

INTERNATIONAL RULES AND STANDARDS FOR POLICING



ICRC



ICRC

International Committee of the Red Cross
19, avenue de la Paix
1202 Geneva, Switzerland
T +41 22 734 60 01 F +41 22 733 20 57
E-mail: shop@icrc.org www.icrc.org
© ICRC, June 2015

Some of the photos in this publication show training sessions.

INTERNATIONAL RULES AND STANDARDS FOR POLICING

TABLE OF CONTENTS

ABBREVIATIONS AND ACRONYMS

LAW ENFORCEMENT AND THE ICRC 7

INTERNATIONAL LAW AND INTERNATIONAL HUMAN RIGHTS LAW

International law	10
International human rights law	11
The United Nations and human rights	13

LAW ENFORCEMENT FUNCTION AND RESPONSIBILITIES

Law enforcement organization, concepts and governing principles	18
Preventing and detecting crime	20
Maintaining public order	23
Providing protection and assistance for people in need	25

LAW ENFORCEMENT POWERS

Use of force and firearms	34
Arrest and detention	38
Search and seizure	44

COMMAND, CONTROL AND ACCOUNTABILITY

Command and management	50
Investigating human rights violations	54

SITUATIONS OF ARMED CONFLICT

International humanitarian law and its relevance for law enforcement officials	60
--	----

CONCLUSION 64

ABBREVIATIONS AND ACRONYMS

Beijing Rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice
Body of Principles	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
BPUFF	Basic Principles for the Use of Force and Firearms by Law Enforcement Officials
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCLEO	Code of Conduct for Law Enforcement Officials
CCPR	Committee on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
CRC	Convention on the Rights of the Child
ECOSOC	United Nations Economic and Social Council
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICRPD	International Convention on the Rights of Persons with Disabilities
IHL	International humanitarian law
IHRL	International human rights law
OPCAT	Optional Protocol to the CAT
SMR	Standard Minimum Rules for the Treatment of Prisoners
Tokyo Rules	United Nations Standard Minimum Rules for Non-custodial Measures
UDHR	Universal Declaration of Human Rights
UN Charter	Charter of the United Nations
Victims Declaration	Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

LAW ENFORCEMENT AND THE ICRC

The International Committee of the Red Cross (ICRC), in its capacity as an impartial, neutral and independent humanitarian organization, engages in dialogue with police and security forces in numerous countries around the world. This dialogue seeks to limit and prevent suffering among people affected by armed conflict and other situations of violence. Police and security forces mandated to enforce the law in their countries play an important role in that regard since it is their responsibility to serve and protect people and communities and, in particular, to prevent and detect crime, to maintain public order and to protect and assist people in need. When fulfilling their obligations in that respect, they are duty bound to respect the international legal framework applicable to the law enforcement task, international human rights law. The ICRC concentrates its dialogue with law enforcement agencies on a core set of human rights that are particularly relevant in armed conflict and other situations of violence. The overall objective is to promote respect for the law that protects people in such circumstances.

The Fundamental Principles of the International Red Cross and Red Crescent Movement

Humanity, impartiality, neutrality, independence, voluntary service, unity, universality



INTERNATIONAL LAW AND INTERNATIONAL HUMAN RIGHTS LAW

International law

International law is a set of rules that governs the relationship between subjects of international law, i.e. entities with legal capacities. These are, in particular, States, public international organizations and individuals.

Primary sources of international law are international conventions, international custom and general principles of law recognized by independent nations. **Secondary sources** are judicial decisions and teachings of highly qualified publicists.

An **international convention** (or treaty or covenant) is “*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*” (Vienna Convention on the Law of Treaties, Article 2(1)(a)). A document of that kind becomes legally binding on a State on signature and ratification or subsequent accession.

International custom is “*evidence of a general practice accepted as law*” (Statute of the International Court of Justice, Article 38(1)(b)). The State in question needs to provide evidence of a consistent (habitual) practice based on a perceived legal obligation.

Jus cogens or peremptory norms of international law are those norms of customary law from which no derogation is allowed (even through treaties). The absolute prohibition of torture is an example of this.

Important additional sources of international law are soft law documents. Soft law comprises non-binding instruments, established through resolutions of the General Assembly of the United Nations. Soft law instruments may serve to strengthen States’ commitment to international agreements, reaffirm international norms or establish a legal foundation for subsequent treaties. The **United Nations**

Code of Conduct for Law Enforcement Officials (CCLEO) and the **Basic Principles for the Use of Force and Firearms by Law Enforcement Officials (BPUFF)** are examples of soft law instruments that are of particular relevance to law enforcement.

While the actual **applicability of international law** within the domestic system may vary depending on the national legal framework, a State may not invoke its constitution or other national laws as reasons for not fulfilling its obligations under international law. When signing a treaty, a State is obliged to bring its domestic legislation into line with the international treaty. It must furthermore ensure that State representatives or institutions comply with the State's international obligations. Failure to do so will entail the responsibility of the State. This responsibility is particularly relevant when it comes to law enforcement.

Violation of the State's obligations under international human rights law by law enforcement officials in the exercise of their duty will entail the State's responsibility at the international level, including the obligation to provide compensation and redress.

Two important areas of international law are international human rights law (IHRL) and international humanitarian law (IHL). Their common aim is to protect people's lives, health and dignity but they have different scopes of application. IHRL applies at all times and is binding on States in their relationship to the individuals living in their territory (an essentially "vertical" relationship); IHL is applicable in situations of armed conflict and constitutes in this regard a *lex specialis*; it is binding on all parties to a conflict.

International human rights law

Human rights are legal entitlements possessed by each individual human being. They are universal and belong to everyone without distinction.

Charter of the United Nations, Article 55

“The United Nations shall promote [...] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

The United Nations was created in 1945 in order to promote and maintain peace and security. Its founding instrument is the Charter of the United Nations (UN Charter). This document contains an important commitment to human rights in Article 55.

Three major instruments that codified human rights at the universal level together form what is often referred to today as the **International Bill of Human Rights**:

- The **Universal Declaration of Human Rights** (UDHR), which was adopted by the General Assembly of the United Nations in 1948;
- The **International Covenant on Economic, Social and Cultural Rights**, which was adopted in 1966, and its Optional Protocol of 2008;
- The **International Covenant on Civil and Political Rights**, which was adopted in 1966, and its two Optional Protocols.

The UDHR had a major impact on subsequent universal and regional human rights treaties as well as on national constitutions and other laws. As a consequence, there are a number of provisions that can today be considered customary law, e.g. the prohibition of torture and other forms of ill-treatment, the prohibition of racial discrimination and the prohibition of slavery.

Following the International Bill of Human Rights, a number of treaties were drafted that dealt with specific topics. They include the following:

- **International Convention on the Elimination of All Forms of Racial Discrimination** (CERD);
- **Convention on the Elimination of All Forms of Discrimination against Women** (CEDAW) and its Optional Protocol;
- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (CAT) and its Optional Protocol (OPCAT);
- **Convention on the Rights of the Child** (CRC) and its Optional Protocols on the involvement of children in

armed conflict and on the sale of children, child prostitution and child pornography.

International human rights treaties that are binding on all States Parties (and their agents) are increasingly complemented by soft law documents that provide guidance and establish more detailed human rights standards. In addition to the two soft law documents already mentioned (CCLEO and BPUFF), the following soft law documents, are of particular relevance to law enforcement officials:

- **Standard Minimum Rules for the Treatment of Prisoners** (SMR);
- **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;**
- **Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** (Victims Declaration).

The United Nations and human rights

The promotion and protection of human rights is one of the main purposes of the United Nations, which, through its different organs and bodies, has embarked on an extensive standard-setting exercise.

The executive organ of the United Nations is the **Security Council**, which has primary responsibility for peace and security. It consists of 15 members, five of which (the People's Republic of China, France, Russia, the United Kingdom and the USA) are permanent members, while the other ten are elected by the General Assembly for a term of two years.

The **General Assembly** is the plenary organ of the United Nations, consisting of all member States. It has the power to discuss any questions or matters that lie within the scope of the UN Charter. However, it cannot legislate directly for the member States and proceeds through recommendations rather than through binding decisions.

Another principal organ of the United Nations is the **Economic and Social Council** (ECOSOC). Among other things, it has the power to “*set up commissions in economic and social fields and for the promotion of human rights*” (UN Charter, Article 68). Important commissions set up by the ECOSOC in the field of human rights are:

- **Commission on Crime Prevention and Criminal Justice**, whose standard-setting work, for instance the drafting of the BPUFF, is of particular relevance to law enforcement officials;
- **Commission on the Status of Women**;
- **Commission on Human Rights**, whose work was taken over by the United Nations Human Rights Council in 2006;
- **Committee on Economic, Social and Cultural Rights**.

The **Human Rights Council** is a subsidiary organ of the General Assembly of the United Nations and was created in 2006. It comprises 47 members, each elected for a three-year term. In the Universal Periodic Review, the Council reviews the human rights situation in each member State once every four years. It is also mandated to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms through a complaint procedure and is supported in this by the Working Group on Communications and the Working Group on Situations.

The principal human rights official of the United Nations is the **High Commissioner for Human Rights**, who has the power to address any contemporary human rights problem and is effectively engaged in the prevention of human rights violations around the world.

Ten human rights treaties have monitoring bodies (CAT, CEDAW, CERD, CPED, CRC, ICRPD, ICCPR, ICESCR, ICRMW, OPCAT). These bodies may also issue interpretations of human rights provisions by way of “General comments” or “General recommendations.”

Besides the universal human rights system of the United Nations, there are also important regional arrangements that establish and promote human rights.



LAW ENFORCEMENT FUNCTION AND RESPONSIBILITIES

Law enforcement organization, concepts and governing principles

It is the State's responsibility to maintain law and order, peace and security within its territory. The structures set up by States for that purpose as well as the underlying law enforcement philosophies and concepts vary considerably across the world and it is unlikely that two identical systems exist. Whatever the choices made by States in this regard, they have to ensure that law enforcement is carried out in a way that respects the State's obligations under IHRL. This means that both domestic legislation and the practice adopted by law enforcement agencies must comply with the applicable provisions of IHRL.

The State's obligations encompass the duty to respect human rights; the duty to protect human rights; the duty to ensure and fulfil human rights; and the duty not to discriminate.

As representatives of the State, law enforcement officials are expected to fulfil the above obligations when carrying out their responsibilities, i.e. to maintain public order, to prevent and detect crime and to provide aid and assistance in all kinds of emergencies. They are given specific powers to enable them to carry out their tasks: the power to use force and firearms, to arrest and detain, and to carry out searches or seizure. They must respect human rights when exercising those powers, which means, in particular, observing four fundamental principles that should govern all State actions with a possible impact on human rights:

- **Principle of legality:** all action should be based on provisions of the law;
- **Principle of necessity:** it should not affect or restrict human rights more than is necessary;
- **Principle of proportionality:** it should not affect human rights in a way that is disproportionate to the aim;
- **Principle of accountability:** those carrying out the action should be fully accountable to all relevant levels (the judiciary, the public, the government and the internal chain of command).

Despite clear legal standards, law enforcement work is, however, not a mathematical science that leads to clear-cut answers. Because law enforcement officials have to deal with a wide range of situations with many conflicting interests, they are accorded a degree of discretion, which places considerable responsibility on them to make appropriate choices. The fact that law enforcement officials frequently find themselves in stressful or dangerous situations and have to deal on a regular basis with people who have broken the law or are suspected of having done so means that high moral and ethical standards have to be met to ensure that law enforcement officials act in accordance with the law at all times.

Breaches of the law by law enforcement officials have a devastating effect on law enforcement work and ultimately on society as a whole.

It is all too easy for “the end justifies the means” attitudes to be adopted in an environment in which serious crimes have been committed and where the difficulties of working in such an environment contribute to the development of group ethics and individual sets of standards. The leadership of law enforcement agencies therefore needs to be aware of the inherent risk of such group ethics fostering “grey policing” that may not always comply fully with the law.

Commanding officers have to ensure that institutional ethics are formulated, promulgated and constantly upheld, thus clearly establishing full respect for the law as the fundamental standard to be met at all times.

In the difficult and dangerous working environment of law enforcement, it is not enough merely to set high ethical standards. **Orders and procedures** that clearly establish what is expected of the individual law enforcement official and their effective enforcement are indispensable to ensure that law enforcement work is always carried out in full compliance with the law.

THE THREE PILLARS OF LAW ENFORCEMENT RESPONSIBILITIES

Preventing and detecting crime

Maintaining public order

Providing protection and
assistance for people in need

Preventing and detecting crime

Prevention and detection of crime is a key obligation of the State as part of its duty to protect the human rights of all who have become, or may become, the victims of a crime. At the same time, the exercise of powers by law enforcement officials investigating a crime may affect individuals' human rights. To effectively fulfil this obligation requires careful balancing of, on the one hand, the rights of the potential or actual victims as well as of society in general and, on the other hand, the rights of those who may be affected by law enforcement work. IHRL provides the legal framework for this balancing act. In particular, it sets out a number of guarantees and rights to be respected throughout the entire judicial process, starting from the very first stages of the investigation.

At the centre of these rights is the **right to a fair trial**, which is actually a set of rights that include the presumption of innocence, the right to be informed about the charges, the right to defence, legal counsel and unimpeded communication with the legal counsel, the right to be tried without undue delay, the right to an interpreter and the right not to be compelled to testify against oneself or to confess guilt.

Almost every investigation results in one way or another in an invasion of the individual's private sphere, affecting the **right to privacy**. Thus, as with any other interference in individuals' rights, such actions must be permissible under domestic law, necessary and in proportion to the legitimate objective to be achieved.

Law enforcement officials are required to **carry out the investigation with utmost objectivity and impartiality**. The whole process must be free from any discriminatory reasoning or bias.

Respect for the above-mentioned rules may occasionally encounter some resistance on the part of law enforcement

International Covenant on Civil and Political Rights, Article 26

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."

officials, who may perceive them as inappropriate obstacles to efficient policing and as protecting “criminals.” The commanding leadership of the law enforcement agency has the utmost responsibility for conveying a clear message to the contrary.

Only lawful policing is good policing; bending or violating laws, rules or regulations will, in the end, affect not only the judicial process but also the law enforcement institution as a whole, including its acceptance and support among the people.

To foster a culture of respect for the rule of law requires a set of measures to be taken at all levels – policies and procedures, education, training and equipment – as well as an effective system of sanctions to enforce respect for the rules and regulations.

The investigative process itself needs to demonstrate a high degree of professionalism:

- **Material evidence** needs to be collected thoroughly by competent law enforcement officials trained in forensics or supported by specialized personnel;
- **Great care should be taken when interviewing witnesses** so as not to obtain biased information;
- **Proactive information gathered through the use of informants needs to be particularly controlled**, preventing any tampering with the process; the same applies to the deployment of **law enforcement officials as undercover agents**, who should, in particular, abstain from any form of incitement to commit legal offences or crimes;
- Statements by suspects are a relevant source of information in the investigative process. However, law enforcement officials should avoid relying too heavily on them and attempt as far as possible to **obtain objective evidence that helps to confirm (or otherwise) a suspect’s statement**;
- **Interrogation of the suspect must be carried out in full respect of fundamental rights**, in particular the

presumption of innocence, the right not to be compelled to testify against oneself or to confess guilt;

- **Torture and other forms of cruel, inhuman or degrading treatment are prohibited at all times.** Such treatment has long-lasting adverse consequences for the victim, the perpetrator, the law enforcement agency as a whole, the justice system and society in general. No exceptional situations may justify a departure from this rule and that must be constantly affirmed by the commanding leadership of the law enforcement agency. The leadership must also take a range of measures to prevent torture from occurring, including a clearly regulated investigation and interrogation process, respect for judicial safeguards and allowing places of detention to be inspected by external bodies.

Enforced disappearance and extrajudicial killings are among the most serious crimes and when they are committed, ordered or tolerated by State agents, they undermine the very foundation of the rule of law and of society. Every effort must be made to ensure the effective prevention of those crimes, which can only be achieved if the law enforcement agency is fully transparent and accountable.

An important element in the prevention of crime is the **prevention of juvenile delinquency**. A number of documents have been established to ensure that the justice system deals with young offenders or alleged young offenders in a way that takes account of their specific vulnerability and of their limited maturity and that prioritizes the prevention of future offences. The central document in this regard is the CRC, which defines a child in its Article 1. Additional rules are set out in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), a non-treaty document.

Convention of the Rights of the Child, Article 1

“A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

When such persons have reached the minimum age established by domestic legislation for being considered responsible under criminal law, the concept of diversion

(i.e. removal from criminal justice proceedings) is the approach recommended by the Committee on the Rights of the Child and in other soft law documents. This is based on the idea that youthful conduct which does not conform to overall social norms is part of the maturation process and that a child-oriented approach involving all parts of society is more likely to prevent the child from embarking on a “career” as a criminal. For the same reason, the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) promote non-custodial measures.

Furthermore, it is recognized that juvenile offenders need special protection and treatment. Law enforcement officials involved in the administration of juvenile justice therefore need to be given appropriate specialized training (Beijing Rule No. 12).

Maintaining public order

The maintenance of public order is a core responsibility of law enforcement officials that calls for constant careful balancing of the rights and interests of all sections of the population. Strict compliance with the applicable legal framework is indispensable to ensure the success of this balancing act. The prevention of violence and avoidance of the need to resort to force should be guiding principles in the management of any public order situation (see BPUFF Nos 4 and 13). A precondition is the existence of a domestic legal framework that governs public order and, in particular, public assemblies in compliance with the State’s obligations under IHRL.

Within this legal framework, **law enforcement officials will be called upon to handle public assemblies in a way that complies with the principles of legality, necessity, proportionality and accountability.** Any restrictions imposed on assemblies should be based on provisions of domestic law and should not go beyond what is necessary to ensure peace and order. Moreover, they should not disproportionately affect the rights of those involved in the

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Part one, section 2.2(a)

“A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult.”

International Covenant on Civil and Political Rights, Article 21

“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

assembly. Respect for and protection of the right to life, liberty and security of person is of particular importance in this regard. This includes the duty to protect peaceful assemblies against violent acts committed by others, e.g. in the course of violent counter-demonstrations. Furthermore, where assemblies are considered unlawful but are taking place in a peaceful manner, law enforcement officials should refrain from actions, e.g. dispersal of the assemblies, if such actions are likely to lead to an unnecessary escalation of the situation, which may involve a high risk of injury, loss of life and damage to property (see BPUFF No. 13).

In any case, **communication, negotiation and de-escalation are all methods that should be given priority in public order situations** (see BPUFF No. 20). For that purpose, law enforcement officials should be trained in appropriate communication with organizers and demonstrators, have adequate communication equipment and know how to use it.

The **right choices in terms of equipment and weapons** are equally crucial in that respect. The physical appearance of law enforcement officials should not be threatening or otherwise contribute to an atmosphere of hostility. This also applies to the use of firearms in situations of violence. In most situations their use will not contribute to re-establishing peace and order but run the risk of worsening an already chaotic situation. Firearms should therefore not be considered as a tactical tool for public order situations but remain the exceptional, ultimate resort in response to individual situations which threaten to cause death or serious injury, and are to be used only where all other means have failed.

Where public order is constantly threatened by demonstrations, rallies, riots and other situations of violence, authorities may decide to declare a **state of emergency** for the purpose of re-establishing peace and order. In particular, they may take measures that derogate from certain human rights, provided that the country is in

a situation of “*public emergency which threatens the life of the nation and the existence of which is officially proclaimed*” (ICCPR, Article 4). Such a declaration needs to be made by the institution or body empowered to do so under domestic law and it should acquaint the population with the exact material, territorial and temporal scope of the measure. The derogations made may not be discriminatory or affect non-derogable rights.

In public emergencies, **authorities may decide to entrust the maintenance of public order to military armed forces**. They should, however, be aware of the risks and challenges involved. Military armed forces, which are normally tasked, trained and equipped to fight an enemy of their country, have to make a fundamental shift in their thinking in order to deal with people from their own country. The legal framework and the procedures governing their operations are also completely different. Training and equipment will have to be adapted accordingly and safeguards established to ensure that they do not resort to their usual way of operating, i.e. when conducting hostilities against an enemy. Where these precautions and safeguards cannot be established, authorities should refrain from deploying their military armed forces in law enforcement missions.

Providing protection and assistance for people in need

The provision of protection and assistance for people in need is the third pillar of law enforcement responsibilities.

This responsibility becomes particularly relevant for vulnerable people, i.e. people who may be at an increased risk of being exposed to discrimination, abuse and exploitation, who do not have access to the basic means of survival and/or who are unable to look after themselves. It is important for law enforcement officials to be aware of groups with one or more of the above-mentioned characteristics within the society, the risks that they may face and their specific protection and assistance needs.

Victims of crime and abuse of power

Law enforcement officials are often the first point of contact for victims of crime and/or abuse of power. The Victims Declaration provides comprehensive guidance on the approach to be adopted by law enforcement officials when dealing with such people, who often suffer long-term physical and/or psychological harm, material damage, stigmatization, etc.

People who have suffered any form of harm (physical, mental, emotional or material) in violation of criminal law (see Victims Declaration, Article 1) deserve to be treated with particular compassion and sensitivity and should be given immediate assistance.

Investigating law enforcement officials must take the victim's particular situation into consideration and make every effort to respect and to protect his or her privacy and, as far as possible, to avoid any re-traumatization.

Victims are entitled to play an active part in the judicial process and have a right to information, redress and compensation. Clear instructions should be given on how to deal with the media to ensure continued protection of victims' dignity and privacy.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1

'The term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from

A particularly serious crime with the most severe physical and mental consequences for the victim is the **crime of torture**. The CAT defines torture in its Article 1. The CAT requires States to establish torture as a crime under domestic criminal law (Article 4) and to ensure prompt and impartial investigation of all cases of (alleged) torture. Victims of torture are entitled to protection, redress and fair and adequate compensation (Articles 13 and 14). Statements obtained by means of torture *"shall not be invoked as evidence"* in Court (Article 15).

Abuse of power is unlawful behaviour on the part of State officials. It does not necessarily constitute a crime but nonetheless represents a violation of human rights (see

Victims Declaration, Article 18). Numerous IHRL documents at global and regional levels provide for the rights of victims affected by such acts in terms of redress, prompt and impartial investigation, compensation, etc. It is the duty of law enforcement officials to:

- Investigate thoroughly whether alleged abuse of power also constitutes an offence under criminal law;
- Protect victims from abuse of power against any further harm;
- Prevent, investigate and correct any abuse of power committed by law enforcement officials.

Children

Law enforcement officials have specific obligations with regard to children, namely the duty to protect and provide assistance for children wherever the need arises. Whenever they have to deal with children in the exercise of their responsibilities, they must pay utmost attention to their specific needs and rights and to their specific vulnerability.

The fundamental document protecting the rights of children is the CRC. Besides affirming that children are entitled to the same fundamental human rights and freedoms as adults, it provides for additional protection against the abuse, neglect and exploitation of children (CRC, Articles 32-36).

Law enforcement officials play a crucial role in the protection of children by preventing and thoroughly investigating child exploitation.

Under the CRC, when **children are deprived of their freedom** – a situation which renders them even more vulnerable to abuse, exploitation or the exertion of harmful influence by adults – authorities are required to separate children from adults (CRC, Article 37) and to apply further safeguards.

Law enforcement officials may interact with children in different settings. Children may be witnesses and/or victims of crime or suspects and law enforcement officials may

him [...] information or a confession, punishing him for an act he [...] has committed or is suspected of having committed, or intimidating or coercing him [...], or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

sometimes need to use force against children. Regardless of the situation, law enforcement officials are required to exercise particular care and sensitivity when dealing with children, thus preventing the law enforcement action from traumatizing them and causing them long-lasting harm.

Women

While women should not be considered inherently vulnerable, they all too often face discrimination, disrespect for their rights and violence. **Law enforcement officials are expected to provide protection and assistance for women in need of them** and to take account of the specific needs and vulnerabilities of women in the exercise of their duty. It is also incumbent on them to prevent women from becoming victims of crime. This is of particular relevance in the case of violence against women, which is defined as “*violence that is directed at a woman because she is a woman or that affects women disproportionately*” and includes “*acts that inflict physical, mental or sexual harm or suffering, threats of such acts and other deprivations of liberty*” (CEDAW Committee, General Recommendation No. 19(6)). Sexual violence and forced prostitution are covered by that definition and investigating them is often a difficult and delicate task. Law enforcement officials need to be trained to identify such cases and to deal with victims of such crimes with appropriate empathy and sensitivity.

When **women are deprived of their freedom**, law enforcement officials must protect them from discrimination and violence.

Arrest and body searches of women should be carried out by female law enforcement officials only; women should be interrogated and detained under the supervision of or by female officials.

Law enforcement agencies are expected to ensure that the treatment of women in the administration of justice does not result in degrading treatment, to respond promptly to incidents of violence and to investigate them thoroughly.

In order to be able to give appropriate consideration to the specific situation and needs of women, **law enforcement agencies should have a sufficient number of female officers in their rank and file for the following purposes:**

- To conduct searches;
- To ensure the safety and security of female detainees in places of detention;
- To investigate cases of domestic and sexual violence;
- To ensure general representativity of the law enforcement agency as a whole.

It is therefore crucial for recruitment procedures not to be discriminatory and to be designed in such a way as to admit a sufficient number of female officials to the law enforcement agency.

People on the move

The fact that people have to leave their place of residence for various reasons is a growing international phenomenon with serious humanitarian and human rights consequences. Regardless of the reasons why they leave their habitual place of residence, internally displaced people, refugees and migrants often find themselves in very precarious and vulnerable situations. It may be difficult for them to access the most basic means of survival and they may be exposed to hostility, discrimination and exploitation in their new environment.

It is the duty of law enforcement officials to protect and assist people on the move and to deal with them in full respect of their rights and status.

Refugees are people who find themselves outside their country of nationality, having left their country of habitual residence for fear of persecution. Refugees are entitled to the same protection of their rights and freedoms as all other people. In particular, they should not be discriminated against and should enjoy the same judicial guarantees as anyone else. Furthermore, they are entitled to identity documents.

The phenomenon of **people being displaced** within the country of their habitual residence as a result of situations of violence, armed conflict, mass violations of human rights and/or natural disasters has increased dramatically over the past few decades.

The following principles are of particular relevance for law enforcement officials:

- **Any displacement should be carried out only in accordance with the law;**
- **Internally displaced persons (IDPs) must be protected against crime and human rights violations;**
- **Arbitrary arrest and detention are prohibited;**
- **Return and resettlement should be facilitated and IDPs should be assisted in the recovery of property and possessions.**

Migrants, i.e. people who have decided to attempt to make a living in a country other than their own, often find themselves in extremely vulnerable positions, particularly with regard to exploitation. This problem is particularly acute for victims of human trafficking, who may even become victims of forced prostitution.

Convention relating to the Status of Refugees Article 33(1)

Prohibition of expulsion or return (“refoulement”)

“No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

Law enforcement officials are duty bound to protect migrant workers against violence, physical injury and threats and to ensure compliance with fundamental judicial guarantees. Specific rules are established in relation to arrest and detention. Collective expulsion is prohibited and any individual expulsion should take place only when based on a decision by the competent authority and in accordance with the law.

The **principle of non-refoulement** protects people on the move if there is a risk of their fundamental rights being violated and, in particular, if they are exposed to the risk of persecution, torture and other forms of ill-treatment as well as arbitrary deprivation of life. People on the move may not be sent back to their country of origin or to any other country

where there is such a risk (or the risk of further refolement to any such country).

Law enforcement officials must know, respect and protect the rights of people on the move. In particular, they are required to comply with the following obligations:

- **To take account of the particular vulnerability of people on the move**, protecting them against crime and xenophobic violence;
- **To give due consideration to their lack of legal knowledge and language skills;**
- **To treat them without discrimination;**
- **To treat them as victims and not as criminals**, particularly where they have become victims of human trafficking;
- **To ensure respect for their legal rights and for the due process of law** in case of arrest and detention.



LAW ENFORCEMENT POWERS

Use of force and firearms

In order to be able to fulfil their responsibility, **law enforcement officials are authorized, *inter alia*, to use force and firearms.**

The way in which law enforcement officials use force and firearms has an immediate effect on the relationship between the law enforcement institution and the community as a whole, particularly where the use of force is arbitrary, excessive or otherwise unlawful.

It is of utmost importance for law enforcement officials to act in full compliance with the legal framework governing the use of force and firearms and for them to comply with the highest possible standards of discipline and professionalism in that respect.

THE THREE LAW ENFORCEMENT POWERS

Use of force and firearms

Arrest and detention

Search and seizure

The use of force is likely to affect fundamental human rights, i.e. the right to life, liberty and security (UDHR, Article 7; ICCPR, Articles 6(1) and 9(1)). The highest priority must be given to protecting those rights – also during the fulfilment of law enforcement responsibilities. Any law enforcement action affecting those rights must therefore be the result of a careful balancing act and comply with the principles that should govern the exercise of any law enforcement power, i.e. the principles of legality, necessity, proportionality and accountability.

Where law enforcement officials are authorized to use force and firearms, **the domestic legal framework should determine the – legitimate – purposes and circumstances** permitting the exercise of this power.

Law enforcement officials must then **use force and firearms only as far as is necessary** to achieve their objective. Law enforcement officials shall not apply force at all if the objective can be achieved without it and, where this is not possible, they shall resort only to the minimum force needed for that purpose and ensure that as little damage and injury as possible occurs.

When force needs to be used to achieve the legitimate objective, **the consequences of such force may nevertheless not outweigh the value of the objective to be achieved, which would render the use of force disproportionate.** In other words, law enforcement officials may not pursue their objectives regardless of all other considerations. They will even have to consider withdrawing and thus not continuing to pursue the legitimate objective if the negative consequences of the use of force would be too serious, given the reason for the use of such force. In particular, the utmost attention must be paid to the protection of uninvolved people.

When law enforcement officials have to resort to force, they need to be fully accountable for their actions.

Adequate reporting mechanisms should therefore be established, particularly where the use of force has resulted in death or injury or where a firearm has been used (BPUFF Nos 22 and 23). Arbitrary, unnecessary or otherwise unlawful use of force and firearms needs to be investigated thoroughly. Responsibility for such use of force lies not only with the individual law enforcement officer concerned but also with superior officers who have given unlawful orders or who did not take action when they knew, or should have known, that a subordinate would resort to unlawful use of force (BPUFF No. 24). Unlawful orders are not an excuse if the law enforcement official(s) had reasonable opportunity to disobey the order (BPUFF No. 26).

Law enforcement agencies must create an **operational framework** that enables law enforcement officials to act in accordance with the above-mentioned principles. Measures may include operational procedures that clearly seek the peaceful settlement of conflicts, adequate training in that respect, the availability of protective clothing and equipment in order to reduce the need to resort to force, and the development and careful evaluation of less lethal weapons and equipment.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, No. 9

"Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

Specific provisions apply to the use of firearms, which have, after all, been specifically designed to kill. Those provisions cover the following points.

- **As a firearm is potentially lethal, its use can – in a logical application of the principle of proportionality – only be acceptable if the intention is to protect against the threat of death or serious injury** (BPUFF No. 9). Domestic legislation, as well as the established procedures of the law enforcement agency, should be formulated so as to ensure that firearms are used only as a last resort and in such situations.
- **Law enforcement officials are required to identify themselves as such and to issue a warning before resorting to the use of firearms** (BPUFF No. 10), unless such warning would create too high a risk, be inappropriate or pointless. The addressee should be given sufficient time to respond to the warning.
- Regulations with regard to the control of weapons and ammunition as well as clear reporting rules for the use of firearms should ensure full **accountability for any use of firearms** by a law enforcement official.
- **Education and training of law enforcement officials on the use of firearms must meet the highest possible standards**, enabling them to give appropriate responses even in stressful and dangerous situations.
- **Responsibility for the lawful and appropriate use of firearms extends to commanding officers**, who have to take all possible precautions to ensure that firearms are used in accordance with the legal framework and with utmost consideration of the right to life. This refers to the immediate operational control of complex situations as well as to the formulation of appropriate procedures and training instructions.

There is no simple response to the difficult situations faced by law enforcement officials in the course of their regular duties and operational procedures. **Instructions and training should therefore seek to address the full complexity of the challenges faced by law enforcement.**

Providing pre-established use-of-force models, without further explanation and for the purpose of creating automatic responses to pre-defined situations would hinder the indispensable thorough assessment of the specific situation by individual law enforcement officials, who have to take account of *all* available options (including negotiation, de-escalation and withdrawal) and the necessary precautions (e.g. with regard to uninvolved people).

In public assemblies, the use of force must follow the same principles as in all other situations. Priority must be given to preventing violence and to allowing for negotiation, persuasion and de-escalation before resorting to the use of force. Where an assembly that does not comply with certain domestic provisions remains entirely peaceful, the use of force should be avoided, albeit without prejudice to the subsequent prosecution of the organizers and participants for taking part in an unlawful assembly. Furthermore, isolated incidents should not lead to a decision to disperse an otherwise peaceful and lawful assembly. In such situations, the law enforcement agency should seek to deal with the violent individuals and continue to facilitate the remainder of the assembly. **Protective equipment should be available in order to restrict the need to resort to the use of force** and – where the use of force becomes unavoidable – appropriate less lethal weapons should allow for a graduated and proportionate response which minimizes damage and protects uninvolved people.

A firearm is not an appropriate tool for dispersing a crowd and under no circumstances should law enforcement officials fire indiscriminately into a crowd.

The use of force in detention facilities must similarly comply with the principles of legality, necessity and proportionality. Again, the use of firearms is restricted to life-threatening situations in accordance with BPUFF No. 9 (see also BPUFF No. 16). Prison officials are even advised not to carry firearms and to limit their use to exceptional circumstances only.

Standard Minimum Rules for the Treatment of Prisoners No 33

"Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment."

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

"No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

Instruments of restraint may be used only for the purpose of security and never as a means of punishment (BPUFF No. 17, read in conjunction with SMR Nos 33, 34 and 54).

Arrest and detention

The right to liberty and security of person is enshrined in numerous universal and regional human rights documents and is one of the oldest basic human rights in existence. Strict procedures need to be followed and fundamental judicial guarantees must be upheld if States restrict this right. Furthermore, any such restriction must be subject to judicial control. In this regard it is important to bear in mind that deprivation of liberty affects the rights of an individual beyond personal liberty and freedom of movement. The power to arrest and detain a person therefore needs to be carefully regulated by law and exercised in full conformity with the applicable international laws and standards.

The power to arrest is usually a discretionary power, according to which law enforcement officials may arrest a person under certain circumstances. It is only as an exception that the law establishes an obligation for a law enforcement official to carry out an arrest. The discretion afforded to law enforcement officials must be exercised in compliance with the overarching principles governing all law enforcement actions: legality, necessity, proportionality and accountability.

Domestic laws usually contain the following grounds for arrest: conviction, to ensure compliance with court orders or other legal obligations, and to bring a person before the competent legal authority if he or she is suspected of having committed an offence. Additional grounds may be established (e.g. to protect individuals from harming themselves or for deportation purposes). However, such provisions need to be justified by legitimate public order or security concerns and may not be discriminatory. The arrest also has to comply with the procedures

established by law, e.g. if an arrest warrant is required before an arrest can be made.

Where a law enforcement official has established that there might be grounds for an arrest, the actual need to carry out the arrest still has to be assessed. **Preference must always be given to less restrictive means of achieving the objective of the law enforcement action.** For instance, the timely collection of evidence can prevent a suspect's attempt to destroy evidence and withdrawing someone's passport can prevent him or her from fleeing the country. **The principle of necessity also governs how, when and where an arrest is carried out,** e.g. limiting damage to the person's reputation by not carrying out the arrest at his or her workplace or under full public gaze – provided, of course, that there are suitable alternatives.

The arrest must be proportionate to the objective, i.e. the reason for the arrest. Proportionality is often already ensured through provisions in domestic law that allow arrest only for offences of a certain gravity.

Judicial control is necessary to ensure that law enforcement officials are accountable for any arrest carried out. Law enforcement officials are obliged to present the arrested person promptly to a judicial authority to determine the lawfulness of the arrest (habeas corpus). The period allowed is usually established in domestic legislation (often between 24 or 48 hours) but should in any case not exceed a few days (CCPR, General Comment No. 8 on ICCPR, Article 9).

Full respect of these governing principles prevents arbitrary arrest. The **prohibition of arbitrary arrest** (ICCPR, Article 9(1)) should be interpreted broadly in the light of the circumstances of the specific case, including aspects such as injustice, unpredictability, unreasonableness, capriciousness, disproportionality or discrimination. It is for that reason that the Body of Principles for the Protection of All Persons under

Any Form of Detention or Imprisonment (Body of Principles) states in its Principle No. 2 that *“arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose,”* thus requiring that those empowered to arrest a person also have the necessary professional skills to make an objective and adequate assessment of the situation leading to the correct choices.

When carrying out an arrest, **law enforcement officials must respect the fundamental rights of the arrested person**, which includes informing him or her of the reasons for the arrest and of his or her rights as a result of the arrest, presenting the person to the judicial authority, ensuring access to legal counsel, notifying the family, treating the person with humanity, etc.

Where law enforcement officials encounter resistance from the person whom they are attempting to arrest, they have to decide whether and how to resort to the **use of force or even firearms**. The use of firearms, in particular, needs to be carefully assessed and is only justified if the person to be arrested presents a danger to the life of others (including that of the law enforcement official; see BPUFF No. 9). Where the possible damage and harm caused by the use of force outweigh the legitimate interest of the arrest, law enforcement officials should refrain from carrying out the arrest.

Such situations often occur unexpectedly and **thorough and regular training** of law enforcement officials based on realistic scenarios is required to enable them to take instantaneous, almost instinctive, decisions in line with those standards.

In case of **planned arrests**, careful preparation is required, based on sound intelligence (with regard to the location, possible risks for others, etc.) and with all possible precautions being taken to protect uninvolved people, the law enforcement officials themselves and, not least, the person to be arrested.

An arrested person must be interrogated in full compliance with, in particular, the presumption of innocence, the right not to be compelled to testify against oneself or to confess guilt, the prohibition of torture or other forms of ill-treatment.

One safeguard is the proper recording of all relevant details of the interrogation (duration, intervals, identity of all those present).

People who have been deprived of their freedom are in a situation of extreme vulnerability. It is therefore of particular importance to safeguard the human rights of those who are held in any form of detention or imprisonment. Ultimately, respect for those rights is also indispensable to their subsequent rehabilitation.

People who have been deprived of their freedom may be held in a variety of places, such as police stations, ordinary prisons or specific remand prisons. Police stations are usually used for short periods of detention and are not designed to detain large numbers of people for longer periods. If that nonetheless occurs, conditions of detention tend to deteriorate quickly, leading to overcrowding, poor hygiene and lack of water, food and adequate health care. Speedy decisions about release on bail or transfer to a remand prison can prevent such problems.

There are various kinds of detaining authorities across the world, although those in charge of a detention facility are usually a special prison service or the police. However, international standards regarding deprivation of liberty are applicable whatever the detaining authority.

The State is responsible for the well-being of all those in its custody. That includes responsibility for the whereabouts of those people and consequently for measures to prevent enforced disappearances (CPED, Article 17).

Pre-trial detention should remain an exceptional measure, based only on there being reasonable grounds to believe that the person detained had committed the offence (legality). It should only take place if there are no other measures available (such as release on bail) and should not last longer than is strictly necessary (e.g. until the investigation is concluded and no further destruction of evidence can be expected). Pre-trial detention must be proportionate to the type of offence and the decision to have recourse to it must be subject to control by a judicial authority (accountability).

International Covenant on Civil and Political Rights, Article 10(1)

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

Humane treatment of detainees includes the prohibition of corporal punishment and adequate conditions of detention that do not amount to torture, cruel, inhuman or degrading treatment. In general, the basic conditions of detention must ensure that a person’s health is not affected merely by being deprived of liberty.

The detention regime should distinguish between different types of detainees: **unconvicted detainees and those awaiting trial are to be segregated from convicted detainees and subject to a different regime** (ICCPR, Article 10(2)(a)). On the basis of the presumption of innocence, unconvicted detainees should be subject to no more restrictions than are necessary to ensure the purpose of the detention and to safeguard the security and good order of the place of detention. For convicted prisoners the detention regime should be in accordance with the basic concept underlying deprivation of liberty, i.e. to protect society against crime. This can only be achieved if the period of imprisonment is used to ensure that the convicted person adopts law-abiding behaviour in the future (SMR No. 58). That is dependent, at least in part, on the prisoner being given fair, humane treatment during the period in detention.

Administrative detention is non-criminal detention based on the persuasion that a person presents a threat to State security or public order. It may take place only in accordance

with the law (legality), must be based on an assessment of the individual situation and must comply fully with fundamental judicial guarantees (Body of Principles Nos 14, 17, 18, 32). Only officially recognized places of detention should be used.

Disciplinary and punitive measures must follow clear, pre-established rules and regulations; the measures and their application in the specific situation must be subject to control and may not be inhumane or degrading.

The use of force in detention facilities should be limited to situations of self-defence, escape and resistance to lawful orders (Body of Principles No. 30; SMR Nos 27-33 and 54(1)) and is then subject to the general principles governing the use of force (BPUFF No. 15).

Women deprived of liberty may not be subjected to discriminatory treatment; they must be kept separate from male detainees (SMR No. 8) and supervised by female officials; protection against sexual violence must be ensured.

Juveniles should be detained as a last resort and with specific care for the needs and vulnerabilities of young persons. Article 40 of the CRC and the Beijing Rules emphasize the need to respect the basic rights of any person deprived of freedom, to involve parents and guardians in the process, to detain juveniles separately from adults, and to promote the juvenile's overall well-being.

Anyone who has been subjected to unlawful arrest or detention has an enforceable **right to compensation** (ICCPR, Article 9(5)).

The ICRC visits people deprived of their freedom in situations of armed conflict and – based on its right of humanitarian initiative – in other situation of violence. The purposes are purely humanitarian and aim to ensure that detainees are treated with dignity and humanity and in

Standard Minimum Rules for the Treatment of Prisoners, No. 8(a)

“Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate.”

accordance with international norms and standards. The visits are conducted on the basis of a set of preconditions and in accordance with the ICRC's specific working procedures. Findings are then shared in a constructive and confidential bilateral dialogue with the authorities concerned, with a view to improving treatment and conditions of detention.

Search and seizure

Search and seizure are two important powers available to law enforcement officials, which are to be understood quite broadly as follows:

- **Search** is defined as the act of deliberately looking for a person, an object or information for a legitimate law enforcement purpose.
- **Seizure** is defined as the act of taking possession of an object for a legitimate law enforcement purpose.

Both these powers cover a very wide range of activities, particularly in criminal investigation. Compared to other powers of law enforcement officials – such as the use of force and firearms or arrest and detention – search and seizure might be perceived as negligible in terms of their relevance to human rights and as a routine activity by law enforcement officials. However, their impact on the personal situation of the individual affected by a search or a seizure should never be underestimated and it is therefore crucial for search or seizure activities to comply with the governing principles of legality, necessity, proportionality and accountability.

Each individual has the right to a protected sphere without external interference or fear of negative consequences. Interference by the State and its agents in this sphere must therefore be **regulated by law** and law enforcement officials may only carry out a search on grounds and in accordance with procedures established by law.

A search may need to be conducted, for instance, to secure a suspect, to secure evidence, to ensure safety and security

International Covenant on Civil and Political Rights, Article 17

*"1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family or correspondence, nor to unlawful attacks on his honour or reputation.
2. Everyone has the right to the protection of the law against such interference or attacks."*

(in particular in the context of arrest and detention), to end an unlawful situation (e.g. with regard to illegal possession of prohibited goods) or to carry out court orders in civil or other proceedings.

Searches should not be more intrusive than absolutely necessary to achieve their purpose and should not be disproportionate in scope. In some cases the law encompasses the balancing of interests and rights, authorizing certain types or forms of searches such as telephone tapping for more serious crimes only.

Any search must be conducted in accordance with the procedures established by law, in particular in full compliance with the relevant elements of accountability. This may mean, for instance, that a warrant established by the competent authority is required, that the person affected must be informed of the reasons for the search, that witnesses must be present or that a recording must be kept of items searched. A search must be motivated by objective, verifiable facts and not merely based on the personal “gut feeling” of a law enforcement official. Law enforcement officials have to be accountable for unnecessary searches or damage and they must ensure that all information obtained in the course of a search remains confidential.

Body searches encompass a wide range of activities such as simple “pat-down searches,” strip searches, body cavity searches, and taking fingerprints and blood or DNA samples. They all affect a person’s dignity and privacy, albeit to varying degrees, and none of them should therefore be carried out lightly.

Body searches should be carried out professionally by a person of the same sex and in the least intrusive manner possible, thus limiting as far as possible the inherently humiliating character of the search.

Adequate supervision – depending on the type of search – by a superior officer or a judicial authority needs to be ensured.

Searches of premises are also often perceived as intrusive and embarrassing since they will provide deep insight into the way of living and/or working of the people concerned. In most countries, a search warrant must be established by a judicial authority and searches without a warrant are usually restricted to exceptional circumstances. Additional procedural requirements, such as ensuring the presence of witnesses and recording the facts of a search, have to be respected and law enforcement officials must avoid causing unnecessary disorder, damage or destruction when carrying out a search.

In an increasingly technical and globalized world, law enforcement agencies are tending to resort increasingly to a wide range of **surveillance methods** such as photography, camera surveillance and the interception of letters, telephone and internet communications. The technical means of invading a person's most private sphere without being noticed are becoming both increasingly powerful and easy to use. This implies a greater need for legal safeguards to ensure that surveillance methods are decided only on a case-by-case base, in full respect of the principles of necessity and proportionality. Domestic legislation as well as the operational procedures of a law enforcement agency should be formulated in such a way as to prevent random surveillance and violations of the presumption of innocence.

In carrying out searches, **law enforcement agencies are required to respect the sphere of privileged communication**. The most prominent example of this is the communication between a lawyer and his or her client. The right to effective defence is intended to ensure that an accused person is able to communicate freely and openly with his or her lawyer without fear that the content of the communication might be used against him or her. This communication must therefore take place in a protected, confidential environment that is not exposed

to surveillance or control by law enforcement agencies. In many domestic laws, similar protection is granted to members of other professions, e.g. medical and religious personnel and journalists.

The fact that a person is deprived of his or her freedom does not confer a greater right to carry out a search.

While authorities are justifiably concerned about safety and security in places of detention, the conduct of searches is still subject to the same rules and principles as in the outside world, i.e. the principles of legality, necessity, proportionality and accountability.

The **seizure of an object** can affect a range of human rights, e.g. the right to own property, to privacy and to exercise a profession. Consequently, law enforcement officials may seize an object only on grounds and in accordance with procedures established by law (principle of legality). Where the objective of the seizure has been achieved, e.g. an item has been examined for fingerprints without any relevant evidence being found, the item must be returned (principle of necessity). The seizure should not be disproportionate to the aim, e.g. random seizure of a massive quantity of documents indispensable for a company's work (principle of proportionality). The observance of established procedures (e.g. obtaining judicial warrants, making records of seized objects) and due care for the seized object must be ensured (principle of accountability).



COMMAND, CONTROL AND ACCOUNTABILITY

Command and management

The structure of law enforcement agencies varies considerably from one country to another; some authorities may opt for a more hierarchical and centralized structure, while others may establish a more decentralized structure with a higher degree of decision-making power at intermediate and lower levels of the hierarchy. Regardless of the choice of structure, two features are common to all law enforcement agencies: a degree of hierarchy with a top-down command structure and the possibility for individual law enforcement officials to exercise their discretion in their day-to-day work. This requires the commanding leadership of a law enforcement agency to create the right blend of centralized, hierarchical structure for the establishment of policies and operational standards, while allowing for a sufficient number of decentralized responsibilities and competences. With regard to the latter, however, the leadership bears responsibility for ensuring that each single law enforcement action at the local level is carried out in full compliance with the rule of law and human rights.

Law enforcement agencies rely heavily on the support and acceptance of the people.

The willingness of the people to cooperate with the law enforcement agency will depend very much on whether that agency is perceived to be legitimate, professional, law-abiding and able to respond to local needs. It is for that reason that growing numbers of police agencies are becoming more decentralized, describing their work under labels such as “community policing,” “self-management” or “result responsibility.” The representativity of a law enforcement agency – in terms of gender, religion, ethnicity, geographical origin, etc. – has proved to be another factor enhancing its acceptance by the people, as it reduces the likelihood of law enforcement action being perceived as biased or discriminatory.

In order to ensure the legitimacy of the law enforcement agency, it is the responsibility of the commanding leadership to constantly affirm the rule of law:

- **The leadership must constantly recall that only law-abiding policing is good policing** and prevent a “the end justifies the means” culture or attitude within the institution.
- This needs to be reinforced through complementary measures enhancing the **transparency and accountability** of all law enforcement actions and through the **definition of ethical standards of professionalism, integrity and respect for applicable domestic and international law.**
- **Corruption** is one of the greatest threats to the legitimacy and effectiveness of a law enforcement agency and it is the responsibility of each and every law enforcement official to play an active part in combating corruption.

Orders and procedures play an important role in ensuring compliance with the law and respect for human rights. In order to be effective and to ensure accountability at all relevant levels, a clear chain of command needs to be established, together with clearly defined responsibilities and decision-making competences as well as the scope for exercising discretion.

The leadership should affirm the governing principles of legality, necessity, proportionality and accountability and adopt means and measures to ensure that those principles are upheld.

Supervision and control are required to ensure that orders and procedures are followed and that action is taken where that is not the case.

Law enforcement is carried out by human beings and its quality therefore depends highly on the competence and skills of those human beings.

Recruitment criteria must go beyond mere physical criteria and include the required level of education, a clear police record, personal integrity and a law-abiding attitude.

Despite the initially higher costs involved in such an approach, it should be borne in mind that in the long term this is more cost-effective than the mass recruitment of poorly qualified personnel. The same applies to efforts to attract the right people to the law enforcement service, which includes establishing appropriate levels of pay and working conditions. At the same time, if it proves difficult to recruit a sufficient number of appropriate candidates, the length and content of education and training courses will need to be adapted to the profile of the potential recruits.

Education and training must also be continually adapted to the dynamics of the law enforcement environment with its constantly evolving challenges and take place throughout the law enforcement officials' careers rather than on entry only.

In **managing human resources**, the commanding leadership of a law enforcement agency has to bear in mind that full respect for the rights and dignity of the law enforcement officials themselves is an indispensable precondition if those officials are to uphold the human rights of those whom they are supposed to serve and protect. This includes adequate pay, respectful treatment, humane working conditions and social security cover. Furthermore, promotions should not be based on seniority but on merit, thus providing an incentive for good policing and compliance with the law.

Supervision and control are key responsibilities of the senior command leadership, which is required to ensure the fulfilment of the country's obligations under international law, in particular to ensure that law enforcement officials abstain from practices which contravene human rights law. Authorities must keep law enforcement procedures – including their compliance with IHRL – under constant review and enforce compliance with those procedures.

All levels across the chain of command need to be legally accountable for compliance with the law. "Grey policing," i.e. bending the law, cannot be tolerated. Supervision and

control leads to the detection of such practices and enables corrective measures to be taken. Turning a blind eye to such practices will entail the personal accountability not only of the acting law enforcement official but also of his or her supervisor. Clear orders and standard operational procedures must therefore provide a firm basis for law enforcement action (without becoming a “straitjacket”). At the same time, adequate reporting procedures must allow for the evaluation of each action in terms of its compliance with the law and procedures. Furthermore, a culture of transparency and trust needs to be established so that law enforcement officials feel comfortable about reporting any violations of the law or procedures.

Law enforcement officials also have to be held internally accountable for complying with internal rules, regulations and procedures as well as for showing respect for the chain of command.

Disrespect must be followed by appropriate disciplinary proceedings.

However, in order to have the desired effect, i.e. future compliance with orders and procedures, **the disciplinary system must be fair, transparent, timely and just.** Other measures, such as additional training, better working conditions or counselling, might sometimes be a more appropriate means of addressing the issue.

A law enforcement agency should also be held accountable to the government, the legislator and the public with regard to its overall performance, i.e. how far it meets the needs of the community that it is serving. Performance appraisal needs to go much further than merely looking at crime rates and arrest figures. It should seek to determine the level of trust existing between the law enforcement agency and the community and the extent to which the law enforcement agency is responsive to the needs of the community.

The **possibility for individuals to lodge complaints about law enforcement action directly with the law enforcement agency** provides the commanding and supervising leadership with opportunities to achieve the following:

- **Evaluate the performance** of their subordinates and of the agency as a whole;
- **Assess the quality** of the relationship between the agency and the public and pinpoint areas where improvement is needed;
- **Win the confidence and trust of the public** – which depends on complaints being dealt with in an impartial, professional and transparent manner.

Nonetheless, such mechanisms should only be complementary to external oversight mechanisms and not replace them.

Investigating human rights violations

Human rights violations undermine the government's credibility and authority and thus present a threat to peace, security and stability in a country.

Law enforcement officials have an important role in the protection of human rights.

Although they are required to uphold human rights law, some law enforcement officials are also potential violators. It must be understood that where those who are supposed to uphold the law and human rights commit human rights violations, the very relationship between the organization and the community is at stake.

It is therefore **important to hold law enforcement officials accountable for their acts**. Even a superior order cannot serve as an excuse where that order is manifestly unlawful, particularly when it comes to serious breaches of international law, such as the acts of genocide or torture. Responsibility and accountability are extended to superior officers who order human rights violations or fail to prevent them.

Depending on the nature of the human rights violation, competences, procedures and possible remedies for addressing it will differ; an effective system of checks and balances involves a combination of a range of mechanisms. Authorities should not see this as a threat.

Acceptance of full scrutiny of the law enforcement work will enhance the credibility and acceptance of authorities.

In addition, scrutiny should help to detect where improvement is needed and how to achieve it and have a preventive effect within the whole institution. Thus, it is in the interest of law enforcement agencies to play an active part in any investigation of human rights violations.

Where a human rights violation also constitutes a criminal offence, the law enforcement agency will be operating within its usual area of responsibility to investigate crime. It goes without saying that this needs to be carried out promptly, thoroughly and impartially. However, it remains psychologically difficult to investigate a colleague's behaviour and very close supervision is needed to ensure that the investigation is not biased. For that same reason, some police agencies have established specialized departments responsible for carrying out such investigations. In any case, success in this area depends on the existence of an institutional culture where unlawful behaviour is clearly unacceptable and where "whistle-blowing" is not perceived as "treason." It is within the remit of the commanding leadership to establish a code of conduct. Nevertheless, appropriate safeguards must also be created through close supervision of such investigations. External oversight remains in any case indispensable.

Finally, **where a human rights violation committed by a law enforcement official does not amount to a criminal offence** (e.g. failure to respect certain procedural safeguards), the law enforcement agency still needs to investigate the matter thoroughly and to ensure respect for the rights of victims regarding remedy and compensation.

Judicial control over law enforcement action should cover all relevant areas: criminal prosecution and civil and public administrative proceedings for compensation or redress.

Victims must have access to judicial control. If that control is to be effective in upholding the rights of victims of human rights violations, independence, impartiality and objectivity of the judiciary are indispensable criteria.

External oversight also includes national human rights institutions in charge of promoting and defending human rights. The structure and nature of such institutions may vary considerably from one State to another but they are all usually public bodies. Although they receive public funding, their independence and impartiality must be ensured. It is important for the public to be able to turn to such institutions in full trust and confidence as to their independence and willingness to protect human rights.

The two most common human rights institutions in the world are the national ombudsperson and the national human rights commission.

- The **national ombudsperson** is usually tasked to receive complaints by individuals – but is sometimes also entitled to act on his or her own initiative. After completion of the investigation, he or she is empowered to issue recommendations as to the response that authorities should give to the complainant or the affected person.
- **National human rights commissions** are mandated to ensure that laws and regulations concerning the protection of human rights are effectively applied. Sometimes they are tasked to address specific human rights questions (e.g. discrimination). With regard to individual complaints, they usually function in a very similar manner to ombudspersons.

International mechanisms provide for additional oversight over law enforcement action. For instance, the International Criminal Court (ICC) is mandated to establish individual

criminal accountability for the crime of genocide, crimes against humanity, war crimes and the crime of aggression. Crimes against humanity are the most relevant to law enforcement work; they are more precisely defined in Article 7 of the Rome Statute of the ICC and include, for instance, acts of torture.

There are two types of proceedings under which States can be held accountable with regard to their obligations under IHRL:

- **Inter-State complaints:** States can submit complaints about the failure of another State to honour its commitment under a specific human rights treaty to the committee in charge of monitoring implementation of and compliance with the treaty.
- **Individual complaints:** Where a treaty provides for the possibility of individual complaints – i.e. where individuals may complain about violations of their rights under the treaty – these are also dealt with by the relevant committee. Each human rights treaty defines the availability of and access to those mechanisms, as well as related competences and procedures within the scope of human rights issues covered by the treaty.



SITUATIONS OF ARMED CONFLICT

International humanitarian law and its relevance for law enforcement officials

Law enforcement takes place at all times – in peacetime, during armed conflict and in other situations of violence.

In situations of armed conflict additional challenges may arise, i.e. law enforcement officials may be targeted, they may participate directly in hostilities, they may have to deal with people involved in or affected by the armed conflict, or they may have to investigate possible violations of IHL and/or IHRL.

International humanitarian law is a body of law that seeks to limit the effects of armed conflict for purely humanitarian purposes.

The first treaties were signed in the 1860s, following the initiative of a Swiss businessman, Henri Dunant, who was profoundly shocked by the suffering endured by the wounded soldiers on the battlefield of Solferino. Two types of law began to emerge, the first governing the means and methods of warfare and the second seeking to protect victims of war. Both types of law were further developed after the Second World War; the four Geneva Conventions of 1949 and their Additional Protocols of 1977 are the most prominent result of that process.

IHL is applicable in, and has been specifically conceived for, situations of armed conflict, i.e. both international armed conflict or a non-international armed conflict. IHL rules are found mainly in the four 1949 Geneva Conventions and their Additional Protocols of 1977, as well as in customary international law.

The **basic rules and principles of IHL related to the conduct of hostilities and the protection of people in the power of the enemy** are as follows:

- The **principle of distinction** obliges parties to the conflict to distinguish between military objectives, including combatants, and civilians/civilian objects and to direct attacks only against military objectives;
- The **principle of proportionality** prohibits attacks that would result in incidental civilian losses and damage to

- civilian property which would be excessive in relation to the concrete and direct military advantage anticipated;
- The **principle of precaution** requires that constant care and all feasible measures be taken to spare the civilian population and civilian objects;
 - **Respect must be shown for the life, dignity and fundamental rights of people in the power of the enemy** (e.g. captured or wounded combatants, civilians held by a party to the conflict).

In addition, **a number of specific treaties prohibit or restrict means of warfare that are indiscriminate or cause superfluous injury or unnecessary suffering**, e.g. biological weapons, chemical weapons, blinding laser weapons, anti-personnel landmines and cluster munitions.

Deprivation of freedom is another area covered by IHL.

Specific IHL rules apply to the treatment of prisoners of war and civilian internees in the context of an international armed conflict and persons deprived of their liberty for reasons related to a non-international armed conflict. These rules provide notably for humane treatment, basic conditions of detention and respect for the fundamental judicial guarantees of people accused of having committed criminal offences.

IHL also provides for the protection of specific groups of people such as refugees, internally displaced people, women and children.

- **Refugees and internally displaced people** are civilians and thus protected against attack, unless and for such time as they are participating directly in the hostilities. Refugees and stateless persons, in particular, shall not be considered as enemies solely because they are “aliens.”
- **Women** are often in greater danger than men during situations of both non-international and international armed conflicts.

Rape, forced prostitution or any form of indecent assault are prohibited.

Rape is sometimes used as a method of warfare and not only affects women and girls, but often also men and boys. Today, such acts are qualified as war crimes and may also amount to other international crimes, e.g. crimes against humanity, when the conditions for such crimes are fulfilled.

- **Children** affected by armed conflict are entitled to special respect and protection under IHL. For instance, children are explicitly protected against all forms of sexual violence; they must be separated from adults while deprived of liberty (unless they are members of the same family); they must have access to education, food and health care; they must be evacuated from areas of combat; unaccompanied children must be reunified with their families. Moreover, IHL prohibits the recruitment of children into armed forces or armed groups and their participation in hostilities.

The conscription, enlistment or use of children under the age of 15 years in direct participation in hostilities is a war crime.

Under normal circumstances, law enforcement officials are considered civilians in situations of armed conflict.

Under IHL, they are thus protected against attacks. However, if they are formally integrated into the armed forces or are otherwise *de facto* taking a direct part in hostilities, they become legitimate targets under IHL. When law enforcement officials participate directly in the hostilities, they need to act in compliance with IHL. This is, for instance, relevant with regard to the use of equipment. Certain equipment, such as expanding bullets or tear gas, is permissible in law enforcement but prohibited in the conduct of hostilities during armed conflict.

Major challenges are presented by situations in which law enforcement officials are required to fulfil two missions simultaneously, i.e. law enforcement missions to

restore or maintain law and order, on the one hand, and combat operations against the enemy, on the other hand. This is so because the relevant rules and principles differ

significantly. While the law enforcement paradigm derives mainly from human rights law, combat operations are covered by the conduct of hostilities paradigm derived from IHL. Authorities must be careful not to blur the lines and leave their officers in uncertainty over their precise mission and the applicable paradigm. Precautions also need to be taken when law enforcement officials return to normal law enforcement duties after having taken a direct part in the hostilities. The difficulty of reverting to the law enforcement mindset should not be underestimated.

CONCLUSION

Law enforcement officials play a fundamental role in society in serving and protecting the people and in upholding the law. That role remains valid at all times – including in times of armed conflict and other situations of violence. This places a high level of responsibility on law enforcement officials, who are required to fulfil their duties in absolute respect of the applicable national and international law, however difficult and even dangerous the circumstances might be. This is far from an easy undertaking; the legal, ethical and professional requirements that have to be met are very demanding. However, compliance with international rules and standards establishes the indispensable framework enabling law enforcement officials to contribute effectively to peace, security and stability in society.

MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.



ICRC



0809/002.06.2015.3000