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POLICING AND THE PREVENTION OF TORTURE

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*“Police agencies that operate effectively, lawfully and humanely are essential elements in securing a social order for all human rights to be realized.”*¹

1. INTRODUCTION

Torture is banned in all circumstances by international law. Any government that allows it to continue is responsible under international law, as well as the perpetrators. Governments have the duty to introduce effective measures to prevent torture, to punish those who use it, and to give compensation and medical and psychological assistance to victims of torture.

As enforcers of the law, the police are frequent targets of accusations of torture or ill-treatment. In some cases, these accusations may be well-founded, while in others they may not. It is in the interests of the police themselves as well as potential victims of torture to ensure that effective systems exist to prevent the use of torture or ill-treatment.

Respect for human rights is an integral part of professional policing. International human rights principles require “[t]hat like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole.”²

A police service which is known to practise torture will be viewed as inhumane and unprofessional; it will lose support and credibility in the eyes of the community it serves. A loss of trust and support from the local community will prevent the police from combating crime effectively within that community. And if a police force practises torture widely or

¹ See Ralph Crawshaw and Leif Holmström, editors *Essential Texts on Human Rights for the Police: A Compilation of International Instruments*, Kluwer Law International, The Hague, 2001, p.3.

² See UN General Assembly Resolution 34/169 of 17 Dec 1979, adopting the Code of Conduct for Law Enforcement Officials, sub-para.(a), www.un.org/documents/ga/res/34/a34res169.pdf

systematically on a national scale, the image of that force will be tarnished in the eyes of the international community.

The police therefore have a crucial role to play promoting systems to make their police stations and detention facilities “torture-free” zones. For example, they can:

- promote the adoption of effective systems to prevent torture in police stations and detention centres;
- help to design and participate in educational programs and promotional campaigns to raise awareness of torture and its prevention and inform local people of their rights with respect to arrest and detention;
- lobby local and central government authorities to provide adequate resources and training for police officers to carry out their duties in a professional manner without resorting to the use of coercion, violence or excessive force.

This paper highlights why everyone should help to fight torture and what police in particular can do to help stop torture. The paper cites rules against torture set out in international law and the safeguards required by law to help prevent torture. These international standards were drafted to apply to all legal systems in the world and take into account the rich diversity of legal procedures – they set out the **minimum guarantees** that all legal systems should provide. This paper also refers to provisions against torture in Chinese law and to China’s international obligations on this issue.

2. WHY HELP TO COMBAT TORTURE?

The idea of deliberately inflicting severe physical or mental pain on people who are deprived of their liberty and who are at the mercy of their jailers is abhorrent to most people, including those who are at the forefront of law enforcement work such as police officers. Torture devastates the lives of its victims and tarnishes all those who are involved in the process. The international community has recognized that torture is a crime and that there is no justification for it under any circumstances. There are also compelling ethical arguments against it. Among other reasons to fight torture are the following:

- **Torture does not serve justice**

The use of torture can never serve the interest of justice. On the contrary, it can corrupt the justice system and result in numerous miscarriages of justice. The use of torture does not guarantee truth – rather it shows how vulnerable individuals are to pain and pressure. People who are tortured are more likely to do as they are told, than necessarily to tell the truth.

Every government has the duty to bring to justice those responsible for crimes. However, when people are tortured or ill-treated by law enforcement officials, when innocent individuals are convicted on the basis of confessions extracted under torture, or when trials are manifestly unfair, justice cannot be served and the justice system itself loses credibility. Unless human rights are upheld in the police station, the interrogation room, the detention centre, the court and the prison cell, the government and all those who enforce the law have failed in their duties and responsibilities.

- **A reliance on torture impedes the adoption of modern and professional methods of**

crime prevention

Respect for human rights is an integral part of professional policing. A “confession-oriented” investigation in which the police seek the information they need from an arrested suspect through the use of violence or coercion will not serve the interests of justice. It merely illustrates a lack of basic investigative skills and resources for a proper and thorough police investigation. Police officers should be equipped with the necessary resources and training to carry out modern, effective methods of criminal investigation which meet with international human rights standards. This should include resources for effective crime scene analysis and training in appropriate interview techniques.

- **Torture breaks the bond of trust between the police and the community it serves**

Professional policing requires that local police establish a relationship with the community that inspires the public confidence and civic cooperation necessary to prevent and detect crime. A community policed through the use of violence, coercion or torture is less likely to be forthcoming with the information and cooperation essential for combating crime since people will be unwilling to make contact with the police. The use of torture, the unjustified use of excessive or lethal force and other serious human rights violations gravely undermine the professionalism of the police and represent a breach of trust with the community and victims.

- **Torture is universally condemned**

While some governments publicly justify some practices in their country which violate certain international human rights standards, there is no government in the world who openly defends the use of torture. Indeed, torture is banned by international law in all circumstances. The right of individuals to be protected against torture and ill-treatment is absolute and cannot be derogated from in any circumstance. This right applies to all people. It may never be suspended even during times of war, threat of war, internal political instability, or states of emergency. No circumstances may be used to justify torture or other cruel, inhuman or degrading treatment or punishment.

- **Torture is prohibited by Chinese law**

China’s Criminal Law (as amended in 1997) includes provisions which criminalize the use of “Torture to Coerce a Confession” (*xingxun bigong*), “Extorting Testimony by Violence” (*baoli quzheng*), and “Ill-treating Prisoners” (*nuedai beijianguanren*). While these provisions have a more limited scope of application than those set out in the UN Convention against Torture, they prohibit “judicial officers”, including police officers, procurators and judges, as well as “custody and supervisory personnel” (*jianguan renyuan*), from a range of acts which constitute torture and ill-treatment. In addition, China’s Judges Law, Procurators Law, and Police Law also include provisions that strictly prohibit the use of torture to coerce confessions.

3. INTERNATIONAL STANDARDS AND CHINA’S INTERNATIONAL OBLIGATIONS

- **International standards**

Attached in the appendix is a document produced by Amnesty International in 1998 entitled “Ten Basic Human Rights Standards for Law Enforcement Officials. They were prepared by Amnesty International in association with police officials and experts from different countries. They are based on United Nations law enforcement, criminal justice and human rights standards, including:

- UN Code of Conduct for Law Enforcement Officials
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- UN Standard Minimum Rules for the Treatment of Prisoners
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

These documents are all available (in both English and Chinese) on the Internet. Please visit: www.endtorture.org

Amnesty International’s “Ten Basic Standards for Law Enforcement Officials” is intended to raise awareness of some fundamental standards which should be part of any police training and police practice. It is hoped that police authorities will be able to use these basic standards as a starting point to develop detailed guidance for the training and monitoring of the conduct of police officers. It is the duty of all officers to ensure that their colleagues uphold the ethical standards of their profession - the standards outlined here are essential for exercising that responsibility.

- **China’s international obligations**

China has ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter Convention against Torture) in 1988. As a State Party to the Convention, it has the obligation to implement the provisions of the Convention and to report periodically to the UN Committee Against Torture (CAT, which monitors implementation of the Convention) on the measures it has taken to ensure implementation.

Since ratification, China has submitted three periodic reports to CAT.³ The last report submitted by China was examined by CAT in May 2000. In its concluding observations on this report, CAT made eight recommendations to China, including the following ones:

“123. The Committee recommends that the State party incorporate in its domestic law a definition of torture that fully complies with the definition contained in the Convention [...]

125. The Committee recommends that the State party continue the process of reform,

³ See Committee Against Torture (CAT) documents CAT/C/7/Add.5, December 1989; CAT/C/20/Add.5, 15 February 1996; CAT/C/39/Add.2, 3 January 2000.

monitor the uniform and effective implementation of new laws and practices and take other measures as appropriate to this end.

126. The Committee recommends that the State party consider abolishing the requirement of applying for permission before a suspect can have access for any reason to a lawyer whilst in custody.

127. The Committee recommends that the State party consider abolishing all forms of administrative detention, in accordance with the relevant international standards.

128. The Committee recommends that the State party ensure the prompt, thorough, effective and impartial investigation of all allegations of torture.

129. The Committee encourages the State party to continue and to intensify its efforts to provide training courses on international human rights standards for law enforcement officers.”

China should also abide by and implement the various standards endorsed by the member states of the United Nations, such as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the Body of Principles), the Basic Principles on the Role of Lawyers, and the Basic Principles on the Independence of the Judiciary.

4. WHAT CAN THE POLICE DO?

Experience worldwide shows that it is often in the first hours or days of detention that detainees are at greatest risk of torture or ill-treatment. Police officers have a duty to protect detainees from violations of their human rights, including torture or ill-treatment. They therefore have a crucial role to play by implementing safeguards against torture in their own facilities and promoting these safeguards throughout the police force as a whole. They should also encourage local or central government to provide adequate funding, resources and training for the police service to make these safeguards effective.

Concrete safeguards against torture include the following measures:

1. Preventing incommunicado detention

- providing prompt notification of custody to the family and legal representative of any person taken into custody. Detainees should be given prompt and regular access to their family at all stages of the legal process;
- respecting the role of defence lawyers in the criminal justice process by giving detainees access to a lawyer within 24 hours after detention and regularly thereafter and by guaranteeing the right to confidential communication between lawyers and their clients;
- respecting the role of doctors in the criminal justice process by giving detainees full and regular access to medical treatment. All detainees should undergo a medical inspection upon their detention and such inspections should be repeated

regularly. A medical inspection should be compulsory upon transfer to another place of detention;

2. Maintaining strict records and appropriate conditions of detentions

- keeping registers of detainees at all places of detention, including the name and identity of the detainee, the reasons for their detention, the names of the detaining police officers, the date and time of detention, the time of a detainee's first appearance before a judge and precise information concerning the place of custody. The register should consist of a bound book with numbered pages which cannot be tampered with;
- introducing and enforcing rules for the conduct of interrogation, including written records and audio or video tape-recording of interrogation, and allowing the suspect's lawyer to be present during interrogation. The time, place and duration of interrogation as well as the identity of all persons present should be included in the records. Hooding or blindfolding of suspects should be forbidden;
- providing for the safety, health, hygiene and appropriate nourishment of all persons in the course of their custody. Police cells should be of a reasonable size, have adequate light and ventilation and be equipped with a suitable means of rest;

3. Taking specific measures to protect vulnerable groups

- preventing prisoner-on-prisoner violence by ensuring that all such reports are investigated and that those responsible are prosecuted and punished. Vulnerable individuals should be offered protective custody without isolating them more than necessary from other detainees and without putting them at further risk of torture or ill-treatment. Detainees should be segregated along the lines of gender, age and seriousness of the crime in accordance with the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- ensuring that all police officers are informed and aware that rape and sexual abuses of detainees constitutes an act of torture or ill-treatment and will not be tolerated. Female guards should be present during the interrogation of female detainees and should be solely responsible for carrying out any body searches of female detainees;
- ensuring that children are only detained as a last resort and for the shortest possible time. They should be given immediate access to relatives, legal counsel and medical assistance and relatives or guardians should be informed immediately of their whereabouts. Juvenile detainees should be kept separate from adults and detained in separate institutions;

4. Ensuring transparency and accountability

- telling detainees promptly of their rights, including their right to lodge complaints about their treatment;

- ensuring that there is a clear chain of command within the police and that police personnel at all levels know that they will be held personally responsible and accountable for their own actions or omissions. Police personnel at all levels should be made aware that they have a right and duty to disobey orders to carry out acts of torture or ill-treatment;
- carrying out an internal investigation into all allegations of torture or ill-treatment and actively cooperating with any external investigation into such allegations. Governments and police are obliged to ensure that such incidents are investigated thoroughly, independently and impartially, that the victims obtain redress and that those responsible are brought to justice through appropriate criminal and other sanctions. Anyone alleged to have committed acts of torture should be suspended from active duty during the course of the investigation without prejudice to the outcome of the investigation;
- allowing representatives of the local or national bar and medical associations, as well as local or national congress members and representatives of national or international non-governmental organizations, to visit any police station and detention facilities without restriction for the purpose of inspection. Such teams should have full access to places of detention and should be allowed to speak privately with detainees during the course of their inspection.

5. Educational and promotional activities should be undertaken on a regular basis to raise awareness among public officials and the public at large about torture and its prevention. An effective way to demonstrate commitment and raise public awareness is to designate a particular locality or local buildings, including police stations or detention centres, as a 'torture-free zone' and ensure that this is widely publicised through local media. Outreach to schools and youth is also an effective way to build a stronger bond between the police and the community and raise young people's awareness of their rights and responsibilities at an early age. By actively participating in such activities, police can:

- show their commitment to opposing all forms of torture;
- demonstrate their professionalism and determination to uphold the law, leading the way for reform among other sectors of the community;
- help to educate the public by providing practical examples of measures taken to safeguard their rights in police custody and thus strengthen the bond of trust between police and the community.

6. Adequate resources and training for law enforcement officials is a basic condition for ensuring the effective implementation of safeguards against torture and other abuses. Inadequate policing skills are a key factor in many countries leading to arbitrary arrests, torture and ill-treatment of suspects. Poor investigation and interview skills can lead to an over-reliance on extracting confessions and statements through coercion, usually at the expense of tested methods of investigation which demonstrate a high standard of professional quality and responsibility. Raising levels of professionalism requires training in high quality skills as well as human rights training.

Police officers, particularly at senior level, should raise these issues with their administrative superiors at both the local and national level, to ensure that the police service is provided with the necessary resources to carry out its work in a professional manner and in line with international human rights standards. Police training should always be based on human rights standards and aimed at ensuring the highest standards of professional conduct. In particular:

- human rights should be a permanent component of police training, reflected in long-term training plans and resource allocation. It should be a key component of all basic training for new recruits. It should also be included in all relevant in-service courses, such as refresher courses, training in crime investigation skills and public order policing;
- such training should emphasize the role of police as protectors of human rights and raise awareness of the fact that human rights protection and effective crime control are mutually reinforcing goals;
- human rights training should demonstrate how human rights principles are applied in routine police work and practice. It should not be contradicted by instructions given in any other part of police training programs;
- police and other law enforcement officials should be instructed on the UN Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- in the course of training, particular attention should be given to the principle that the prohibition of torture is absolute and police officers have a duty to disobey orders from a superior to commit torture;
- training on “scene of crime management”, on the gathering, analysis and preservation of evidence and other aspects of the investigation of alleged crimes, including techniques of interviewing and taking statements from suspects and witnesses, should be designed to develop the capacity of police to build a case in an efficient manner that avoids reliance upon coercion;
- training programs and their impact should be monitored and evaluated. The criteria for these evaluations should be established at the start of the training program to ensure that resources are not wasted and that lessons learnt can be fed back into the training program.

**APPENDIX: AI's Ten Basic Human Rights Standards for Law Enforcement Officials
POL 30/004/1998**

All governments are required to adopt the necessary measures to instruct law enforcement officials, during basic training and all subsequent training and refresher courses, in the provisions of national legislation in accordance with the UN Code of Conduct for Law Enforcement Officials as well as other basic international human rights standards applicable to law enforcement officials.

These standards should be made available as widely as possible to the general public and fully respected under all circumstances. They should be reflected in national legislation and practice, and regular public reports issued on their implementation. Exceptional circumstances such as a state of emergency or any other public emergency do not justify any departure from these standards.

All governments should adopt an active and visible policy of integrating a gender perspective into the development and implementation of training and policies for law enforcement officials.

Introduction

These '10 Basic Human Rights Standards for Law Enforcement Officials' were prepared by Amnesty International in association with police officials and experts from different countries. They are based on United Nations law enforcement, criminal justice and human rights standards. They are intended as a quick reference, and not as a full explanation of or commentary on the applicability of international human rights standards relevant to law enforcement.

This document is intended to raise awareness amongst government officials, parliamentarians, journalists and non-governmental organizations of some fundamental standards which should be part of any police training and police practice.

It is hoped that police authorities will be able to use these 10 basic standards as a starting point to develop detailed guidance for the training and monitoring of the conduct of police agents. Certainly, it is the duty of all officers to ensure that their colleagues uphold the ethical standards of their profession - the standards outlined here are essential for exercising that responsibility.

Background

Everyone shares responsibility to uphold the Universal Declaration of Human Rights (UDHR) in its entirety. Nevertheless the UDHR contains a number of articles which are particularly relevant for law enforcement work:

„Everyone has the right to life, liberty and security of person (Article 3, UDHR)

„No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5, UDHR)

„All are equal before the law and are entitled without any discrimination to equal protection of the law (Article 7, UDHR)

„No one shall be subjected to arbitrary arrest and detention (Article 9, UDHR).

„Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defence (Article 11(1), UDHR)

„Everyone has the right to freedom of opinion and expression (Article 19, UDHR)

„Everyone has the right to freedom of peaceful assembly and association, and no one may be compelled to belong to an association (Article 20, UDHR)

Other documents directly relevant to policing work are the following United Nations law enforcement, criminal justice and human rights instruments:

„UN Code of Conduct for Law Enforcement Officials

„UN Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials

„UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions

„UN Declaration on the Protection of All Persons from Enforced Disappearances

„UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

„UN International Covenant on Civil and Political Rights

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

„UN Standard Minimum Rules for the Treatment of Prisoners (hereafter referred to as Standard Minimum Rules)

„UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereafter referred to as Body of Principles)

„UN Convention on the Rights of the Child

„UN Rules for the Protection of Juveniles Deprived of their Liberty

„UN Declaration on the Elimination of Violence against Women

„UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

„UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The UN Code of Conduct for Law Enforcement Officials, the UN Standard Minimum Rules and the UN Body of Principles set out several important principles and prerequisites for the humane performance of law enforcement functions, including that:

„Every law enforcement agency should be representative of, and responsive and accountable to, the community as a whole

„The effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws

„Every law enforcement official is a part of the criminal justice system, the aim of which is to prevent and control crime, and the conduct of every official has an impact on the entire system

„Every law enforcement agency should discipline itself to uphold international human rights standards and the actions of law enforcement officials should be open to public scrutiny

„Standards for humane conduct of law enforcement officials lack practical value unless their content and meaning become part of the creed of every law enforcement official, through education and training and through monitoring.

The term "*law enforcement officials*" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest and detention. This should be given the widest possible interpretation, and includes military and other security personnel as well as immigration officials where they exercise such powers.

Copies of UN law enforcement, criminal justice and human rights standards can be obtained from the Office of the High Commissioner for Human Rights, CH-1211 Geneva 10, Switzerland (http://www.un.org/cgi-bin/treaty_2.pl or E-mail to: treaty@un.org)

Basic Standard 1:

**Everyone is entitled to equal protection of the law,
without discrimination on any grounds, and especially against violence or threat.
Be especially vigilant to protect potentially vulnerable groups such as children, the
elderly, women, refugees, displaced persons and members of minority groups.**

For the implementation of Basic Standard 1 it is of great importance that police officers at all times fulfil the duty imposed on them by law, by serving the community and protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. They must promote and protect human dignity and maintain and uphold the human rights of all persons, among which are the following:

„Everyone has the right to liberty and security of the person

„No one should be subjected to arbitrary arrest, detention or exile

„All persons deprived of their liberty have the right not to suffer torture or cruel, inhuman or degrading treatment

„Everyone is entitled without any discrimination to equal protection of the law

„Everyone has the right to a fair trial

„Everyone has the right to freedom of movement

„Everyone has the right to peaceful assembly

„Everyone has the right to freedom of expression

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may they invoke superior orders or exceptional circumstances such as a state of war or threat of war, or political instability or other public emergency as a justification for such acts. Special attention should be given to the protection of human rights of members of potentially vulnerable groups, such as children, the elderly, women, refugees, displaced persons and members of minority groups.

Sources include: UN Code of Conduct for Law Enforcement Officials (Articles 1,2,5), Beijing Declaration and Platform for Action (paragraph 2.2.4)

Basic Standard 2:

Treat all victims of crime with compassion and respect, and in particular protect their safety and privacy

Victims are people who have suffered harm, including mental and physical injury, emotional suffering, economic loss or substantial impairment of their fundamental rights through acts or omissions that are in violation of criminal law.

For the implementation of Basic Standard 2, police officers must:

Ensure that, if needed, measures are taken to ensure the protection and safety of victims from intimidation and retaliation

Inform victims without delay of the availability of health and social services and other relevant assistance

Provide without delay specialist care for women who have suffered violence

Develop investigative techniques that do not further degrade women who have been victims of violence.

Give particular attention to victims who have special needs because of the nature of the harm inflicted on them or because of factors such as race, colour, gender, sexual orientation, age, language, religion, nationality, political or other opinion, disability, ethnic or social origin, etc.

Sources include: UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Principles 4, 14, 15, 16 and 17), CEDAW - General Recommendation No 19 (11th Session, 1992)

Basic Standard 3:

Do not use force except when strictly necessary and to the minimum extent required under the circumstances

The implementation of Basic Standard 3 involves, among other things, that Police officers, in carrying out their duty, should apply non-violent means as far as possible before resorting to the use of force. They may use force only if other means remain ineffective or without any promise of achieving the necessary result. Basic Standard 3 must be implemented in accordance with Basic Standard 4 and 5.

Whenever the lawful use of force is unavoidable, police officers must:

▪Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved

▪Minimize damage and injury, and respect and preserve human life

▪Ensure that all possible assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment

▪Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment

▪Where injury or death is caused by the use of force by police officers, they shall report the incident promptly to their superiors, who should ensure that proper investigations of all such incidents are carried out.

Sources include: UN Code of Conduct for Law Enforcement Officials (Article 3), UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principles 4, 5, 6 and 9)

Basic Standard 4:

Avoid using force when policing unlawful but non-violent assemblies. When dispersing violent assemblies, use force only to the minimum extent necessary.

Everyone is allowed to participate in peaceful assemblies, whether political or non-political, subject only to very limited restrictions imposed in conformity with the law and which are necessary in a democratic society to protect such interests as public order and public health. The police must not interfere with lawful and peaceful assemblies, otherwise than for the protection of persons participating in such an assembly or others.

The implementation of Basic Standard 4 involves, among other things:

▪In the policing of assemblies that are unlawful but non-violent, police officers must avoid the use of force. If force is indispensable, for example to secure the safety of others, they must restrict such force to the minimum extent necessary and in compliance with the other provisions in Basic Standard 3

▪Firearms shall not be used in the policing of non-violent assemblies. The use of firearms is strictly limited to the objectives mentioned in Basic Standard 5

▪In the dispersal of violent assemblies police officers may use force only if other means remain ineffective or without any promise of achieving the intended result. When using force police officers must comply with the provisions in Basic Standard 3

▪In the dispersal of violent assemblies police officers may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary to achieve one of the objectives mentioned in Basic Standard 5 and in accordance with the provisions in Basic Standard 3 and Basic Standard 5.

Sources include: UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principles 9, 12, 13, and 14)

Basic Standard 5:

Lethal force should not be used except when strictly unavoidable in order to protect your life or the lives of others

The use of firearms is an extreme measure which must be strictly regulated, because of the risk of death or serious injury involved. The implementation of Basic Standard 5 requires, among other things, that **police officers must not use firearms except for the following objectives and only when less extreme means are insufficient to achieve these objectives:**

- In self-defence or in 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 the police officer's authority, or to prevent his or her escape

In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

Police officers must 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 officers 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.

Rules and regulations on the use of firearms by police officers must include guidelines that:

- Specify the circumstances under which police officers are authorized to carry firearms and prescribe the types of firearms and ammunition permitted
- Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm
- Prohibit the use of any firearms or ammunition that cause unnecessary injury or present an unnecessary risk
- Regulate the control, storage and issuing of firearms and ammunition, including procedures for ensuring that police officers are accountable for firearms and ammunition issued to them
- Provide for warnings to be given, if appropriate, when firearms are to be discharged
- Provide for a system of reporting and investigation whenever police officers use firearms in the performance of their duty.

Sources include: UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles 9, 10 and 11)

Basic Standard 6:

**Arrest no person unless there are legal grounds to do so,
and the arrest is carried out in accordance with lawful arrest procedures**

To make sure that an arrest is lawful and not arbitrary, it is important that the reasons for the arrest and the powers and identity of arresting officers are known. Therefore the implementation of Basic Standard 6 involves, among other things:

„Arrest or detention shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose

„Police or other authorities which arrest a person shall exercise only the powers granted to them under the law

„Anyone arrested must be informed at the time of arrest of the reasons for the arrest

„The time of the arrest, the reasons for the arrest, precise information identifying the place of custody, and the identity of the law enforcement officials concerned must be recorded; in addition, the records must be communicated to the detained person or to his or her lawyer

„Officials carrying out an arrest should identify themselves to the person arrested and, on demand, to others witnessing the event

„Police officers and other officials who make arrests should wear name tags or numbers so that they can be clearly identified. Other identifying markings such as the insignia of soldiers' battalions or detachments should also be visible

„Police and military vehicles should be clearly identified as such. They should carry number plates at all times.

„A person should not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other officer authorized by law to exercise judicial power, and be entitled to a trial within a reasonable time, or to release. It should not be the general rule that persons awaiting trial are detained in custody, but release may be subject to guarantees to appear for trial.

„All detainees should only be kept in recognised places of detention. Such places of detention should 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.

„The detention of refugees and asylum seekers should normally be avoided. No asylum-seeker should be detained unless it has been established that detention is necessary, is lawful and complies with one of the grounds recognized as legitimate by international standards. In all cases, detention should not last longer than is strictly necessary. All asylum-seekers should be given adequate opportunity to have their detention reviewed by a judicial or similar authority. Reference regarding the detention of refugees and asylum seekers should be made to the competent authorities, as well as to the office of the United Nations High Commissioner for Refugees (UNHCR) and other refugee assistance organizations.

Sources include: UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principles 2, 8, 10, 11, 12, 20 and 29), UN Standard Minimum Rules for the Treatment of Prisoners (Rule 55), UN Convention relating to the Status of Refugees (Article 31), Conclusion 44 of the UNHCR Executive Committee

Basic Standard 7:

Ensure all detainees have access promptly after arrest to their family and legal representative and to any necessary medical assistance

Experience worldwide has shown that it is often in the first hours or days of detention that detainees are at greatest risk of being ill-treated, tortured, made to "disappear", or killed. Unconvicted detainees must be presumed innocent and treated as such. The implementation of Basic Standard 7 requires, among other things, that:

• Detainees should be promptly told of their rights, including the right to lodge complaints about their treatment.

• A detainee who does not understand or speak the language used by the authorities responsible for his or her arrest is entitled to receive information and have the assistance, free of charge if necessary, of an interpreter in connection with the legal proceedings subsequent to his or her arrest.

• A detainee who is a foreigner should be promptly informed of his or her right to communicate with the relevant consular post or diplomatic mission.

• All detained refugees and asylum seekers should be allowed access to the local representative of the UNHCR and to refugee assistance organizations, regardless of why they are being detained. If a detainee identifies himself / herself as a refugee or an asylum seeker, or otherwise indicates their fear at being returned to their country, it is incumbent on the detaining officials to facilitate contact with these organizations.

• Police officers or other competent authorities must ensure that all detainees are fully able in practice to avail themselves of the right to notify family members or others immediately of their whereabouts. All detainees should be informed of this right. If they do not have the financial or technical means to send word to their relatives, the officers must be ready to communicate the

• Police officers or other competent authorities must ensure that accurate information on the arrest, place of detention, transfer and release of detainees is available promptly in a place where relatives and others concerned can obtain it. They must ensure that relatives are not obstructed from obtaining this information, and that they know or are able to find out where the information can be obtained. (See also the commentary to Basic Standard 8)

• Relatives and others should be able to visit a detainee as soon as possible after he or she is taken into custody. Relatives and others should be able to correspond with the detainee and make further visits regularly to verify the detainee's continued well-being.

• Every detainee must be informed promptly after arrest of his or her right to a legal counsel and be helped by the authorities to exercise this right. Moreover, every detainee must be able to communicate regularly and confidentially with their lawyer, including having meetings with their lawyer within sight but not within hearing of a guard or police officer, in order to help prepare the detainee's defence and to exercise his or her rights.

• An independent doctor should promptly conduct a proper medical examination of the detainee after taken into custody in order to ascertain that the detainee is healthy and not suffering from torture or ill-treatment, including rape and sexual abuse. Thereafter, medical care and treatment shall be provided whenever necessary. Every detainee or his or her legal counsel has the right to request a second medical examination or opinion. Detainees, even with their consent, must never be subjected to medical or scientific experimentation which may be detrimental to their health.

Female detainees should be entitled to medical examination by a female doctor. They should be provided with all necessary pre-natal and post-natal care and treatment. Restraints should only be used on pregnant women as a last resort and should never put the safety of a woman or foetus at risk. Women should never be restrained during labour.

Sources include: UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principles 8, 11, 14, 15, 16, 17, 18, 19, 20, 22, 24, 25 and 29), Conclusion 44 of the UNHCR Executive Committee

Basic Standard 8:

All detainees must be treated humanely.

Do not inflict, instigate or tolerate any act of torture or ill-treatment, in any circumstances, and refuse to obey any order to do so

Detainees are inherently vulnerable because they are under the control of law enforcement officials who therefore have a duty to protect detainees from any violation of their rights by strictly observing procedures designed to respect the inherent dignity of the human person. Accurate record-keeping is an essential element of the proper administration of places of detention. The existence of official records which are open for consultation helps to protect detainees from ill-treatment including torture. The implementation of Basic Standard 8 requires, among other things, that:

No person under any form of detention may be subjected to torture, or to cruel, inhuman or degrading treatment or punishment, and law enforcement officers have a right and a duty to disobey orders to carry out such acts. No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may they invoke superior orders or exceptional circumstances such as a state of war or threat of war, or political instability or other public emergency as a justification for such acts.

Law enforcement officials should be instructed that rape of women in their custody constitutes an act of torture that will not be tolerated. Similarly, they should be instructed that any other forms of sexual abuse may constitute torture or cruel, inhuman or degrading treatment and that offenders will be brought to justice.

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 holding a detainee in conditions which deprive him or her, even temporarily, of the use of any of his or her natural senses, such as sight or hearing, of his or her awareness of place or passing of time. Compliance with the other basic standards for law enforcement are also essential safeguards against torture and ill-treatment.

A detainee may not be compelled to confess, to otherwise incriminate himself or herself or to testify against any other person. While being interrogated, no detainee may be subject to violent threats or methods which impair his or her capacity of decision or judgement. Female guards should be present during the interrogation of female detainees and should be solely responsible for carrying out any body searches of female detainees.

Children should be detained only as a last resort and for the shortest possible time. They should be given immediate access to relatives, legal counsel and medical assistance and relatives or guardians should be informed immediately of their whereabouts. Juvenile detainees should be kept separate from adults and detained in separate institutions. They

should be protected from torture and ill-treatment, including rape and sexual abuse, whether by officials or other detainees. Refugees and asylum seekers detained for non-criminal reasons should never be detained together with common law prisoners. Conditions and treatment should be humane, and appropriate to their status as refugees.

▪ Detainees should be kept separate from imprisoned persons and, if requested, be kept reasonably near their usual place of residence. All detainees should if possible wear their own clothing if it is clean and suitable, sleep singly in separate rooms, be fed properly and be allowed to buy or receive books, newspapers, writing materials and other means of occupation as are compatible with the interests of justice.

▪ Registers of detainees should be kept in all places of detention including police stations and military bases. The register should consist of a bound book with numbered pages which cannot be tampered with. Information to be entered in them should include:

The name and identity of each person detained

The reasons for his or her arrest or detention

The names and identities of officials who arrested the detainee or transported him

The date and time of the arrest and of the transportation to a place of detention

The time, place and duration of each interrogation and the name of the person or persons conducting it

The time of the detainee's first appearance before a judicial authority

Precise information concerning the place of custody

The date, time and circumstances of the detainee's release or transfer to another place of detention.

Other measures that can contribute to the proper treatment of detainees are:

▪ Police officers and other competent authorities should allow representatives of the local or national bar and medical associations, as well as local or national members of parliament, appropriate international bodies and officials, to visit any police station and facilities, including detention centres, without restriction for the purpose of inspection.

▪ These bodies and officials must be able to make unannounced visits

▪ These bodies and officials must have access to all parts of each place of detention and all detainees and be able to interview them freely and without witnesses

▪ These bodies and officials must be able to make return visits whenever they wish

▪ These bodies and officials must be able to make recommendations to the authorities concerning the treatment of detainees

▪ The treatment of detainees should conform as a minimum to the standards laid down in the UN Standard Minimum Rules and the Body of Principles.

Sources include: UN Code of Conduct for Law Enforcement Officials (Article 5); UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principles 1,2,6, 12, 21 and 23); UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 2); UN Standard Minimum Rules for the Treatment of Prisoners (Rules 55, 85, 86, 87, 88, 91, 92 and 93); UN International Covenant on Civil and Political Rights (Article 10); UN Convention on the Rights of the Child (Article 37), Conclusion 44 of the UNHCR Executive Committee

Basic Standard 9:

Do not carry out, order or cover up extrajudicial executions or "disappearances", and refuse to obey any order to do so

No one should be arbitrarily or indiscriminately deprived of life. An extrajudicial execution is an unlawful and deliberate killing carried out by, or on the order of, someone at some level of government, whether national, state or local, or with their acquiescence.

There are several important elements in the concept of an extrajudicial execution:

It is deliberate, not accidental

It violates national laws such as those which prohibit murder, and/or international standards forbidding the arbitrary deprivation of life.

Its unlawfulness distinguishes an extrajudicial execution from:

• A justifiable killing in self-defence

• A death resulting from the use of force by law enforcement officials which is nevertheless consistent with international standards

• A killing in an armed conflict situation which is not prohibited by international humanitarian law

In an armed conflict, even if not an international armed conflict, armed officers and soldiers of the government, as well as combatants of armed political groups, are prohibited from carrying out arbitrary and summary executions. These acts would constitute breaches of Common Article 3 of the Geneva Conventions --(which also prohibits mutilation, torture or cruel, inhuman or degrading treatment, hostage taking and other gross abuses).

The "disappeared" are people who have been taken into custody by agents of the state, yet whose whereabouts and fate are concealed. It is a grave violation of human rights to carry out disappearances.

• No order or instruction of any public authority, civilian, military or other, may be invoked to justify an extrajudicial execution or a "disappearance". Any person receiving such an order or instruction has a duty to disobey it.

All police officers and all other law enforcement personnel should be aware of their right and duty to disobey orders the implementation of which might result in serious human rights violations. Since those violations are unlawful, police officers and others must not participate in them. The need to disobey an unlawful order should be seen as a duty, taking precedence

over the normal duty to obey orders. The duty to disobey an unlawful order entails the right to disobey it.

The right and duty to disobey an order to participate in "disappearances" and extrajudicial killings are incorporated in the UN Declaration on Disappearances (Article 6) and in the UN Principles on Extra-Legal, Arbitrary and Summary Executions (Principle 3). The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials protect the right to disobey by stating that no criminal or disciplinary sanction should be imposed on law enforcement officials who, in compliance with these Basic Principles and the UN Code of Conduct for Law Enforcement Officials, refuse to carry out an order to use force and firearms or who report such use by other officials.

To implement Basic Standard 9, it is important that the use of force and firearms by the police strictly complies with all the provisions in Basic Standard 3, Basic Standard 4 and Basic Standard 5.

Sources include: UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Principle 1 and 3); Common Article 3 of the Geneva Conventions; UN Declaration on the Protection of All Persons from Enforced Disappearances (Preamble and Article 6)

Basic Standard 10:

**Report all breaches of these Basic Standards to your senior officer
and to the office of the public prosecutor.**

Do everything within your power to ensure steps are taken to investigate these breaches.

All violations of human rights by the police or other law enforcement personnel, including any breaches of these Basic Standards, should be investigated fully, promptly and independently, for instance by the office of the public prosecutor. The main objective of these investigations is to establish the facts and to bring to justice those responsible:

■Has a violation of human rights or a breach of principles or of national law been perpetrated?
If so, by whom?

■If a public official has committed a crime or breach of regulations, was he or she acting under orders or with the acquiescence of other officials?

■Has the office of the prosecutor opened a criminal investigation and, if there is sufficient admissible evidence, sought to prosecute?

Sources include: UN Code of Conduct for Law Enforcement Officials (Preamble and Articles 1, 2, 8); UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Preamble)

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