
- No exceptions are permitted with regard to the right to life; the right to freedom from torture; the prohibition of slavery; the prohibition of imprisonment for failure to fulfil a contractual obligation; the prohibition on retrospective laws; the recognition of everyone as a person before the law; or the right to freedom of thought, conscience and religion.
- Non-violent means shall be attempted before the use of force.
- Force shall be used only when strictly necessary.
- Force shall be used only for lawful law enforcement purposes.
- Force applied shall be proportional to the lawful law enforcement objectives.
- Every effort shall be made to limit damage and injury.

- A range of means for the differentiated use of force shall be available.
- No unnecessary limitations on the rights to free speech, assembly, association or movement shall be imposed; limitations should not be imposed on freedom of opinion.
- The independent functioning of the judiciary shall be maintained.
- All wounded and traumatised persons shall be immediately cared for.

There are also practical principles of conduct that the police can follow in order to give practical effect to the standards listed above.

- The right to hold opinions without interference (*International Covenant on Civil and Political Rights*, Article 19.1).
- The right to freedom of expression (Jamaican Constitution, Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, Section 13(3)(c); ICCPR, Article 19.2)
- The right of peaceful assembly (Jamaican Constitution, Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, Section 13(3)(e); ICCPR, Article 21)
- The right to freedom of association (Jamaican Constitution, Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, Section 13(3)(e); ICCPR, Article 22.1)

Other rights should be considered when maintaining human rights during public disorder. These include:

- The right to equality before the law (Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, Section 13 (3)(g))
- The right to equitable and human treatment by any public authority in the exercise of any function (Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, Section 13 (3)(h))

- The right to freedom from discrimination on the ground of (i) being male or female (ii) race, place of origin, class, colour, religion, political opinion ((Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, Section 13 (3)(i))
- Policing Unlawful Assemblies (Annex B, Jamaica Constabulary Force Human Rights and Police Use of Force and Firearms Policy).

The exercise of those rights is not without limits. Restrictions on the exercise of such rights can be imposed on it, provided that:

- (a) they are lawful; and
- (b) necessary:
 - for respect of the rights or reputation of others; or
 - for the protection of national security, public order, or public health or morals. (ICCPR, Articles 19.3, 21 and 22.2)

■ D. Maintenance of Human Rights in a State of Emergency and Military Conflict Situations

States of emergency may only be declared in conformity with national Constitutional law and international law and must be officially declared before exceptional measures must be taken.

- International law (ICCPR, Article 4) declares that states of emergency may only be declared where a public emergency threatens the life of the nation, and where ordinary measures are plainly inadequate to address the situation.
- Any exceptional measures must be strictly required by the demands ('exigencies') of the situation and must not be inconsistent with other requirements under international law.
- Any exceptional measures must not discriminate solely on the basis of race, colour, gender, language, religion or social origin.
- No exceptions are permitted with regard to the right to life; the prohibition of torture and cruel, inhuman or degrading treatment; the

prohibition of slavery; the prohibition of imprisonment for failure to fulfil a contractual obligation; the prohibition on retrospective laws; the recognition of everyone as a person before the law; or the right to freedom of thought, conscience and religion.

- No one may be held guilty of any criminal offence which was not an offence at the time it was committed.
- No one may be subjected to a heavier penalty than that which was applicable at the time the offence was committed.

SUGGESTED ACTIVITIES

- Group discussion on police responsibility in the maintenance of public order.
- Discussion of presented scenarios with emphasis on the application of the PLAN principles in maintaining law and order.
- Presentations of international examples of civil disorder and discussions on how human rights were or were not respected in these instances.

EXERCISE

1. Do people have the right to demonstrate, assemble and express themselves?
2. Describe the balance between the rights of people to exercise their legal rights and freedoms without infringing the rights of others, and observance of the law by all parties.
3. What role do police officers play to ensure the rights of protestors while protecting the rights of the public? When may police stop an assembly?
4. What are the responsibilities of police officers in maintaining public order?
5. What human rights principles are applicable to the use of force to disperse assemblies?



CHAPTER 11

Vulnerable Groups

Children, Women, Non-Jamaicans (Refugees, Displaced Persons), Mentally Ill, Victims

RELEVANT INSTRUMENTS

National

- The Jamaican Constitution, Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011
- Laws of Jamaica
- The Child Care and Protection Act
- The Domestic Violence Act
- The Mental Health Act
- The National Policy on Disability
- Victims of Charter
- The Trafficking In Persons (Prevention, Suppression And Punishment) Act

Regional

- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
- Inter-American Convention on the Elimination of all Forms of Discrimination against People with Disabilities.
- Commonwealth Guidelines on Best Practice for the Treatment of Victims of Crime.

International

- The Convention for the Elimination of All Forms of Discrimination Against Women
- Convention on the Rights of a Child
- Beijing Rules- United Nations Standard Minimum Rules for the Administration of Juvenile Justice
- Convention on the Rights of People with Disabilities
- Convention Relating to the Status of Refugees
- Guiding Principles on Internal Displacement
- Declaration on Principles of Justice for

Victims of Crime and Abuse of Power

- UN Protocol to prevent, suppress, and punish trafficking of persons, especially women and children.

INTRODUCTION

It is an unfortunate reality of our world that even in the 21st century, in many countries, there are still laws, religions, practices and systems that systematically discriminate against certain groups of people. All people have the right to be protected, and to be treated with dignity, care and respect. All people have the same basic rights but groups such as children, women, refugees, displaced persons, the mentally ill and victims need extra measures to protect them due to their vulnerability. The police are legally and morally situated in an important role in this regard and need to see themselves as protectors of these groups and their rights. Police training should emphasize the human rights aspect of this. The concern for the protection of the rights of specific vulnerable groups have generated many national, regional and international instruments that spell out the rights of these groups and the duties that the state and the public have in upholding them.

OUTLINE

■ A. Children

Children are the future of every nation. They are a vulnerable group in society who need special care, attention and protection. Police officers deal with children on a regular basis, on the one hand as victims of crime and abuse (requiring perhaps more

OBJECTIVES

1. To define 'child.'
2. To state the basic human rights of children.
3. To explain why women are a vulnerable group.
4. To name the convention concerning women and state its main features.
5. To explain what is meant by a 'refugee' and 'asylum seeker' and an 'internally displaced person.'
6. To name the four (4) principles relating to refugees.
7. To describe the powers of the police with regard to mentally ill persons.
8. To define who is a 'victim.'
9. To name four 'special' categories of victims and state why they are termed 'special.'

attention than adult victims), and on the other as perpetrators of crime. Children who are suspected of criminal conduct should be treated with care. There are likely to be societal and behavioral reasons for childhood criminal activity, and children who are treated by police as if they were already fully-grown hardened criminals are quite likely to become such criminals. While the same legal procedure may apply as with adults, in addition there may be special rules that apply to children. In encouraging the development and protection of children, it is vital for police to afford the community a role, through proactive liaison and recognition by police of the special role and expertise of child protection institutions, religious institutions, non-governmental organizations, community organizations, charitable organizations, and educational institutions.

The concept of 'in the best interest of the child' is well known, and refers to all activities designed to guarantee and protect children and their rights so that they may live, grow, develop and participate optimally in society in accordance with the dignity to which they are entitled as human beings, and so that they may be protected against violence and discrimination in order to ensure the moral values and well-being of all children.

1. Definition of a Child

A child is defined as a person under the age of 18 years by the Jamaican Child Care and Protection Act as well as the United Nations Convention on the Rights of a Child.

Children as Victims of a Crime

Police officers should provide special attention and protection to children who are victims of crime. All children should be treated equally and with dignity, regardless of their social standing. Children have to be protected against torture and cruel, inhuman or degrading treatment or punishment. Children should be protected against sexual exploitation and abuse.

Police officers can play an important role in the protection of children. The State has a responsibility to take measures to protect children from being encouraged

or forced to take part in any unlawful sexual activities or practices, prostitution, pornographic performances or material. The police should also assist the State in preventing children from being stolen or sold for any purpose whatsoever. Children should be protected from drug abuse. The State – and so the police – should take special measures to prevent children from being used to produce or traffic drugs.

Children as Suspects of a Crime

Children should be treated in a manner that promotes their sense of dignity and worth; that facilitates their reintegration into society; which reflects the best interests of the child; and which takes into account the needs of a person of that age. Children who are involved in crime have often been earlier subjected to violence and abuse, particularly within the family environment, or have been neglected (emotional or physical neglect, especially during infancy) or abandoned. This leads to children being involved in crimes such as prostitution, the sale and possession of drugs, theft and acts of violence. Children, especially young children, are sometimes ignorant of the fact that they are being abused or exploited. Whatever the appearances, police should not take it for granted that children are willing participants in crime, for example in prostitution – the child may have little real choice, or become involved in the activity after being abused or exploited. Police must see the rehabilitation and re-socialization of such children (rather than simply punishment) as the ultimate objective. Children are to benefit from all the human rights guarantees available to adults.

Focus on The Provision of Special Attention and Protection as well as the Equality in treatment in adults and children with respect to basic rights.

When dealing with children (victims or suspects), police officers should always:

- be extremely patient;
- establish a relationship of trust with the child;
- be aware of the signs of abuse and exploitation;

- take into consideration that children, especially young or ignorant children, may in many instances not realise that they have been or are being abused or exploited; and
- accept that sexual and serious physical abuse of children occurring in the home is not a 'private' matter, but criminal conduct and a human rights abuse.

Procedure in treating children accused of offences

There are certain human rights based principles to keep in mind when dealing with children who are accused of committing an offence:

- Children shall not be subjected to torture; to cruel, inhuman or degrading treatment or punishment; to corporal punishment; or to life imprisonment without a chance of release.
- Detention or imprisonment of children shall be an extreme measure of last resort, and detention shall be for the shortest possible time.
- Children shall be separated from adult detainees.
- Detained children shall be allowed to receive visits and correspondence from family members.
- Respect for the minimum age for criminal responsibility, which in Jamaica is 12 according to the Jamaican Child Care and Protection Act.
- Non-judicial proceedings and alternatives to institutional care shall be provided for.
- The child's privacy shall be respected, and complete and secure records are to be maintained and kept confidential.
- The use of physical restraints and force on children is to be exceptional, employed only when all other control measures have been exhausted and have failed, and shall be employed for the shortest possible time. Weapons shall not be carried in juvenile institutions.
- Discipline shall respect the child's dignity, and shall instill in the child a

sense of justice, proportionality, self-respect and respect for human rights.

- Officials dealing with juveniles shall be specially trained and personally suited for that purpose.
- Periodic, as well as unannounced, visits by inspectors to juvenile facilities shall be provided for.
- Parents are to be notified of any arrest, detention, transfer, sickness, injury or death.

The Convention on the Rights of a Child (CRC) is central to the administration of juvenile justice. It offers a wide range of measures aimed at protecting the direct interests of the child. These include measures that seek to protect children coming into conflict with the law.

The CRC requires State parties (Articles 33-36) to take measures that combat abuse, neglect, and exploitation of children, specifically:

- The adoption of rules to fight drug abuse by children and prevent the use of children in the trafficking of drugs (Article 33);
- Protection against all forms of sexual abuse and exploitation, including unlawful sexual activity, exploitation of children in prostitution or unlawful sexual practices, and exploitative use of children in pornographic performances and materials (Article 34);
- National, bilateral and multinational measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form (Article 35);
- Protection against all other forms of exploitation prejudicial to any aspect of the child's welfare (Article 36).

The Beijing Rules develop and extend those Articles of the CRC which cover topics such as arrest, detention, investigation, and prosecution, adjudication and disposition, and the institutional and non-institutional treatment of juvenile offenders.

The Jamaican Child Care and Protection Act (CCPA) prohibits and provides for

the punishment of such acts as cruelty and ill treatment of children, seduction, abduction, carnal knowledge, procuring the defilement and encouraging prostitution of girls. According to the CCPA, the minimum age for which a child can be charged for a crime is age 12.

EXERCISE

To find alternative ways of dealing with offences committed by minors, you are asked to draw up proposals for non-custodial measures. Give details of the measures you propose and of the conditions under which each of these measures is to be applied.

Becoming Victims

There are certain responsibilities that a State, and by extension, the police, must undertake to ensure the protection of one of the most vulnerable groups of society-children.

Governments can take the following measures in order to prevent child abuse:

- Develop a nationwide capacity to provide a rapid, effective, and measured investigative response to crimes involving the victimization of children.
- Enhance the capabilities of state and local law enforcement investigators through training programmes, investigative assistance, and task force operations.

In order to prevent crimes against children, the police should:

- Use multi-disciplinary resource teams to investigate and prosecute crimes against children that cross legal, geographical, and jurisdictional boundaries.
- Promote and enhance inter-agency sharing of intelligence information, specialized skills and services.
- Increase the provision of victim/witness assistance services.
- Investigate online child pornography/child sexual exploitation; and

- Investigate the possession, production, and/or distribution of child pornography facilitated by an online computer.

The Trafficking In Persons (Prevention, Suppression And Punishment) Act also provides protection for children who may be exploited by adults.

Study Questions

- What is the objective of the administration of juvenile justice?
- How does the Convention on the Rights of a Child define a 'child'?
- What are the rights of a juvenile upon arrest?
- What are the rights of a juvenile following arrest?

Understanding

What do children deserve special care and protection under the law?

■ B. Women

In some countries there are many laws, religions, cultures and practices that discriminate against women. Police officers have a very important role to play in the protection of women, beginning with the recognition of their exclusion from many areas of life, inadequate voice, and their vulnerability to abuse both within and outside the family. Girls and young women are particularly vulnerable. The police are best positioned to address the particular problem of violence against women. Police understandably find violence in the home a difficult area to deal with. It is important for police to realize that violence against women is not simply a 'private domestic matter'- it constitutes criminal conduct. And all physical, sexual and psychological abuse and discrimination of women is an issue of human rights.

1. Protection of Women Victims

When women are victims of a crime police officers should take special care. The following principles can be emphasized:

- Police Officers should always respect the victim's dignity. This is reflected in the way police talk and deal with victims.

- If possible a female police officer should assist a woman victim, especially when she has been the victim of a violent crime or abuse. Where possible, statements should be taken in private.
- In the case of a victim of abuse, the police officer should remember that he or she is dealing with a person who has already been impaired, who has been ill-treated and humiliated and who is a person who will therefore be much more vulnerable than other members of the community. The police should not exacerbate the primary suffering by adding to it with their own conduct. This refers to the problem of 'repeat victimization' if a female victim of crime experiences insensitive or traumatic treatment once she seeks help from police after the crime.
- Police officers are usually the first point of contact for female victims. The welfare and well-being of the victim should be the police officer's highest priority. The crime occurring cannot be reversed, but adequate help and assistance to the victim will definitely contribute towards limiting the negative consequences of the crime.

Domestic Violence

Domestic violence happens not only within families, but also among people who are in a relationship with each other. The problem for police is that it happens within an environment where many view the relationship between husband and wife or partners as a private matter. Police the world over recognize domestic disputes as a very difficult area to work in. If anything at all, they often prefer to mediate rather than to treat domestic violence as a normal crime.

Violence against women can be physical, sexual or psychological, and includes battery, sexual abuse, marital rape, harmful traditional practices, non-spousal rape and violence, sexual harassment, forced prostitution, trafficking in women, acid-

throwing, female genital mutilation, and exploitation-related violence. Violence against women, in all its forms, violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms. Women who are victims of domestic violence are mostly denied equality before the law, and this reinforces their subordinate social status.

In Jamaica, The Domestic Violence Act provides remedies for domestic violence, including restraining orders and other non-custodial sentencing. Breaching a restraining order is punishable by a fine and 6 months' imprisonment.

Suspects

Women are entitled to the same rights as men upon arrest and detention. However, there are additional protections and considerations offered to women in an arrest situation, as outlined in relation to police detention below. One of the most serious human rights concerns is the prevalent violence against female detainees by police officers all over the world. When female suspects are placed in police custody, they are especially vulnerable to abuse by police officers. In many cases this happens because these women are poor or are migrants. Women detainees are entitled to the same rights as male detainees and cannot be discriminated against. International standards provide that women detainees are to be extended special measures of protection.

2. International Standards and Practices Applicable when dealing with Violence against Women

The *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW, 1979), ratified by Jamaica and many other Commonwealth countries, defines 'gender-based violence' as:

"... Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

"Violence that is directed at a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts and other deprivations of liberty ..."

Here are some of the international human rights standards and practices applicable when dealing with violence against women:

- Police shall exercise due diligence to prevent, investigate and make arrests for all acts of violence against women, whether perpetrated by public officials or private persons, in the home, the community and in official institutions.
- Police shall take rigorous official action to prevent the victimisation of women, and shall ensure that re-victimisation does not occur as a result of the omissions of police or gender-insensitive enforcement practices. Police should deal with all the cases of domestic violence in a compassionate way, supporting the victims.
- Violence against women is a crime and must be treated as such, including when it occurs within the family. Police officers must refrain from viewing the issue of domestic violence as a private family matter. Police officers are required to act upon a complaint of domestic violence as with any other crime occurring within their jurisdiction. All cases of domestic violence should be investigated in a proper and professional way if the complainant desires this.
- Victims of domestic violence are often afraid of reprisals should they press charges, and therefore the treatment of the crime may require special measures including protection against further victimisation, referral to shelters and for specialised medical care.

3. Trafficking and Exploitation of Women and Girls

Trafficking and exploitation of women is on the rise all over the world. This creates a new challenge to police officers all across the world. The United Nations Protocol to Prevent, Suppress and Punish Trafficking of

Persons, Especially Women and Children defines trafficking in persons as follows:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."
- (b) The consent of a victim of 'trafficking in persons' to the intended exploitation set forth in sub-paragraph (a) of this Article shall be irrelevant where any of the means set forth in sub-paragraph (a) have been used.
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in sub-paragraph (a) of this Article.
- (d) 'Child' shall mean any person under eighteen years of age.

In keeping with international standards and obligations —Section 3 of Jamaica's *The Trafficking In Persons (Prevention, Suppression And Punishment) Act* provides that "The object of this Act is to prescribe measures to prevent and combat trafficking in persons with particular regard being had to victims who are women and children..." and incorporates most of the international definitions and standards.

Under this comprehensive definition, it will be seen that trafficking of persons takes various forms. The most common forms of trafficking include those women and children who are trafficked (or often trapped and deceived) into migrant work, domestic work, bonded labour, prostitution, servile marriage in the form of mail order brides,

and child labour. Some of the most common types of abuse suffered by these trafficked victims include: long working hours; no time off; illegal confinement; debt bondage; sexual assault; physical and psychological abuse; denial of food; and non-payment of wages or reduced wages.

Trafficking is still a relatively new field of study in police agencies all over the world, and there are not many guidelines yet. The Human Rights Unit of the Commonwealth Secretariat has produced an Expert Group's Guidelines for Best Practice Strategies for Combating Trafficking in Women and Children. Two of the most important aspects for police are to:

- Treat victims of trafficking as victims, rather than as criminals.
(This is especially difficult when women were forced into prostitution, as prostitution may be against the law. In cases of trafficking, these women are the victims who are being abused by unscrupulous persons.)
- Treat women encountered in trafficking, or its consequent activities, with compassion, understanding for their vulnerable status, and respect for their dignity.

Women Police Officers

The presence of women in police institutions is of enormous importance for the effectiveness, legitimacy and acceptability of general police functions and activities, especially when dealing with female or child perpetrators, or with female or child victims. Women can play an extremely important role in policing, in particular (but not only) when dealing with victims of crime.

The problem in many police agencies around the world is that women are largely underrepresented.

Women are also sometimes discriminated against once in the police force, and sometimes might be excluded from high-ranking jobs or employed in administrative support or reception positions only. Women's presence happens to be particularly scarce at strategic, managerial and policy-making levels.

There is also the phenomenon of sexual harassment in the workplace and the maintenance of policies and attitudes which marginalise women officials and their impact on the organisation. Law enforcement agencies are often very isolated from the society within which they operate, and are often the last institutions to respond to changing social norms.

The UN *Code of Conduct for Law Enforcement Officials* states that:

- Law enforcement agencies shall not discriminate against women in recruitment, hiring, training, assignment, promotion, salary or career and administrative matters.
- Law enforcement agencies shall recruit sufficient numbers of women to ensure fair community representation and the protection of the rights of female suspects, arrestees and detainees.

Section 13(3)(i) of the Jamaican Constitution, Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 guarantees "the freedom from discrimination on the ground of being male or female."

Other problems faced by female officers include lack of child-care provision; the selection criteria not being gender-neutral enough; and selectors themselves not being women, or being untrained in the need for female representation.

Study Questions

1. What is meant by 'equality' of men and women?
2. What are the special rights of women to protection during arrest and detention?

Understanding

What do you consider to be the main causes for discrimination against women?

■ D. Vulnerable Non-Jamaicans: Aliens, Refugees and Internally Displaced Persons

People have moved for all sorts of reasons including war, civil war, persecution, criminal activities or opportunities, natural disasters, drought, better economic opportunities and they do not always move by choice.

Non-Nationals

Many countries host large numbers of foreigners, who may be fairly settled and contribute greatly and peacefully to the local life and economy. However, when times get harder, or high profile crimes are committed by non-citizens, this group are normally the first to feel pressure from the host population. Police are then often pressured to act in some way against these groups.

'Xenophobia' is defined as an irrational fear and hatred of strangers or foreigners. It is often based on fear of the unknown and unfamiliar. Xenophobia may manifest itself in various ways, from derogatory names for foreigners, to discrimination, to violent attacks. It is also true that many countries have to deal with organised crime often run by foreigners. But it is clearly a myth that often tends to generalize foreigners or non-nationals as 'criminals'. Some of them may have been trafficked into the country and into forced prostitution. Such persons are already victims of a crime and ought not to be unduly victimized further. There is usually a lot of pressure from local citizens on the police to be tough on foreigners. This said, the way that the most vulnerable groups are treated, is a yardstick for measuring the commitment to democratic values of the specific State. The police have a part to play in raising community awareness and promoting harmony.

Non-nationals (migrants) are usually divided into two groups: documented migrants and undocumented migrants. These people are sometimes referred to as 'aliens' by government officials, and even in legislation. Non-nationals are normally defined as persons who are not citizens of the country they are in. This is a broad definition (nationality and citizenship can be technical terms) and includes widely different groups, for example permitted non-citizen persons (permanent and temporary residents, asylum seekers, refugees) and prohibited persons (such as unauthorised migrants who are not seeking or have been determined ineligible for asylum/refugee status).

The police should have a very clear understanding of the different categories,

and of the different legal regimes (international and national) that cover these categories of persons. It should be remembered as a matter of general approach that police have a very important role to play in relations with immigrant communities or non-national individuals. Aside from the fact that international law dictates minimum standards of treatment of persons whatever their legal status, police treatment of members of such groups can often directly contribute (positively or negatively) to their country's international relations with its neighbours.

Permitted Persons

Such persons have the legal right or government permission to be in the country. Nonnationals lawfully within the territory may be expelled only if decided by law, if the decision is not arbitrary or discriminatory, and if procedural guarantees have been afforded.

Permanent residents

Such persons are also known as long-term residents and are people who have lived in a country for a long time and have been granted the right to live in that country on a permanent basis by the local authorities. This is the group of people who are normally issued with a permanent residence permit.

Temporary residents

Such persons are also known as 'legal migrants' and are permitted to reside in a country temporarily. The permit or visa (if required) will usually state the period and reason for which residence has been granted. Temporary residents usually enjoy the right to work. Holiday makers can sometimes be considered temporary residents but are normally thought of as visitors only.

Asylum seekers

This category is used to describe persons who have moved to a new country and intend to seek asylum (protection) or refugee status (permission to remain), on the basis that they have a 'well founded fear of persecution' in their own country because of their race, ethnic group, religion, nationality, political opinion or membership of a particular social group. An asylum

seeker is someone yet to be considered for refugee status under immigration laws. In most legal systems, such a person will normally receive temporary permission to reside in the country, while his or her application to receive refugee status is being studied. Such persons may have entered the country unlawfully, but once they have submitted an application under the legal system, they are to be considered a permitted person, for that period of time until it is decided if the basis of their application (fear of persecution if returned) is well founded or not.

Refugees

While the term 'refugee' is used loosely, it describes a legal category of internationally protected persons under the Refugees Convention 1951. Police treatment of persons accepted in law as refugees should acknowledge this. Someone with decided refugee status is by definition in a vulnerable position, away from their known environment and usually in a destitute situation. Refugee children and women are particularly vulnerable and require special protection and treatment at times. See the section below for detailed discussion.

2. Refugees

The 1951 UN Convention relating to the Status of Refugees and Stateless Persons defines a refugee as:

"... a person who, owing to a well-founded fear of persecution on the grounds of race, religion, nationality, membership in a particular social group, or political opinion, is outside the country of his nationality, and is unable or, owing to such fear, is unwilling to return to his or her country of origin (or, if stateless, to his or her country of habitual residence)."

Article 14 the Universal Declaration of Human Rights, to which Jamaica is a signatory, states that:

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or

from acts contrary to the purposes and principles of the United Nations”

A person receives the special dispensation of refugee status when he or she is determined under national laws based on the Refugees Convention 1951 (or by the United Nations mechanisms) to have a well founded fear of persecution in his or her homeland. By conferring refugee status to a certain person, the State assumes the obligation to protect and receive the person. Refugees may hold an exemption certificate and may be issued with travel documents, are entitled to travel within the country, work and attend school. The rather legal definition of ‘refugee’ must be understood in the context of actual practice in relation to very large displacements of persons as a result of conflict. In countries with very large numbers of persons who have fled conflict or disaster elsewhere, the authorities might grant some form of temporary permission to remain in the country (or put aside strict immigration rules), because of the logistical problem of processing large numbers of persons.

Essential Elements of Refugee Status

From the 1951 Convention definition above, in order to be recognised as a refugee, an asylum seeker must show that he or she has a well-founded fear of persecution based on one or more of five different grounds, including:

- (i) Political beliefs, where a person’s political views are not tolerated and as a result has suffered or been threatened with persecution;
- (ii) Race or ethnic origins, in other words differential treatment based on colour, descent, national or ethnic origin;
- (iii) Membership of a social group, which normally comprises of persons of similar background, habits or social standards who have suffered persecution because of their membership, for example women or trade unions;
- (iv) Religious beliefs, for example preventing people to worship or from receiving religious instruction; and that he/she is outside his or her country of origin, and is not protected by his/her country of origin, either because it’s unable or unwilling to protect him or her; or

(v) that he/she was compelled to flee his or her country in order to seek refuge in another country as a result of:

- (1) external aggression;
- (2) occupation;
- (3) foreign domination; or
- (4) events seriously disturbing public order.

The Rights of Refugees

- Refugees have the right to seek, and if appropriate to enjoy, in another country, asylum from persecution.
- Refugees are entitled to all basic human rights, with the exception of certain political rights, but, if unlawfully within the territory, certain limitations on movements may be applied in the interests of public order and health.
- Refugees shall be given treatment which is at least as favourable as that given to nationals in the exercise of basic rights, such as free association; religion; elementary education; public relief; access to courts; property; and housing.
- No one shall be returned to a country where his or her life or freedom would be threatened, or where he or she would be persecuted, nor to a third country likely to return the refugee to such a country.
- Refugees unlawfully within the territory of a state, who have come directly from a country of persecution and who present themselves without delay to the authorities, shall not be penalised.
- Refugees coming directly from a country of persecution shall not be refused at least temporary entry.
- Refugees lawfully in the territory of a state have the right to freedom of movement and residence.
- Persons seeking asylum should be informed of the necessary procedures, shall be provided with the necessary facilities to do so, and shall be allowed to remain pending a final decision.
- No refugee shall be expelled except on grounds of national security or public order, and only on the basis of a decision reached in accordance with due process of law.

- Before expulsion, a refugee shall be given an opportunity to offer evidence, to be represented, and to appeal to a higher authority.

3. Internally Displaced Persons

In the case of internally displaced persons (IDPs), police officers deal with citizens of their own country. IDPs are citizens whose human rights must be respected during what can be extremely trying times. They should be treated with dignity, respect and compassion. Many factors, sometimes in combination, create IDPs. The most important are internal armed conflicts, economic upheaval and natural or environmental disasters, such as hurricanes, earthquakes and tsunamis. Most of the millions of persons displaced by these forces endure squalid conditions and disease, daily hardships to obtain basic necessities, and the threat of violence from locals. IDPs are a major issue in some countries as experienced by Jamaica. There are no reliable statistics, but it is usually estimated that there are one and a half times the number of IDPs as refugees around the world. It is important to sensitize police officers to the special care needs of IDPs as another vulnerable group in society.

The United Nations’ 1998 *Guiding Principles on Internal Displacement* defines internally displaced persons (IDPs) as:

“Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence suddenly or unexpectedly as a result of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.”

■ E. Mentally Ill

A mental illness is a disruption of the brain that results in a disruption in a person’s thinking, feeling, moods, and ability to relate to others. Mental illness is different from the legal concept of insanity. Mental Illness is a disorder that should be viewed similarly

high blood pressure or diabetes. Many mental disorders, such as schizophrenia which is prevalent in Jamaica, can be treated by medication.

Treatment Under Jamaican Law

Police involvement with mentally ill persons is grounded in two common law principles: (1) The power and responsibility of the police to protect the safety and the welfare of the public, and (2) the protection for disabled citizens such as mentally ill persons. Most mental health codes instruct police to initiate a psychiatric emergency apprehension whenever the person is either dangerous to self or others or is unable to provide for basic physical needs so as to protect himself/ herself from harm.

Although the law legitimizes the police officer's power to intervene, it does not—and cannot—dictate the officer's response in any given situation. As with all law enforcement decisions, the police must exercise discretion in choosing the most have three choices: transport that person to a mental hospital, arrest the person, or resolve the matter informally. In making these judgments and in trying to calm situations on their own, the police are called upon to act as “street-corner psychiatrists.” But their options are, in practice, limited. Initiating an emergency hospitalization often is fraught with bureaucratic obstacles and the legal difficulties of obtaining commitment or treatment.

In addition, many psychiatric programs will not accept everyone, particularly those considered dangerous, those who also have substance abuse disorders, or those with numerous previous hospitalizations.

In Jamaica, the need for reform of the law and the method of dealing with mentally ill persons in the criminal justice system has been highlighted from 2000 by several dramatic cases of mentally ill detainees “lost” in the system such as Ivan Burrows and Gilbert Legister, to name only two. Ivan's case resulted in a Practice Note from the Chief Justice directing judges to receive a monthly report on anyone sent to prison as ‘unfit to plead’ – an obvious endeavour to make certain no-one got lost again. It failed however to deal with the problem of

‘treatment by incarceration.’ ‘Treatment by incarceration’ in a prison has as its primary purpose control, by separation and isolation. Psychiatric care is secondary to this primary objective. A prison is not a therapeutic environment, in fact, by its very nature, it is counter-therapeutic.

In the latter part of 2005, amendments were made to the Criminal Justice (Administration) Act were laid in Parliament and subsequently passed by both the House of Representatives and the Senate, though they are not yet promulgated. These amendments deal with reporting and a widened range of orders that a court can make with respect to a mentally ill person including determination of fitness to stand trial.

■ F. Victims

A victim can be defined as anybody who has individually suffered unlawful harm (physical, sexual or psychological injury, fear or emotional suffering, damage to property, or other impairment. (Note that from a human rights perspective, ‘victims’ include those who suffer violations of internationally recognized norms of human rights whether or not the relevant abusive conduct is also provided for in national criminal laws.) It is useful to think of ‘victims’ in a broad way so that attention is given not only to the primary victim of an assault (for example) but also to the person's children or family. Police must ensure that they treat every victim with dignity, respect and compassion, irrespective of the victim's race, status, sex, age, etc.

Victims of crime are a neglected but very important element in criminal justice and law enforcement systems. Often, one finds that it is the police services that draw public attention to the significance of the victim's interests. However, in the investigation and prosecution of crime, victims are sometimes overlooked, poorly protected or even mistreated by police officers. In many countries, police are not provided with adequate training regarding the impact of violent crime on victims, nor with methods of ensuring that victims are informed of their rights and referred to essential services. Therefore, police are often not sensitive enough when dealing

with emotionally distraught victims. Actions like this impair relations between the police and the community, and undermine the confidence of victims (and their families) in the police service and their willingness to participate in the criminal justice process.

Any persons – including police officers – can become victims.

Instruments on the Rights of Victims of Crime

In 1985, the United Nations General Assembly adopted the Declaration on Principles of Justice for Victims of Crime and Abuse of Power. This is the only instrument offering guidance to member states on the issue of protection and redress for victims of crime and abuse of power. Some Commonwealth countries have taken significant legislative and other steps to protect the rights of victims of crime. In 2002, an Expert Group set up by the Human Rights Unit of the Commonwealth Secretariat produced the *Commonwealth Guidelines on Best Practice for the Treatment of Victims of Crime*, which provides a model framework for member states to address the needs of victims of crime.

The rights of victims of crime are closely linked to the responsibilities of police officers. The set of standards developed by the United Nations applicable to the police when dealing with victims of crime are as follows:

- Victims shall have access to mechanisms of justice and prompt redress;
- Redress procedures shall be expeditious, fair, inexpensive and accessible;
- Victims shall be informed of their rights in seeking redress and protection;
- Victims should be informed of their roles in formal proceedings, of the scope, timing and progress of such proceedings and, of the disposition of their cases;
- Victims should be allowed to present their views and feelings on all matters where their personal interests are affected;
- Victims shall receive all necessary

legal, material, medical, psychological and social assistance and shall be informed of their availability;

- Inconvenience to victims shall be minimized in the handling of cases;
- The privacy and safety of victims shall be protected;
- Unnecessary delay in the handling of victims' cases shall be avoided;
- Offenders should, where appropriate, should make restitution;
- Governments should make restitution when public officials are at fault;
- Police shall be trained in the needs of victims, and should be provided with guidelines to ensure proper and prompt aid;

Responsibilities of Police to Victims of Crime

Police officers should always avoid treating victims of crime in a way that compounds the initial suffering resulting from the crime itself ('re-victimisation'). Such people are already victims at the time police attend, and have suffered because of the actions of someone else. Therefore, police should not treat them in such a way that they effectively become victims for a second time. All victims of crime or abuse of power shall be treated with compassion and respect. Police officers should receive proper training on how to deal with and support victims of crime. At a station level, systems and information for referring victims to supportive agencies should exist.

It is important for trainers to instill in police officers the understanding that part of effective community relations (resulting in effective police operations) is the manner in which police treat victims of crime and their families.

Using the above international standards and practices as the basis, here are some guidelines on actions that can be followed by police, beginning with immediate on-site crisis intervention, which is one of the first steps in victim support:

- Promptly providing crisis intervention at the scene of the crime, securing of emergency medical assistance, and providing physical and psychological first aid.

- Accompanying victims to emergency medical services in cases involving injury.
- Informing victims of the possibility of pregnancy or infection with diseases as a result of a crime.
- Immediately referring victims, verbally or with a written supporting reference, to community agencies that offer emergency services to victims, together with information about different forms of assistance (for example, a brochure should be developed in different languages and given to victims that includes information about emergency and long-term services, victim compensation, likely reactions to crime victimisation and information about the investigative process).
- In addition, police should provide victims with information regarding their rights, and with referrals to services and resources that can help the victim to heal.
- Police should refer victims to medical and/or counselling and support services in the community, for example, psychologists, welfare officers, women's support groups for domestic violence and rape, etc.
- Victims/complainants/witnesses should be treated courteously, with dignity and with respect.
- Statements from people approaching police as victims should be taken in a sensitive and professional manner. The victim's right to privacy should be respected by, if possible, taking statements in private.
- In cases of sexual or domestic violence against women, a female police officer might be selected to take statements and provide referrals.
- Cases should be investigated swiftly, in a professional manner – this should include regular feedback to victims and their families about the course of the investigation (where appropriate).
- Confidential information is to be handled securely.
- Police should provide advice on crime prevention.

- Informing victims about how to protect evidence.
- Providing information to crime victims about their rights, as well as the availability of crime victim compensation.
- Ensuring that the victim is personally contacted by telephone or in person 24 to 48 hours following the initial response, in order to see whether assistance has been sought and/or received.
- Ensuring that the property of the victim is secured so that personal safety is not compromised as a result of crime.
- Where appropriate, the police should provide to victims of crime the following information about police procedure (investigations) and criminal procedure, as soon as possible, and, if possible, in writing:
 - the name and details of the investigating officer;
 - regular feedback during the investigation on the status of investigation – this is especially important in cases where a person was the victim of violent crime;
 - the date of the trial of his or her case;
 - cancellation of any trial, and new dates;
 - the date on which the convicted person will be sentenced;
 - the outcome of the trial and the sentence that was passed;
 - the place where and time when, and the person from whom, any confiscated property of the victim may be collected; and
 - any provisions that exist for public victim's compensation, support services, etc.

Police commanders should:

- ensure that systems exist at station level for proper communication with and referral of crime victims;

- establish and enforce strict property return protocol and procedures – this should be a standardised, jurisdiction-wide programme (closely co-ordinated with prosecutors' offices and the courts) designed to eliminate potential confusion as to exactly which property return rights and procedures are enforced by different law enforcement agencies; and
- establish protocols for proper detention and investigation of suspects in order to protect the safety of victims.

Non-discrimination and Victims

The responsibilities of police towards victims of crime apply equally for those subject to non-criminal abuses of power: the existence of complaints mechanisms; complaints should be recorded and properly investigated; victims should be treated with compassion to ensure that they are not re-victimized; in case of injury to a victim he/she should be provided with medical treatment; etc.

The *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* defines 'victims of abuse of power' as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment

of their fundamental rights, through acts or omissions that may not constitute violations of national criminal laws as such, but which are the result of officials exceeding their authority.

Police officers are sometimes responsible for abuse of the authority that is granted to them under the law. A person who is a victim of police abuse of power is in a very difficult situation – to whom does such a person go to in order to make a complaint? Who will protect that person? In many countries, organisations such as Human Rights Commissions, the Office of the Ombudsman, External Complaints Mechanisms or Internal Complaints Mechanisms may be available. Non-governmental organisations will often assist victims. These actions may in many instances result in findings, disciplinary or criminal action, or civil suits against the state or police.

The responsibilities of police towards victims of crime apply equally for those subject to noncriminal abuses of power: the existence of complaints mechanisms; complaints should be recorded and properly investigated; victims should be treated with compassion to ensure that they are not re-victimised; in case of injury to a victim he/she should be provided with medical treatment; etc.

SUGGESTED ACTIVITIES

- Debate: *Do you think that a child who commits murder should be prosecuted as a child?*
- Brainstorm on the differences between treatment of victims and suspects based on sex.
- Discussion on the trafficking and exploitation of women in Jamaica
- Discussion: *When can a person seek asylum?*
- Discussion: *What are the differences between a refugee and an immigrant?*
- Discussion: *What standards should be in place to deal with mentally ill persons who are victims and suspects?*
- Discussion: *How can Police Officers become Victims?*
- Scenario Discussion on the rights and responsibilities of the police in dealing with special victims.





CHAPTER 12

Human Rights Violations

RELEVANT INSTRUMENTS

National

- The Jamaican Constitution, Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011
- The Code of Conduct detailing Police/Citizen Relations
- The Public Defender (Interim) Act
- The Independent Commission of Investigations Act

Regional

- Optional Protocol – Inter-American Commission on Human Rights

International

- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse
- International Covenant on Civil and Political Rights

INTRODUCTION

Police are often in a very difficult position when doing their job. On the one hand, the public often want police officers to be tough on crime and criminals, while on the other, police officers are under a duty to respect and protect the human rights of suspected criminals. This difficult situation is compounded if the officers do not understand human rights standards and how to apply these in their daily activities. Where awareness levels are low, it is not surprising that it happens that police officers in their line of duty violate the human rights of others. These actions are always regarded as serious misconduct and should be dealt with severely.

Another consequence of human rights violations by police is that it alienates the community in which officers must live and

work, leading to cycles of distrust, and so making police work harder to do.

Some examples of human rights violations by police officers are:

- enforced or involuntary disappearance;
- extra-legal, arbitrary or summary executions;
- unlawful arrest and detention;
- excessive use of force;
- torture;
- inhuman or degrading treatment of arrested and detained persons;
- discrimination;
- unlawful search and seizure procedures;
- unlawful investigation methods;
- illegal corporal punishment;
- inhumane treatment of complaints of victims of human rights violations;
- defeating the ends of justice (covering up crime).

■ A. Definition of Human Rights Violations

Human rights violations can be defined as violations of internationally recognized standards relating to human rights, whether or not these have yet been incorporated into national laws.

The UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* proposes two definitions. The first characterizes them as “a violation of criminal laws operative within States, including those laws proscribing criminal abuse of power”. Central to such violations is the

OBJECTIVES

1. Explain what is meant by a ‘human rights violation.’
2. Explain the responsibility of the state in the protection of various human rights.
3. Discuss the consequences of the human rights violations by the police.

individual or collective harm and suffering caused to persons, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that can be imputed to the State. The second definition concerns those “acts and omissions [imputable to the State] that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.”

The Jamaican Constitution: Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 says that:

“Parliament shall pass no law and no organ of the State shall take any action which abrogates, abridges or infringes those rights” that are guaranteed under the Charter, unless the breach can be justified in a free and democratic society.

—Section 13(2)(b)

■ B. Police Officers and Violations of Human Rights

Violations of human rights by police officers can only make the already difficult task of law enforcement even more difficult. When the law-enforcer becomes the lawbreaker, the result is not only an assault on human dignity, and on law itself, but also the creation of obstacles, which prevent the progress of effective policing.

Negative effects of police violations of human rights include:

- they destroy, little by little, public confidence in the police;
- they isolate the police from the community;
- they can lead to civil unrest;
- they often prevent effective prosecutions in court (for example, if evidence grounding the prosecution has been obtained by torture in violation of a suspect’s human rights);
- they result in police officers becoming merely ‘enforcers’ instead of ‘law enforcers’ (removing the element of ‘law’ from ‘law enforcement’);

- they force the police to be reactive, rather than preventative in their approach to crime;
- they can damage the international standing and credibility of the State and lead to increased scrutiny from international bodies, in particular human rights monitoring mechanisms.

The Duty to Respect and Protect Human Rights

Under Section 13(3)(h) of the Jamaican Constitution: Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, every person in Jamaica,

The right to equitable and humane treatment by any public authority in the exercise of any function.

Respect shown by the police for human rights actually improves police effectiveness. In this sense, as has been noted, respect for human rights by police, in addition to being a legal and ethical obligation, also makes practical sense.

When police are seen to respect, uphold and protect human rights:

- (i) public confidence in the police grows and community co-operation with the police increases;
- (ii) a contribution is made to the peaceful resolution of conflicts and complaints;
- (iii) prosecutions of offenders are more likely to be successful;
- (iv) police are seen as part of the community, performing a valuable social function;
- (v) the fair administration of justice is served and, consequently, confidence in the system increases;
- (vi) an example is set for others in society to respect the law;
- (vii) police get closer to the community and are accordingly better able to prevent crimes through proactive policing;
- (viii) the media begin to support the police, and the police receive support from the international community and local politicians; and

- (ix) professional pride in the police service is maintained, with the flow-on this has for job satisfaction, institutional reputation and recruitment.

■ C. Roles and Responsibilities of the State in Protecting Human Rights

The State has an obligation to promote universal respect for and observance of human rights and freedoms.

—Section 13(1)(a) the Jamaican Constitution: Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011

International human rights law creates legally binding obligations for States. These obligations include the requirement to adapt (or create) national legislation in accordance with the international norms, as well as to refrain from practices that are in contravention of those norms. ‘The State’ also includes persons acting on behalf of the State, including public officials such as police officers.

There is a responsibility on every law enforcement official – as an agent and representative of the state – to respect, protect and promote the human rights of every person. Since human rights violations constitute a violation either of criminal laws within a State, or of internationally recognised human rights norms (or both), States are under an obligation to exert judicial control over such acts or omissions and to protect victims.

In addition, States have certain responsibilities:

- To ensure that every police officer is trained and educated in applying human rights in their daily duties and activities.
- To implement proper structures to monitor and evaluate police actions and to ensure that they adhere to human rights standards and practices.
- To create mechanisms and structures to deal with complaints, for example, internal complaints or disciplinary units, and external complaints mechanisms such as national human rights commissions, ombudsman or similar institutions.

- To develop proper complaints investigation procedures and structures.

■ D. Complaint Procedures and Remedies Available when Human Rights are Violated

If any person alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

—Section 19 of the the Jamaican Constitution: Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011

As a backdrop to the international framework of standards within which all policing takes place, there are a variety of international reporting, review and complaints mechanisms existing either under the United Nations system or the specialized bodies establishing under human rights treaties. These bodies also provide elaboration on the nature and extent of States' duties in relation to particular rights.

National Complaint Procedures

It is an international obligation of governments to provide mechanisms for 'effective remedies' of human rights violations. This means the State is obliged to have complaints procedures and remedies available to people when their human rights are violated.

Violations of human rights committed by law enforcement officials are detrimental to the integrity of the entire law enforcement organisation, and may even reflect on the credibility of governments. Their occurrence must be prevented through training and awareness. If a violation was impossible to prevent, the State should be prepared to deal with such situations by investigating all complaints promptly, thoroughly and impartially. Individual law enforcement officials must be held accountable for their actions. This requires internal monitoring and review procedures. In the event of human rights violations, adequate disciplinary measures and/or legal proceedings must be initiated.

National remedies can include legal proceedings, whether criminal or civil, arbitration or conciliation mechanisms, independent complaints procedures, a national ombudsman or national human rights commission. The names and responsibilities of these organizations may differ from country to country. Their functions are normally regulated in domestic legislation.

International standards provide that:

- superior officers should be held responsible for abuses if they knew, or should have known, of their occurrence and did not take action.
- police are to receive immunity from prosecution or discipline for refusing unlawful superior orders.
- obedience to superior orders shall not be a defence for violations committed by the police.

■ E. Who Monitors Human Rights?

There are various governmental and non-governmental groups at the national, regional and international levels which can monitor the police. The implementation of human rights standards is closely watched at several levels.

At the national level, human rights are monitored by:

- concerned government agencies and services, including the police;
- national human rights institutions (Public Defender)
- human rights and other non-governmental organizations (NGOs) – Independent Jamaican Council for Human Rights; Jamaicans for Justice and others
- the Courts;
- Parliament;
- The Independent Commission of Investigations
- the media;
- professional organisations (such as lawyers, doctors, etc.);
- trade unions;
- religious organisations; and
- centres at universities.

Regional Groups that Monitor Human Rights

At the regional and international levels, organisations have developed mechanisms to monitor human rights within the relevant countries. There are many regional mechanisms including the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers of the Council of Europe.

International Groups that Monitor Human Rights

At the international level, States' compliance with human rights are also 'monitored' by an elaborate monitoring mechanism in the Conventions adopted by the United Nations, as well as by a number of international NGOs, such as Amnesty International, Human Rights Watch and the Commonwealth Human Rights Initiative.

Within the UN system, four principal review functions of State conduct exist. The first is treaty-based monitoring, such as by the Committee against Torture, the Human Rights Committee, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. The second is 'Charter-based monitoring, such as by the UN Human Rights Commission (replaced by the Human Rights Council), the special procedures mechanisms (Special Rapporteurs), and other expert working groups within the UN. The third is monitoring that occurs through peacekeeping and human rights field operations. The fourth is monitoring which is carried out by the Office of the UN High Commissioner for Human Rights, under a global mandate to promote and protect human rights. It is also possible to see the UN Security Council, with its mandate to consider and make binding resolutions on 'threats to international peace and security', as having a monitoring role over large-scale human rights abuses. The Commonwealth Ministerial Action Group (CMAG), formed under the *Millbrook Declaration* 1995, can consider widespread and systematic abuses as a factor in deciding whether a

member country has persistently failed to meet Commonwealth principles.

■ F. Victims of Human Rights

It is important to realize that victims of human rights violations committed by police officers are sometimes in an even more difficult position than other victims due to the fact that police officers – who are supposed to protect and respect human rights, and investigate abuses – are themselves the perpetrators. Victims should be treated with compassion and respect for their dignity. The manner in which police deal with victims and complainants reflects readily on their image and their reputation for professionalism. Victims also have the right to access the mechanisms of justice and to prompt redress, and police need to know these matters in order to be in a position to assist and advise victims.

Standards and practices that can serve as a basic guideline for dealing with victims of human rights abuses by police include:

- Effective mechanisms to ensure internal discipline and external control, as well as the effective supervision of law enforcement officials.
- Law enforcement officials who have reason to believe that a violation has occurred, or is about to occur, should report the matter.
- Provisions should be made for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of those provisions shall be publicized.
- Investigations into violations should be prompt, competent, thorough and impartial.
- Investigations shall seek to identify victims, recover and preserve evidence, discover witnesses, discover cause, manner, location and time of the violation, and identify and apprehend perpetrators.

ACTIVITIES

- Role play on Examples of Human Rights Violations
- Brainstorming exercise on the Compliance and non-Compliance of the State in protection of Human Rights
- Group discussion on the differences between national, regional and international complaint procedures and remedies available when human rights are violated
- Discussion: *What role do human rights watch groups play in the society?*
- Discussion: Human Rights violations in other countries such as police brutality and genocide.

QUESTIONS

- What is a violation of human rights?
- What is the role and responsibility of the state in protecting human rights?
- What remedies exist at the national level for human rights violations?
- What is the role and responsibility of a national human rights commission?
- What are the consequences- in principle or law, and the practical policing consequence when law officials violate human rights?
- What are the victims of human rights violations?



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