

# HUMAN RIGHTS IN THE CRIMINAL JUSTICE SYSTEM IN NEPAL

## LAW ENFORCEMENT TRAINER'S MANUAL (Police and Prosecutors) 2009



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# Effective Training Methods

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As a trainer of your professional peers in law enforcement, you need to think about how to maximise the effectiveness of the learning experience in the workshops which you facilitate. The following are some general principles of effective adult education.

## **A. *Know and Understand the Manual***

1. Understand and continually remind yourself of the objectives of the training.
2. Make sure you read through and become familiar with the content of the Manual. Be sure to understand how each part of the Manual relates to the others and their relative importance.

## **B. *Know your Audience***

3. Understand the skills and limitations of participants as they relate to the demands and objectives of the training. It is essential that you get a full list of participants and the positions they hold, so that you can focus the training appropriately.
4. Be sure always to relate the training materials to the experiences and daily functions and activities of the participants

## **C. *Plan and Practice the Timing of the Training***

5. Allocate and abide by time blocks for each part, to make sure you can get through the course.
6. Identify the steps in each part and allocate a time block for each.
7. With each step, identify the elements that you wish to highlight and those that you will summarize or skip over.

## **D. *Encourage a Participatory Method***

8. Remember always that the training is experience-based and designed to encourage discussion by way of contributions from participants, allowing them to reflect on their own experiences.
9. Respectful discussion is to be encouraged from all participants, but do not allow individuals to ramble or to dominate discussion, or to divert onto irrelevant topics.
10. Do not get stuck on one issue. Move on, even when a matter has not been fully resolved. There are often opportunities later to return to the issue or to address it in a different way.

Note: For further information on effective human rights training, see UN High Commissioner for Human Rights, *Human Rights Training: A Manual on Human Rights Training Methodology*, Professional Training Series No 6, 2000.

# Suggested Lesson Plan

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By the end of each chapter, participants should be able to answer the following questions:

## **PART I: INTRODUCTION**

1. What are human rights?
2. What is the role of law enforcement in protecting rights?
3. Why is it important for law enforcement to protect rights?

## **PART II: ARREST**

1. When can I arrest a person?
2. How may I arrest a person?
3. What rights must I ensure a suspect receives?

## **PART III: DETENTION**

1. When can I detain a person?
2. How may I detain a person?
3. What rights must I ensure a detainee receives?

## **PART IV: INVESTIGATION**

1. When can I investigate?
2. How may I investigate?
3. What rights must I respect during investigation?

## **PART V: POLICING PUBLIC ORDER**

1. When should I permit or not permit a demonstration?
2. How should I police a protest while respecting rights?
3. When may I use force during a demonstration?

## **PART VI: FAIR TRIAL AND PROSECUTION**

1. How do I decide when to prosecute or not to prosecute?
2. How can I ensure a fair trial for those I am prosecuting?
3. What sort of evidence should not be relied upon in court?

# Timetable: One Day Workshop

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The Workshop can be conducted either as a one day or two day program.

Note also that the Workshop can be customised to your particular audience. For example, if your workshop participants are mainly prosecutors, more time should be allocated to working through *Part VI: Fair Trial & Prosecution*.

## SAMPLE TIMETABLE FOR A ONE DAY WORKSHOP

9:00-9:30am	PART I: INTRODUCTION
9:30-10:30am	PART II: ARREST (first half)
10.30-11:00am	Tea Break
11:00-11:45pm	PART II: ARREST (second half)
11.45-1:00pm	PART III: DETENTION
1:00-2:00pm	Lunch
2:00-2:45pm	PART IV: INVESTIGATION
2:45-3:15pm	Tea Break
3:15-3:45pm	PART V: POLICING PUBLIC ORDER
3:45-5:00pm	PART VI: FAIR TRIAL & PROSECUTION
5:00-5.10pm	Administer Evaluation Form
5.15pm	Close of Workshop



# Timetable: Two Day Workshop

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## SAMPLE PROGRAM FOR A TWO DAY WORKSHOP

### Day One

9:00-10:30am	PART I: INTRODUCTION
10.30-11:00am	Tea Break
11:00-12.30pm	PART II: ARREST (first half)
12:30-1:30pm	Lunch
1:30-3:00pm	PART II: ARREST (second half)
3:00-3:30pm	Tea Break
3:30-5:00pm	PART III: DETENTION

### Day Two

9:00-10:30am	PART III: DETENTION (second half)
10.30-11:00am	Tea Break
11:00-12.30pm	PART IV: INVESTIGATION
12:30-1:30pm	Lunch
1:30-3:00pm	PART V: POLICING PUBLIC ORDER
3:00-3:30pm	Tea Break
3:30-5:00pm	PART VI: FAIR TRIAL & PROSECUTION

# Evaluation Form for Participants

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*To gauge the effectiveness of this training workshop, participants should be asked to fill in the following Evaluation Form at the end of the workshop. Please tell participants that the form is anonymous (they should not write their name on it, unless they want to). Also make sure that you allow enough time (about 10 minutes) for participants to complete the form.*

---

## ***Human Rights in the Criminal Justice System in Nepal***

### **Evaluation Form**

#### **WORKSHOP CONTENT**

**Q1: How relevant was the workshop to your work?**

☐ Very relevant      ☐ Quite relevant      ☐ Somewhat relevant      ☐ Not relevant

**Q2: Did you find the workshop material to be informative and useful?**

☐ Very informative      ☐ Quite informative      ☐ Somewhat informative      ☐ Not informative

**Q3: Did you think that the balance between theory and practice in the workshop was appropriate?**

☐ Balance was right      ☐ Too much theory      ☐ Too much practice

**Q4: How much will the material covered in the workshop impact on your day to day work?**

☐ Significantly      ☐ Occasionally      ☐ Marginally      ☐ Not at all

#### **TRAINING METHOD**

**Q5: Was the workshop too long or too short, or was the length about right?**

☐ Too long      ☐ Too short      ☐ About right

**Q6: Did the workshop manual provide too much detail or not enough, or was it about right?**

☐ Too detailed      ☐ Not enough detail      ☐ About right

**Q7: Did you find the level of participation to be too much or too little, or was it about right?**

- ☐ Too much
- ☐ Too little
- ☐ About right

**Q8: How effective did you find the presenter(s)/ trainer(s)?**

- ☐ Very effective
- ☐ Quite effective
- ☐ Somewhat effective
- ☐ Not effective

**Q9: How might the workshop change the way in which you work?**

**Q10: Would you have liked the workshop to cover any other issues?**

**Q 11: Any other comments?**

# PART I: INTRODUCTION

---

## 1. What are human rights?

Human rights are moral and legal entitlements enjoyed by all people around the world. They are based on the idea, expressed in the *Universal Declaration of Human Rights* (1948), that: “All human beings are born free and equal in dignity and rights”.

Protecting human rights aims to ensure that everyone can live with dignity, with freedom from fear and want, and under conditions which enable them to develop their full potential. Human rights also support the values of freedom, peace and justice, particularly in countries recovering from armed conflict, as in Nepal.

There are two main categories of human rights, both of which are equally important:

1. **Civil and political rights:** these rights often require governments not to minimally interfere with the freedom of individuals in various ways; for example, to permit people to express their opinions or follow their chosen religion.
2. **Economic, social and cultural rights:** these rights often require governments to take action to provide individuals with certain goods or services, such as adequate food, water, health care and education.

A full list of all of these rights appears on the next page. Human rights are universal because they reflect minimum values shared by all societies, cultures and religions.

## 2. Who enjoys human rights?

All people are entitled to enjoy human rights and to have their rights protected. No person is without rights, including criminals, who are fellow humans entitled to be treated with dignity. **Freedom from discrimination** is one of the most basic human rights principles and is set out in article 2 of the *Universal Declaration of Human Rights* (1948) as follows:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The principle of non-discrimination essentially means that people should not be adversely treated because they come from a different caste, religion or other group. A number of other important rights are related to the principle of non-discrimination, such as the **right of all people to be recognised by the law** as enjoying legal rights, the **right of all people to be treated equally by the law**, and the **right of all people to access legal remedies and justice**.

## Trainer Notes

- Historically, the human rights movement developed out of resistance to oppressive governments, for example, during the American and French revolutions, in order to limit the power of governments to interfere in individual liberty.
- After World War Two, many countries saw that human rights were necessary to prevent the massive violence which occurred in that war from returning
- Emerging new rights include the right to development and the right to a clean and healthy environment
- “other status” may include sexuality – to prevent discrimination against homosexuals or transgender people

### 3. What are the main human rights?

The main internationally protected human rights are set out in two binding treaties:

- International Covenant on Civil and Political Rights 1966 (ICCPR)
- International Covenant on Economic Social and Cultural Rights 1966 (ICESCR)

Certain rights are common to both treaties, including:

- Right to equality and freedom from discrimination;
- Protection of the family and children;
- Right of peoples to self-determination, including to freely determine their political status and freely pursue their economic, social and cultural development.

Other rights are protected separately in the two treaties as follows:

#### Civil and Political Rights

- Right to life (Art 6)
- Freedom from torture or cruel, inhuman or degrading treatment or punishment (Art 7)
- Freedom from slavery and servitude (Art 8)
- Liberty and security of person, including freedom from arbitrary detention (Art 9) and humane conditions of detention (Art 10)
- Freedom of movement and freedom to leave any country (Art 12)
- Right to equality and recognition before the law (Articles 14 and 16)
- Right to a fair hearing in court, the presumption of innocence, and non-retrospective punishment (Articles 14-15)
- Right to privacy (Art 17)
- Freedom of thought, conscience and religion (Art 18)
- Freedom of opinion and expression (Art 19)
- Freedom of peaceful assembly (Art 21)
- Freedom of association (Art 22)
- Right to participate in public affairs, vote and have access to public service (Art 25)
- Cultural rights of ethnic, religious or linguistic minorities (Art 27)

#### Economic, Social and Cultural Rights

- **Work or labour rights** (Articles 6-9), including just and fair employment conditions, protection against forced labour, the right to form and join trade unions, and the right to social security for the unemployed
- **Right to an adequate standard of living** (Art 11), including rights to adequate **food**, safe **water**, **clothing** and secure, safe, affordable **housing**
- **Right to health** (Art 12), including to enjoy the highest attainable standard of physical and mental health through accessible, affordable health services
- **Right to education** (Art 13), including free and compulsory primary education and the availability of accessible, affordable education at higher levels
- **Right to take part in cultural life** (Art 15)

## Trainer Notes

- These two treaties make binding in law the rights which are listed as aspirations in the non-binding UN General Assembly's Universal Declaration of Human Rights (1948)
- States must immediately protect civil and political rights, including through the courts
- Economic, social and cultural rights must be "progressively realised" in accordance with the resources available to the particular State
- In some countries, however, the courts do still have a role in enforcing economic, social and cultural rights (eg, India, South Africa, Brazil)
- The right of self-determination includes the right of a population to choose to be an independent country

### Individual Exercise

From the above lists of human rights:

- (1) Think of an example in your work of where one of these rights **has** been protected;
- (2) Think of an example in your work of where one of these rights **has not** been protected;
- (3) Identify which rights you think are most relevant to your work.

## 4. Nepal's human rights obligations

Nepal has consented to be bound by international human rights law by voluntarily becoming a party to the key human rights treaties. Both the ICCPR and ICESCR have been binding on Nepal since 1991. Nepal is also bound by a number of additional specialised treaties:

- **Convention against Torture** (1984), binding on Nepal since 1991
- **Convention on the Elimination of Racial Discrimination** (1965), binding on Nepal since 1971
- **Convention on the Rights of the Child** (1989), binding on Nepal since 1990; along with an Optional Protocol on the Sale of Children (2000) (binding on Nepal since 2006) and on Child Soldiers (2000) (binding on Nepal since 2007)
- **Convention on the Elimination of All Forms of Discrimination against Women** (1979), binding on Nepal since 1991
- **Second Optional Protocol to the ICCPR, Aiming at the Abolition of the Death Penalty** (1991), binding on Nepal since 1998
- International Labour Organisation **Convention 169 on the Rights of Indigenous and Tribal Peoples**, binding on Nepal since 2007
- **Four Geneva Conventions** (1949) on armed conflict, binding on Nepal since 1964
- **Genocide Convention** (1948), binding on Nepal since 1969

While women, children and indigenous peoples already enjoy the full range of human rights enjoyed by all people, these specialised treaties recognise that some groups of people may have particular vulnerabilities and special needs which must be addressed if they are to enjoy their human rights at a level equal to others in society. In 2007, Nepal also voted in favour of the United Nations General Assembly **Declaration on the Rights of Indigenous Peoples**, non-binding guidelines which encourage better protection of indigenous rights.

Nepal has signed the recent **Convention on the Rights of Persons with Disabilities** (2007) but has not yet ratified it, although it may do so in the future. Nepal is also not yet a party to the **Rome Statute** (1998), which would allow the **International Criminal Court** in The Netherlands to independently prosecute serious war crimes, genocide or crimes against humanity, including where committed by members of government and public officials.



## Trainer Notes

- Following the individual exercise, encourage discussion by participants
- Identify rights using the list provided on page 2
- The “best interests” of the child should be the guiding principle of government action and decision making concerning children
- The Geneva Conventions are human rights standards applicable during armed conflict and which include criminal liabilities for the commission of war crimes
- International criminal law enables the prosecution of those who commit serious human rights breaches
- All people have duties not to commit war crimes, crimes against humanity, torture or genocide
- Every national court has authority under international law to prosecute these international crimes

## 5. How are human rights implemented?

International human rights treaties are legally binding on countries which have adopted them. As a result, countries are required by international law to take steps (including by adopting necessary legislation, regulations and policies) to implement and protect human rights in national law. National laws (including national constitutions) should be compatible with international human rights standards.

The Nepali legal system protects human rights in a variety of formal ways:

- The Interim Constitution protects many fundamental human rights;
- Laws passed by the Nepalese Parliament protect some human rights;
- The common law (judge-made law) of Nepal protects some rights.

National institutions (such as the courts, police, and human rights bodies) provide mechanisms for protecting human rights when they are violated or at risk.

## 6. Constitutional rights in Nepal

Part 3 of the **Interim Constitution of Nepal 2063** (2007) protects 'Fundamental Rights' in Nepal, many of which implement the international human rights identified above. Some constitutional rights in Nepal are more advanced than in international law – for example, a **right to a clean environment** (Art 16) and a **right to information** (Art 27). For police and law enforcement officials, the most relevant constitutional rights include:

- Right to equality (Art 13)
- Right against untouchability and racial discrimination (Art 14)
- Right to property (Art 19)
- Rights of women (Art 20)
- Right to social justice (Art 21)
- Rights of children (Art 22)
- Rights regarding justice (Art 24)
- Right against preventive detention (Art 25)
- Right against torture (Art 26)
- Right to privacy (Art 28)

Most importantly, **the Constitution provides a right to an enforceable remedy against violations of constitutional rights** (articles 32 and 107). The **Supreme Court of Nepal** may **issue orders to enforce rights**, and law enforcement officials must implement such orders. The Court **may also order that compensation be paid** where rights have been violated.

## Trainer Notes

- International law requires domestic law to protect human rights and Nepal must take steps to adequately implement human rights in national law
- Formal legal protection (for example, through the constitution or statutes) is not enough, but must be followed by actual compliance with human rights in practice
- Note that a new constitution is being drafted by the Constituent Assembly and is likely to include similar rights
- Explain to participants that most of these rights are similar to international human rights and so there is no need to go through each of these individually in the workshop.
- Ask participants to explain what they understand the right to social justice to mean, then refer to the Appendix
- A right to a remedy is only meaningful if people have prompt, affordable and non-discriminatory access to justice, including information about their rights, legal advice and legal aid where necessary

## 7. Who protects human rights?

Under international law, all governments have duties to:

- **Respect** the human rights of people within their territory or control;
- **Prevent** human rights abuses by others, including non-state actors; and
- **Provide** effective remedies for human rights abuses.

Governments act through their public officials and Nepal has a duty to ensure that all officials, including police and prosecutors, uphold human rights. **Nepalese police and law enforcement officials play very important roles in protecting human rights:**

- By maintaining law and order, police protect people from violence and rights abuses committed by individuals and private groups (such as gangs, criminals or militants).
- By respecting human rights in their dealings with the public and criminal suspects, police ensure that, as public officials, they comply with human rights law.

## 8. International protection of rights

Outside Nepal, there are a number of important international mechanisms which supervise human rights in Nepal and monitor violations of rights. In particular, there are expert international committees which review whether countries comply with their human rights obligations, and which sometimes also receive complaints from individuals. Nepal has been a party to the **First Optional Protocol to the ICCPR** since 1991, which allows individuals in Nepal to complain to the **UN Human Rights Committee** in Geneva about rights violations, in circumstances where domestic remedies in Nepal have failed to provide remedies.

## 9. Rights in the criminal justice system

Because the work of law enforcement officers can be so diverse, officers may come across many different human rights issues during their careers. However, certain human rights are especially important, since they arise so frequently in daily work. In particular, **the rights which are most often relevant are those which relate to powers concerning:**

- Arrest (including both summary arrest and arrest with a warrant);
- Detention (including police custody and pre-trial detention);
- Investigation of crime (including powers of search, entry and seizure);
- Maintaining public order;
- Prosecuting offenders in criminal trials; and
- Dealing with vulnerable groups (such as women, children, *dalits*, refugees, migrants, the homeless and the disabled).

## Trainer Notes

- For example, law enforcement must prevent groups such as the Young Communist League from exercising their own forms of vigilante justice
- Police should see themselves as human rights defenders – an honourable task
- These bodies do not interfere with Nepal's sovereignty or force Nepalese people to run their country in a certain way. Rather, the purpose of these bodies is to provide independent scrutiny, expertise and constructive feedback on how Nepal can better protect its own people

## 10. Purpose of this training

**For police to better protect human rights, you must receive training to understand:**

1. What are human rights and when are those rights violated?
2. How are human rights violations prevented and remedied?
3. How can police best protect human rights in their work?

**This training will focus on key rights affected by law enforcement powers, including:**

- Liberty and security of person;
- Freedom from arbitrary arrest and detention;
- Freedom from torture or cruel, inhuman or degrading treatments;
- Rights to humane conditions of detention;
- Fair trial rights, including access to legal representation;
- Rights to privacy and non-interference;
- Rights of vulnerable groups such as women, children, *dalits*, homeless people, stateless people and refugees;
- Rights to effective remedies for rights violations.

## 11. Why human rights matter in law enforcement

**When law enforcement officials violate human rights, they:**

- Erode public confidence in the justice system;
- Aggravate civil unrest and provoke resistance;
- Isolate themselves from the community;
- Undermine the effectiveness of prosecutions in court;
- Punish the innocent and allow the guilty to go free;
- Leave victims of crime without justice;
- Provoke media, public and international criticism and embarrass their law enforcement agencies, their government, and their country.

## Trainer Notes

- To answer questions, use list on page 2 and encourage questions that elaborate on meaning of these rights
- Advise participants that their training will be participatory and that they should feel free to ask questions or make comments at any time, and that they should use the training as an opportunity to reflect upon their own work experiences and practices
- Emphasise that not respecting rights makes the job of law enforcement harder and less effective



**On the other hand, when law enforcement officials uphold human rights, they:**

- Produce more successful prosecutions and a fairer justice system;
- Enhance the effectiveness of law enforcement and the justice system;
- Build public confidence, trust and community cooperation;
- Receive the support of the media, public and international community.

*(See UN OHCHR, Human Rights and Law Enforcement (1997), p v)*

## **12. Why do police need to know about human rights?**

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

*United Nations Code of Conduct for Law Enforcement Officials, UN General Assembly Resolution 34/169 of 17 December 1979, article 2*

“All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.”

*United Nations Basic Principles for the Treatment of Prisoners, UN General Assembly Resolution 45/111 of 14 December 1990, article 1*

“Police officers’ duty is to serve and protect their communities.... Core police duties, carried out with the authority and resources of the state, touch on the most fundamental of rights, often of people at their most vulnerable. It is most important for those wielding public authority, such as police officers, to appreciate the responsibilities that come with authority which are premised on the foundations of laws and the state’s legal process. However, it should also be realised that the government is also the institution primarily responsible and most capable of ensuring, securing and protecting human rights.

Police duties are primarily directed at protecting the rights of the citizens; they also include measures that may sometimes limit the rights of individuals in the interests of the state. This cannot be effectively achieved without police officers knowing about those specific individual or collective rights, in particular, knowing in a practical and tangible way how their day-to-day conduct is enabled or limited by law and by human rights considerations.”

*(Commonwealth Manual on Human Rights Training for Police, p77)*



## Trainer Notes

- [illegible]

**In summary, police need to know about human rights because:**

1. Police have a legal and moral **duty to respect human rights** themselves, including by reporting any rights violations by fellow officers;
2. Police have a **duty to prevent human rights violations** by others, including by promptly and effectively investigating rights violations;
3. **Police are entitled to human rights too** – such as freedom from discrimination and mistreatment by superiors, and the right to safe and fair work conditions.

**Respecting rights does not impede effective policing.** If police violate rights, it makes policing more difficult. Abuses result in “alienating police from the community in which they live and must work, leading to cycles of distrust and making crime prevention and investigation work harder to do” (*Commonwealth Manual*).

**Good policing respects rights.**

### **13. Why do prosecutors need to know about rights?**

As public officials of Nepal, like police, prosecutors have legal obligations to respect human rights, which arise under international law, the Constitution of Nepal, statutes and the common law, and the rules and procedures of the courts. Prosecutors must act impartially and independently, without any corruption or undue influence from politicians or police.

In particular, **as officers of the court, prosecutors have professional legal responsibilities to ensure that a suspect receives a fair trial.** Prosecutors need to be aware of how all stages of the pre-trial criminal process affect suspects (including arrest, detention and investigation), since the actions of police officials determine whether a subsequent trial will be fair.

For example, prosecutors must ensure that in building a case against an accused, they do not rely upon forced confessions obtained during police interrogations which have used torture or other ill-treatment, or illegally obtained evidence procured by illegal searches of premises or illegal seizure of property. Prosecutors must also ensure that they disclose all relevant evidence to the defence, and treat vulnerable witnesses (such as victims of sexual assault or child witnesses) with care and sensitivity.

The manner in which prosecutors exercise their discretion whether to proceed with a prosecution – or not to proceed if the evidence is weak or illegal – can have important impacts on the rights of suspects. Prosecutors must, therefore, be aware of all of the factors that are relevant to deciding whether to prosecute – and not simply commence a prosecution because the police want them too, even where the case is weak or flawed.

## Trainer Notes

- Emphasise the two core duties on police officers to respect rights and prevent rights violations
- Explain that while prosecutors are advocates for one side of a case, they are also officers of the court with a wider duty to the court and to the justice system to ensure a fair trial
- Prosecutors should not therefore pursue their case so aggressively that it would result in an unfair trial. Prosecutors must exercise discretion and fairness

# PART II: ARREST

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## 1. Introduction

Making arrests is a very important and commonly exercised police power. An arrest has serious consequences for an arrested person, whose liberty is affected by coming under the complete control of police. Because of the impact of arrest on a person's liberty, the power to arrest must be exercised carefully and in accordance with law – which includes not only national law, but also international human rights law.

**As a police officer, you need to think about a number of important questions so that you comply with your human rights obligations as a public official of Nepal:**

1. In what circumstances do I possess the legal authority to make an arrest?
2. When can I use force to make an arrest, and how much force may I use?
3. What rights does an arrested person enjoy, and what is my role in protecting them?

## 2. Police powers to arrest

**KEY HUMAN RIGHT: *Freedom from Arbitrary or Unlawful Detention* – ICCPR, article 9(1)**

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

**KEY CONSTITUTIONAL RIGHT: *Right to freedom* – article 12(2)**

“Except as provided for by law no person shall be deprived of his/her personal liberty.”

As a police officer, you must only arrest a person if you have legal authority to do so. **Under international law, lawful reasons for arresting a person include to:**

- Prevent a person from committing an imminent crime;
- Enable a crime involving the suspect to be investigated;
- Detain a person for the purpose of prosecuting them before a court;
- In exceptional, emergency situations, for preventive detention purposes.

If you are unsure whether you have legal authority to arrest a person, seek advice and instructions from your senior/commanding officer or your colleagues.

## Trainer Notes

- “Arbitrary” means unreasonably or without adequate justification
- Discuss the legal bases of arrest in Nepal
- Explain that an officer must have a good evidence or a rational suspicion before arresting a person – and that it is not enough to have a hunch, feeling or instinct about a person
- Ask participants whether they feel that their senior officers are approachable

## Arbitrary, Unlawful Arrests

An arrest will be contrary to human rights law if it is made without lawful authority. Under the common law, such arrests will likely amount to the crime and tort of false imprisonment, as well as being an abuse of power by a public official.

An arrest will be arbitrary and unlawful if it is **made for a discriminatory purpose**, for example, in order to punish, mistreat or target a person based on their race, colour, sex, gender, sexuality, language, religion, social origin, or disability.

The Interim Constitution of Nepal expressly protects against such discrimination and makes it a crime, including for police officers and law enforcement officials.

### KEY CONSTITUTIONAL RIGHTS:

#### Right to equality – article 13

“(1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.

(2) There shall be no discrimination against any citizen in the application of general laws on grounds of religion, race, gender, caste, tribe, origin, language or ideological conviction....

(3) The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, gender, origin, language or ideological conviction or any of these....”

#### Right against untouchability and racial discrimination – article 14(1)

“No person shall, on the ground of caste, descent, community or occupation, be subject to racial discrimination and untouchability in any form. Such a discriminatory act shall be liable to punishment and the victim shall be entitled to compensation as provided by the law.”

### What if I am simply following orders?

If your commanding officer has ordered you to make an arrest which you reasonably believe to be unlawful or arbitrary, you should not obey the order.

### What if I see another police officer make an unlawful arrest?

If you become aware that an unlawful or arbitrary arrest has been made by another police officer, you should report the matter through the proper channels for making complaints.

### Discussion Questions:

1. What is the process for making complaints about unlawful conduct by other police?
2. Are there any problems with those complaints processes which deter complaints?
3. What are you trained to do if your commanding officer issues an illegal order?



## Trainer Notes

- Other arbitrary reasons might include harassment, revenge, punishment or mere administrative convenience
- An arrest would also be unlawful where a warrant is required in the circumstances but is not obtained
- See the Police Act 2012, section 17 on when an arrest without a warrant is lawful – for example, a detainee attempting to escape
- Ask participants about their experiences in dealing with these different groups
- Ask participants about the practicality of not obeying such orders
- Discuss the complaints process
- Encourage contributions from participants
- For Question 3, again identify rights by using the list on page 2

### 3. Use of force when making arrests

In limited circumstances, police are empowered to use force in carrying out their official duties and in enforcing compliance with the law. The use of force can have serious impacts on human rights, particularly the right to life (that is, the right not to be arbitrarily deprived of life) and the right to security of person (that is, freedom from violence and interference). The authority to use force is a heavy responsibility carried by police officers and must be exercised cautiously and in accordance with human rights standards.

#### Making Arrests

On many occasions, it is simply unnecessary for police to use force to make an arrest. If you use calm and polite language in your dealings with a suspect, and treat them humanely and with dignity, most people will cooperate with you and not resist arrest. In many countries, people generally have respect for the authority of police officers and are likely to comply with lawful and reasonable requests, including when being taken into custody.

**Discussion Question:** If a suspect is resisting arrest, threatening you or endangering someone else, what alternatives to using force would you consider?

If a person does not comply with your directions in making an arrest, in many cases you will still not need to resort to using force to make the arrest. If polite directions have not been followed, you might resort to a sterner tone of voice and the use of more imperative, authoritative language, which might persuade the person to cooperate.

If a person still does not cooperate, you should consider whether it is necessary to attempt to arrest the person at that time, or whether there might be an adequate opportunity to peacefully arrest the person at a later, and less volatile, time.

#### When to use force

If you do need to proceed with the arrest, you will need to consider whether you are lawfully entitled to use force in the circumstances:

- You may use force in self-defence if a person is an **imminent threat** to your safety or the safety of another person.
- You may use force to make an arrest only if it is **necessary** for some other reason, for example, because the person is resisting arrest or responding with violence.
- Only use force if **other means are, or would be, ineffective**.
- You must **not** use force to punish, humiliate, or discriminate against a person.
- Make use of self-defensive equipment for police (such as shields, helmets, bullet-proof vests and bullet-proof vehicles), to decrease your need to use weapons.



## Trainer Notes

- Ask participants about their different experiences in making arrests
- Consider alternatives such as negotiation or persuasion. Then refer to the Practical Tips on page 12
- For example, you might know where the person lives or works so that you could approach them later when they have cooled down, especially for minor offences
- Discuss the legal bases / tests (statute or common law) for using force in Nepal
- Ask participants about the availability and use of such equipment in their work

### How much force to use

- Use only such degree of force as is necessary and proportionate to the threat faced – that is, use minimal force and cause minimal harm to achieve your lawful purpose.
- Consider first whether non-lethal tactics or weapons would achieve your purpose.
- Do **not** obey an order from a superior officer which would require you to use excessive or unlawful force in the circumstances.

#### **Practical Tip: Options for Using Minimal Force**

In making an arrest, you should think about the range of options available to accomplish the arrest, on a sliding scale of methods, from least invasive to most dangerous:

1. Verbal directions to cooperate;
2. Softly touching the person (eg, on the shoulder) to encourage them to comply;
3. Harder touching of the person, by using techniques of control which you have been trained to safely use (eg, pressure points or joint manipulation);
4. Motor dysfunction techniques, which are more likely to cause injury (such as striking of limbs or nerve areas, and martial arts techniques);
5. Chemicals which you are trained to safely use (eg, tear gas or pepper spray);
6. Batons, clubs or other impact weapons, which are you are trained to safely use;
7. Fire arms: in order, first (a) warn the person you intend to use them; (b) consider firing a warning shot; (c) consider firing a non-fatal shot at the limbs to incapacitate the person; (d) only resort to lethal force as a last resort.

*See Commonwealth Manual on Human Rights Training for Police, p68*

### Use of lethal force and firearms

- **Only** resort to lethal weapons as a last resort.
- On most occasions, it would not be appropriate to use lethal force only to protect property, in circumstances where the harm to property does not endanger life.
- Do **not** use force merely to prevent the escape of a prisoner, if the person does not present any immediate risk of harm to you or another person.
- Do **not** use lethal force if it would cause excessive casualties of innocent civilians.
- Before using force, **identify yourself** as police, give a **clear warning** of your intent to use force, and provide the person with a final opportunity to comply (**unless** it would place you or others at risk of death or serious harm).

## Trainer Notes

- Explain to participants that discretionary statutory powers to use force should be exercised consistently with the right to life. For example, under the *Essential Utility-items Protection Act 1955*, section 6, and under the *National Park and Wildlife Protection Act 1972*, section 14, it is permitted to shoot a person below the knee if they are attempting to escape, but police are not required to shoot in these circumstances. Under human rights law it would only be lawful to shoot at a person if they pose an imminent danger to the police officer or some other person, and not if they are merely attempting to escape.
- Ask participants about their training in and experience of these methods of escalating the use of force
- Emphasise that force should never be used indiscriminately, for example, by firing randomly into a crowd

**Discussion Question:**

What methods and/or weapons would you employ in using force to make an arrest?

**Remember:** Police should only resort to force if it is **lawful, necessary** and **proportionate**.

**After you have used force**

- Immediately provide medical assistance to the injured person. Make sure that you receive training on how to provide basic first aid to injured people.
- Inform relatives or close friends of the injured person as soon as possible.
- If you have used lethal force (such as a fire-arm), report it to your superior officer.

**Accountability for using force**

Because public officials also have a duty to protect life, any use of force which results in killing of a person must be promptly and impartially investigated. Investigation ensures that:

- Public officials can be held accountable if they violate the right to life, and
- Systemic problems in the law enforcement procedures for the use of force can be identified and rectified in future cases.

**Remember:** Arbitrary or excessive use of force or weapons by police is a crime.

## 4. Immediate rights of an arrested person

**KEY CONSTITUTIONAL RIGHT: Rights regarding justice – article 24(1)**

“No person shall be detained without being informed of the ground for such an arrest.”

**As a police officer, when you arrest a person you must *immediately inform the person of:***

- The reasons for arresting him or her;
- Their legal rights, in a language they understand; and
- The charges to be brought against them.

**In addition, you must immediately:**

- Permit the person to remain silent if they choose not to speak;
- Treat the person humanely, respectfully and with dignity; and
- Presume that the person is innocent until proven guilty by a court.

## Trainer Notes

- Encourage discussion on this question
- Ask about participants' knowledge and experience of accountability processes

### Practical Tip

Carry a card in your pocket which lists the rights of suspects upon arrest. Read out those rights to the suspect once you have arrested the person. For example, you might say:

1. *You have the right to remain silent. If you remain silent, your silence will not be interpreted as evidence that you are guilty.*
2. *You have a right to choose and communicate confidentially with a lawyer.*
3. *If you cannot afford a lawyer, you can request that one be provided to you.*
4. *You have a right to contact a relative or close friend and to be visited by them.*
5. *You have a right to be brought before a judge within 24 hours or you must be released. You may challenge the lawfulness of your detention before the judge.*
6. *[If the person does not understand the language of the police officer:] You have a right to be provided with a free interpreter during any interviews by police.*
7. *[If the person is a foreign citizen:] You have a right to contact the consular or diplomatic officials of your country and to be visited by them.*

## 5. Subsequent rights of an arrested person

After you have arrested the person, you must:

- Only detain the person in a lawful place of detention;
- Not torture the person or treat them in a cruel, inhuman or degrading way;
- Notify family members or another appropriate person of the arrest and detention;
- Make a written record of the details of the arrest, including:
  - (i) The reasons for the arrest;
  - (ii) The time and place of arrest;
  - (iii) The place to which the person was taken to be detained;
  - (iv) The identity of the police officers involved;
  - (v) Notes of any questioning or interrogation;
  - (vi) The time the person was brought before a judge;
  - (vii) Any property of the person kept by police;
  - (viii) The medical condition of the suspect;
  - (ix) Any visits by lawyers, doctors, family, friends or others;
  - (x) The time and date of any transfer or release of the person.



## Trainer Notes

- On arrest, a person may be frightened, anxious, confused bewildered or angry, and unfamiliar with the legal process. It is vital that police clearly explain to a person their legal rights, which will help them to understand what is happening to them and how they can obtain help
- Ask participants about their current practices in reading rights to an arrestee
- Ask participants about their current practices in recording information

## 6. Rights of suspect during interview

Questioning suspects in custody is one of the most important means available to police for gathering evidence about a crime. At the same time, the rights of suspects must be respected during any interrogation process.

**If you are interviewing a suspect in detention, you must:**

- Advise the person of their right not to answer questions and to request a lawyer;
- Respect the person's right to silence and their right not to incriminate themselves;
- Permit a lawyer of the person's choice to attend the interrogation;
- Not torture the person or treat them in a cruel, inhuman or degrading way;
- Not force, threaten or intimidate a person to provide information or a confession.

If the person speaks a different language, you should also arrange **to provide an interpreter** so that the person is able to understand the allegations against him or her and to meaningfully answer, if they wish, any questioning by police.

## 7. Torture and cruel, inhuman or degrading treatment

**KEY HUMAN RIGHT: *Freedom from torture* – ICCPR, article 7**

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

**What is torture?**

The **Convention against Torture** (1984) defines torture generally as:

"any act by which **severe pain or suffering, whether physical or mental**, is intentionally inflicted on a person **for such purposes as obtaining from him or a third person information or a confession, punishing him** for an act he or a third person has committed or is suspected of having committed, or **intimidating or coercing** him or a third person, **or for any reason based on discrimination** of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

The definition does not give particular examples of torture but leading human rights courts and bodies around the world have interpreted the definition as prohibiting a variety of practices, as amounting either to torture or other ill-treatment. These include:



## Trainer Notes

- Explain that the purpose of interrogation is to establish the facts, not to punish or harass a person or to prejudge their guilt. Presume a person is innocent until proven guilty by a court

- Torture can also be committed by non-state actors, such as rebel, insurgent, militant or terrorist groups. Police have a duty to investigate and prosecute such crimes.
- A child must not be hand-cuffed, foot-cuffed, or kept in solitary confinement: see the Child Rights Act 2048, section 15

### Causing direct physical pain, such as:

- Systematic beatings
- Electric shocks
- Thumb presses/screws
- Burning (including cigarettes)
- Hanging the body from the limbs
- Prolonged forced standing
- Simulated executions/amputations
- Simulated drowning
- Repeated immersions in blood, urine, vomit or excrement
- Rape and other sexual violence
- Use of painful substances (eg, salt, or chemicals)

### Environmental stresses, such as:

- Prolonged solitary confinement
- Deprivation of food, water or clothing
- Prolonged exposure to loud noise
- Prolonged exposure to extreme temperatures
- Prolonged deprivation of sleep or light
- Prolonged hooding, blindfolding or shackling
- Withholding of medical care and treatment

Whether treatment amounts to torture will depend on the circumstances of the case. Where a detainee is particularly vulnerable (because of their age, gender, disability or some other factor), a combination of conditions may amount to inhuman treatment.

### **Restraining Devices** *(see Standard Minimum Rules for the Treatment of Prisoners)*

It is common for police forces to use restraining devices to secure criminal suspects upon arrest and during transport. However, the following principles should be followed to ensure that the use of restraining devices complies with human rights standards:

- Restraints (such as handcuffs) should **never** be applied as a punishment;
- Chains or irons should **never** be used as restraints;
- Other restraints should **only** be used to prevent escape during transport, on medical grounds, or to prevent prisoners from harming themselves, others or property;
- Restraining devices must not be used for longer than is strictly necessary.

## Trainer Notes

- These are just some examples but other acts may also amount to torture – the question is whether the act inflicts severe pain or suffering
- Remember that torture includes not only physical violence but also acts which cause serious mental or psychological harm
- Ask participants to reflect on their use of restraints and what guidelines they follow

**Police as Victims of Torture**

Police too may be victims of torture, if other officials inflict physical or mental harm on you to arbitrarily punish or discriminate against you. For example, the ritual abuse or humiliation of new recruits may be inhuman treatment, even if it is intended to be “fun” or to build team spirit or camaraderie. If you are a victim of torture, you should report it immediately.

**Torture is a crime**

**KEY CONSTITUTIONAL RIGHT: *Right against torture* – article 26**

“(1) No person who is detained during investigation, or for trial or for any other reason, shall be subjected to physical or mental torture, or be treated in a cruel, inhuman or degrading manner.

(2) Any such an act pursuant to clause (1) shall be punishable by law, and any person so treated shall be compensated in a manner determined by law.”

**Discussion Question**

Do you think there are any circumstances in which torture might be justified?

**Does a public emergency justify torture?**

The UN Convention against Torture states in Article 2(2) that torture is **never** justified:

“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

**What if I am following orders?**

Any order to torture is illegal and must not be obeyed. The UN Convention against Torture states in Article 2(3) that: “An order from a superior officer or a public authority may not be invoked as a justification of torture.”

**Reporting torture**

If you have reason to believe that a person has been tortured, or is about to be tortured, you should report it immediately to your superior or commanding officer, and to other appropriate bodies empowered to investigate.

**Discussion Question**

To what other bodies in Nepal might you report an incident of torture?

## Trainer Notes

- Ask participants about whether they have witnessed or heard about abuses of recruits during training
- Draw out discussion on really 'hard cases', such as the "ticking bomb" scenario, and highlight the problems of torture (including the unreliability of evidence obtained by torture, that it leads to false leads and wastes investigative time, that it will be unknown whether the person is guilty or possesses the information, that a person will say anything to make torture stop, and that torture degrades the torturer)
- Note also that there is a duty under international law not to return a person to a country where they may be tortured
- Discuss answers – eg human rights bodies, police inspectors etc

## Evidence of Torture in Nepal

Unfortunately there is credible evidence that torture is systematically practised by police in Nepal. Methods used in Nepal include beatings with bamboo poles and plastic pipes, kicking with boots, pouring water in the nose, applying electric shocks to the ears, rolling wooden poles over the thighs, trampling on thighs and legs, maintenance of stress positions, binding to a pole and hanging upside down and beating, beating the soles of the feet and prolonged periods of being blindfolded or hooded and handcuffed (see *UN Special Rapporteur on Torture*, 9 January 2006, E/CN.4/2006/6/Add.5, p8).

In 2007 the Office of the UN High Commissioner for Human Rights received around 100 allegations of ill-treatment or torture by police of criminal suspects (mainly in armed groups). The alleged conduct included beatings, near drowning, secret/incommunicado detention, release in return for “surrender” by militants, failure to observe court orders, and extrajudicial execution after arrest (see OHCHR, *Report to the UN Human Rights Council*, 18 February 2008, A/HRC/7/68, p10).

### Examples of Torture in Nepal

1. In September 2007, the Supreme Court ordered a police report on investigations into the death of 15 year old Maina Sunuwar. Sunuwar died within three hours of being taken from her home by the Nepalese Army and subjected to improper interrogation methods. Police were slow to investigate and the Army failed to give police access to documents, suspects and witnesses. After extensive advocacy, a body believed to be Sunuwar was exhumed from an unmarked grave at a training centre of the Nepalese Army. A DNA sample taken from the remains was not sent for analysis for some time, and the unidentified body was returned to Sunuwar’s family (see OHCHR, *Report to the UN Human Rights Council*, 17 January 2007, 1/HRC/4/97, p8).
2. In August 2005, Badal Bogati, aged 24, was arrested on the street and taken to Patan Police Office. He was interrogated from 11am to 8pm by six police officers. He was blindfolded, handcuffed, held by the throat, beaten with bamboo sticks on the soles of his feet, kicked in the back with boots, suspended by a bamboo pole fastened behind his knees, as well as beaten with electrical cables and an iron rod and drenched with water. Nearly one month after his arrests he had not had access to his family and they had not been notified of his arrest (see UN Special Rapporteur on Torture, 9 January 2006, E/CN.4/2006/6/Add.5, p18).
3. An Indian national died in custody in October 2006, reportedly as a result of torture. A police officer was suspended but not charged (see OHCHR, *Report to the UN Human Rights Council*, 17 January 2007, 1/HRC/4/97, p8).

## Trainer Notes

- Ask participants whether they have ever come across examples like these, and how they felt about it
- See also the Civil Rights Act 2012, section 15 and the Government Cases Act 2049, section 15



## 8. Rights in the legal process following arrest

The arrested person also has rights in the legal processes following an arrest.

1. A person in police custody has a right to be brought promptly before a judge and to challenge the lawfulness of their detention.

**KEY CONSTITUTIONAL RIGHT: *Rights regarding justice* – article 24(3)**

“Every person who is arrested shall be produced before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and the arrested person shall not be detained in custody beyond the said period except on the order of such authority.”

This safeguard ensures that the arrest is lawful and supervised by an independent authority, and enables the release of any person who has been unlawfully detained.

**In Nepal, an arrested person must ordinarily be brought before a judge within 24 hours of arrest** (Interim Constitution, article 24(3)). After that time, the person must be released from police custody unless the judge authorises an extension of detention.

**Example from Nepal**

One study in Nepal found that 37% of suspects surveyed were produced before a judge only *after* the end of the constitutional deadline (24 hours plus travel time). Suspects were also frequently held in police custody beyond the 24 hour limit without judicial authorisation (see CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, p 109).

**Discussion Questions:**

1. In your experience, are detainees normally brought before a judge within 24 hours?
2. If not, why are people sometimes not brought before a judge within that time?

2. A person may have a right to apply for bail pending trial for their crime.

Human rights law recognises the importance of personal liberty and a person should only be detained pending trial if there are good reasons to continue to detain the person (for example, there is a risk that the person would disappear and not turn up to court, that they might destroy evidence or interfere with witnesses, or that they might harm someone).

**In Nepal**, one study found that in 94% of cases where bail is granted, it is conditional on a property bond. This means only wealthy defendants can afford bail while poorer people are deprived of liberty (see CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, p 110).



## Trainer Notes

- Detention is time limited because freedom and liberty are regarded as vitally important values in human rights law
- Regarding Question 1, encourage discussion regarding how to remedy this situation
- Encourage discussion on Question 2; acknowledge that travel time may be lengthy in remote areas but it should be minimised as far as possible
- Discuss bail laws in Nepal

**Discussion Questions:**

1. Should you advise detainees of their right to apply for bail?
2. In what circumstances would you seek to oppose bail?

**3. A person detained and charged with a crime has a right to fair trial.****KEY CONSTITUTIONAL RIGHT: *Rights regarding justice* – article 24(9)**

“Every person shall be entitled to a fair trial by a competent court or judicial authority.”

Human rights law and the law of Nepal place a high level of importance on personal liberty. As a result, to ensure that liberty is properly safeguarded, a criminal suspect is entitled to receive a procedurally fair criminal trial. A fair trial seeks to ensure that people are only convicted of crimes if the evidence supports a conviction, after the evidence has been properly obtained and tested in court, and the person has had an opportunity to explain their conduct. Fairness also requires that the court be impartial and independent.

**There are a number of basic components of a fair trial (see ICCPR, articles 14-15):**

- A fair and public hearing by a lawful, competent, independent and impartial tribunal;
- Equal and non-discriminatory treatment before the courts;
- The right to be presumed innocent until proved guilty according to law;
- A right to be informed promptly of the charges, in a comprehensible language;
- Adequate time and facilities to prepare a defence and consult a lawyer;
- A right to choose a lawyer or to have one provided if the person cannot afford one;
- A right to be tried in one’s presence;
- Trial without undue delay;
- A right to cross-examine witnesses;
- A right to free use of an interpreter if necessary;
- A privilege against self-incrimination;
- A right not to be retrospectively punished;
- Protection against double jeopardy (being tried twice for the same offence);
- A right to appeal the judgment to a higher court.

**Discussion Questions:**

1. What length of time would constitute an “undue delay” before trial?
2. Why is there a prohibition on retrospective punishment?

## Trainer Notes

- Ensure participants understand why the answer is yes – so that people are not detained unnecessarily if they are no risk
- Draw out examples of when they have opposed bail and why
- Note that Chapter VI deals with these rights in detail and it is not necessary to consider them in detail at this point in the training
- In discussing Question 1, ask participants about their experiences of the length of time before trial – was it excessive?
- Complex trials may take longer (eg some fraud, terrorism or conspiracy cases)
- Note differences between civil cases which are more lenient in the time allowed, and criminal cases which are less lenient (since a person may be in custody pending trial)
- Question 2 – because of the need for fairness to a person (ie, not punishing them for conduct which was not criminal at the time, and so which they could not foresee would be wrongful) and non-arbitrary punishment, respect for the rule of law

## 9. Rights to a lawyer

1. A person has a right to receive assistance from a lawyer and must be provided with reasonable facilities to exercise this right.

**KEY CONSTITUTIONAL RIGHT: *Rights regarding justice* – article 24(2)**

“The person who is arrested shall have the right to consult a legal practitioner of his/her choice at the time of the arrest. The consultation made by such a person with the legal practitioner and the advice given thereon shall remain confidential, and such a person shall not be denied the right to be defended by his/her legal practitioner.”

A detained person has a **right to communicate confidentially** with a lawyer. Confidential communication is necessary so that the person can speak freely to their lawyer and obtain the best possible advice about how to proceed in the legal process.

**Police must advise a detainee of their right to consult a lawyer**, and if they cannot afford one, to have a lawyer provided by the legal system.

**Police must respect the confidentiality** of lawyer-client communications. Police must **provide facilities which enable confidential communications** to take place. For example, a meeting place must be provided in which communications cannot be overheard, listened to, or monitored by police officers. For security reasons, **it is permitted to maintain sight** of a person and their lawyer, as long as their communications cannot be overheard.

You should be aware that if you do overhear confidential communications, such privileged conversations will normally **not be admissible as evidence** in court.

2. If the person cannot afford to pay for a lawyer, one must be provided by the State.

**KEY CONSTITUTIONAL RIGHT: *Rights regarding justice* – article 24(10)**

“Any indigent person shall have the right to free legal aid in accordance with law.”

**Example from Nepal**

One study found that only 56% of prisoners in Nepal had access to lawyers during trial. None of the prisoners surveyed had access to lawyers within 24 hours of arrest, and many were not aware of the right to legal assistance (see CeLRRd, *Baseline Survey*, p 82).

**Discussion Questions:**

1. What procedures do you follow to ensure that a suspect has access to a lawyer?
2. Are there any obstacles to enabling a person’s right to lawyer?

## Trainer Notes

- Most people are unfamiliar with the legal system and require assistance (especially if illiterate) to ensure that they can effectively defend themselves and receive a fair trial, in an adversarial trial system where it falls to each party to look after their own interests. Police must facilitate such assistance since they are in a position of control over suspects
- Ask participants to reflect on their experiences and explore their views as to how these obstacles could be removed

# PART III: DETENTION

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## 1. Introduction

**Deprivation of liberty** through detention or imprisonment is one of the most invasive powers available to police and the legal system. A person deprived of liberty is completely subject to the control of the detaining authority and as such the person becomes particularly vulnerable to abuses of power by that authority. Police, guards and prison officers accordingly owe special duties of care and protection towards those in their control.

A **'detained person'** means any person deprived of personal liberty for any reason, except as a result of conviction for an offence (see *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988)).

An **'imprisoned person'** means any person deprived of personal liberty as a result of conviction for an offence. Regardless of whether a person is detained or imprisoned, all people deprived of their liberty are entitled to basic human rights protections.

## 2. Powers to detain

Under human rights law, there must always be a lawful reason to deprive any person of liberty. Lawful reasons may include:

- A person has been lawfully arrested;
- A person is awaiting criminal trial and has not been granted bail;
- A person has been convicted of a crime and is serving a sentence;
- A person is detained under any lawful emergency powers.

Police will most commonly detain a person after making a lawful arrest, until a person has received bail or pending trial if bail has been refused or is not available. After a person has been convicted, normally prison officials will take custody of an imprisoned person.

## 3. Lawful place of detention

Whenever a person is deprived of their liberty, they must be held in a lawful place of detention. A person should not be "disappeared", held in a secret location, or held incommunicado (that is, without contact with anyone in the outside world).



## Trainer Notes

- It may also be lawful to detain people for other purposes not related to the criminal justice system – for instance, where a person is mentally ill and requires compulsory hospitalisation to protect them or protect others from them; or in immigration control when removing people from the country; and for quarantine purposes where a person is a public health risk
- Ask participants to discuss the main places of detention which they typically use

Holding a person in an unofficial or secret place of detention is illegal and an abuse of public authority. It also renders the person more vulnerable to abuse, because the person may not be able to access the courts, communicate with a lawyer, or make contact with family.

Where possible, a person should be detained close to their family and/or place of residence.

#### **Example from Nepal**

Four people accused of involvement in the Kathmandu bombings were held in secret detention for up to 11 days, during which police denied to the UN Office of the High Commissioner for Human Rights that they were holding them. They were reportedly beaten while in detention and signed confessions under duress, which they were unable to read.

(OHCHR, *Report to the UN Human Rights Council*, 18 February 2008, A/HRC/7/68, p10)

## **4. Rights to access justice**

See the rights explained in relation to arrest in the first module on Arrest [from p 9].

**To summarize, a person deprived of their liberty:**

- Must be treated humanely, with dignity, and without discrimination;
- Must be informed of the reasons for their detention and be informed of their rights;
- Must be brought before a judge within 24 hours and be entitled to challenge the lawfulness of their detention;
- Should have the reasons for their detention periodically reviewed;
- Is entitled to select a lawyer or have one appointed if they cannot afford one, and must be able to confidentially communicate with their lawyer;
- Must not be tortured or treated in a cruel, inhuman or degrading way;
- Is entitled to remain silent and is not required to answer questions;
- Is presumed innocent until proven guilty by a court;
- Has a right to a fair trial and adequate time and facilities to prepare for trial.

#### **Remember:**

Detainees should always be notified of: (1) the reasons for their detention; (2) any criminal charges which have been laid; and (3) their rights in the legal process and in detention.



## Trainer Notes

- Discuss the reasons why police would try to hold people in secret places
- Informing people is essential so that they know what is happening to them and they can plan how to respond, including by cooperating with police

# 5. Minimum conditions of detention

Because detainees or prisoners are in the complete control of the detaining authorities, public officials are responsible for providing all of the necessities of life to detainees, to ensure that they can maintain their dignity as human beings. Essential physical needs which must be provided include **adequate**:

- **Food:** sufficient food should be provided at regular intervals to enable detainees to remain healthy; there should be no more than 15 hours between morning and evening meals; food should be adapted to the dietary and religious requirements of detainees; and food provided by family, friends or charities should be permitted;
- **Water:** including clean drinking water **and** water for washing/bathing;
- **Shelter:** detention facilities should provide adequate protection from the weather and climate (including heating and cooling as needed), natural light and ventilation, and should be clean (including from insects and rodents) and not overcrowded;
- **Clothing:** detainees not yet convicted of a crime should normally be allowed to wear their own clothes (if clean and suitable); and adequate (including warm) clothing should be provided as needed;
- **Hygiene facilities:** including regular access to clean washing/bathing facilities, clean toilet facilities, and facilities for washing of clothes;
- **Bedding:** detainees should be provided with clean and adequate bedding, including blankets which are adequate for the climate;
- **Medical services:** including access to first aid treatment, emergency care, treatment of illness and disease, hospital treatment and surgery, and mental health services;
- **Exercise:** opportunities for regular exercise should be available to detainees, for at least one hour per day in the open air;
- **Religious observance:** opportunities and facilities for religious observance should be available to detainees.

For more details on each of these requirements, see the *UN Standard Minimum Rules for the Treatment of Prisoners* (see Appendix).

**Discussion Questions:**

1.

In your detention facilities, do prisoners have sufficient access to these needs?
2.

If not, can you think of ways to improve the access of prisoners to these basic needs?

## Trainer Notes

- Encourage participants to focus on two or three of the 'Conditions of Detention'
- Acknowledge the obvious limitations of funding and resources, but note that attitudes, initiative and better procedures can often mitigate resource limitations

## Minimum Accommodation Standards

**Source:** *UN Standard Minimum Rules for the Treatment of Prisoners*

9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

## Poor Conditions of Detention

In international law, severe prison conditions have been regarded as amounting to **cruel, inhuman or degrading treatment**. For example, conditions may be inhumane due to inadequate food, water, sanitation and hygiene necessities, clothing and bedding, recreational facilities and exercise, poor heating, lighting or ventilation, harsh discipline or mistreatment by guards, denial of visitors or legal access, or denial of complaints.

## Trainer Notes

- These standards provide more detail on some of the conditions of detention mentioned on the previous page and it is not necessary to go through them here – this extract is for reference only
- Such poor conditions of detention would violate the international law prohibition on cruel, inhuman or degrading treatment or punishment, which covers not only direct physical punishment but the wider conditions in which detainees are held

### Example from Nepal: Poor Prison Conditions

Most prisons in Nepal are made up of old, dilapidated buildings. Common problems include leaks and damp, unsafe structures, lack of heating, poor ventilation and foul toilets. In Nawalparasi prison, the toilets, kitchen and living rooms are linked together and are in a horrible condition (see CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, p 90).

Prisons are often overcrowded. For example, in 2001, Bhimphedi (Makwanpur) prison was holding 114 inmates, but the official capacity of the prison is 45 (see CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, p 91).

The conditions in Hanuman Dhoka Police Office were described as 'inhuman' by the United Nations, because the cells were filthy and poorly ventilated, with up to 12 persons detained in a small 3 metre by 4 metre area. Fourteen year old boys were detained amongst adults.

*UN Special Rapporteur on Torture, 9 January 2006, E/CN.4/2006/6/Add.5, p12*

## 6. Safety of detainees

Detaining authorities also have a duty of care to protect detainees from other detainees who are violent, intimidating or threatening.

**You should conduct regular, periodic checks of detainees to ensure their safety and security.** Particularly vulnerable detainees should be checked more regularly.

**You may need to segregate:**

- violent or threatening detainees from other detainees;
- particularly vulnerable detainees (such as informants) from other detainees;
- mentally ill detainees from other detainees.

As a result of mental health issues (including depression or mental illness), some detainees may be at risk of self-harm (such as self-mutilation or suicide). **You will need to take special measures to ensure the safety of detainees at risk from themselves.**

When admitting new detainees, assess them for signs of illness, injury, or alcohol or drug intoxication and provide treatment as necessary.

Officers inside detention areas with detainees should not normally carry firearms.



## Trainer Notes

- Ask participants to reflect upon prison or detention facilities which they are familiar with – are those facilities overcrowded? Do they meet the minimum conditions?
- Ask participants how they might improve conditions in their facilities – for example, by bailing people (to reduce overcrowding), not arresting/detaining people for trivial or minor offences; releasing children to their parents; use charities and NGO assistance
- Ask participants to reflect on their current practices here concerning separation
- Ask participants to reflect on their current ways of identifying and dealing with mental health issues

## 7. Recreation

Being held in detention can be a distressing, boring and isolating experience for many people. Boredom can also contribute to behavioural problems amongst prisoners.

It is important that prisoners be given opportunities to occupy themselves with meaningful activities, including to develop their skills, receive education, and work in paid employment. Such skills will also assist in the rehabilitation of prisoners, in particular by preparing them for release back into the community and for returning to normal life. Accordingly:

- Detainees should be able to access books, newspapers and writing materials;
- Opportunities for education (including reading, writing and literacy) and development of vocational skills should be considered;
- Opportunities for paid employment by detainees should be explored, but detainees must not be forced to work.

## 8. Visitors

**Places of detention should enable prisoners to receive visitors, including:**

- To meet in private and confidentially with a lawyer;
- To see family members and friends;
- To see religious figures such as holy people, priests or monks;
- To receive inspections from independent bodies such as the International Committee of the Red Cross, the UN Office of the High Commissioner for Human Rights, or the National Human Rights Commission. Detainees should be able to meet such inspectors in private and confidentially.

Note also that where a detainee is transferred from one place of detention to another, the transfer should be recorded and the person’s lawyer and family/friend notified.

### Example from Nepal

One study found that detainees are often not allowed to converse with visitors in private, or to speak confidentially with their lawyers. They are supervised by armed guards during all visits (see CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, p 97).

### Discussion Questions:

1. In places where you detain people, are prisoners able to meet with these visitors?
2. If not, how could you better enable access to these visitors in your facilities?



## Trainer Notes

- Ask participants to reflect on their current practices here
- Compare and contrast the participants' experiences of visiting rights and circumstances in detention
- Acknowledge resource limits, but ask whether better utilization of existing space might improve the situation, eg by using rooms for multiple purposes according to a timetable for sharing the spaces

## 9. Vulnerable group: unconvicted detainees

People in pre-trial custody should be detained separately from convicted criminals. Suspects are presumed to be innocent until proven guilty and therefore should **not** be detained alongside convicted prisoners, where they may also be at risk of harm.

## 10. Vulnerable group: women

Women are entitled to the same rights as men upon arrest and detention, but women also have special needs which should be respected by law enforcement officers.

**Violence against female detainees by police officers** is a human rights concern all over the world. Special measures should protect women who are vulnerable to abuse:

- **Women should be detained separately from male detainees;**
- Women detainees should be supervised and searched by female officers;
- Women should only be interrogated or detained under the supervision of female police officers or other suitable females;
- Women should be given access to specialised medical facilities where appropriate, particularly during or soon after pregnancy;
- Provisions should be made for the care of children whose mothers are in custody.

## 11. Vulnerable group: children

The criminal justice system should aim to help children who commit crime to reintegrate into society. **Detention or imprisonment of children should only be used as an extreme measure of last resort.** When detention is used, the following protective rules should apply:

- **Children should be separated from adults in detention;**
- Detention or imprisonment of children should be for the shortest possible time;
- Children should not be subject to corporal punishment or to life imprisonment;
- Detained children should be allowed to receive visits and letters from their family;
- Physical restraints and force should only be used in exceptional circumstances, when all other control measures have been tried and have failed;
- Discipline should be used with respect for the child's dignity, and for human rights;
- Inspectors should be invited to regularly inspect facilities with child detainees;
- Alternatives to institutional care and non-judicial proceedings should be provided;
- Parents must be notified at all stages (arrest, detention, transfer, illness or injury).

## Trainer Notes

- Ask participants to reflect on their current practices concerning women here
- Ask participants to reflect on their current practices concerning children here
- Education should also be considered

### Examples from Nepal

- A 1996 study of juvenile crime in Nepal showed that 81% of child offenders who were detained in police custody were mistreated. Approximately 36% were beaten during interrogation, 11% were forced to perform labour, 7% received threats and abuse, 3% were starved, 21% were transported to the city border and 3% were housed in adult prisons (see CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, p 101).
- In 1995, there were 63 children living in prison because their parents had committed a crime. In 1998, the number was reported by the Department of Prisons as 85, but an NGO suggested it may be higher than 100 (see CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, p 102).
- Police routinely arrest street kids and place them in custody for days or weeks. They then eventually charge them with public offences, which do not attract a right to legal representation. Children are therefore left completely at the mercy of police in these cases (see CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, p 102).
- In Rukum district, a 13-year-old boy was arrested on suspicion of being a Maoist. He was held for 6 months in an adult prison cell holding 54 inmates (the cell capacity was 15).
- In 2005, five children, including an eight year old, were held in cells with adults at Hunuman Dhoka police station without legal representation. They were remanded into police custody by a court without being produced before the judge, and lawyers who tried to see them were denied access (see UN OHCHR, *Report to ECOSOC*, 16 February 2006, E/CN.4/2006/107, pp 19 and 25).
- At least 100 children were detained under *TADO* in 2005 and kept in prisons and police stations (see UN OHCHR, *Report to ECOSOC*, 16 February 2006, E/CN.4/2006/107, pp 19 and 25).

### Discussion Questions:

1. In places where you detain people, are the above groups (unconvicted detainees, women and children) detained separately from other groups of detainees?
2. If not, what problems have arisen due to the mixing of different groups?
3. If not, can you think of ways in which you could separate these groups?
4. What other problems have you encountered in dealing with these groups?

## Trainer Notes

- Ask participants whether these statistics reflect their own experiences of the treatment of child detainees
- Note that street children are particularly vulnerable to over-policing and over-criminalisation, because they are highly visible targets in public places and may be blamed for things they have not done
- Good policing should also liaise with charities, shelters, NGOs, orphanages and religious organisations to help address the underlying social problems faced by street children and to provide referral to welfare services for homeless children, which will help to reduce their exposure to crime and the likelihood of children offending
- Ask the participants to explain the precise means by which separation is effected

## 12. Disciplining detainees

Police and prison officials have a duty to maintain order in detention facilities and prisons. This includes ensuring that detainees and prisoners comply with prison rules and regulations, that they do not endanger police or prison officials, and that they do not compromise the safety of other detainees or prisoners.

**Disciplinary measures should not, however, be administered in an arbitrary, abusive or discriminatory way.** To ensure that disciplinary systems are lawful and rational:

- Detention rules should be clearly spelled out and notified in advance to detainees;
- The penalties for infractions of the rules should be clearly explained and notified;
- Before a penalty is imposed, the affected detainee or prisoner should be given an opportunity to be heard, so that the person can explain their conduct. This will assist in determining the truth, and in identifying any mitigating factors;
- **Any penalty should be proportionate to the seriousness of the infraction;**
- **No penalty should be inhumane** – for example, prolonged solitary confinement, or any other method of torture or cruel, inhuman or degrading treatment;
- Restraining devices should **not** be used for punishment.

Remember, it is **not** the role of police or prison officials to inflict additional punishment on a person for any original crime that the person is suspected or convicted of committing. Any judgment of criminal guilt, and determination of criminal punishment, is the responsibility of a judge in court, not of police or prison officials.

**Where possible, it is good practice to assign different officers to supervise detainees than those officers responsible for arresting and investigating a suspect.**

All detention officers should also receive adequate training on riot control techniques and equipment, and on the use of non-lethal control methods, in the event of unrest or disorder within the detention facility.

### **Remember:**

- Only use force if necessary, after other means (including negotiation) have failed.
- Only use as much force as is necessary to restore order.
- Never use force to punish, intimidate or discriminate, or in revenge.



## Trainer Notes

- Ask participants to discuss their own disciplinary rules and procedures and whether they meet these requirements
- Police are public servants not judges empowered to determine guilt

## 13. Discipline and detaining authorities

Disciplinary systems should also provide for the punishment of police or prison officials who mistreat detainees. Penalties may include suspension, pay docking, termination of employment and criminal prosecution.

You should report immediately to your superior or commanding officer any suspicion of mistreatment of detainees by other public officials, whether physical or mental (including verbal abuse, threats or intimidation).

All detention officers should wear clearly visible identity badges, to facilitate accurate reporting of violations by officials.

## 14. Complaints by detainees

### ***UN Standard Minimum Rules for the Treatment of Prisoners***

35. (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

### ***UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), Principle 33:***

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

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

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

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



## Trainer Notes

- Ask participants to discuss the disciplinary channels that are available and whether they are effective or defective
- Ask participants whether this occurs
- Ask participants to discuss the informal and formal complaints mechanisms available to detainees and whether they are effective or defective, and how they might be improved

## 15. Deaths in custody

Human rights law aims to prevent arbitrary deprivation of life. As a result, every government has a duty to account for any person taken into custody and who disappears or is killed. It includes a duty to investigate the circumstances of the killing, to take any necessary disciplinary action and/or criminal prosecution, and to compensation the victims' families.

***UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), Principle 34:***

"Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case...."

**Principle 34:**

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

## 16. Preventive detention

**KEY CONSTITUTIONAL RIGHT: Right against preventive detention – article 25**

(1) No person shall be held under preventive detention unless there is sufficient ground to believe in the existence of an immediate threat to the sovereignty and integrity of, or the law and order situation in, Nepal.

(2) If an authority detains a person under preventive detention contrary to law or in bad faith, the person detained is entitled to compensation under the law.

Normally a person can only be detained if they are arrested on suspicion of a crime, or they are pending trial (and have been refused bail), or they are a convicted prisoner.

In exceptional situations, however, such as public emergencies or armed conflicts, there may be special powers to *preventively* detain people, that is, even where they are not being held in relation to a particular crime which they may have already committed. Such powers have a protective purpose – that is, to prevent potential serious harm in the future, rather than dealing with criminal harms that have already happened, as is usual in the criminal law.

## Trainer Notes

- Ask participants to discuss the process for investigating deaths in custody and whether they are effective or defective, and how they might be improved
- Under the Prison Act 2019 (karagar ain 2019), section 13, the death of any prisoner or detainee must be examined by a government doctor and a detailed report prepared, along with witness statements.
- Under the Police Act 2012, section 22, suspicious deaths must be sent for post-mortem examination.
- Under the Sarkari mudda sambandi Ain 2049, any suspicious death within a police station should be investigated and reported by police and sent for post-mortem examination.

## Human rights safeguards on preventive detention

If a country has declared a **public emergency threatening the life of the nation**, then the country may be permitted to suspend freedom from arbitrary detention. This was the case, for example, in Britain after the terrorist attacks of 11 September 2001, where the UK government declared that a global terrorist organisation, Al Qaeda, was a grave and exceptional threat to the national security of Britain.

Even in these circumstances, however, human rights law still imposes limits and safeguards on detention in emergency situations:

- The detention power must be **authorised by law**;
- The detention power must be **strictly necessary** to respond to the security threat;
- The detention power must be **proportionate** to the aim of achieving security (meaning that detention cannot be excessive);
- The detention power **must not be discriminatory** against particular racial, ethnic, religious or other groups.

### Example from Nepal

In Nepal, laws such as the *Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) 2004* (now suspended) and the *Public Security Act (PSA) 1989* have provided the police and military with very wide powers to detain suspects for preventive reasons, sometimes for months on end. For example, the PSA allows for preventive detention for 90 days by order of an administrative officer.

At least 29 detainees suspected of links to the Communist Party of Nepal (Maoist) who were arrested under *TADO* remained in detention by early 2008. This included three women who were juveniles when arrested and who have been held in pre-trial detention since 2000 and 2001 – almost seven years without trial.

See UN Office of the High Commissioner for Human Rights,  
*Report to the Human Rights Council*, 18 February 2008, A/HRC/7/68, p11).

### Discussion Questions

1. In your opinion, is preventive detention necessary in Nepal today?
2. Are the powers of the regular criminal law (such as arrest on suspicion of crime) sufficient to confront serious security threats? If not, why not?
3. Does preventive detention really assist in dealing with emergencies? If so, how?

## Trainer Notes

- Even preventive detention in emergencies requires that a person is individually suspected (based on good evidence) of being a security risk, even if the evidence would not be admissible a criminal court and therefore the person cannot be dealt with in the ordinary way (arrest, trial, charge) by the criminal courts
- In Britain, the law mentioned here was found to be unlawful by the UK House of Lords because it was racially discriminatory – it allowed only foreign suspected terrorists to be indefinitely detained, but not suspected British nationals – even though both groups were equally dangerous and so if detention were necessary, the law should have applied to both groups
- Also discuss criticisms of the TADO and PSA

# PART IV: INVESTIGATION

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## 1. Introduction

‘Police officers, in their investigatory capacity, play a critical role in the judicial process. The detection of crime through investigation and gathering of evidence is the first step in the judicial process that can lead to the conviction and punishment of criminals.

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

*(Commonwealth Manual on Human Rights Training for Police, p77)*

## 2. Police powers to investigate crime

Police exercise a wide variety of powers when investigating crime, from informally questioning witnesses and suspects, to searching people, vehicles or premises, to processing crime scenes, to seizing property or evidence or intercepting mail, telephone and email communications. The purposes of investigation can include:

- To identify victims;
- To locate witnesses and evidence;
- To determine the manner, location, time and cause of a crime;
- To identify and apprehend suspects.

Because police powers can be very invasive and affect privacy and other human rights, police must be careful to exercise their powers cautiously. Such powers should only be exercised cautiously and in a manner which is lawful, not arbitrary or in bad faith, not excessive or unduly intrusive, and only where it necessary to interfere in human rights.

**Discussion Questions:**

1.

What powers do you most commonly use in investigating crimes?
2.

Look again at the list of human rights on page 2 of this Manual. Which human rights are most likely to be affected by your police powers to investigate crime?



## Trainer Notes

- Focus on the legal powers (eg, statutory) of investigation in Nepal, as well as actual actions in investigating crimes
- Stress the positive and negative outcomes of police investigative powers
- See next page for more answers



### 3. Rights affected by investigations

A number of key human rights may be adversely affected by police investigations.

#### 1. Right to liberty and security of person

Police officers and prosecutors must ensure the physical safety of people affected by investigations, including victims, witnesses and suspects.

**Suspects** should be protected against any physical or mental threats or abuse.

**Witnesses** also have a right to be treated with dignity and respect, and not to be physically or verbally abused by law enforcement officials. If a witness is not a suspect, the witness should cooperate with police in their inquiries. Witnesses should not be treated as if they are themselves criminals. Respecting the dignity of witnesses is more likely to result in their cooperation and in discovering the truth behind crimes they may have witnessed.

Police and prosecutors may need to take special **measures to protect witnesses** from harm by criminals, who may seek to prevent witnesses from testifying against them.

#### 2. Presumption of innocence until proven guilty

The independent courts are responsible for determining whether a person is guilty of a crime. As a result, police and prosecutors should treat every person in an investigation as if they are innocent, until they are proven guilty by a court. The role of police in investigations is to determine the truth, not to judge criminal liability.

#### 3. Right to privacy and non-interference

##### KEY HUMAN RIGHT: Right to privacy – ICCPR, art 17(1)

“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

##### KEY CONSTITUTIONAL RIGHT: *Right to privacy* – article 28

“Except in circumstances provided by law, privacy in relation to the person, and to their residence, property, documents, records, statistics and correspondence, and their reputation are inviolable.”

Most investigations will interfere in some way with the privacy of people affected by investigative powers. The right to privacy includes protection of a person’s home and correspondence (which in modern terms includes letters and documents, telephone communications, and email and internet communications).

## Trainer Notes

- Ask participants to reflect on their experiences in protecting witnesses
- Discuss which powers may be relevant here, for example, search warrants, telecommunications intercepts, surveillance

There may be good reasons for police to interfere in individual privacy to investigate crime. However, for interference to be permitted, an investigative action must be:

- **Authorised by law;**
- **Necessary** to achieve a legitimate aim or purpose (such as solving crimes); and
- **Proportionate** (that is, the investigative measure goes no further than is necessary in order to solve crime, and should not excessively infringe upon privacy).

#### **4. Rights of suspects and detainees in the legal process**

The rights of suspects and detainees in the legal process, in particular the right to a fair trial, can be seriously jeopardized if law enforcement officials use unlawful investigative methods. Unlawful investigations may also result in a court dismissing the case against a suspect, because the evidence is unreliable or obtained unlawfully.

The rights of suspects in the legal process were explained in detail in the previous chapters on 'Arrest' (p 9) and 'Detention' (p 23). To summarize, any person deprived of liberty:

- Must be treated humanely, with dignity, and without discrimination;
- Must be informed of the reasons for their detention and be informed of their rights;
- Must be brought before a judge within 24 hours and be entitled to challenge the lawfulness of their detention;
- Should have the reasons for their detention periodically reviewed;
- Is entitled to select a lawyer or have one appointed if they cannot afford one, and must be able to confidentially communicate with their lawyer;
- Must not be tortured or treated in a cruel, inhuman or degrading way;
- Is entitled to remain silent and is not required to answer questions;
- Is presumed innocent until proven guilty by a court;
- Has a right to a fair trial and adequate time and facilities to prepare for trial.

## Trainer Notes

- This section is a summary and reminder of material already considered under “Arrest” and “Detention” and does not need to be dealt with again here

## 4. Respecting rights in investigations

**Before taking any investigative action, ask yourself:**

- Is it legal and does it follow procedure?
- Is it necessary and reasonable?
- Is it excessively intrusive?
- Will the evidence hold up in court?

When in doubt about the legality of an action, seek advice from a senior officer.

**General principles for good investigation:**

- Always treat suspects as innocent people.
- Always treat victims, witnesses and suspects politely, respectfully and professionally.
- Investigations should be competent, thorough, prompt and impartial.
- There should exist clear procedures for investigations.
- Police and other investigators should receive adequate training in investigations.
- Investigate all of the evidence and then identify a suspect. Do **not** first identify a suspect and then try to fit the evidence around that suspect.

### (a) Crime scenes

Information and evidence gathered at a crime scene is essential to the investigative process and may play an important role in later securing a conviction. Unfortunately, mistakes made at the crime scene can harm the prospects of locating suspects and securing their conviction. It can also lead to wrongly identifying the suspects, which may interfere with the liberty of innocent people.

- Crime scenes must be carefully processed.
- Evidence must be carefully collected and preserved.
- Contamination of crime scenes must be avoided.
- Procedures for transferring evidence and documenting the chain of evidence must be carefully followed, for example, when police hand over evidence to forensic laboratories for examination.

#### **Discussion Questions**

1. Have you experienced a contaminated crime scene? If so, what were the problems?
2. How did the contamination affect the subsequent legal processes and prosecution?

## Trainer Notes

- Stress the need for action to be 'necessary and reasonable'. This is essential in the exercise of all police powers, and is a question of attitude and foresight
- Asking these questions helps to prevent human rights violations before they occur – "prevention is the best approach"
- It is important to remember that courts determine guilt of suspects, not police
- Ask participants to discuss the legal sources of their investigative powers and the procedures that they follow – and any problems or defects which arise
- Ask participants to discuss these questions based on their own experiences
- Contamination can, for example, destroy the ability to use DNA samples

## (b) Interviewing / questioning people

The purpose of an interview is to clarify facts and to discover new facts about the alleged crime. Mistakes in the interviewing process may lead to miscarriages of justice if innocent people are wrongly convicted on the basis of unreliable evidence, and result in impunity for the real perpetrators of crime who are not properly identified.

- **Always inform victims, witnesses and suspects of their rights** before interviewing.
- **Do not torture or treat any person cruelly, inhumanely or degradingly.** Courts will exclude evidence obtained by torture as ‘inherently unreliable, unfair, offensive to ordinary standards of humanity and decency and incompatible with principles which should inform a tribunal seeking to administer justice’ (British House of Lords in the case of *A v Secretary of State* [2005]). Torture is morally wrong, illegal, and does not assist the legal system in solving crimes.
- **No one shall be compelled to confess or testify against him or herself, or against any other person.** Forced confessions are **not** reliable or accurate evidence. When police or prosecutors rely on forced confessions, they are not solving crime, and are very likely capturing innocent people. Forced confessions include not only confessions obtained by violence or intimidation against the person, but also by threats against the person or their friends or family, or by other pressure which impairs the informed judgment or decision-making capacity of a person. Be aware that a person may confess to a crime for a variety of complex psychological reasons, including a desire to please people in a position of authority, or to quickly finish the process, or to protect a guilty person (such as a friend, family member or co-worker).
- **Never rely on a confession as the only basis of the case** against a person. Investigations should assist you to secure independent, corroborating evidence.
- **Keep detailed records** of all interviews conducted, including the duration and place of interview, the names of people present during the interview, and the length of interval between successive interview sessions. Any statement containing a person’s confession should be recorded in the person’s own words and signed by them (or otherwise approved by them if the person is illiterate). Note that a suspect is entitled at any time to withdraw or alter any statements they have made.
- **Exercise confidentiality** and care in the handling of sensitive information.



## Trainer Notes

- Refer back to the chapter on “Arrest” for detail on what amounts to ill-treatment
- Ask participants why evidence obtained by ill-treatment or torture is likely to be unreliable (see answer below)
- Ask participants to discuss their record keeping practices and whether there any defects in these procedures
- Emphasise the importance of protecting sensitive person information from disclosure – and the importance of maintaining a person’s privacy and not ruining their reputation or damaging their relationships with others by leaking private information

## (c) Search and seizure powers

### KEY CONSTITUTIONAL RIGHT: *Right to property* – article 19

- (1) Every citizen shall, subject to the existing laws, have the right to acquire, own, sell and otherwise dispose of property.
- (2) The State shall not, except in the public interest, acquire, or create any encumbrance on the property of any person. Provided that this clause shall not be applicable to property acquired through illegal means.
- (3) Compensation shall be provided for any property requisitioned, acquired or encumbered by the State in implementing scientific land reform programmes or in the public interest in accordance with law. The amount and basis of compensation, and relevant procedure shall be as prescribed by law.

Police powers to search people, property and communications, and to seize property, can be important and legitimate uses of government power to prevent, detect and punish crime. At the same time, the human right to privacy means that police must not search a person's body, property or correspondence and communications unless such searches are **legally authorised, necessary, and infringe privacy as minimally as possible**.

Unlawful or arbitrary search or seizure seriously affects human dignity, undermines public confidence in and cooperation with the police and makes policing less effective, jeopardizes the success of trials, and exposes police to compensation claims and disciplinary action.

### Lawful Grounds of Search and Seizure

Under human rights law, legitimate reasons for searching people or property might include where police have **reasonable grounds to believe** that:

- A person has committed a crime;
- A person may be carrying a dangerous object or other unlawful object which is imminently likely to be used to commit a crime;
- A certain object, article or property was used to commit a crime;
- A certain object, article or property is imminently likely to be used to commit crime.

**'Reasonable grounds' of suspicion** means that a reasonable person, in light of the circumstances, would have believed or have held the same suspicion as the police officer, who truly or genuinely believed the grounds or facts in question.

### Discussion Question

Under what circumstances do you exercise powers of search or seizure?

## Trainer Notes

- This right is relevant where police seize property during criminal investigations, for example, as evidence or as proceeds of crime.
- If property is taken unlawfully, it must be returned to the person and/or compensation paid for its value

- Ask participants to discuss the legal sources of their powers in Nepal to search people (including on the streets), vehicles or premises, and to reflect on whether those powers comply with the requirements of human rights law
- Discuss how often the participants use those powers, and what are the results (ie, how often are unlawful objects found)?

## Procedures of Search and Seizure

**Seek a warrant or court order, whenever possible, before conducting searches.** The issue of a warrant by a judicial authority aims to ensure that searches are legally authorised and supervised by a body which is independent of the investigating police. The judge assesses the information provided by police and makes a decision about whether a search is justified. The warrant or order will identify which person, property or objects may be searched.

### Discussion Question

What is the process for obtaining a search warrant in your area?

### When executing a warrant:

- You must comply with the limits and conditions of the warrant, and not search people or places which are not specifically identified in the warrant or order.
- You should normally execute the warrant during the day, not at night, unless there are strong reasons for acting at night and such timing is authorised by the warrant.
- The warrant remains in force until it is executed, or otherwise cancelled by the authority which issued it.
- Normally a search should be carried out when the owner or occupier is present at the premises.
- Before entering premises, announce yourself as a police officer and demand entry. Only resort to force (such as breaking down a door or smashing a window) if entry is refused or there is no other way of gaining entry. Only use as much force as is necessary and do not cause excessive damage to property.
- Any objects or articles which are seized from the premises should be listed on the warrant and the warrant should be signed by the owner or occupier.

**Searches without a warrant should only be conducted in exceptional circumstances,** only when reasonable and with due cause, such as when:

- It is incidental to a lawful arrest (for example, to ensure that a person is not carrying weapons or dangerous objects, or to register property carried by the person);
- The person freely consents to the search (not under duress or coercion);
- Obtaining a warrant in advance would be impossible in the circumstances (such as when there is an imminent risk of essential evidence or dangerous materials being moved or destroyed if the search was delayed until a warrant was obtained).

## Trainer Notes

- Encourage discussion as to whether the relevant processes are adequate, appropriate and functional, and ask participants to reflect on their experiences
- Ask participants to discuss the source of their legal powers to search, and the process that must be followed, and whether any difficulties or issues arise
- Ask how often requests for search warrants are not approved, in participants' work

- Ask participants to discuss the source of their legal powers to search without a warrant, and the process that must be followed, and whether risks of abuse arise

### Practical Tips: Searching Premises

When searching premises, keep in mind the following principles:

1. Do not cause unnecessary damage to property.
2. Do not use force unless it is necessary, and only use as much force as is necessary.
3. Only search places where objects are suspected or likely to be found.
4. Inform the property owner or occupier that you intend to search.
5. Search during the daytime in normal circumstances.
6. Provide a copy of the search warrant to the owner.

*(Commonwealth Manual on Human Rights Training for Police, p97.)*

### Additional protections concerning searches

- **Women** should be body searched by women officers, and men by men.
- **Strip searches** must only be undertaken if strictly necessary and must be conducted in private and with due respect for the dignity of the person.
- **Invasive body cavity searches** (vaginal or anal) must only be undertaken in private and by a medical practitioner. There must be reasonable grounds for suspecting that the person is hiding an object used, or intended for use, in committing a crime.
- Where available, modern technology such as **X-rays or scanners** should be used as less invasive alternatives for searching people. However, there must still be reasonable grounds for conducting the search and such equipment should not be used to conduct more frequent searches in circumstances where there are not reasonable grounds for searching.
- **DNA technology** collects very private and potentially highly prejudicial information about a person's genetic profile and must be used strictly according to law and only where a person is suspected of committing a crime. It should not be used to randomly collect DNA profiles from non-suspects in an attempt to solve any crime. There must also be strong safeguards protecting the confidentiality of DNA profiles and for the destruction of profiles where a person is no longer considered a suspect.
- **If property is seized**, ensure that you follow the relevant legal procedures for recording and storing property, and (as appropriate) for confiscating or returning property, or compensating for property unlawfully taken and damaged or destroyed.



## Trainer Notes

- Direct participants to always think of these basic rules before conducting a search
- Discuss the source of legal powers to collect DNA samples in Nepal and the processes which must be followed
- What legal sources of power in Nepal to seize property and in what circumstances, and what procedures must be followed?



## 5. Rights of victims

**Victims** of crime should be treated with compassion and respect for their dignity.

**Witnesses** may also be victims where they are disturbed by seeing a violent crime occur and accordingly need support from police or from counselling services.

**Discussion Question**

In what ways do you support victims of crime in your area of operations?

***UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)***

**Extract: Access to justice and fair treatment**

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

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

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

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

## Trainer Notes

- Ask participants to discuss victim support in their own experiences. Is such support widespread? How do people (including victims) respond to the existing support available?
- Instruct participants to read this extract later in their own time – there is no need to go through it during the training workshop itself. You might, however, raise the points listed below
- Regarding (b), courts in some countries consider “victim impact statements” which allow victims to explain how the crime has affected them (but this would be most appropriate at the sentencing stage after guilt has been independently established, so that the impact statement does not prejudice the trial)
- Regarding (7), ask participants about whether any alternative means of achieving justice are used in their experience, for example, informal, customary law or religious law mechanisms

## 6. Vulnerable group: children

A 'child' is someone who is under the age of 18 years.

### KEY CONSTITUTIONAL RIGHT: Rights of children – article 22

- (1) Every child shall have the right to his or her own identity and name.
- (2) Every child shall have the right to be nurtured, to basic health and social security.
- (3) Every child shall have the right not to be subjected to physical, mental or any other form of exploitation. Any such act of exploitation shall be punishable by law and any child so treated shall be compensated as determined by law.
- (4) Helpless, orphaned or mentally retarded children, children who are victims of conflict or displaced and street children at risk shall have the right to receive special privileges from the State to ensure their secure future.
- (5) No minor shall be employed in factories, mines or in any other hazardous work nor shall be used in army, police or in conflicts.

Children have the same fundamental human rights as adults, but due to their age and vulnerability, extra measures are needed to ensure these rights are protected. **Children are especially vulnerable to abuse and exploitation**, including slave labour, prostitution, drug abuse and taking arms in conflict. When children become victims of crime, **they can have difficulty approaching and reporting to law enforcement agencies**.

**Children also commit crime for different reasons than adults.** They may have experienced violence and abuse, or may have been neglected or abandoned. These experiences may force children into criminal activities such as theft, sale and possession of drugs, prostitution and violence. For these reasons, police should not assume that children are willing participants in crime. Children who are treated like hardened criminals by police are more likely to become hardened criminals as they grow up.

### When dealing with children – whether victims or suspects – you should:

- Be very patient;
- Establish a relationship of trust with the child;
- Notify parents/guardians of any arrest, detention, transfer, sickness, injury or death;
- Be aware of the signs of abuse and exploitation;
- Consider that children may not realise that they have been or are being abused or exploited, especially if they are young or ignorant; and
- Remember that sexual and serious physical abuse of children within the home is not a 'private' matter. It is a crime, and a human rights abuse.

(See *Commonwealth Manual on Human Rights Training for Police*, p 117)

## Trainer Notes

- Emphasise that different children have different levels of emotional and intellectual maturity, even if they are the same age, and some may not yet understand the difference between right and wrong and cannot be held criminally responsible until they understand the difference
- Ask participants to discuss the age of criminal responsibility in Nepal

By building strong community relationships, police can help reduce the incidence of crime amongst young people, and protect them from harm. **When preventing and investigating crimes against child victims, you should:**

- Get to know children in your area, and their families;
- Be aware of places and adults frequently involved in crime, and take note if children are involved with them;
- Notify parents and school authorities if you seen children who are away from school during school hours;
- Investigate any evidence of neglect or abuse of children in their homes, communities or police facilities;
- For non-serious crimes, return juvenile offenders to parents or social workers, instead of arresting them;
- Meet with social workers and doctors in your area to discuss children's issues; and
- Report to your superior officer if you think that a colleague is not dealing with children appropriately.

(See OHCHR, *Human Rights Standards and Practice for the Police*, p 40)

#### **Discussion Question**

What can you do if you suspect a child might be a victim of abuse or exploitation?

#### **When investigating crimes involving child suspects:**

- The child's privacy should be respected and complete and secure records should be maintained and kept confidential. Where possible, these records should be stored separately to those of adults.
- Special care should be taken to explain to children why they are being investigated.

#### **Remember:**

Detention or imprisonment of children should only be used as an extreme measure of last resort, for the shortest possible time, and children must be segregated from adults.

## Trainer Notes

- Ask participants to discuss their experiences and strategies for dealing with the problem



## 7. Vulnerable group: women

### KEY CONSTITUTIONAL RIGHT: *Rights of women* – article 20

(1) No woman shall be discriminated against in any way on the basis of gender...

(3) No physical, mental or other form of violence shall be inflicted on any woman, and such an act shall be punishable by law.

### Women as victims of crime

Women experience discrimination of different kinds all around the world. For example, women may be excluded from political participation and public life. Women are also vulnerable to physical, psychological and sexual abuse, in public and within the home.

**These are not 'private' matters – they are human rights violations.** Police officers must acknowledge that these problems exist and take extra measures to protect women against violence (including in the home) and discrimination.

### Domestic violence: not a private matter

Violence against women can be physical, sexual or psychological. It is important to recognize that domestic violence is a crime, and that police should normally investigate it as a crime. Women are often wary of reporting the matter, and afraid of the sort of treatment the police might give their case.

The police have the potential to make a major contribution to the public perception of violence through police responses that unambiguously identify violence both inside as well as outside the family as unacceptable behaviour. Police can educate the community by their response. They should seek to liaise with community groups. This will contribute to the recognition that the human rights of women in the home are no different to those of men.

*Commonwealth Manual on Human Rights Training for Police*

Women are particularly vulnerable to 'repeat victimisation', where they experience insensitive or traumatic treatment when seeking help from police after the crime. Police must ensure that re-victimisation does not occur as a result of their omissions or gender-insensitive enforcement practices. Police officers should prioritise the victim's welfare and should always show respect for her dignity.

### Discussion Question

Do you currently have any special procedures in place to protect women?



## Trainer Notes

- Ask participants what they believe are 'private' matters and what are 'public' matters for the purposes of human rights law
- Emphasise the importance of police in setting a good example in society, showing community leadership, and changing behaviour in the community
- Ask participants to discuss, drawing on their personal experiences

### **Example from Nepal: Violence against Women**

In one survey of women in Nepal who had reported rape or sexual assault to police,

- 54% said that police had mentally harassed them during their investigation.
- 57% of victims said that police were reluctant to investigate as soon as their complaint had been lodged.
- 21% of victims reported that police did not arrest the alleged offenders.
- 21% of victims reported that the suspects were released before the investigations were completed.
- 83% of victims received threats to their life and suffered physical assault if they chose to appear in court. The complaints made by victims regarding such threats were not pursued.

See CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, pp124-145.

### **Example from Nepal**

Attempts to seek redress by victims of discrimination and related abuse have often been unsuccessful in Nepal. Police often encourage mediation, sometimes involving political parties, rather than prosecution of offenders. The lack of punishment with regard to discriminatory practices has reinforced a climate of impunity (see UN OHCHR, *Report to the Human Rights Council*, 18 February 2008, A/HRC/7/68, p 17).

### **When dealing with women who are victims of crime, you should:**

- Respect the victim's dignity in the way you talk to and deal with her;
- Treat domestic violence as seriously as other assaults;
- Respond promptly to domestic and sexual violence calls, and help victims find appropriate medical support and a safe place to stay;
- Take statements from female victims in private, away from anyone who may have been violent towards them, or could be in future;
- Ensure a female officer or other female is present when taking a statement, and in dealing with female victims; and
- Be aware that the woman may be feeling humiliated, vulnerable and afraid, and this may affect the way she communicates.

**Remember** - the welfare and wellbeing of the victim should be your highest priority.

## Trainer Notes

- Ask participants why some police are reluctant to treat violence against women as a serious crime
- Explain that where used in the wrong circumstances, mediation can suggest that the victim is somehow partly to blame for the criminal conduct of the perpetrator, when violence against women is a serious crime for which the woman does not share responsibility or blame
- Women may be reluctant to confront a male perpetrator in a mediation setting, out of fear of reprisal (including against family and children) or because of cultural traditions of submissiveness to her husband or relative (and most violence against women is caused by husbands or family members)

## Trafficking and exploitation of women

The increasing global trend of human trafficking, usually for labour or sexual exploitation, poses a new challenge for law enforcement. Women are the most common victims of trafficking. It is important for police *not* to treat victims of trafficking as criminals. The victims may have been coerced to perform unlawful activities (for example, where women are forced into prostitution), and the consent of victims to the exploitation is irrelevant (see *Protocol to Prevent, Suppress and Punish Human Trafficking 2000*).

### Example from Nepal

- Up to 200,000 Nepalese girls are working as prostitutes or in sex-related businesses in India, and between 5,000 and 7,000 Nepalese girls are trafficked into India every year. Under the 'deukis' system in Nepal, rich childless families buy girls from poor rural families and offer them to the temples as though they were their own. These girls are forced into prostitution. In 1992, 17,000 girls were given as deukis (see Radhika Coomaraswamy, UN Special Rapporteur on Violence Against Women, 1997).
- Many of the girls are only 9 or 10 years old. Some girls are sold by poor parents, tricked into fraudulent marriages, or promised employment in towns, but end up in Indian brothels. There they are often locked up for days, starved, beaten, and burned with cigarettes until they learn how to service up to 25 clients a day. Some girls go through 'training' before being initiated into prostitution, which can include constant exposure to pornographic films, tutorials in how to 'please' customers, and repeated rapes (see Soma Wadhwa, 'For sale childhood' (1998) *Outlook*).
- Trafficking in women and girls is easy along the 1,740 mile-long open border between India and Nepal. Trafficking in Nepalese women and girls is less risky than smuggling narcotics and electronic equipment into India. Traffickers ferry large groups of girls at a time without the hassle of paperwork or threats of police checks. The procurer-pimp-police network makes the process even smoother.... Police are paid by brothel owners to ignore the situation. Girls may not leave the brothels until they have repaid their debt, at which time they are sick, with HIV and/or tuberculosis, and often have children of their own (see Soma Wadhwa, 'For sale childhood' (1998) *Outlook*).

## Women as suspects in crime

Women are entitled to the same rights as men upon arrest and detention, but women also have special needs which should be respected by law enforcement officers. Violence against female detainees by police officers is a human rights concern all over the world. The training of police officers must emphasise that any violence against women by an officer, including physical, sexual or psychological abuse, is a gross breach of duty and a serious criminal act.

## Trainer Notes

- Ask participants to reflect on their experience of cases involving trafficking in women or children/girls
- Ask participants what they think are the major obstacles or difficulties in detecting, investigating and prosecuting trafficking
- Note also how victims of trafficking may also be stigmatized and excluded by their own communities for conduct which was not their own fault



### **Special measures should protect women who are vulnerable to abuse:**

- Women should be detained separately from male detainees;
- Women should be supervised, searched and interrogated by female officers;
- Statements from women who are victims of a violent crime should be taken in private, and administered by female police officers;
- Women should be given access to specialised medical facilities where appropriate, particularly during or soon after pregnancy;
- Provisions should be made for the care of children whose mothers are in custody.

## **8. Vulnerable group: disabled people**

### **KEY HUMAN RIGHT: *Convention on the Rights of Persons with Disabilities (2007)*:**

#### **Access to Justice – Article 13**

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

#### **Article 16 - Freedom from exploitation, violence and abuse**

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

Whether as victims, witnesses or suspects in investigations, physically or mentally disabled people may face particular difficulties in the criminal justice system. These may include:

- negative stereotypes of the disabled by public officials and lawyers;
- an inability to fully understand the seriousness of the criminal process;
- lack of awareness that legal advice or representation may be necessary;
- lack of specialist legal services which can assist them;
- lack of financial resources to pay for legal services;
- communication difficulties, particularly with police and lawyers;
- physical barriers to access where a person is seriously physically disabled.

## Trainer Notes

- Ask participants to reflect on their own experiences with disabled people and any difficulties which arose



## 9. Vulnerable group: homeless people

The United Nations estimates that around 100 million worldwide have *no* housing whatsoever, while one billion people lack *adequate* housing. Homelessness and forced evictions can seriously compromise the ability of a person to access justice.

### Right to security

Homeless people are often the victims of violence, which may take the form of death threats, violent attacks, harassment, intimidation or severe discriminatory treatment. Women and children living on the streets are particularly vulnerable to violence or exploitation, while refugees and minorities may be victims of racist attacks.

### Police should actively provide protection from violence for homeless people by:

- Familiarising yourself with the homeless people living in your area and being aware of the problems affecting them;
- Making positive contact with homeless people and ensuring that they are aware of how to obtain protection from police;
- Cooperating with social services and other groups assisting homeless people;
- Identifying the special needs of people living in areas of poor housing such as slums and providing those areas with specially trained law enforcement personnel.

### Vulnerability in the justice system

Homeless people are often over-policed or wrongly accused of crimes, since they may be convenient targets due to their vulnerable status and inability to easily access support networks. Even if legal aid is available, they may lack the necessary information and self-confidence to seek redress from the courts. Homeless people are often overwhelmed by issues of urgency, including health, accommodation, and hunger, which result in seeking assistance for their legal needs being relegated to a lower priority.

Whether they have committed a crime or not, those living in poverty have a right to enjoy the minimum guarantees of a fair trial, such as the presumption of innocence and protection against arbitrary arrest or detention. People living in poverty are more likely than others to be discriminated against and deprived of these minimum guarantees. They may, for instance, find it much harder to obtain bail, because they have no fixed address and no property which can be provided as a guarantee to obtain bail.

### Discussion Questions

1. What dealings have you had with homeless people in your area?
2. Were there any particular difficulties or problems you encountered?

## Trainer Notes

- Ask participants to reflect on their experiences with homeless people
- Encourage participants to liaise with welfare services and charities to assist homeless people in order to prevent them being victims or perpetrators of crime

There are a range of barriers preventing homeless people from accessing justice which law enforcement officials need to be sensitive to, including:

- Fear of the legal system, and a belief that their problems will just ‘go away’;
- Lack of ability to identify their problems as a legal issue;
- Lack of lawyers and legal services with specific skills to listen and understand the issues confronting homeless people (who may also be suffering from other problems such as substance abuse, addiction, or mental illness);
- Vulnerability to harassment and discrimination, particularly from law enforcement;
- Low levels of literacy, causing difficulty in understanding legal information.

## 10. Vulnerable group: minorities

**KEY CONSTITUTIONAL RIGHT: Right to equality – article 13**

“(1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.

(2) There shall be no discrimination against any citizen in the application of general laws on grounds of religion, race, gender, caste, tribe, origin, language or ideological conviction or any of these.

(3) The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, gender, origin, language or ideological conviction or any of these....”

**KEY CONSTITUTIONAL RIGHT:**

**Right against untouchability and racial discrimination – article 14(1)**

“No person shall, on the ground of caste, descent, community or occupation, be subject to racial discrimination and untouchability in any form. Such a discriminatory act shall be liable to punishment and the victim shall be entitled to compensation as provided by the law.”

During police investigations, all persons, regardless of race, colour and ethnic origin, sexual orientation and religious beliefs have **a right to equal treatment**. This includes:

- The right of victims to access effective legal remedies and the right to seek just and adequate reparation for any damage suffered as a result of such actions; and
- The right of accused persons to equal treatment before all courts and tribunals.

**Discussion Question**

Can you think of ways to help ensure that *dalits* are not discriminated against?

## Trainer Notes

- As noted previously, police should also protect against discrimination based on a person's sexuality
- Ask participants to discuss and reflecting on their own experiences
- Some answers are on the next page

**It is important that police develop strategies for enhancing relations with minority groups (including *dalits*) in the community, for example:**

- Establishing liaison officers with minority ethnic communities and other groups;
- Specifically emphasising the recruitment of police from minority communities;
- Establishing a multi-lingual website for ethnic communities;
- Publishing a multi-lingual phrase book for front-line police; and
- Educating police officers on racial and religious diversity.

#### **Example from Nepal**

‘Women, indigenous peoples, Dalits and Madheshis are not well represented in the security forces. The recent introduction of a quota system in the police’s recruitment process is a good start, but it will not be easy to ensure inclusiveness, not only in recruitment, but also in promotion, planning, assignment of duty and decision making.’

*Richard Bennett, Representative of the UN High Commissioner for Human Rights in Nepal, Remarks at police training program, Kathmandu, 21 November 2008*

## **11. Vulnerable groups: refugees and non-nationals**

### **Refugees**

A refugee is a person who, owing to a well founded fear of persecution on the grounds of race, religion, nationality, membership in a particular social group, or political opinion, is unable or unwilling to return to his or her country of origin (or, if stateless, to his or her country of habitual residence) (see Refugee Convention 1951).

**Law enforcement needs to be aware of the basic rights of refugees, which include:**

- The right to temporary entry when coming directly from a country of persecution without being penalised if presenting themselves without delay to the authorities;
- The right not to be returned to a country where they face **persecution** or **torture**;
- The right to freedom of movement and residence and the right to travel documents and identity papers (when entering a country lawfully);
- The right to be informed of the necessary procedures, provided with the necessary facilities and to remain pending a final decision;
- No refugee shall be expelled except on the grounds of national security or public order and only on the basis of a decision reached following due process of law.

## Trainer Notes

- Encourage participants to get to know their local areas better and also the minority communities which live there
- Ask participants to discuss the Madheshi problem and discuss strategies for defusing violence or antagonism
- Note that the main refugee groups in Nepal are Tibetans and Bhutanese (Jhapa district)
- The test for not returning a person to persecution or torture is whether there are substantial reasons for believing that a person would be exposed to those risks on return to another country. A person does **not** have to prove that the risk exists beyond reasonable doubt (the criminal standard) or on the balance of probabilities (the civil standard) – even a less than 50% chance is enough, and a person should enjoy the benefit of the doubt



#### **Example from Nepal: Tibetan Refugees in Nepal**

'Nepal's threat to use violence to prevent anti-China protests when the Olympic torch reaches Mount Everest has been condemned by Amnesty International.

The Nepali Home Ministry has pledged to use "force, including gunfire... to prevent anti-China protests" when the Olympic torch relay arrives on Mount Everest in early May. The threats follow earlier crackdowns on peaceful pro-Tibetan protesters, which were unconstitutional. Since 10 March 2008 over 2,000 people have been arbitrarily detained.

The Nepali government is extending illegal police actions against Tibetans in Nepal and systematically violating their fundamental rights to liberty, due process and freedom of movement, assembly and expression.

"Members of the Tibetan refugee community have in recent days faced increasingly punitive police measures designed to muzzle free speech, including threats of arbitrary deportation to China. Statements threatening the use of lethal force represent an unacceptable escalation," said Amnesty International.'

*Amnesty International, 'Nepal Threatens Olympic Protesters', 22 April 2008*

#### **Non-nationals**

Non-nationals include foreigners citizens and stateless persons. **Police need to be aware of their basic rights, which include:**

- The right to leave, emigrate and not be expelled where they have close attachments to the country. Other non-nationals lawfully in the country may be expelled only if decided by law, if the decision is **not arbitrary** and is **not discriminatory**, and if procedural guarantees have been afforded. Collective/mass expulsion is prohibited.
- The right (after lawful entry) to be joined by their spouse and dependant children.
- The right to communicate with their consulate or diplomatic mission.
- The right not to be sent to a country where their human rights would be violated, such as by being returned to torture or persecution.

#### **Refugees, non-nationals and law enforcement**

If a person is under investigation for being in the country illegally, all actions should always be lawful and reasonable under the circumstances. Further, the person under investigation has the right to be given written reasons for being apprehended and the right to have the decision reviewed by a court must be afforded.



## Trainer Notes

- Refugees enough basic human rights such as freedom of expression, which do not depend on nationality or citizenship
- In this example, it is not permitted for Nepal to suppress the free expression of the refugees merely in order to improve diplomatic relations with China
- Ask participants whether they have had any dealings with refugees in their work
- Non-nationals who are detained should also be advised of their right to consular assistance and communication
- Ask participants whether they are familiar with the immigration law processes and the circumstances in which non-nationals can be detained or deported

**In addition, all police officers must:**

- Be alert to any evidence of xenophobic or racist activity. Supervisory officers should issue clear orders on the special vulnerability and needs of non nationals;
- Cooperate and liaise with immigration authorities and social agencies assisting refugees and non-nationals;
- In areas with high immigrant concentrations, reassure residents of their right to seek police protection and assistance without fear of being deported. Supervisory officers should organise increased presence in these areas;
- Remember that non-nationals are not criminals solely on the basis of their unlawful immigration status;
- Provide visible security for refugee shelters and camps.

**Discussion Questions**

Have you come across incidents of racism or hostility against foreigners? What did you do?

**Example from Nepal: Bhutanese Refugee Camps**

‘Violent clashes this week resulting in two deaths in Nepal’s Bhutanese refugee camps underscore the need for the Nepali police to protect refugees from mob violence and ensure their right to peaceful expression, Human Rights Watch said today....

Human Rights Watch is concerned about the escalation of violence in the refugee camps in eastern Nepal and along the Indian border, which some refugees have been attempting to cross in a march to Bhutan.

On May 27, a group claiming to be members of the Bhutanese Communist Party (Marxist-Leninist-Maoist) attacked refugees who have voiced support for a US offer to resettle Bhutanese refugees. The attackers beat at least one refugee leader and destroyed his and several other huts in Beldangi II camp in eastern Nepal....

In response to the violence, a contingent of the Nepal Armed Police opened fire on the mob and reportedly killed a teenage boy. By some accounts, police shot a second teenager on Monday who died later that day in hospital.

“Nepali police need to protect the Bhutanese refugees and their right to peacefully express their views on resettlement or return,” said Human Rights Watch....

Refugees or others who resort to violence and attack refugees with whom they disagree must be arrested and prosecuted by Nepali authorities, Human Rights Watch said. At the same time, the police should avoid excessive force in maintaining order.

*Human Rights Watch, ‘Nepal: Bhutanese Refugee Tensions Erupt into Violence’, 30 May 200*

## Trainer Notes

- Ask participants to reflect on their own experiences, and to suggest ways in which police can prevent racism and hostility
- This example illustrates (1) the obligation of police to protect groups that are at risk of foreseeable violence and (2) the obligation on police not to use indiscriminate force or excessive violence in controlling public order

# PART V: POLICING PUBLIC ORDER

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## 1. Introduction

In addition to preventing and investigating individual crimes, police and law enforcement officials play a vital wider role in maintaining public order. In particular, police have a role in ensuring order and safety during public demonstrations, marches, rallies, protests and strikes, as well as in responding to violence such as riots, civil unrest, terrorism and conflict. Police may, for instance, order crowds to disperse, arrest disorderly demonstrators, or even resort to the use of force in response to violence.

At the same time, all people, whether citizens or non-citizens, have a right to peacefully participate in democratic life by exercising their freedoms of expression, assembly, association and movement. Law enforcement should not interfere in the exercise of these freedoms unless there are strong reasons for doing so (such as to maintain public safety or to protect the rights and freedoms of others).

## 2. Human rights and public order

All people enjoy political freedoms which are essential to democracy. These include:

- **Freedom of opinion and expression:** including freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- **Freedom of thought, conscience and religion:** including freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private; to manifest his religion or belief in worship, observance, practice and teaching; and the freedom not to be religious.
- **Freedom of association:** including the right to form groups, political parties and trade unions, and to meet with other people sharing common interests. Individuals also have a right to join or not to join an organisation. The right to organise is an important way for people to influence politics and to hold governments accountable.
- **Freedom of peaceful assembly:** including a right to hold rallies, demonstrations, protests and workers' strikes. Holding peaceful assemblies is an important way for people to express their political views and to influence government policies.
- **Freedom of movement:** including the liberty to move freely within the national territory, to choose a place of residence, to leave any country, and to be readmitted to one's own country of nationality or permanent residence.

## **Trainer Notes**

- Highlight the need to carefully balance the competing interests of individual freedom and public safety



### KEY CONSTITUTIONAL RIGHT: Right to freedom – article 12(3)

“Every citizen shall have the following freedoms:

- (a) freedom of opinion and expression;
- (b) freedom to assemble peaceably and without arms;
- (c) freedom to form political party or organisations;
- (d) freedom to form unions and associations;
- (e) freedom to move and reside in any part of Nepal; and
- (f) freedom to engage in any occupation or be engaged in employment, industry and trade....”

## 3. Respecting rights while maintaining order

Most human rights are not absolute but may be limited to protect public interests. Freedoms of expression, association, assembly and movement may be restricted where:

- It is **necessary** to limit the freedom to achieve a legitimate and important public purpose such as **ensuring public safety or security**, or protecting the rights of others;
- The restrictive measure is a **proportionate** method of achieving the public interest purpose, and does not go further than is necessary (that is, it is not excessive);
- The restrictive measure is **not imposed on a discriminatory or arbitrary basis**;
- The measure is **authorised by law**; and
- The measure persists only until the public purpose has been achieved.

To give some examples:

- **Freedom of expression:** a person’s freedom of expression might be lawfully limited where the person is inciting other people to commit crimes or violence, or is provoking racial or religious hatred of another group of people.
- **Freedom of association:** a person’s freedom of association might be lawfully limited where the organisation is formed for the purpose of criminal activity, such as organised crime or terrorism.
- **Freedom of peaceful assembly:** a person’s freedom to assemble might be limited where a demonstration becomes violent or jeopardizes public safety.
- **Freedom of movement:** a person’s freedom of movement might be lawfully restricted when they are subject to lawful arrest, detention or imprisonment; or where an area of the country is affected by a natural disaster or violent conflict and it is not safe for people to return there; or for reasons of immigration control.

Note that limitations may never be imposed on freedom of opinion.

## Trainer Notes

- Emphasise these key rules
- Discuss these examples and take comments
- Emphasise how many human rights are not absolute, but enable competing individual and community interests to be balanced
- Accordingly, human rights can help law enforcement to ensure public safety



## 4. Permission to hold demonstrations

In some countries, demonstrations may be permitted without prior permission of the authorities. In other countries, protesters must first obtain permission from the authorities before proceeding with a demonstration, so that the police can adequately plan for the safety and control of crowds and traffic.

Because of the importance to human rights and democracy of freedom of assembly, **if permission to assemble is required by law, it must not be unreasonably withheld by police.** There should be a presumption that a demonstration is allowed to be held, unless:

- There are reasonable grounds for believing that the demonstration would constitute a threat to public safety or security, including by damaging property; and
- That threat cannot be met by good policing tactics during the demonstration itself.

Police must therefore attempt to balance freedom of assembly and public safety, without sacrificing one absolutely in favour of the other. Any procedural requirements for obtaining permission for a protest should not be too onerous, lengthy or expensive.

Often it will be possible for police to work cooperatively with the organisers of a demonstration to ensure that safety concerns are met, for example, by agreeing on a route for a protest march, agreeing on the times for starting and finishing the demonstration, or by involving the organisers of a march in securing cooperative behaviour from protesters.

Police should also be alert to any preparations for unlawful demonstrations, to ensure that police are adequately prepared to maintain public safety if such demonstrations occur.

## 5. Good policing of demonstrations

Even if a protest is unlawful, **police should be tolerant of it if it is peaceful.** Responding aggressively to unlawful protests risks escalating them and endangering public safety.

For lawful demonstrations, it is important for police to make adequate preparations and plans in advance to ensure public safety can be maximised. In policing demonstrations:

- Make contact with the protest organisers to agree on the conduct of the protest, and seek their assistance in directing the crowd during the protest;
- Where it is necessary to disperse a crowd, always leave a clear and obvious corridor of escape, so that the crowd does not panic or stampede;
- Always treat a crowd as a group of independently thinking individuals, not as a single-minded mass;
- Treat members of the crowd with dignity and respect, and seek their cooperation;
- Avoid provocative or aggressive tactics;
- Ensure that there is an adequate number of police who are properly equipped.

## Trainer Notes

- Ask participants to discuss the laws and procedures for holding protests or demonstrations in Nepal, and any problems which have arisen in their experience
- Under the Police Act 2012, section 19, the Chief District Officer or his or her delegate can authorise the place for public assemblies or protest rallies so as to maintain peace and order and can halt a protest if it disrupts public peace and security. This power should be interpreted consistently with the protection of freedom of assembly and expression – see, for instance, the box at the top of page 57
- Ask participants to reflect on their own experiences in policing demonstrations
- Note that police should also ensure that competing groups are separated during protests for their own safety – for example, by keeping rival political parties apart

### **What is a 'peaceful' demonstration?**

'[D]emonstrators can be loud, enthusiastic, taunting and boisterous, but still be counted as 'peaceful'. The right to demonstrate peacefully does not mean people must shuffle along quietly. People do not break the law and surrender their free expression rights by being vocal, dancing, etc. Many crowd control situations deteriorate because police seek to prematurely shut down peaceful but enthusiastic demonstrations. The restraint needed comes from self and group confidence in the police officers themselves. This is about confidence in the competence and calm of their chain of command as the situation develops. It is helped by having the right equipment and training to deal with grades of force as might be necessary...'

*Commonwealth Manual for Police, p 103*

## **6. Use of force during protests**

Using force in policing protests should be a last resort, when other methods of control have failed. Recall also the module on using force to make arrests earlier in this Manual.

### **Avoid using force if possible:**

- Develop crowd control techniques which minimise the need to use force, including by securing the cooperation of the protest organisers in directing crowds;
- Use non-forcible techniques of persuasion, mediation, negotiation and conflict resolution, before resorting to more forceful methods;
- If persuasion fails, issue directions to the crowd before resorting to forceful means;
- Remember that every crowd is different and the use of force against a particular crowd may not be needed even if it at first seems similar to another situation where force was used. Do not follow rigid plans for crowd control but be flexible, taking into account the particular characteristics of each crowd.

### **Where using force becomes necessary:**

- Plan in advance for the gradual, progressive use of escalating force, beginning with the least forcible and non-lethal methods;
- Sometimes the show or threat of force (for example, by lining up police dressed in riot gear) will be sufficient to secure cooperation, without actually using it – but be aware that threatening force may also be seen as provocative by the crowd and could counterproductively escalate the situation;
- Ensure that police have defensive equipment (such as shields, vests, helmets and non-lethal weapons) so that there is less need to use offensive force;
- Use lethal weapons (such as firearms) only as a last resort.

## Trainer Notes

- Emphasise that professional police remain in self-control and exercise restraint, and are not tempted to over-react to rowdy but peaceful protesters
- Also refer back to the chapter on “Arrest”
- Under the Local Administration Act 2028 BS, section 6, when protests or mobs get out of control, police are directed to attempt to use peaceful means first, such as by convincing the people involved to stop
- In your experience, are police plans for crowd control rigid or flexible?
- Ask participants to reflect on their own procedures, orders and training
- Under the Local Administration Act 2028 BS, section 6, coercive methods such as baton charging, tear gas, water canon or warning shots can be used; if those methods fail, after a final warning, firing bullets may be used as a last resort (but only shooting below the knee).



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

### *Policing unlawful assemblies*

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

**Remember:** if a person is injured during a protest, make sure they receive medical care.

### Examples from Nepal: Excessive Use of Force

There is evidence that law enforcement officials in Nepal have sometimes failed to fulfil their human rights obligations in maintaining public order. In particular, law enforcement have sometimes **used excessive force** in response to public demonstrations. For example:

- Nepal Police and Armed Police Force have responded to demonstrations with excessive force by beating protesters on the head with metal-bamboo sticks (*lathis*), entering homes to beat residents, obstructing ambulances and emergency vehicles, and firing ammunition directly into crowds of demonstrators when there was no credible threat to life (see UN OHCHR, *Report to the Human Rights Council*, 6 March 2007, A/HRC/4/97/Add1, p 4).
- Interventions by the Armed Police Force and Nepal Police to control protests since the Comprehensive Peace Agreement have resulted in at least 27 deaths and many injuries, either through the use of firearms or severe beatings. 19 of these deaths occurred during the *Madheshi Andolan* (see UN OHCHR, *Report to the Human Rights Council*, 18 February 2008, A/HRC/7/68, p 9).
- The fatal shooting of four demonstrators by the Nepal Police on 22 January 2007 in the Siraha District led to widespread demonstrations throughout Terai areas. The escalation led to 24 deaths (23 civilians and 1 police officer), resulting primarily from confrontations between demonstrators and police (see UN OHCHR, *Report to the Human Rights Council*, 6 March 2007, A/HRC/4/97/Add1, p 4).
- On 30 July 2006 an Armed Police Force patrol at the Nepal-Chinese border fired into a crowd of violent demonstrators, killing a bystander and wounding several others UN OHCHR, *Report to the Human Rights Council*, 17 January 2007, 1/HRC/4/97, p 7).

## **Trainer Notes**

- This extract is for later reading and does not need to be covered in the training
- You may ask participants to discuss and comment on these examples if you wish
- Emphasise that these examples demonstrate the need for police not to overreact or panic and to remain in control



### **Example from Nepal: Failure to Prevent Violence**

It may also be a breach of Nepal's international human rights obligations if police **fail to adequately respond** to situations which required intervention by police – that is, where police have failed to use lawful force where it is necessary. In circumstances where police are aware of likely tensions between different groups in the community, there is a duty on police to act to protect the right to life and to maintain peace and order. For example:

- On 21 March 2007, the Madheshi People's Rights Forum (MPRF) and the Communist Party of Nepal (Maoist) (CPN(M)) organised simultaneous rallies in the same place. In spite of known escalating tensions, authorities were unable or unwilling to control the situation. Several hundred members of the police forces present did not intervene to stop fatal attacks on CPN(M) cadres which resulted in 27 deaths (see UN OHCHR, *Report to the Human Rights Council*, 18 February 2008, A/HRC/7/68, p 9).

### **Discussion Question**

Do the above examples illustrate how the excessive use of force by police, and the failure to adequately respond to violence, can generate greater, not lesser, public order problems?

### **Remember:**

1. Only use force if it is necessary;
2. Only use as much force as is necessary; and
3. Only use force for as long as is necessary.

**Never use force indiscriminately.**

*Refer also to the rules on page 12.*

## Trainer Notes

- If time permits, consider splitting the participants into two groups, with one side arguing for the use of force in this situation, and the other arguing against (5 minutes preparation, the 5 minutes presentation per group)
- Advise participants that there are key rules

# PART VI: FAIR TRIAL & PROSECUTION

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## 1. Why do prosecutors need to know about rights?

Prosecutors play a vital role in the conduct of criminal trials. The right to a fair trial is a fundamental human right which is crucial to upholding the rule of law. International law and the Interim Constitution of Nepal impose procedural standards which assist prosecutors to protect this essential human right.

A fair trial also depends on compliance with human rights standards during all steps in the pre-trial process. For that reason, prosecutors must also be aware of how the trial process is affected by the actions of police leading up to trial, including arrest, detention and investigation, and how those actions affect the rights of an accused.

‘The right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law.’

*(UN Human Rights Committee, General Comment No 32)*

‘[P]rosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect and compliance with...the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal...” for the purpose of “contributing to fair and equitable criminal justice and the effective protection of citizens against crime.’

*(Preamble, Guidelines on the Role of Prosecutors, adopted by the 8<sup>th</sup> UN Congress on the Prevention of Crime and the Treatment of Offenders, 1990)*

**In summary, prosecutors need to know about human rights because:**

1. Prosecutors have a legal and moral duty to **respect the human rights** of persons who are appearing before courts or tribunals;
2. Prosecutors can **assist courts and tribunals** to ensure the requirements of a fair trial are met;
3. **Prosecutors are entitled to human rights too** – such as the right to safe and fair work conditions which allow prosecutors to work independently.

## Trainer Notes

- Note that prosecutors have simultaneous duties to their client (the public interest in prosecuting crime) and duties to the court (ensuring justice and a fair trial and acting properly)

## 2. Independence and impartiality

Prosecutors must act independently to ensure that all persons are treated equally before the law. However, there are many pressures that may impair their ability to do so. These pressures may be *internal* or *external*. For example:

- You may experience *internal* pressures if you are required to prosecute someone who holds public office, and you are tempted to give them special treatment; or
- You may experience *external* pressures if you are approached by friends or family members of a suspect and asked to ignore a piece of evidence, in return for a favour or bribe.

### Example from Nepal

- One study found that 87% of prosecutors gave special weight to the opinions of the investigating officer, even if these opinions were not based on hard evidence.
- 27% of prosecutors indicated they had been pressured in subtle ways to drop cases.

(See CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, pp 214-215)

Impartiality requires prosecutors to carry out their duties **without discriminating** against people on political, social, religious, racial, cultural, sexual or other grounds. This may require the investigation and prosecution of crimes committed by public officials such as corruption or abuses of power.

Appropriate education and training can assist prosecutors to be conscious of, and resist, the pressures that affect the performance of their duties. Prosecutors should be aware of:

- The ethical duties of their office,
- The constitutional and legal protections of the suspect and the victim, and
- The human rights and fundamental freedoms recognised by national and international law.

(See also *Guidelines on the Role of Prosecutors*, adopted by the 8<sup>th</sup> UN Congress on the Prevention of Crime and the Treatment of Offenders, 1990.)

### Discussion Question

1. Can you think of someone who you might feel uncomfortable prosecuting? What can you do in this situation?
2. How might people put pressure on you as a prosecutor to act in a certain way?



## Trainer Notes

- Emphasise that prosecutors have a duty to exercise their discretion to filter out inappropriate cases from the courts and to act independently to ensure that the justice system functions effectively
- Encourage discussion of actual experiences



### 3. What are the components of a fair trial?

As law enforcement officials, police and prosecutors owe special duties towards the courts in criminal proceedings, including a duty to ensure that a suspect receives a fair trial. The components of a fair trial, discussed below, are set out in articles 14 and 15 of the **International Covenant on Civil and Political Rights (ICCPR)**.

#### 1. A fair and public hearing by a lawful, competent, independent and impartial tribunal

**KEY CONSTITUTIONAL RIGHT: *Right to a fair trial* – article 24(9)**

“Every person shall be entitled to a fair trial by a competent court or judicial authority.”

- Criminal trials should be conducted in public, unless there are special circumstances warranting trial in a closed court.
- The defendant must not be subject to any interference, pressure or intimidation for any reason. For example, a hearing is not fair if the accused is faced with noisy and hostile public spectators who are tolerated by the court and impede their ability to defend their case (HRC, *General Comment 32*, pg 7).
- Equal weight should be given to the prosecution and defence cases.
- The same procedural rights should be provided to all the parties, except where distinctions are based on law and can be justified on objective and reasonable grounds.

#### **Example from Nepal**

35% of criminal cases are still tried by executive tribunals such as the DAO, the Forest Officer, the Conservation Park Warden and Customs Officers. These trials are generally conducted without legal representation and formal motions are not used (see CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, p 82).

#### 2. Equal and non-discriminatory treatment before the courts

You must not discriminate against defendants, victims or other witnesses on the bases of religion, race, sex, caste, tribe, origin, language, ideological conviction or on any ground.

Discrimination means treating a person less favourably because of their membership of a particular group, compared with how you would treat other people not from that group.

## Trainer Notes

- Special circumstances might include protecting sexual assault victims or child witnesses, or national security concerns
- Ask participants whether they think these tribunals are capable of guaranteeing a fair trial as required by human rights law – or do they lack sufficient judicial independence and procedural safeguards?

### 3. The right to be presumed innocent until proved guilty according to law

#### KEY CONSTITUTIONAL RIGHT: *Right to be presumed innocent* – article 24(5)

“No person accused of any offence shall be assumed to be an offender until proven guilty”

- The prosecution bears the burden of proving the charge against the accused;
- Public officials should refrain from making public statements before or during the trial implying that the accused is guilty;
- Defendants should be given the benefit of the doubt, and not be treated in a way that suggest they are guilty or dangerous (e.g. they should not be kept in shackles or caged unnecessarily);
- Denial of bail or a finding of liability in civil proceedings does not undermine the presumption of innocence.

### 4. A right to be informed promptly, in a language the person understands, of the charges

- This may require the use of an interpreter in some circumstances;
- A person should be notified as soon as they have been formally charged with an offence;
- Notification may be made in writing or orally (if later confirmed in writing), and should indicate the relevant law and the alleged facts on which the charge is based.

### 5. Adequate time and facilities to prepare a defence and consult a lawyer

- “Adequate time” must be judged on the circumstances of the case. For example, if the accused is using an interpreter to communicate with their lawyer, it may be appropriate to allow additional consultation time;
- “Adequate facilities” must include access to all documents and evidence that the prosecution plans to use against the accused in court, **and** access to any documents or evidence that suggest the accused is not guilty, or that prosecution evidence was obtained unlawfully (see below);
- The accused should be granted prompt access to a lawyer;
- The accused should be able to meet with their lawyer in private and to communicate with them confidentially.

## Trainer Notes

- Ask participants if they have any questions or comments about this right, and to reflect on their own experiences
- Ask participants if they have any questions or comments about this right, and to reflect on their own experiences
- “Adequate time” will also depend on the complexity of the case; complex cases may warrant additional time to prepare
- Note also that prompt and full pre-trial disclosure of the evidence by the prosecution to the accused is essential to enable the defence to prepare its case

## 6. A right to choose a lawyer or to have one provided if the person cannot afford one

### KEY CONSTITUTIONAL RIGHT: *Right to legal representation* – article 24(2)

“The person who is arrested shall have the right to consult a legal practitioner of his/her choice at the time of the arrest. The consultation made by such a person with the legal practitioner and the advice given thereon shall remain confidential, and such a person shall not be denied the right to be defended through his/her legal practitioner.”

### *Right to legal aid* – Article 24(10)

“Any indigent person shall have the right to free legal aid in accordance with law.”

If an accused person can afford to pay for a lawyer themselves, you must allow them to:

- Defend themselves **in person**,
- Appoint a lawyer **of their own choice** to represent them, OR
- Be represented by a lawyer of their own choice **and** testify on their own behalf.

Some defendants will not be able to afford legal representation. In these circumstances, the Interim Constitution of Nepal requires that they be provided with free legal aid. A defendant receiving legal aid does not have the right to choose any lawyer to represent them. However, if a defence lawyer exhibits manifestly deficient professional conduct, it may be necessary for the court to intervene to ensure the right to a fair trial.

## 7. A right to be tried in one’s presence

- Every effort should be made to ensure an accused person is informed of proceedings against them sufficiently in advance, understands their right to attend, and is given a genuine opportunity to attend.
- Sometimes a trial may have to proceed without the presence of the accused, for example where an accused person has refused to attend.

### Example from Nepal

Prisoners are often housed in remote areas. No plans are made to transfer them to court to appear at their trials. If they cannot afford to pay for transportation, they must choose between walking in chains, or missing out on the chance to defend themselves in person (see CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, p 96).

### Discussion Question

What should you do if a defendant is not present at his or her trial?



## Trainer Notes

- Ask participants to reflect on their own experience and discuss the availability and practicality of these rights
- Ask participants to reflect on this example and their own experiences
- Answer: take steps to secure the defendant's presence, including by arranging transport, or an adjournment to enable the defendant to attend later



## 8. A right to cross-examine witnesses and call witnesses on their behalf

You should ensure the accused person is given a genuine opportunity to:

- Answer the charges laid against them;
- Challenge the evidence presented by the prosecution;
- Present evidence and call witnesses in their defence if they chose to do so, and
- Cross-examine witnesses.

This does not allow defendants to call unlimited witnesses. Only witnesses that are relevant to the defence case must be allowed to give evidence.

When witnesses are to give evidence in court it is important that they should be briefed about the court's procedures and about their role and responsibilities as a witness. Preparing a witness does **not** mean telling them what to say – the duty of a witness is to tell the truth, and the duty of prosecutors is to facilitate witnesses to tell their stories.

## 9. Trial without undue delay

This means that a trial should:

- **Commence** without undue delay,
- **End** without undue delay, and
- **Judgment should be given** without undue delay.

Some delays are acceptable to allow for effective investigation of criminal charges, provided they are **reasonable**. What is 'reasonable' depends on the circumstances of the case. Factors which are relevant to determining a 'reasonable' delay include the complexity of the case, the conduct of the accused, the conduct of other administrative and judicial authorities, and the case load of the courts.

This requirement does not prevent the accused from making use of his or her right not to cooperate with judicial authorities.

### Discussion Questions

1. What factors might unduly delay trial proceedings in Nepal?
2. What procedures could be put in place to reduce delay in the future?

## 10. A right to free use of an interpreter if necessary

This right applies to people who cannot speak or understand the language in which a trial is being conducted. This right arises at all stages of the trial, and applies to important documents as well as the oral proceedings.

## Trainer Notes

- The purpose of cross-examination is to test the strength of the case, including the truthfulness of witnesses and to expose inconsistencies and lack of credibility
- Ask participants to reflect on their involvement in the selection and preparation of witnesses for trial
- Note that there are no fixed time limits on investigation and pre-trial delays
- Ask participants to discuss the length of time before trial in cases which they have been involved in – was there **undue** delay?
- Encourage discussion of actual cases which participants were involved in, and how the courts have responded (if there was a response at all)
- Discuss how interpreters are provided for and funded, and what is the process?

## 11. A privilege against self-incrimination

### KEY CONSTITUTIONAL RIGHT: *Privilege against self-incrimination* – article 24(7)

“No person accused of any offence shall be compelled to be a witness against himself.”

You must not apply direct or indirect psychological pressure to the accused to try and obtain a confession of guilt. The privilege against self-incrimination is part of the right to silence.

### Example from Nepal: Torture and Forced Confessions

- Torture is often encouraged by Nepalese police because confessions are seen as the most reliable form of evidence. One research study found that police subjected 67% of surveyed detainees to torture. This included several children (see CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, p 83).
- A 1999 survey showed that confessions were extracted from detainees in 85% of cases. Of those, 42% complained of ill-treatment in court. However, the trial court convicted 60% of accused, taking their confessions as valid evidence (see CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, p 110).

## 12. A right not to be retrospectively punished for conduct which was not criminal at the time it was committed

### KEY CONSTITUTIONAL RIGHT: *Right not to be retrospectively punished* – article 24(4)

“No person shall be punished for an act which was not punishable by law when the act was committed, and no person shall be subjected to a punishment greater than that prescribed by the law in force at the time of the offence.”

Laws exist to guide the conduct of individuals. People have a right to know what is criminal and what is not. Not protect this right, it is essential that:

- No one can be tried or convicted for conduct which did not constitute an offence at the time it was committed, and
- As a prosecutor, you must not seek a punishment that is more severe than the punishment that applied to the conduct at the time it was committed.

### Discussion Question

Why does human rights law protect against retrospective punishment? What do you think is wrong with punishing a person retrospectively?

## Trainer Notes

- A person does not have to admit their own guilt – the State must prove the case against them, not the person themselves
- Experience shows that forced confessions are unreliable and infringe human dignity
- Police and prosecutors must not use forced confessions or introduce them into court
- Do these statistics accord with your own experience of the justice system?
- Answer: to prevent unfairness to the defendant - who could not know in advance that his or her conduct was unlawful - the rule of law requires that people can know in advance what is legal and illegal

### 13. Protection against double jeopardy (being tried twice for the same offence)

#### KEY CONSTITUTIONAL RIGHT: *Protection against double jeopardy – article 24(6)*

“No person shall be prosecuted or punished for the same offence in a court of law more than once.”

This right prohibits bringing a person, who has been convicted or acquitted of a particular offence, before the same court, or a different court, for the same offence.

This prohibition does not prohibit the re-opening of a criminal trial in **exceptional circumstances**, such as where new evidence is discovered which was not available or known at the time that a person was convicted of a criminal offence.

#### Discussion Question

What is the purpose of the protection against double jeopardy?

### 14. A right to appeal the judgment to a higher court

This means that the accused must have access to all options for appeal available under the law of Nepal. An appeal must be **substantive**. It must address the **sufficiency of evidence**, and the **application of the law** as relevant in the particular case.

A person convicted of a crime must be provided with a **written judgment** of the trial court which includes reasons for the decision, so that they can exercise their right to an appeal.

Prosecutors should not appeal judicial decisions unless they are unreasonable or in error.

## 4. Unlawfully obtained evidence

Prosecutors have to ensure that human rights are upheld throughout the criminal justice system. This will require you to take action if you **know or suspect** that evidence has been obtained through **unlawful methods** which violate human rights. **If this occurs you should:**

- Refuse to use the evidence against the suspect;
- Inform the court of your decision to refuse to use the evidence;
- Bring to justice those responsible for using unlawful methods to obtain evidence.

**Unlawful methods** include methods which (a) breach Nepalese law or (b) breach international human rights law (including the prohibition on torture and forced confession).

Return to pp 15-18 of this Manual for the definition and examples of **torture**.



## Trainer Notes

- The purpose is to limit the State from arbitrarily prosecuting a person more than once, after a person has already been convicted or acquitted for that conduct. It also encourages the State to be more efficient and focused, making sure it prosecutes properly the first time
- Discuss any barriers to appeal rights in Nepal – for example, an automatic sentence increase in cases where the appeal fails is arbitrary and unjustifiably deters appeals
- Discuss whether written judgments are usually provided in cases in which the participants have been involved
- What is the purpose of written judgments? Transparency – it allows the reasons to be evaluated and appealed if incorrect
- Ask participants to discuss Nepalese laws and court rules on the admissibility of evidence
- Under the Evidence Act 2031, section 9, evidence obtained by torture, force or coercion cannot be admitted in court



### Discussion Questions:

What steps would you take to ensure that those who violate the human rights of suspects are brought to justice? What problems might you face in taking such action?

## 5. Children and the trial process

Children may be involved in the trial process as victims, witnesses or suspects. Care should be taken to protect their rights, and assist them to understand the proceedings.

- A minimum age for criminal responsibility should be established by law.
- Children who commit crime should be dealt with via non-judicial proceedings and alternatives to institutional care shall be provided for.
- The child's privacy should be respected and complete and secure records should be maintained and kept confidential.
- Children may require assistance in giving evidence. Be patient and put them at ease.
- It may be appropriate to receive evidence from children in a closed court to protect their privacy and safety.

### Example from Nepal: Closed Courts to Protect Children

In the Kathmandu District Court case of *HMG v Shree Prasad Upreti* (2003), a judge ordered an *in camera* proceeding (closed court) to protect a nine-year old girl who was testifying that her school principal had raped her.

## 6. Women and the trial process

### Example from Nepal: Violence against Women

In one survey of women in Nepal who had reported rape or sexual assault to police:

- In 59% of cases, the respondents failed to appear in court to testify, because the Government Attorney did not inform them of the adjudication process.
- The Government Attorneys chose not to exercise their legal power to order an additional investigation in 96% of cases.
- 83% of victims received threats to their life and suffered physical assault if they chose to appear in court. The complaints made by victims were not pursued.
- 56% of victims reported a long and humiliating cross-examination by defence lawyers. Judges and prosecutors did not step in to prevent this.

See CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, pp124-145.

## Trainer Notes

- Encourage discussion on the question of how prosecutors and police investigate and collect evidence of such violations.
- Ask participants what measures and procedures they have in place for dealing with and protecting children during trial
- How frequently would you omit to inform a suspect of the court process?
- These statistics suggest that law enforcement is not treating gender related violence sufficiently seriously and are not therefore protecting human rights

## 7. Prosecutorial discretion

**Prosecutors** must carefully exercise their legal discretion in deciding whether to proceed with a prosecution. Not every case or brief of evidence provided by police should be prosecuted. Police can sometimes be too close to a case, or may lack the necessary legal expertise to understand whether a case will be successful in court. The resources available for prosecution are finite and should not be wasted pursuing inappropriate cases.

**Because prosecutors are independent of the police, they bring an impartial judgment to whether a case should be prosecuted.** Prosecutors should strive to meet standards of fairness, openness, consistency, accountability and efficiency in prosecuting offences against the laws of Nepal, in order to maintain the confidence of the public they serve.

**Criteria which must be considered in deciding whether to prosecute include:**

- **whether there is admissible, substantial and reliable evidence** that a criminal offence has been committed by the alleged offender – **a prosecution should not proceed if there is no reasonable prospect of a conviction** (see the end of this chapter for a full list of factors to consider in evaluating the evidence);
- **whether the public interest requires a prosecution** (see the end of this chapter);
- **whether there is an alternative to prosecution**, for example, an administrative penalty or a civil action, which would achieve justice in the case.

### **Example from Nepal: Deciding When to Prosecute**

The Government Attorney has the authority to decide which cases proceed to trial. This power is rarely exercised. On average, only 5% of cases are dropped or resolved before going to trial. This leads to a failure rate of 40-50% (see CeLRRd, *Baseline Survey on Criminal Justice System of Nepal*, pp 87-88).

### **Example from Nepal: Appropriate Penalties**

Prosecutors sought the stiffest available penalty in 73% of cases, without regard to the circumstances of the offence (see CeLRRd, *Baseline Survey*, p 110).

**A decision whether to prosecute must not be influenced by improper motives, such as:**

- (a) The race, religion, sex, national origin or political involvement of the alleged offender;
- (b) Personal feelings concerning the alleged offender or the victim;
- (c) Possible political advantage, disadvantage or embarrassment to the Government or any political group or party; or
- (d) The effect on the personal or professional circumstances of the prosecutors involved.

# Trainer Notes

- [illegible]

## Prosecution of children

The welfare of a child must be considered when prosecutorial discretion is exercised. Prosecution of a child should always be regarded as a severe step which is appropriate only when there are no other appropriate alternatives and the offence is serious. **Ordinarily the public interest will not require the prosecution of a child who is a first offender in circumstances where the alleged offence is not serious.** In deciding whether the public interest warrants the prosecution of a child, **you should give particular consideration to:**

- (a) The seriousness of the alleged offence;
- (b) The age and apparent maturity and mental capacity of the child;
- (c) The available alternatives to prosecution, such as a caution/warning;
- (d) The sentencing options available to the court if the matter proceeds;
- (e) The child's family circumstances, particularly whether the parents appear able and prepared to exercise effective discipline and control over the child;
- (f) The child's criminal history, including the circumstances of any previous caution, and whether they indicate that a less formal response would be inappropriate;
- (g) Whether a prosecution would be likely to have an unduly harsh effect on the child or be inappropriate, given the child's vulnerability and family circumstances.

**Any decision to prosecute a child should be made by a senior lawyer.**

## Mental health of the alleged offender

In determining whether the public interest requires a prosecution, you should consider the intelligence, mental health or special vulnerability of the alleged offender, in the light of the seriousness or relative triviality of the alleged offence, the need for general and/or specific deterrence and whether the alleged offence is of considerable public concern.

The issue of unfitness to be tried is usually raised with the court by the defence. However, the issue can also be raised by the defendant personally or the prosecution. In the unusual circumstances **where there is an obvious fitness issue and it is not raised by the defence then it should be raised with the court by the prosecution.** This will be particularly important where the defendant does not have legal representation.

## Choice of charges

Where the evidence discloses an offence against several different laws, care must be taken to choose a charge or charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence. Under no circumstances should higher but inappropriate charges be laid with the intention of providing scope for charge negotiation.

## **Trainer Notes**

- Ask participants to discuss their experiences of prosecuting or not prosecuting children
- Ask participants how they identify and deal with mental health issues



## **Charge negotiation**

Charge negotiation involves negotiations between the defence and the prosecution in relation to the charges to be proceeded with. Such negotiations may result in the defendant pleading guilty to fewer than all of the charges he or she is facing, or to a lesser charge or charges, with the remaining charges either not being proceeded with or taken into account without proceeding to conviction.

**Anything which suggests an arrangement in private between a judge and counsel in relation to the plea to be made or the sentence to be imposed must be avoided.** It is objectionable because it does not take place in public, it excludes the person most vitally concerned (the defendant), it is embarrassing to the Government Attorney and it puts the judge in a false position which weakens public confidence in the administration of justice.

Negotiations between the defence and the prosecution are to be encouraged, may occur at any stage and may be initiated by the prosecution. Negotiations between the defence and the prosecution as to charge or charges and plea can be consistent with the requirements of justice subject to the following constraints:

- (i) The charges to be proceeded with should bear a reasonable relationship to the nature of the criminal conduct of the defendant;
- (ii) Those charges provide an adequate basis for an appropriate sentence in all the circumstances of the case; and
- (iii) There is evidence to support the charges.

The prosecution should not agree to a charge negotiation proposal initiated by the defence if the defendant continues to assert his or her innocence..

When deciding whether to agree or not agree to a charge negotiation proposal, prosecutors should give special consideration to: whether the defendant is cooperating, the defendant's criminal history, whether it would save the time and expense of prosecuting, the consequences for witnesses (including saving vulnerable witnesses from testifying), whether the defendant has compensated for harm caused, and the views of the police and victims.

## **Victims of Crime**

It is important in all prosecution action that victims are treated with respect for their dignity. A victim is an individual who has suffered harm as the direct result of an offence, including physical or mental injury, emotional suffering or economic loss. It may be appropriate to take into account the views of victims when deciding to commence or discontinue a prosecution, agree to a plea negotiation, or decline to prosecute. The interests of victims must, however, be balanced against other public interest considerations.

## Trainer Notes

- Ask participants about the practices on charge negotiation
- Emphasise that prosecutors should never meet in private (outside court) with the judge unless the defence has been informed and invited to attend
- Ask participants whether they currently provide any special assistance or services to victims, including witness protection where the person is at risk of harm

## Does the evidence support a prosecution?

Extract from the *Prosecution Policy of the Commonwealth of Australia*, paragraph 2.4

**When evaluating the evidence regard should be had to the following matters:**

- (a) Are there grounds for believing the evidence might be excluded bearing in mind the principles of admissibility at common law and under statute? For example, prosecutors will wish to satisfy themselves that confession evidence has been properly obtained. The possibility that any evidence might be excluded should be taken into account and, if it is crucial to the case, may substantially affect the decision whether or not to institute or proceed with a prosecution.
- (b) If the case depends in part on admissions by the defendant, are there any grounds for believing that they are of doubtful reliability having regard to the age, intelligence and apparent understanding of the defendant?
- (c) Does it appear that a witness is exaggerating, or that his or her memory is faulty, or that the witness is either hostile or friendly to the defendant, or may be otherwise unreliable?
- (d) Has a witness a motive for telling less than the whole truth?
- (e) Are there matters which might properly be put to a witness by the defence to attack his or her credibility?
- (f) What impression is the witness likely to make on the arbiter of fact? How is the witness likely to stand up to cross-examination? Does the witness suffer from any physical or mental disability which is likely to affect his or her credibility?
- (g) If there is conflict between eye witnesses, does it go beyond what one would expect and hence materially weaken the case?
- (h) If there is a lack of conflict between eye witnesses, is there anything which causes suspicion that a false story may have been concocted?
- (i) Are all the necessary witnesses available and competent to give evidence, including any who may be abroad?
- (j) Where child witnesses are involved, are they likely to be able to give sworn evidence?
- (k) If identity is likely to be an issue, how cogent and reliable is the evidence of those who purport to identify the defendant?
- (l) Where two or more defendants are charged together, is there a reasonable prospect of the proceedings being severed? If so, is the case sufficiently proved against each defendant should separate trials be ordered

## Trainer Notes

- Ask participants to discuss how they currently make decisions about whether the evidence is sufficient to justify proceeding with a prosecution
- Do they consider all of the factors listed on the previous page? Are some factors more or less important in most cases? Are there any other factors you would consider?

## Is it in the public interest to prosecute?

*Extract from the Prosecution Policy of the Commonwealth of Australia, paragraph 2.10*

**Factors in determining whether the public interest requires a prosecution include the following:**

- (a) The seriousness or, conversely, the relative triviality of the alleged offence or that it is of a 'technical' nature only;
- (b) Mitigating or aggravating circumstances impacting on the appropriateness or otherwise of the prosecution;
- (c) The youth, age, intelligence, physical health, mental health or special vulnerability of the alleged offender, a witness or victim;
- (d) The alleged offender's antecedents and background;
- (e) The passage of time since the alleged offence when taken into account with the circumstances of the alleged offence and when the offence was discovered;
- (f) The degree of culpability of the alleged offender in connection with the offence;
- (g) The effect on community harmony and public confidence in the administration of justice;
- (h) The obsolescence or obscurity of the law;
- (i) Whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute;
- (j) The availability and efficacy of any alternatives to prosecution;
- (k) The prevalence of the alleged offence and the need for deterrence, both personal and general;
- (l) Whether the consequences of any resulting conviction would be unduly harsh and oppressive;
- (m) Whether the alleged offence is of considerable public concern;
- (n) Any entitlement of a person or body to criminal compensation, reparation or forfeiture if prosecution action is taken;
- (o) The attitude of the victim of the alleged offence to a prosecution;
- (p) The actual or potential harm, occasioned to an individual;
- (q) The likely length and expense of a trial;
- (r) Whether the alleged offender has or is willing to co-operate in investigating/prosecuting others;
- (s) The likely outcome in the event of a finding of guilt having regard to the sentencing options available to the Court;
- (t) Whether the alleged offence is triable only on indictment;
- (u) The necessity to maintain public confidence in the rule of law and the administration of justice through the institutions of democratic governance including the Parliament and the Courts;
- (v) The need to give effect to regulatory or punitive imperatives;
- (w) The efficacy, as an alternative to prosecution, of any disciplinary proceedings that have been found proven against the alleged offender to the extent that they encompass the alleged offence;
- (x) The adequacy in achieving any regulatory or punitive imperatives, of relevant civil penalty proceedings, either pending or completed, and whether these proceedings may result, or have resulted, in the imposition of a financial penalty.



## Trainer Notes

- Ask participants to discuss how they currently make decisions about whether the public interest would justify proceeding with a prosecution
- Do they consider all of the factors listed on the previous page? Are some factors more or less important in most cases? Are there any other factors you would consider? Are there any factors listed here which are unfamiliar to them?



## FURTHER RESOURCES

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In addition to the legally binding international human rights treaties, and the Interim Constitution of Nepal, there are a number of important non-binding guidelines relevant to human rights-based law enforcement, which have been developed by the United Nations:

- United Nations *Code of Conduct for Law Enforcement Officials*
- United Nations *Standard Minimum Rules for the Treatment of Prisoners*
- United Nations *Basic Principles on the Use of Force and Firearms*
- United Nations *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*
- United Nations *Basic Principles of Justice for Victims of Crime and Abuse of Power*

These instruments provide useful operational guidance to law enforcement officials in applying human rights standards to their daily work.

## **Code of Conduct for Law Enforcement Officials**

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

### **Article 1**

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

Commentary:

(a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

### **Article 2**

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

Commentary:

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

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

### **Article 3**

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

Commentary:

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

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

#### **Article 4**

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

Commentary:

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

#### **Article 5**

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

Commentary:

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which: "[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(b) The Declaration defines torture as follows:

". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

#### **Article 6**

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

Commentary:

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

#### **Article 7**

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

Commentary:

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

#### **Article 8**

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

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

Commentary:

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency

or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

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

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

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

*Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.*

Whereas the work of law enforcement officials <sup>\*</sup> is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

### **General provisions**

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.



2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

### ***Special provisions***

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.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

#### ***Policing unlawful assemblies***

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

#### ***Policing persons in custody or detention***

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

#### ***Qualifications, training and counselling***

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of

conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

#### ***Reporting and review procedures***

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

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

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

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

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#### **Note:**

\* In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

## **Standard Minimum Rules for the Treatment of Prisoners**

Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

### ***Preliminary Observations***

1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.
2. In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.
3. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.
4. (1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" or corrective measures ordered by the judge.  
(2) Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.
5. (1) The rules do not seek to regulate the management of institutions set aside for young persons such as Borstal institutions or correctional schools, but in general part I would be equally applicable in such institutions.  
(2) The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

### ***PART I***

#### ***RULES OF GENERAL APPLICATION***

##### ***Basic principle***

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.  
(2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

##### ***Register***

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

- (a) Information concerning his identity;
- (b) The reasons for his commitment and the authority therefor;
- (c) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

#### **Separation of categories**

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

- (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;
- (b) Untried prisoners shall be kept separate from convicted prisoners;
- (c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
- (d) Young prisoners shall be kept separate from adults.

#### **Accommodation**

9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work,

- (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
- (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

#### **Personal hygiene**

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

#### ***Clothing and bedding***

17. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.

18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

#### ***Food***

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

#### ***Exercise and sport***

21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

#### ***Medical services***

22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

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

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

23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be



torn in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

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

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

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

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

26. (1) The medical officer shall regularly inspect and advise the director upon:

(a) The quantity, quality, preparation and service of food;

(b) The hygiene and cleanliness of the institution and the prisoners;

(c) The sanitation, heating, lighting and ventilation of the institution;

(d) The suitability and cleanliness of the prisoners' clothing and bedding;

(e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

(2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

### ***Discipline and punishment***

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

28. (1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

(2) This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

29. The following shall always be determined by the law or by the regulation of the competent administrative authority:

(a) Conduct constituting a disciplinary offence;

(b) The types and duration of punishment which may be inflicted;

(c) The authority competent to impose such punishment.

30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

(2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.

(3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

#### ***Instruments of restraint***

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

(b) On medical grounds by direction of the medical officer; (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

#### ***Information to and complaints by prisoners***

35. (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

36. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.

(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

(4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

### ***Contact with the outside world***

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong. (2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

39. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.

### ***Books***

40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

### ***Religion***

41. (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

(2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.

(3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.

42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

### ***Retention of prisoners' property***

43. (1) All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition. (2) On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.

(3) Any money or effects received for a prisoner from outside shall be treated in the same way.

(4) If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.

### ***Notification of death, illness, transfer, etc.***

44. (1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.

(2) A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.

(3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

### ***Removal of prisoners***

45. (1) When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.

(2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.

(3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.

### ***Institutional personnel***

46. (1) The prison administration, shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.

(2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

(3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

47. (1) The personnel shall possess an adequate standard of education and intelligence.

(2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

(3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

49. (1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.

(2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

50. (1) The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.

(2) He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.

(3) He shall reside on the premises of the institution or in its immediate vicinity. (4) When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions.

51. (1) The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.

(2) Whenever necessary, the services of an interpreter shall be used.

52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.

## **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**

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

### ***Scope of the Body of Principles***

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

### ***Use of Terms***

For the purposes of the Body of Principles:

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

### ***Principle 1***

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

### ***Principle 2***

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

### ***Principle 3***

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

### ***Principle 4***

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

### ***Principle 5***

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



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

#### ***Principle 6***

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

#### ***Principle 7***

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

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

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

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

#### ***Principle 8***

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

#### ***Principle 9***

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

#### ***Principle 10***

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

#### ***Principle 11***

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

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

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

#### ***Principle 12***

1. There shall be duly recorded:

(a) The reasons for the arrest; (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;

(c) The identity of the law enforcement officials concerned;

(d) Precise information concerning the place of custody.

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

### ***Principle 13***

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

### ***Principle 14***

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

### ***Principle 15***

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

### ***Principle 16***

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

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

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

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

### ***Principle 17***

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

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

***Principle 18***

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

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

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

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

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

***Principle 19***

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

***Principle 20***

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

***Principle 21***

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

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

***Principle 22***

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

***Principle 23***

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

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

***Principle 24***

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

***Principle 25***

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

***Principle 26***

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

***Principle 27***

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

***Principle 28***

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

***Principle 29***

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

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

***Principle 30***

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

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

***Principle 31***

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.

***Principle 32***

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.
2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

### ***Principle 33***

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.
2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.
3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.
4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

### ***Principle 34***

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

### ***Principle 35***

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by domestic law.
2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

### ***Principle 36***

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for

the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

***Principle 37***

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

***Principle 38***

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

***Principle 39***

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

***General clause***

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



## **UN Basic Principles of Justice for Victims of Crime and Abuse of Power**

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

### **A. Victims of Crime**

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.
3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

### **Access to justice and fair treatment**

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
  - (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
  - (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
  - (c) Providing proper assistance to victims throughout the legal process;
  - (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
  - (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.
7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

### **Restitution**

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

### **Compensation**

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

### **Assistance**

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

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

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

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

## ***B. Victims of Abuse of Power***

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

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include

restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

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

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

## PART 3

# FUNDAMENTAL RIGHTS

### 12. Right to freedom

(1) Every person shall have the right to live with dignity, and no law which provides for capital punishment shall be made.

(2) Except as provided for by law no person shall be deprived of his/her personal liberty.

(3) Every citizen shall have the following freedoms

- (a) freedom of opinion and expression;
- (b) freedom to assemble peaceably and without arms;
- (c) freedom to form political party;
- (d) freedom to form unions and associations;
- (e) freedom to move and reside in any part of Nepal; and
- (f) freedom to engage in any occupation or be engaged in employment, industry and trade.

Provided that,

(1) Nothing in sub-clause (a) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of Nepal, or which may jeopardize the harmonious relations subsisting among the people of various castes, tribes, religions or communities, or on any act of defamation, contempt of court or incitement to an offence, or on any act which may be contrary to decent public behaviour or morality.

(2) Nothing in sub-clause (b) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty, integrity or law and order situation of Nepal .

(3) Nothing in sub-clauses (c) and (d) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of Nepal, or which may jeopardize the harmonious relations subsisting among the people of various castes, tribes, religions or communities, or which may instigate violence, or which may be contrary to public morality.

## भाग ३

### मौलिक हक

#### १२. स्वतन्त्रताको हकः

(१) प्रत्येक व्यक्तिलाई सम्मानपूर्वक बाँच्न पाउने हक हुनेछ र मृत्यु दण्डको सजाय हुने गरी कुनै कानून बनाइने छैन ।

(२) कानून बमोजिम बाहेक कुनै पनि व्यक्तिको वैयक्तिक स्वतन्त्रता अपहरण हुने छैन ।

(३) प्रत्येक नागरिकलाई देहायको स्वतन्त्रता हुनेछः-

- (क) विचार र अभिव्यक्तिको स्वतन्त्रता,
- (ख) बिना हातहतियार शान्तिपूर्वक भेला हुने स्वतन्त्रता,
- (ग) राजनैतिक दल खोल्ने स्वतन्त्रता,
- (घ) संघ र संस्था खोल्ने स्वतन्त्रता,
- (ङ) नेपालको कुनै पनि भागमा आवतजावत र बसोबास गर्ने स्वतन्त्रता,
- (च) कुनै पेशा, रोजगार, उद्योग र व्यापार गर्ने स्वतन्त्रता ।

तर,

(१) खण्ड (क) को कुनै कुराले नेपालको सार्वभौमसत्ता, अखण्डता वा विभिन्न जात, जाति, धर्म वा सम्प्रदायहरूका बीचको सुसम्बन्धमा खलल पर्ने वा गाली वेइज्जती वा अदालतको अवहेलना हुने वा अपराध गर्न दुरुत्साहन दिने वा सार्वजनिक शिष्टाचार वा नैतिकताको प्रतिकूल हुने कार्यमा मनासिव प्रतिबन्ध लगाउने गरी कानून बनाउन रोक लगाएको मानिने छैन ।

(२) खण्ड (ख) को कुनै कुराले नेपालको सार्वभौमसत्ता, अखण्डता वा सार्वजनिक शान्ति र व्यवस्थामा खलल पर्ने कार्यमा मनासिव प्रतिबन्ध लगाउने गरी कानून बनाउन रोक लगाएको मानिने छैन ।

(३) खण्ड (ग) र (घ) को कुनै कुराले नेपालको सार्वभौमसत्ता, अखण्डता वा विभिन्न जात, जाति, धर्म वा सम्प्रदायहरूका बीचको सुसम्बन्धमा खलल पर्ने वा हिंसात्मक कार्य गर्न दुरुत्साहित गर्ने वा सार्वजनिक नैतिकताको प्रतिकूल हुने कार्यमा मनासिव प्रतिबन्ध लगाउने गरी कानून बनाउन रोक लगाएको मानिने छैन ।

- (4) Nothing in sub-clause (e) shall be deemed to prevent the making of laws which are in the interest of the general public, or which are made to impose reasonable restrictions on any act which may jeopardize the harmonious relations subsisting among the people of various castes, tribes, religions or communities.
- (5) Nothing in sub-clause (f) shall be deemed to prevent the making of laws to impose restrictions on any act which may be contrary to public health or morality, to confer on the State the exclusive right to undertake specific industries, businesses or services, or to impose any condition or qualification for engaging in any industry, trade, profession or occupation.

### **13. Right to equality**

(1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.

(2) There shall be no discrimination against any citizen in the application of general laws on grounds of religion, race, gender, caste, tribe, origin, language or ideological conviction or any of these.

(3) The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, gender, origin, language or ideological conviction or any of these.

Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of women, Dalits, indigenous ethnic tribes [Adivasi Janajati], Madhesi or farmers, labourers or those who belong to a class which is economically, socially or culturally backward, or children, the aged, disabled or those who are physically or mentally incapacitated.

(4) There shall be no discrimination with regard to remuneration and social security between men and women for the same work.

### **14. Right against untouchability and racial discrimination**

(1) No person shall, on the ground of caste, descent, community or occupation, be subject to racial discrimination and untouchability in any form. Such a discriminatory act shall be liable to punishment and the victim shall be entitled to compensation as provided by the law.



(४) खण्ड (ड) को कुनै कुराले सर्वसाधारण जनताको हित वा विभिन्न जात, जाति, धर्म वा सम्प्रदायहरूका बीचको सुसम्बन्धमा खलल पर्ने कार्यमा मनासिब प्रतिबन्ध लगाउने गरी कानून बनाउन रोक लगाएको मानिने छैन ।

(५) खण्ड (च) को कुनै कुराले सर्वसाधारण जनताको सार्वजनिक स्वास्थ्य वा नैतिकताको प्रतिकूल हुने कार्यमा रोक लगाउने वा कुनै खास उद्योग, व्यापार वा सेवा राज्यले मात्र सञ्चालन गर्ने वा कुनै उद्योग, व्यापार, पेशा वा रोजगार गर्नको लागि कुनै शर्त वा योग्यता तोक्ने गरी कानून बनाउन रोक लगाएको मानिने छैन ।

#### १३. समानताको हकः

(१) सबै नागरिक कानूनको दृष्टिमा समान हुनेछन् । कसैलाई पनि कानूनको समान संरक्षणबाट वञ्चित गरिने छैन ।

(२) सामान्य कानूनको प्रयोगमा कुनै पनि नागरिकमाथि धर्म, वर्ण, लिङ्ग, जात, जाति, उत्पत्ति, भाषा वा वैचारिक आस्था वा ती मध्ये कुनै कुराको आधारमा भेदभाव गरिने छैन ।

(३) राज्यले नागरिकहरूका बीच धर्म, वर्ण, जात, जाति, लिङ्ग, उत्पत्ति, भाषा वा वैचारिक आस्था वा ती मध्ये कुनै कुराको आधारमा भेदभाव गर्ने छैन ।

तर महिला, दलित, आदिवासी जनजाति, मधेशी वा किसान, मजदुर वा आर्थिक, सामाजिक वा सांस्कृतिक दृष्टिले पिछडिएको वर्ग वा बालक, वृद्ध तथा अपाङ्ग वा शारीरिक वा मानसिक रूपले अशक्त व्यक्तिको संरक्षण, सशक्तिकरण वा विकासको लागि कानूनद्वारा विशेष व्यवस्था गर्न रोक लगाएको मानिने छैन ।

(४) समान कामका लागि महिला र पुरुषका बीच पारिश्रमिक तथा सामाजिक सुरक्षामा भेदभाव गरिने छैन ।

#### १४. छुवाछुत तथा जातीय भेदभाव विरुद्धको हकः

(१) कुनै पनि व्यक्तिलाई जात, वंश, समुदाय वा पेशाका आधारमा कुनै किसिमको छुवाछुत तथा जातीय भेदभाव गरिने छैन । यस्तो भेदभावपूर्ण व्यवहार दण्डनीय हुनेछ र पीडित व्यक्तिले कानूनद्वारा निर्धारण भए बमोजिमको क्षतिपूर्ति पाउनेछ ।

(2) No person shall, on the ground of caste or tribe, be deprived of the use of services, conveniences or utilities available to the public, or be denied access to any public place, or public religious places, or be prevented from performing any religious act.

(3) No person belonging to any particular caste or tribe shall, in relation to the production or making available of any goods, services or conveniences, be prevented from purchasing or acquiring such goods, services or conveniences; and no such goods, services or conveniences shall be sold or distributed only to members of a particular caste or tribe.

(4) No one shall be allowed to purport to demonstrate superiority or inferiority of any person or a group of persons belonging to any caste, tribe or origin; or to justify social discrimination on the basis of caste and tribe; or to disseminate ideas based on caste superiority or hatred; or to encourage caste discrimination in any form.

(5) Any act contrary to the provisions of clauses (2), (3) and (4) shall be punishable in accordance with law.

## **15. Rights regarding publication, broadcasting and press**

(1) There shall be no prior censorship of publication and broadcasting or printing of any news item, editorial, article, feature or other reading or audio-visual material by any means including electronic publication, broadcasting and the press.

Provided that nothing shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty or integrity of Nepal, or which may jeopardise the harmonious relations subsisting among the peoples of various castes, tribes or communities; or on any act of sedition, defamation, contempt of court or incitement to an offence; or on any act which may be contrary to decent public behaviour or morality.

(2) If there is any broadcasting, publishing or printing of material using radio, television, online or other types of digital or electronic equipment or medium, no such equipment or medium shall be closed, seized or any registration cancelled because of such broadcasting, publication or printing.

(3) No newspaper, periodical or press shall be closed or seized nor shall its registration be cancelled merely for printing or publishing any news items, articles, editorials, writings or other reading material.

(4) No means of communication including the press, electronic broadcasting and telephone shall be obstructed except in accordance with law.

(२) कुनै पनि व्यक्तिलाई जात जातिको आधारमा सार्वजनिक प्रयोगमा रहेका सेवा, सुविधा वा उपयोगका कुराहरू प्रयोग गर्नबाट वा सार्वजनिक स्थल वा सार्वजनिक धार्मिक स्थलमा प्रवेश गर्न वा धार्मिक कार्य गर्नबाट वञ्चित गरिने छैन ।

(३) कुनै वस्तु, सेवा वा सुविधा उत्पादन वा वितरण गर्दा त्यस्तो सेवा, सुविधा वा वस्तु कुनै खास जात, जातिको व्यक्तिलाई खरिद वा प्राप्त गर्नबाट रोक लगाउन वा त्यस्तो वस्तु, सेवा वा सुविधा कुनै खास जात, जातिको व्यक्तिलाई मात्र विक्री वितरण गरिने छैन ।

(४) कुनै जात, जाति वा उत्पत्तिका व्यक्ति वा व्यक्तिहरूको समूहको उच्च नीच दर्शाउने, जात, जातिको आधारमा सामाजिक विभेदलाई न्यायोचित ठहराउने वा जातीय सर्वोच्चता वा घृणामा आधारित विचारको प्रचार प्रसार गर्ने वा जातीय विभेदलाई कुनै पनि किसिमले प्रोत्साहन गर्न पाउने छैन ।

(५) उपधारा (२), (३) र (४) विपरीतको कार्य कानून बमोजिम दण्डनीय हुनेछ ।

#### १५. प्रकाशन, प्रसारण तथा छापाखाना सम्बन्धी हक:

(१) विद्युतीय प्रकाशन, प्रसारण तथा छापा लगायतका अन्य जुनसुकै माध्यमबाट कुनै समाचार, सम्पादकीय, लेख, रचना वा अन्य कुनै पाठ्य, श्रव्य दृश्य सामग्रीको प्रकाशन तथा प्रसारण गर्न वा छाप्न पूर्व प्रतिबन्ध लगाइने छैन ।

तर नेपालको सार्वभौमसत्ता वा अखण्डता वा विभिन्न जात, जाति वा सम्प्रदाय बीचको सुसम्बन्धमा खलल पर्ने, राज्यद्रोह, गाली बेइज्जती वा अदालतको अवहेलना हुने वा अपराध गर्न दुरुत्साहन गर्ने वा सार्वजनिक शिष्टाचार वा नैतिकता प्रतिकूल हुने कार्यमा मुनासिव प्रतिबन्ध लगाउने गरी कानून बनाउन रोक लगाएको मानिने छैन ।

(२) कुनै श्रव्य, श्रव्य दृश्य वा विद्युतीय उपकरणको माध्यमबाट कुनै सामग्रीको प्रकाशन तथा प्रसारण गरे वा छापे वापत त्यस्तो सामग्री प्रकाशन तथा प्रसारण गर्ने वा छापे, रेडियो, टेलिभिजन, अनलाइन वा अन्य कुनै किसिमको डिजिटल वा विद्युतीय, छापा वा अन्य सञ्चार माध्यमलाई बन्द, जफत वा दर्ता खारेज गरिने छैन ।

(३) कुनै समाचार, लेख, सम्पादकीय, रचना वा अन्य कुनै पाठ्य सामग्री मुद्रण वा प्रकाशन गरे वापत कुनै समाचारपत्र, पत्रिका वा छापाखाना बन्द, जफत वा दर्ता खारेज गरिने छैन ।

(४) कानून बमोजिम बाहेक कुनै छापा, विद्युतीय प्रसारण तथा टेलिफोन लगायतका सञ्चार साधनलाई अवरुद्ध गर्न सकिने छैन ।

## **16. Rights regarding environment and health**

- (1) Every person has the right to live in a clean environment.
- (2) Every citizen shall have the right to basic health services free of cost from the State as provided for in the law.

## **17. Education and cultural rights**

- (1) Each community shall have the right to receive basic education in their mother tongue as provided for in the law.
- (2) Every citizen shall have the right to receive free education from the State up to secondary level as provided for in the law
- (3) Each community residing in Nepal has the right to preserve and promote its language, script, culture, cultural civilisation and heritage.

## **18. Rights regarding employment and social security**

- (1) Every citizen shall have the right to employment as provided for in the law.
- (2) Women, labourers, the aged, disabled as well as incapacitated and helpless citizens shall have the right to social security as provided for in the law.
- (3) Every citizen has the right to food \*sovereignty as provided for in the law.

## **19. Right to property**

- (1) Every citizen shall, subject to the existing laws, have the right to acquire, own, sell and otherwise dispose of property.
- (2) The State shall not, except in the public interest, acquire, or create any encumbrance on the property of any person.

Provided that this clause shall not be applicable to property acquired through illegal means.

- (3) Compensation shall be provided for any property requisitioned, acquired or encumbered by the State in implementing scientific land reform programmes or in the public interest in accordance with law. The amount and basis of compensation, and relevant procedure shall be as prescribed by law.

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\* We have confirmed that "food sovereignty" is the phrase deliberately chosen (see also the Comprehensive Peace Agreement) (editors).

**१६. वातावरण तथा स्वास्थ्य सम्बन्धी हक:**

(१) प्रत्येक व्यक्तिलाई स्वच्छ वातावरणमा बाँच्ने हक हुनेछ ।

(२) प्रत्येक नागरिकलाई राज्यबाट कानूनमा व्यवस्था भए बमोजिम आधारभूत स्वास्थ्य सेवा निःशुल्क रूपमा पाउने हक हुनेछ ।

**१७. शिक्षा तथा संस्कृति सम्बन्धी हक:**

(१) प्रत्येक समुदायलाई कानूनमा व्यवस्था भए बमोजिम आफ्नो मातृ भाषामा आधारभूत शिक्षा पाउने हक हुनेछ ।

(२) प्रत्येक नागरिकलाई राज्यबाट कानूनमा व्यवस्था भए बमोजिम माध्यमिक तहसम्म निःशुल्क शिक्षा पाउने हक हुनेछ ।

(३) नेपालमा बसोवास गर्ने प्रत्येक समुदायलाई आफ्नो भाषा, लिपि, संस्कृति, साँस्कृतिक सभ्यता र सम्पदाको संरक्षण र सम्बर्धन गर्ने हक हुनेछ ।

**१८. रोजगारी तथा सामाजिक सुरक्षा सम्बन्धी हक:**

(१) प्रत्येक नागरिकलाई कानूनमा व्यवस्था भए बमोजिम रोजगारीको हक हुनेछ ।

(२) महिला, श्रमिक, वृद्ध, अपाङ्ग तथा अशक्त र असहाय नागरिकलाई कानूनमा व्यवस्था भए बमोजिम सामाजिक सुरक्षाको हक हुनेछ ।

(३) प्रत्येक नागरिकलाई कानूनमा व्यवस्था भए बमोजिम खाद्य सम्पन्नताको हक हुनेछ ।

**१९. सम्पत्तिको हक:**

(१) प्रत्येक नागरिकलाई प्रचलित कानूनको अधीनमा रही सम्पत्ति आर्जन गर्ने, भोग गर्ने, बेचबिखन गर्ने र सम्पत्तिको अन्य कारोबार गर्ने हक हुनेछ ।

(२) सार्वजनिक हितको लागि बाहेक राज्यले कुनै व्यक्तिको सम्पत्ति अधिग्रहण वा प्राप्त गर्ने वा त्यस्तो सम्पत्ति उपर अरु कुनै प्रकारले कुनै अधिकारको सिर्जना गर्ने छैन ।

तर अवैध ढङ्गले आर्जन गरेको सम्पत्तिको हकमा यो उपधारा लागू हुने छैन ।

(३) वैज्ञानिक भूमिसुधार कार्यक्रम लागू गर्दा वा सार्वजनिक हितको लागि राज्यले कुनै व्यक्तिको सम्पत्ति अधिग्रहण वा प्राप्त गर्दा वा त्यस्तो सम्पत्ति उपर कुनै अधिकारको सिर्जना गर्दा कानून बमोजिम क्षतिपूर्ति दिइनेछ । क्षतिपूर्ति र सोको आधार र कार्य प्रणाली कानूनद्वारा निर्धारण गरिए बमोजिम हुनेछ ।

## **20. Rights of women**

- (1) No woman shall be discriminated against in any way on the basis of gender.
- (2) Every woman shall have the right to reproductive health and other reproductive rights.
- (3) No physical, mental or other form of violence shall be inflicted on any woman, and such an act shall be punishable by law.
- (4) Sons and daughters shall have equal rights to ancestral property.

## **21. Right to social justice**

Women, Dalits, indigenous ethnic groups [Adivasi Janajati], Madhesi communities, oppressed groups, the poor farmers and labourers, who are economically, socially or educationally backward, shall have the right to participate in state structures on the basis of principles of proportional inclusion.

## **22. Rights of children**

- (1) Every child shall have the right to his or her own identity and name.
- (2) Every child shall have the right to be nurtured, to basic health and social security.
- (3) Every child shall have the right not to be subjected to physical, mental or any other form of exploitation. Any such act of exploitation shall be punishable by law and any child so treated shall be compensated as determined by law.
- (4) Helpless, orphaned or mentally retarded children, children who are victims of conflict or displaced and street children at risk shall have the right to receive special privileges from the State to ensure their secure future.
- (5) No minor shall be employed in factories, mines or in any other hazardous work nor shall be used in army, police or in conflicts.



**२०. महिलाको हक:**

- (१) महिला भएकै कारणबाट कुनै पनि किसिमको भेदभाव गरिने छैन ।
- (२) प्रत्येक महिलालाई प्रजनन स्वास्थ्य तथा प्रजनन सम्बन्धी हक हुनेछ ।
- (३) कुनै पनि महिला विरुद्ध शारीरिक, मानसिक वा अन्य कुनै किसिमको हिंसाजन्य कार्य गरिने छैन र त्यस्तो कार्य कानूनद्वारा दण्डनीय हुनेछ ।
- (४) पैतृक सम्पत्तिमा छोरा र छोरीलाई समान हक हुनेछ ।

**२१. सामाजिक न्यायको हक:**

आर्थिक, सामाजिक वा शैक्षिक दृष्टिले पछि परेका महिला, दलित, आदिवासी जनजाति, मधेशी समुदाय, उत्पीडित वर्ग, गरीब किसान र मजदुरलाई समानुपातिक समावेशी सिद्धान्तको आधारमा राज्यको संरचनामा सहभागी हुने हक हुनेछ ।

**२२. बालबालिकाको हक:**

- (१) प्रत्येक बालबालिकालाई आफ्नो पहिचान तथा नामको हक हुनेछ ।
- (२) प्रत्येक बालबालिकालाई पालनपोषण, आधारभूत स्वास्थ्य र सामाजिक सुरक्षा प्राप्त गर्ने हक हुनेछ ।
- (३) प्रत्येक बालबालिकालाई शारीरिक, मानसिक वा अन्य कुनै पनि किसिमको शोषण विरुद्धको हक हुनेछ । यस्तो शोषणजन्य कार्य कानूनद्वारा दण्डनीय हुनेछ र त्यस्तो व्यवहार गरिएको व्यक्तिलाई कानूनले निर्धारण गरे बमोजिमको क्षतिपूर्ति दिइनेछ ।
- (४) असहाय, अनाथ, सुस्त मनस्थिति, द्वन्द्वपीडित, विस्थापित एवं जोखिममा परेका सडक बालबालिकालाई सुनिश्चित भविष्यको लागि राज्यबाट विशेष सुविधा पाउने हक हुनेछ ।
- (५) कुनै पनि नाबालकलाई कुनै कलकारखाना, खानी वा यस्तै अन्य कुनै जोखिमपूर्ण काममा लगाउन वा सेना, प्रहरी वा द्वन्द्वमा प्रयोग गर्न पाइने छैन ।

### **23. Right to religion**

(1) Every person shall have the right to profess, practise and preserve his or her own religion as handed down to him or her from ancient times paying due regard to social and cultural traditions.

Provided that no person shall be entitled to convert another person from one religion to another, and no person shall act or behave in a manner which may infringe upon the religion of others.

(2) Every religious denomination shall have the right to maintain its independent existence, and for this purpose to manage and protect its religious places and religious trusts, in accordance with law.

### **24. Rights regarding justice**

(1) No person shall be detained without being informed of the ground for such an arrest.

(2) The person who is arrested shall have the right to consult a legal practitioner of his/her choice at the time of the arrest. The consultation made by such a person with the legal practitioner and the advice given thereon shall remain confidential, and such a person shall not be denied the right to be defended by his/her legal practitioner.

**Explanation:** For the purpose of this clause, the words "legal practitioner" means any person who is authorized by law to represent any person in any court.

(3) Every person who is arrested shall be produced before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and the arrested person shall not be detained in custody beyond the said period except on the order of such authority.

Provided that nothing in clauses (2) and (3) shall apply to preventive detention or to a citizen of an enemy state.

(4) No person shall be punished for an act which was not punishable by law when the act was committed, and no person shall be subjected to a punishment greater than that prescribed by the law in force at the time of the offence.

(5) No person accused of any offence shall be assumed to be an offender until proven guilty.

**२३. धर्म सम्बन्धी हक:**

(१) प्रत्येक व्यक्तिलाई प्रचलित सामाजिक एवं साँस्कृतिक परम्पराको मर्यादा राखी परापूर्वदेखि चलिआएको आफ्नो धर्मको अवलम्बन, अभ्यास र संरक्षण गर्ने हक हुनेछ ।

तर कसैले कसैको धर्म परिवर्तन गराउन पाउने छैन र एक अर्काको धर्ममा खलल पार्ने गरी कुनै काम, व्यवहार गर्न पाइने छैन ।

(२) प्रत्येक धार्मिक सम्प्रदायलाई कानून बमोजिम आफ्नो स्वतन्त्र अस्तित्व कायम राखी आफ्नो धार्मिक स्थल र धार्मिक गुठीको सञ्चालन र संरक्षण गर्ने हक हुनेछ ।

**२४. न्याय सम्बन्धी हक:**

(१) कुनै पनि व्यक्तिलाई पक्राउ भएको कारण सहितको सूचना नदिई थुनामा राखिने छैन ।

(२) पक्राउमा परेका व्यक्तिलाई पक्राउ परेको समयमा नै आफूले रोजेको कानून व्यवसायीसँग सल्लाह लिन पाउने हक हुनेछ । त्यस्तो व्यक्तिले आफ्नो कानून व्यवसायीसँग गरेको परामर्श र निजले दिएको सल्लाह गोप्य रहनेछ र त्यस्तो व्यक्तिलाई आफ्नो कानून व्यवसायीद्वारा पुर्पक्ष गर्ने हकबाट वञ्चित गरिने छैन ।

**स्पष्टीकरण:** यस उपधाराको प्रयोजनको लागि “कानून व्यवसायी” भन्नाले कुनै अदालतमा कुनै व्यक्तिको प्रतिनिधित्व गर्न कानूनले अधिकार दिएको व्यक्तिलाई जनाउँछ ।

(३) पक्राउ गरिएको व्यक्तिलाई पक्राउ भएको समयबाट बाटोको भ्याद बाहेक चौबीस घण्टाभित्र मुद्दा हेर्ने अधिकारी समक्ष उपस्थित गराउनु पर्नेछ र त्यस्तो अधिकारीबाट आदेश भएमा बाहेक पक्राउ भएका व्यक्तिलाई थुनामा राखिने छैन ।

तर उपधारा (२) र (३) मा लेखिएका कुराहरू निवारक नजरबन्द र शत्रु राज्यको नागरिकको हकमा लागू हुने छैन ।

(४) तत्काल प्रचलित कानूनले सजाय नहुने कुनै काम गरे वापत कुनै व्यक्ति सजायको भागी हुने छैन र कुनै पनि व्यक्तिलाई कसूर गर्दाको अवस्थामा प्रचलित कानूनमा तोकिएभन्दा बढी सजाय दिइने छैन ।

(५) कुनै अभियोग लगाइएको व्यक्तिलाई निजले गरेको कसूर प्रमाणित नभएसम्म कसूरदार मानिने छैन ।

(6) No person shall be prosecuted or punished for the same offence in a court of law more than once.

(7) No person accused of any offence shall be compelled to be a witness against himself/herself.

(8) Every person undergoing trial shall have the right to be informed about the proceedings of the trial.

(9) Every person shall be entitled to a fair trial by a competent court or judicial authority.

(10) Any indigent person shall have the right to free legal aid in accordance with law.

## **25. Right against preventive detention**

(1) No person shall be held under preventive detention unless there is sufficient ground to believe in the existence of an immediate threat to the sovereignty and integrity of, or the law and order situation in, Nepal.

(2) If an authority detains a person under preventive detention contrary to law or in bad faith, the person detained is entitled to compensation under the law.

## **26. Right against torture**

(1) No person who is detained during investigation, or for trial or for any other reason, shall be subjected to physical or mental torture, or be treated in a cruel, inhuman or degrading manner.

(2) Any such an act pursuant to clause (1) shall be punishable by law, and any person so treated shall be compensated in a manner determined by law.

## **27. Right to information**

(1) Every citizen shall have the right to demand or obtain information on any matters of concern to himself or herself or to the public.

Provided that nothing in this Article shall be deemed to compel any person to provide information on any matter about which confidentiality is to be maintained according to law.

(६) कुनै पनि व्यक्ति विरुद्ध अदालतमा एकै कसूरमा एक पटकभन्दा बढी मुद्दा चलाइने र सजाय दिइने छैन ।

(७) कुनै कसूरको अभियोग लागेको व्यक्तिलाई आफ्नो विरुद्ध साक्षी हुन कर लगाइने छैन ।

(८) प्रत्येक व्यक्तिलाई निज विरुद्ध गरिएको कारवाहीको जानकारी पाउने हक हुनेछ ।

(९) कुनै पनि व्यक्तिलाई सक्षम अदालत वा न्यायिक निकायबाट स्वच्छ सुनुवाइको हक हुनेछ ।

(१०) असमर्थ पक्षलाई कानूनमा व्यवस्था भए बमोजिम निःशुल्क कानूनी सेवा पाउने हक हुनेछ ।

#### २५. निवारक नजरबन्द विरुद्धको हक:

(१) नेपाल राज्यको सार्वभौमसत्ता र अखण्डता वा सार्वजनिक शान्ति र व्यवस्थामा तत्काल खलल पर्ने पर्याप्त आधार नभई कसैलाई पनि निवारक नजरबन्दमा राखिने छैन ।

(२) निवारक नजरबन्द राख्ने अधिकारीले कानून विपरीत वा वदनियतपूर्वक कसैलाई नजरबन्द राखेमा नजरबन्द रहेको व्यक्तिले कानूनद्वारा तोकिएबमोजिम क्षतिपूर्ति पाउनेछ ।

#### २६. यातना विरुद्धको हक:

(१) अनुसन्धान, तहकिकात वा पुर्पक्षको सिलसिलामा वा अरु कुनै किसिमले थुनामा रहेको कुनै पनि व्यक्तिलाई शारीरिक वा मानसिक यातना दिइने वा निजसँग निर्मम, अमानवीय वा अपमानजनक व्यवहार गरिने छैन ।

(२) उपधारा (१) बमोजिमको कार्य कानूनद्वारा दण्डनीय हुनेछ र त्यस्तो व्यवहार गरिएको व्यक्तिलाई कानूनले निर्धारण गरे बमोजिमको क्षतिपूर्ति दिइनेछ ।

#### २७. सूचनाको हक:

प्रत्येक नागरिकलाई आफ्नो वा सार्वजनिक सरोकारको कुनै पनि विषयको सूचना माग्ने वा पाउने हक हुनेछ ।

तर कानूनद्वारा गोप्य राख्नु पर्ने सूचनाको जानकारी दिन कसैलाई कर लगाएको मानिने छैन ।

**28. Right to privacy**

Except in circumstances provided by law, privacy in relation to the person, and to their residence, property, documents, records, statistics and correspondence, and their reputation are inviolable.

**29. Right against exploitation**

(1) Every person shall have the right against exploitation.

(2) No person shall be exploited in the name of custom, tradition and practice, or in any other way

(3) No person shall be subjected to human trafficking, slavery or bonded labour.

(4) No person shall be subject to forced labour.

Provided that nothing in this clause shall prevent the enactment of a law requiring citizens to be engaged in compulsory service for public purposes.

**30. Right Regarding labour**

(1) Every employee and worker shall have the right to proper work practices.

(2) Every employee and worker shall have the right to form trade unions, to organise themselves and to engage in collective bargaining for the protection of their interests in accordance with law.

**31. Right against exile**

No citizen shall be exiled.

**32. Right to constitutional remedy**

The right to proceed in the manner set out in Article 107 for the enforcement of the rights conferred in this Part is guaranteed.



**२८. गोपनीयताको हक:**

कुनै पनि व्यक्तिको जीउ, आवास, सम्पति, लिखत, तथ्याङ्क, पत्राचार, चरित्र सम्बन्धी कुराहरूको गोपनीयता कानूनद्वारा तोकिएको अवस्थामा बाहेक अनतिक्रम्य हुनेछ ।

**२९. शोषण विरुद्धको हक:**

(१) प्रत्येक व्यक्तिलाई शोषण विरुद्धको हक हुनेछ ।

(२) प्रथा, परम्परा र प्रचलनको नाममा वा कुनै पनि किसिमले कसैलाई शोषण गर्न पाइने छैन ।

(३) मानिसलाई बेचबिखन गर्न, दास वा बाँधा बनाउन पाइने छैन ।

(४) कसैलाई पनि निजको इच्छा विरुद्ध काममा लगाउन पाइने छैन ।

तर यस उपधारामा उल्लिखित व्यवस्थाले सार्वजनिक प्रयोजनको लागि नागरिकलाई अनिवार्य सेवामा लगाउन सकिने कानून बनाउन रोक लगाएको मानिने छैन ।

**३०. श्रम सम्बन्धी हक:**

(१) प्रत्येक कामदार र कर्मचारीलाई उचित श्रम अभ्यासको हक हुनेछ ।

(२) कानूनमा व्यवस्था भए बमोजिम प्रत्येक कामदार र कर्मचारीलाई आ-आफ्ना हित रक्षाको निमित्त ट्रेड युनियन खोल्ने, सङ्गठित हुने र सामूहिक सौदावाजी गर्ने हक हुनेछ ।

**३१. देश निकाला विरुद्धको हक:**

कुनै पनि नागरिकलाई देश निकाला गरिने छैन ।

**३२. संवैधानिक उपचारको हक:**

यस भागद्वारा प्रदत्त हकको प्रचलनका लागि धारा १०७ मा लेखिएको तरिका अनुसार कारबाही चलाउन पाउने हक सुरक्षित गरिएकोछ ।

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