

# THE HUMAN RIGHTS OF POLICE UNDER THE INTERNATIONAL SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

By Ralph Crawshaw

Policing is an exacting vocation – emotionally, intellectually and physically. It can be dangerous and uncomfortable. Whilst due regard for the human rights of police cannot remove all of the dangers and discomforts, it can remove some and it can alleviate others. It is important to attend to the human rights of police in order to promote the well being of police, and in order to reinforce a culture supportive of human rights within police agencies. The relationship between human rights and policing is needlessly contentious and incongruous, and it is helpful to consider the human rights of police within the context of this broader relationship.

## **The relationship between human rights and policing**

This relationship can be usefully regarded as having four components: respect, protect, investigate, and entitlement.

### **Respect**

Police are required to respect human rights in the exercise of their powers. This aspect of the relationship is the most commonly addressed, because one of the primary purposes of human rights is to protect people from abuse of power by the state. Human rights limit police powers, exercised on behalf of the state, to use force, to deprive people of their liberty, and to carry out search and surveillance activities or operations. They require humane treatment of detainees. Equally, the lawful and reasonable exercise of police powers may legitimately limit human rights. Most of the jurisprudence of human rights institutions concerning police acts or omissions arises from this aspect of the relationship.

### **Protect**

Police are expected to protect human rights in the performance of their functions. For example in their crime prevention task police endeavour to prevent murder and other unlawful killings. Failure to do so can, in certain circumstances, mean that the right to life has been violated.(1) In their investigative function police are required to gather evidence and present it to courts in order that guilt or innocence may be decided. When these processes are carried out lawfully the right to a fair trial is reinforced. That right is subverted through the presentation of false evidence, or evidence unlawfully or unfairly obtained.(2) When police maintain or restore order they contribute to the protection of all human rights, for when social order breaks down all human rights are vulnerable.

### **Investigate**

Police have a duty to investigate human rights violations because, in the first instance, some violations, such as violations of the right to life and of the prohibition of torture, are very serious crimes. Furthermore, human rights instruments (3) and the jurisprudence of human rights institutions (4) require that alleged or suspected violations of human rights

should be investigated. Whilst it has not been specified that police should carry out these investigations, indeed in some cases it would not be appropriate for them to do so, in many cases it is inevitable that police will investigate. Prompt, impartial and effective investigation of human rights abuse reinforces other measures to ensure respect for and protection of human rights, including human rights of police.

These three aspects of the relationship between human rights and policing are often contested by some police officials. In effect they argue that they are justified in violating human rights in order to deliver effective policing. The claim that police officials, law enforcement officials, need to break the law in order to enforce the law is incongruous. In fact it is absurd and it is inimical to human rights and subversive of the rule of law.

### **Entitlement**

Every police official is entitled, as is every other person, to human rights. Furthermore police officials, as members of a particular type of occupational group, have specific needs and entitlements in relation to human rights. These points are developed in the next section.

## **The human rights of police officials**

### **The universality of human rights and the obligations on states to secure human rights**

Human rights derive from the inherent dignity and worth of the human person and they are universal, indivisible and interdependent. These characteristics of human rights indicate their inclusivity; they apply to all members of the human family. Article 2 of the Universal Declaration of Human Rights states that everyone is entitled to all of the rights and freedoms set forth in the 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 obligation to secure human rights rests upon states. All member states of the United Nations are bound under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.<sup>(5)</sup> States are also bound, under the various human rights treaties to which they are parties, to ensure respect for and protection of the rights of individuals within their jurisdiction according to the terms of those treaties. For example, article 1 of the European Convention on Human Rights requires High Contracting parties to secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of the Convention. Article 14 of the Convention stipulates that the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination. It then lists a number of grounds similar to those set out in article 2 of the Universal Declaration. Article 13 of the Convention requires that everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national tribunal notwithstanding that the violation has been committed by persons acting in an official capacity.<sup>(6)</sup>

In sum, everyone is entitled to human rights, including police officials. States are required to secure those rights to all within their jurisdiction without discrimination and, when they fail to do so, they have to provide an effective remedy for the violation. When they fail to

do that, providing certain other conditions are fulfilled, an individual can have recourse to an international institution, for example the European Court of Human Rights, to secure redress.

Although it is not a common occurrence, police officials have had recourse to international institutions in order to secure their rights. For example, in *Halford v. the United Kingdom*, (7) the applicant, a senior police official, claimed that calls made from her home and her office telephones were intercepted for the purposes of obtaining information to use against her in proceedings she was bringing at an Industrial Tribunal. She had instituted those proceedings alleging that she had been discriminated against on grounds of sex. The European Court of Human Rights concluded that the conversations held by Ms Halford on her office telephones fell within the scope of the notions of "private life" and "correspondence". The Court found that there had been a violation of Article 8 of the Convention, which protects the right to private and family life, in relation to the interception of calls made on the applicant's office telephones, but felt that there was insufficient evidence to suggest that calls made from her home telephone were being intercepted.

**In *Munoz Hermoza v. Peru* (8) the author of the communication was an ex-sergeant of the Guardia Civil (police). He alleged that he had been temporarily suspended from the Guardia Civil on 25 September 1978 on false accusations of having insulted a superior but, when he was brought before a judge on 28 September 1978 on that charge, he was immediately released for lack of evidence. Nevertheless, by administrative decision dated 30 January 1984, he was discharged from service. The author claimed that after having served in the Guardia Civil for over 20 years he had been arbitrarily deprived of his livelihood and of his acquired rights, including accrued retirement rights, thus leaving him in a state of destitution, particularly considering that he had eight children to feed and clothe. He then spent 10 years going through numerous and diverse domestic administrative and judicial instances seeking reinstatement in the Guardia Civil, without success.**

In considering the merits of this case, the Human Rights Committee noted that the concept of a fair hearing, as set out in article 14.1 of the International Covenant on Civil and Political Rights, necessarily entails that justice be rendered without undue delay. It reviewed the multifarious domestic procedures followed by the author, observing in particular that an administrative review kept pending for seven years constituted an unreasonable delay, and concluded that such a seemingly endless sequence of instances and the repeated failure to implement decisions were incompatible with the principle of a fair hearing.

The Committee was of the view that the events of this case disclosed a violation of article 14, paragraph 1, of the International Covenant on Civil and Political Rights. The State party was under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations suffered by Rubén Toribio Muñoz Hermoza, including payment of adequate compensation for the loss suffered.

## **The specific nature of the entitlement of police to human rights**

It is a fundamental principle of human rights protection that human rights apply equally to all members of the human family, and this principle should not be lost in distinguishing between the differing needs and entitlements of various social groups. However, it is recognised that special provisions have to be made to secure the human rights of vulnerable categories of people, for example women and children.<sup>(9)</sup> Moreover, it is evident that some groups, for example occupational groups, will regard some human rights as more important than others; that different conditions need to be fulfilled in order to secure the human rights of different groups; and that states have differing types of obligations to secure rights for the various groups. For example it is to be expected that the right to freedom of opinion and expression <sup>(10)</sup> will be regarded as extremely important by journalists, whereas police officials may consider that the right to equal access to public service <sup>(11)</sup> has great importance because unfair criteria for appointments to public service may have prevented them from following their chosen profession.

Regarding the conditions that need to be fulfilled to secure human rights for different occupational groups, and differing obligations on states in this respect, it is instructive to consider the requirement on states to protect the right to life. The conditions to be fulfilled in order to protect the right to life of a journalist, or a delegate of the International Committee of the Red Cross, working in a war zone, are different to those to be fulfilled in order to protect the right to life of a police official. They each require information and skills, hence training and briefing, and they each require equipment. However, because the nature of their tasks and the conditions under which they carry them out differ, their training needs and equipment differ. Furthermore, as police officials are state officials there is a direct obligation on the state to train and equip them, in fact the obligation is wider than that, whereas the state has no such direct obligation in relation to the journalist and the ICRC delegate.

In order to illustrate the nature and extent of the obligation on the state to protect the right to life of police, and how it may happen that a state fails to meet this obligation, I would like to recall a situation that arose during a human rights programme for police I was conducting in a Member State of the Council of Europe for the Council. During a discussion on the right to life the participants explained that a large number of police officials had been killed in the course of their duties during the previous year. They gave a figure for police deaths that seemed excessively high, even though the incidence of violent crime in that country was also high. In spite of the large number of murders of police, the participants claimed that not one of the incidents had been analysed with a view to taking preventive and protective action in the future. Hence no changes had been made in selecting, training, equipping, briefing and deploying police officials in response to the killings. If their account was accurate then, clearly, there had been a gross failure on the part of the police leadership and the government, and the state had not met its obligation to protect the right to life of its police officials.<sup>(12)</sup>

International standards for police on equipment, including protective equipment, and on selection, training, and counselling, are set out in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. <sup>(13)</sup> These principles express professional, practical standards on the use of force and firearms by police, and on the personal safety of police officials. Whilst not legally binding, they indicate some of the conditions that need to be fulfilled by states in order that they may meet their treaty obligations to protect the right to life of all those involved, including police, in operations where force or firearms may be used by police.

It is not my purpose in this paper to examine the full range of human rights from the point of view of police entitlements, but some of the economic social and cultural rights clearly have great significance for police. For example, the right to just and favourable remuneration ensuring an existence worthy of human dignity (14) is important for police officials everywhere, and for the communities they serve. Governments need to ensure that police pay and conditions of service are sufficient to maintain the human dignity of police officials, and to provide a bulwark against corruption. The onus on governments in this respect is particularly strong because human rights treaties allow for the imposition of lawful restrictions on members of armed forces and of the police in the exercise of the right to freedom of association with others, including the right to form and join trade unions for the protection of their interests. (15)

## **The rights of police in times of armed conflict**

Police officials are generally insufficiently aware of the principles and provisions of international humanitarian law, or the law of armed conflict, that are relevant to police officials and police operations in times of armed conflict. The purposes of this branch of public international law are to regulate the conduct of hostilities and to protect victims of armed conflicts. International humanitarian law imposes obligations on parties to armed conflicts, and comes into force only when armed conflict occurs. Its provisions are not generally expressed as rights, but the obligations they impose on parties to armed conflicts can provide forms of protection to police officials in ways similar to some human rights.

International humanitarian law consists of two sets of treaty law ("Hague Law" and "Geneva Law") plus a number of customary rules. The two strands of treaty law are distinguished in that Hague Law governs the conduct of hostilities - the permissible means and methods of warfare, whereas Geneva Law is concerned with the protection of victims of war. An example of Hague Law is the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land. Since they first entered into force many of the Hague Regulations have been developed or superseded by the Geneva Conventions and their Additional Protocols. In fact the distinction between the two sets of treaty law is not now quite so marked, as they are merging to some extent through these later treaty provisions. Geneva Law is largely contained in the four Geneva Conventions of 1949. These treaties make provision for combatants who become victims of war - either as sick, wounded or shipwrecked casualties, or prisoners of war (in the first, second and third Conventions), and for the protection of civilians in time of war (in the very long and detailed fourth Convention). Apart from article 3 Common to all four Conventions, all of the Conventions' provisions concern the protection of victims of international armed conflicts. In 1977 two Protocols Additional to the 1949 Geneva Conventions were adopted. The first Protocol, relating to international armed conflicts, up-dates and elaborates existing rules of combat as well as rules for the protection of war victims, bringing about the partial fusion of "Hague" and "Geneva" law referred to above. The second Protocol supplements the provisions of article 3 Common to the 1949 Geneva Conventions, which contains a number of obligations binding on the parties to non-international armed conflicts.

The relationship between police and international humanitarian law can be characterised in much the same terms as those used in characterising the relationship between police and human rights - police officials are required to comply with its provisions, and to protect victims of armed conflict and the civilian population. They may be called upon to

investigate crimes arising out of armed conflict; (16) and they can benefit from various forms of protection available under international humanitarian law.

The provisions of international humanitarian law relevant to police and police operations in times of conflict are many and detailed. My purpose in raising this matter in this context is simply to point out that there are benefits arising for police officials when this branch of law is complied with, just as there are when human rights law is complied with. For example, in an international armed conflict, some members of armed law enforcement agencies that have been incorporated into the armed forces of a party to a conflict have combatant status.<sup>(17)</sup> This means that they have some forms of protection on the battlefield, and are entitled to treatment as prisoners of war in the event of capture by the adverse party. However, the majority of police, as members of civilian police agencies, would have civilian and not combatant status in the event of such a conflict. This means that they would be entitled to the protection afforded to the civilian population set out in 1949 Geneva Convention IV and 1977 Additional Protocol I.

1949 Geneva Convention IV relating to the protection of civilians requires any civilian, military, police or other authorities who in time of war assume responsibilities in respect of protected persons, to possess the text of the Convention and be specially instructed as to its provisions.<sup>(18)</sup> 1977 Geneva Protocol 1 requires any military or civilian authorities who, in time of armed conflict, assume responsibilities in respect of the application of the Conventions and the Protocol, to be fully acquainted with the text thereof.<sup>(19)</sup> Perhaps these obligations on High Contracting Parties could also be regarded as rights of police officials.

## **Concluding remarks**

The focus of this conference on the human rights of police officials it to be welcomed. The human rights of police are an extremely important aspect of the relationship between human rights and policing. Focusing on this aspect should enable the relationship to develop into one that is less contentious and incongruous.

## **Notes and References**

1. See, for example, *Osman v. the United Kingdom* (judgement of 28 October 1998, *Reports of Judgements and Decisions* 1998-VIII) in which the European Court of Human Rights observed that article 2 of the European Convention on Human Rights may imply, in certain well-defined circumstances, a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.

2. See, for example, *Barbera, Messegue and Jabardo v. Spain*, judgement of 6 December 1988, Series A no 146, in which the European Court of Human Rights had reservations about some crucial aspects of the way in which the evidence had been taken and the conduct of the trial proceedings, including the accuseds' confessions. In this respect, the Court observed that when they made their confessions to the police, they had already been charged but did not have the assistance of a lawyer, although they did not appear to have waived their right to one. Accordingly these confessions, which had been obtained during a long period of custody in which they were held incommunicado, gave rise to

reservations on the part of the Court. The Court concluded that the proceedings in question, taken as a whole, did not satisfy the requirements of a fair and public hearing, and that there had been a violation of article 6. 1 of the European Convention on Human Rights. 3. See, for example, article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which requires that each state party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. 4. See, for example, *McCann and Others v. the United Kingdom*, judgement of 22 September 1995, Series A no. 324, in which the European Court of Human Rights held that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by the state.

5. Article 55 (c).

6. Article 2.1 and 2. 3 (a) of the International Covenant on Civil and Political Rights embodies similar provisions. 7. Judgement of 25 June 1997, Reports of Judgements and Decisions 1997-III. 8. Communication No. 203/1986: Peru 17/11/88. </DIV> CCPR/C/34/D/203/1986. <DIV ALIGN=center>9. See, for example, the Convention on the Elimination of All Forms of Discrimination against Women adopted by UN General Assembly resolution 34/180 of 18 December 1979; and the Convention on the Rights of the Child adopted by UN General Assembly resolution 44/25 of 20 November 1989. 10. Article 19 of the Universal Declaration of Human Rights, and article 10 of the European Convention on Human Rights. 11. Article 21.2 of the Universal Declaration of Human Rights.

12. I am aware that the Council of Europe attempted to arrange for some technical assistance from a police agency of another Member State in order to provide a proper response to this situation but do not know if, or how, it was resolved.

13. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August – 7 September 1990. See also the European Code of Police Ethics (Recommendation [2001] 10 adopted by the Committee of Ministers of the Council of Europe on 10 September 2001). 14. Article 23.3, Universal Declaration of Human Rights. Article 7 of the International Covenant on Economic, Social and Cultural Rights.

15. See, for example, articles 22 and 11 of the International Covenant on Civil and Political Rights the European Convention on Human Rights respectively.

16. The requirement for police officials to investigate such crimes may arise in a number of ways. For example, each of the Geneva Conventions obliges high contracting parties to provide effective penal sanctions for persons committing or ordering to be committed grave breaches of the Conventions. They are also required to search for such persons and bring them, regardless of nationality, before their own courts or hand them over for trial to another high contracting party concerned. (Articles 49, 50, 129 and 146 of the four Conventions respectively). See also article 85 of 1977 Geneva Protocol I. Grave breaches are acts such as wilful killing and torture or inhumane treatment when committed against those protected by the Conventions. Police could be involved in various stages of the processes required by these provisions, including investigations.

Furthermore, in 1988 the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court adopted the Rome Statute of the International Criminal Court. This Court has jurisdiction with respect to the crime of genocide, crimes against humanity, war crimes and the crime of aggression. The Statute entered into force on 1 July 2002, and the Chief Prosecutor took office in 16 June 2003. When the Court begins its operations, police agencies in different countries will be involved in investigating crimes subject to the jurisdiction of the Court.

17. Article 43. 3 1977 Geneva Protocol I. 18. Article 144. 19. Article 83.2

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