

**INTERNATIONAL PRACTICE IN PRE-TRIAL DETENTION CLOSING ROUNDTABLE – HANOI,  
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**The Role of the Police in Upholding Human Rights**

**Presentation Abstract: Mr Michael Kellett, Former Detective Chief Inspector, British Police Service and former Police Advisor to the European Committee for the Prevention of Torture**

At last September's Roundtable Conference here in Hanoi and in the six workshops that took place in Hanoi, Ho Chi Minh City and Nha Trang at the end of last year and the beginning of this year, we concentrated largely on the technical aspects of human rights as they relate to the work of the police and based on our seven focus areas. We looked at the international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention Against Torture and we also examined Vietnamese domestic legislation. Further, we dealt with the practical detail of operational features of human rights in policing, such as health and safety, independent monitoring mechanisms and the investigation of allegations of torture and ill-treatment. Today I would like to pull together the various strands of our discussions and examine in more detail the principles underlying the role of the police in upholding human rights.

I think it is a good idea to remind ourselves from time to time why the police should uphold human rights and to do this it is vital to understand the purpose of policing. This of course has a number of dimensions but the most important in my view, is the relationship between the police and the citizen. In the former Soviet Union and in the states of the former eastern bloc, the prime purpose of the police was to protect the government and the state (often, in effect, these were same thing) from the population. However, in modern western democracies the principle is that the police exist to protect individual and collective freedoms but at the same time are there to represent the authority of the state. If these two examples can be said to represent the two extremes of the police/citizen relationship spectrum, I would say that human rights are clearly a more important consideration for the police in the latter than in the former. And I should perhaps also point out that not all western democracies have achieved the ideal and that some are closer to the human rights end of the spectrum than others. I do not know enough about Vietnamese society to say authoritatively exactly where you are on that spectrum but my involvement in this project during the last twelve months tells me that the Vietnamese Police are taking the issue of human rights seriously, even if, as with many other countries, there is still much work to be done.

There is of course a delicate balance here and even in those police forces that are closer to the human rights end of the spectrum, in practice there is often a tension between human rights and policing. Of course, that tension is one of the reasons that this project has taken place in the first place. But the fundamental principle is that the prime duty of the police is to uphold human rights. This was set out explicitly and very powerfully a few years ago in a report into policing in Northern Ireland written by the former Governor of Hong Kong, Christopher Patten, as a result of which major changes were made to the organisation and structure of the police in that part of the United Kingdom. The report said:

*'It is a central proposition of this report that the fundamental purpose of policing should be .... the protection and vindication of the human rights of all. .... Article 28 of the Universal Declaration of Human Rights states: "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised". The role of the police is to help achieve that social and international order. They must, for example, uphold the laws that safeguard the lives of citizens. There should be no conflict between human rights and policing. Policing means protecting human rights'.[1]*

That is a very clear statement but, as the report went on to point out, not so easy to implement in practice. Judgments that police officers make every day, often split second decisions, can determine the difference between good policing and bad policing, between effective policing and ineffective policing. In several of the workshops I stated that human rights are not something that the police should be afraid of but rather something to be embraced because applying human rights principles aids effective policing and that is an argument I will develop shortly. However, for the moment, let us stay with more general principles.

There are a number of general reasons why the police should uphold human rights and the first of these is, quite simply, that human rights are protected by law - by international law and the by constitutions and laws of states and this applies to Vietnam just as it does to every other country in the world.[2] Police are law enforcement officials who have a duty to respect and enforce laws which protect human rights as equally as they have a duty to respect and enforce other laws. They are not entitled to violate human rights laws

when enforcing those other laws. If they do so, they are not reducing criminality but rather they are adding to it and committing crimes themselves.

Secondly, when the police enforce the law by seeking to prevent and detect crime or to prevent public disorder or to hold detainees in lawful pre-trial detention, they are upholding the human rights of all citizens. Some police officers appear to hold the view that human rights are something designed to protect criminals and to make their jobs more difficult. Nothing could be further from the truth. Human rights apply to victims of crime just as much as they apply to those suspected of crime – and they apply to police officers just as much as they apply to other citizens. The rights of victims and suspects have to be balanced of course but one class does not have primacy over the other. This principle has been formally recognised in Europe in recent years by an increasing frequency of decisions made by the European Court of Human Rights, in which the importance of the victim's position has been firmly recognised by stating that a failure by police to mount an effective investigation into criminal acts can in itself amount to a violation of the European Convention on Human Rights.[3]

In developing this theme and moving on to the practical consequences of police failing to uphold human rights, I would refer back to Article 28 of the Universal Declaration of Human Rights quoted above, in which it is stated that everyone is entitled to 'social order'. Social order, 'as characterised by tolerable levels of criminality and low levels of civil tension or unrest is heavily contingent upon effective policing'.[4] But social order cannot be said to exist when there is illegality and violation of human rights in the process of law enforcement. "Order" secured by abuse of power is the ultimate disorder and a complete negation of the notion of law enforcement'.[5] And of course, eventually, this type of 'order' inevitably breaks down and those subjected to it are likely to rebel. In the United Kingdom we experienced this in the early part of the 1980s, when serious public disorder occurred in our major cities, the spark for which was what was perceived to be the oppressive use of police powers towards ethnic minority communities. This was indeed a failure of policing, due in significant part to human rights abuses. Similar disorder has occurred recently in France. But the adverse consequences for policing are not limited to the outbreak of disorder. Police who are seen to abuse human rights lose the trust of the communities in which they work, thereby rendering effective policing of those communities difficult, if not impossible. Effective policing is only possible with the consent of those who are policed and when consent is withdrawn the police become at best almost redundant and at worst, agents of repression.

I think it may be appropriate here to say a few words about the abuse of human rights in 'extreme circumstances', something which in these days of international terrorism is very topical. When confronted with grave and horrendous crimes and when dealing with hardened criminals and terrorists and under pressure to obtain results quickly, police can be tempted to breach legal and ethical standards and to engage in torture and ill-treatment. This is not just theory but reality and in at least one country, the United States of America, it has apparently become official government policy.[6] It is not my intention to rehearse the ethical and legal arguments against torture, which are manifold and deserving of at least one roundtable conference of their own, but rather to outline the practical consequences of it for the work of the police.[7]

The plain fact is that torture simply does not work. It is an ineffective investigation tool. Persons under torture or the threat of torture can be made to admit to the most grievous crimes, even when they are innocent of any wrongdoing and the police may not know if what is admitted is true. The result is that innocent people may be imprisoned and the guilty may be left free to commit further serious crimes. This is not simple hypothesis but the painful experience of my own country where, in the 1970s and 1980s, a number of innocent people were convicted of serious terrorist related crimes and of horrific murders, as a result of confessions obtained following ill-treatment or the threat of ill-treatment.

Other practical consequences for the police are that, once violence or the threat of it has been introduced into the relationship with the suspect, it is almost impossible to use any other legitimate interrogation technique. And as the investigators among you will know very well, some of the best informants are recruited from those who have been arrested; using or threatening violence against suspects will almost always make it impossible to recruit them as informants, thus further inhibiting the effectiveness of the police.

Finally, if a police force becomes known for using torture or otherwise breaching human rights, legitimate law enforcement agencies in other countries will be reluctant to deal with them, thus affecting international cooperation in the investigation of crime. Furthermore, it will be almost impossible to have anyone extradited. Once again, this is not just hypothesis but recent experience. Only a few weeks ago Canada placed its close ally and neighbour, the United States, on an official Foreign Ministry list of countries where

torture is an issue of concern[8] and in my own country, we have been wrestling for several years with the serious and difficult problem of what to do with some twenty suspected Islamic terrorists, resident in the UK and many of them wanted in their own countries but whom the British courts refuse to authorise to be extradited or deported, on the grounds that they are at risk of being tortured if returned home.

I do not want to give the impression that the only reason for police adhering to human rights principles is that there are negative consequences for failing to do so, although I hope I have illustrated that there are indeed negative consequences, both for the police and for the citizen. But there are also positive reasons for adhering to human rights principles, not least that doing so impels police to become more professional in their work and thus more effective. Abusing or neglecting human rights could almost be said to be 'lazy policing'. For example, it is a relatively quick and easy task to force a confession out of a suspect by ill-treating him. It can be a little more time consuming to gather enough evidence to make it irrelevant whether or not a suspect confesses. But in the first case, there is always a doubt that the guilty party has been convicted, in the second case there is no such doubt. The list of benefits from applying human rights principles is long and we covered many of them in the workshops. It is true that adopting them implies more training and almost certainly some changes in working practices but they are worth it.

Human rights are not an alien concept imposed on law enforcers and inhibiting them from carrying out their duties effectively. Rather the reverse – they are a basic and essential foundation of policing in the modern world. Without them, policing risks becoming oppressive; with them and when combined with an effective training system, they are a powerful means of protecting society ethically and successfully. When first confronted with the requirement to adhere to human rights principles in their work, it is understandable if some police officers, not used to the concept, experience anxiety and concern. However, the experience of police in the UK and elsewhere is that they can be quickly assimilated into everyday practice – they are after all, no more than common sense and the exercise of basic principles of common human decency, that all people with whom we come into contact, be they suspects, victims of crime or just citizens with whom we interact, are treated as we would wish to be treated ourselves. So, in conclusion I would return to the words of the Patten Report, there is, 'no conflict between human rights and policing. Policing means protecting human rights.'[9]

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[1] 'A New Beginning: Policing in Northern Ireland. The Report of the Independent Commission on Policing for Northern Ireland'. London HMSO, September 1999, paragraph 4.1 (Patten).

[2] The substance of this paragraph is taken from a paper presented by Ralph Crawshaw and reproduced in 'Human Rights and the Police: Seminar Proceedings, Strasbourg 6/8 December 1995'. Council of Europe Publishing 1997, p12.

[3] See, for example, *Osmanoglu -v- Turkey* (24/01/08), *Maslova & Nalbandov -v- Russia* (24/01/08) and *Donmus & Kaplan -v- Turkey* (31/01/08). Decisions of the European Court of Human Rights can be accessed via its website: [www.echr.coe.int](http://www.echr.coe.int).

[4] Crawshaw *op.cit.*, p15.

[5] *Ibid.*

[6] See, for example, 'US Government said to endorse harsh CIA interrogations', International Herald Tribune, 03/10/07.

[7] For a comprehensive, convincing and easily readable account of the arguments against using torture see, 'Defusing the Ticking Bomb Scenario: Why we must say No to torture, always'. Association for the Prevention of Torture, Geneva, 2007. The document can also be accessed at [www.apr.ch](http://www.apr.ch).

[8] See, for example, 'Canada Puts US on Prison Torture Watch List', Globe and Mail, Toronto, 18/01/08.

[9] Patten *op. cit.*