



The International Institute for
Justice and the Rule of Law



Effective Decision-Making in Counter-Terrorist Investigations

A HUMAN RIGHTS TOOLKIT



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The International Institute for Justice and the Rule of Law

Inspired by the Global Counterterrorism Forum (GCTF), the IJ was established in 2014 as a neutral platform for training and capacity-building for lawmakers, judges, prosecutors, law enforcement, corrections officials, and other justice sector practitioners to share and promote the implementation of good practices and sustainable counter-terrorism approaches founded on the rule of law.

The IJ is an intergovernmental organisation based in Malta with an international Governing Board of Administrators (GBA) representing its 14 members: Algeria, France, Italy, Jordan, Kuwait, Malta, Morocco, the Netherlands, Nigeria, Tunisia, Turkey, the United Kingdom, the United States, and the European Union. The IJ is staffed by a dynamic international team headed by an Executive Secretary, who are responsible for the day-to-day operations of the IJ.

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Preface by the International Institute for Justice and the Rule of Law

The **Effective Decision-Making in Counter-Terrorism Investigations: A Human Rights Toolkit** is designed to support practitioners, policymakers, and organisations in integrating human rights considerations into their decision-making processes. This toolkit aims to provide a structured approach to decision-making that ensures the protection and promotion of human rights across diverse contexts, from policy formulation to the implementation of counter-terrorism measures and beyond.

The development of this toolkit was inspired by the recognition that human rights should be at the core of every decision that impacts individuals and communities. As the global landscape continues to evolve with complex challenges, including security concerns, the need for clear, consistent, and rights-respecting approaches to decision-making has never been more critical.

This toolkit consolidates the insights and expertise gained through extensive consultations, capacity-building activities, and collaboration with a broad range of stakeholders, including practitioners, international organisations, and experts in the field. It incorporates lessons learned from the International Institute for Justice and the Rule of Law (IJJ) through the EU funded Counter-Terrorism Platform for Human Rights Engagement (CT PHARE) facility's three Capacity Building Activities held in Malta, Ivory Coast, and Tanzania, bringing together professionals from the Middle East, North Africa, and Sub-Saharan East and West Africa. The input and commitment of these participants have been invaluable in shaping the toolkit's content and ensuring its practical applicability.

The toolkit includes a comprehensive Decision-Making Model (DMM) that allows any jurisdiction to plan legislation, policy, and procedures according to international human rights standards for various law enforcement activities. As noted in Chapter 2, the DMM ensures that decisions are ethical and comply with human rights standards, providing a consistent framework within which all elements of policing can operate effectively.

Chapter 3 emphasises the importance of seeking specialist advice and guidance, which is crucial for enhancing decision-making, especially under high-risk conditions. Consulting with more experienced individuals and carefully recording the advice given are highlighted as essential steps in law enforcement operations.

In Chapter 4, strategies to mitigate decision traps, biases, and heuristics are explored, providing operational and strategic leaders with the tools needed to refine their decision-making skills. The measures outlined—such as awareness, education, structured decision-making, and critical thinking—are vital for maintaining objectivity and fairness.

The Human Rights Checklists found in Chapters 5 through 10 provide practical and detailed guidelines to ensure compliance with human rights standards in various operational contexts. These chapters cover essential topics, such as the legal thresholds for detention and custody, the necessity and proportionality of search and seizure, and the use of force, all while emphasizing the importance of accountability and respect for human dignity. Special attention is given to surveillance and data collection in Chapter 9, where considerations for legality, necessity, and privacy are carefully addressed in the digital age.

Chapter 10 provides an invaluable checklist for the treatment of victims and witnesses, ensuring their rights are protected, they are informed, and they are treated with dignity and respect. This section emphasises confidentiality, non-discrimination, and the maintenance of trust within law enforcement practices.

The final section of this toolkit presents the sources of international human rights, offering a thorough understanding of their evolution since their codification in 1948. This historical context is vital for developing strategies to address current and future challenges while ensuring human rights remain central to all efforts.

Overall, this toolkit is an invaluable resource for developing strategies that align with international human rights standards, ensuring that all elements of law enforcement and counter-terrorism operations are conducted within a consistent, ethical framework.



Mr. Steven Hill
Executive Secretary

The International Institute for Justice
and the Rule of Law

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The IJ and CT PHARE would like to express its sincere gratitude to Mr. Donal O'Driscoll for his invaluable contributions to the development of the Toolkit on the Human Rights-Based Decision-Making Model (DMM). Mr. O'Driscoll, BA, MA, MSc, EMII, FISRM, is a security consultant and former police commander with over 40 years of experience in the fields of counter-terrorism, security, intelligence, and crisis management. He has advised at a strategic level in Ireland, Afghanistan, Iraq, and Moldova. His expertise, insights, and thoughtful feedback were crucial in shaping its content and ensuring that it meets the highest standards of clarity and practicality. This toolkit would not have been possible without his dedication and collaboration.

The IJ and CT PHARE would also wish to acknowledge John Hughes, Senior Investigating Officer in London's Metropolitan Police, Counter Terrorism Command, for his unwavering support in reviewing and refining the material.

The IJ and CT PHARE extend sincere thanks to the Arab Interior Ministers' Council (AIMC) and the African Union Counter Terrorism Centre (AUCTC) for jointly organising with the IJ and CT PHARE the three Capacity Building Activities—held in Malta with practitioners from the Middle East and North Africa (July 2023), in Ivory Coast with Francophone African countries (April 2024), and in Tanzania with Anglophone African countries (May 2024). The contributions of these regional organisations, alongside the experts involved and all the practitioners who attended these events, were instrumental to the ongoing success of this Toolkit.

Abbreviations and Acronyms

ACHR	American Convention on Human Rights
ACHPR	African Charter on Human and People's Rights
AIMC	Arab Interior Ministers' Council
AUCTC	African Union Counter Terrorism Centre
CAT	Convention against Torture and Other Inhuman or Degrading Treatment or Punishment
CFR	Charter of Fundamental Rights of the European Union
CIDTP	Cruel, inhuman, and degrading treatment or punishment
CRPD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
DMM	Human Rights Compliant Decision-Making Model
CT PHARE	Counter-terrorism Platform for Human Rights Engagement
EU	European Union
ECHR	European Convention on Human Rights
GCTF	Global Counterterrorism Forum
GDPR	General Data Protection Regulation
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
IJ	International Institute for Justice and the Rule of Law
OSCE	Organisation for Security and Co-operation in Europe
UDHR	Universal Declaration of Human Rights
UN	United Nations
WHO	World Health Organization

CHAPTER 1

Introduction

Decision-making is at the core of all human cognitive activity. At any given moment, where we are, what we are doing and why and how we are doing it, is a function of the decisions that we have made or are making. In our everyday lives, we each make thousands of decisions, most of them trivial and inconsequential and most of them costing us little thought or attention. For some, however, their work involves making decisions which have great consequence for themselves and those who rely upon them. Counter-terrorist professionals fit definitively into this bracket. In this discipline, poor quality, ethically questionable and human rights deficient decisions, and the actions flowing from them, can have adverse effect on the potential success or failure of their operations or investigations, on organisational reputations and on the international reputations and standing of States and nations. They can also result in significant and lasting damage to the lives and personal reputations of the decision-makers. Most importantly, such decisions and actions can have wide-ranging and profound impact upon the safety and wellbeing on those impacted by them, potentially affecting every aspect of their lives.

Within the field of decision-making, as in any field of human endeavour, numerous tools have been developed in efforts to assist us in improving our processes and there is an abundance of decision-making models used across different disciplines and professions, each designed and shaped for the specific purposes of its users. Because models are based upon innate human decision-making processes, they have many basic common features but differ in detail and how they emphasise and prioritise aspects of that process. No single model is held up as the best or most effective, however, in the field of law enforcement, many agencies have adopted variations of a rational decision-making model particularly well suited to assisting law enforcement personnel in making effective, consistent and ethical decisions in challenging circumstances and environments.

The International Institute for Justice and the Rule of Law (IJJ) has adopted the *Human Rights Compliant Decision-Making Model* (DMM hereafter) which will be described within this toolkit, to assist decision-makers working in the challenging field of counter-terrorism in making effective, timely and human rights compliant decisions during the course of their investigations, operations and other related duties. The approach adopted by the DMM is to break down the rational decision-making processes that practitioners already use in the course of their private and professional lives, and structure them in a way that prompts the user to make more systematic, objective, consistent and risk-aware decisions.

Human rights and ethics in counter-terrorism

Whilst there may be challenges in balancing effective counter-terrorism measures with upholding and supporting appropriate human rights principles and standards, the two goals are not inherently incompatible and adopting an ethically sound and rights-based approach is essential in achieving effective and sustainable outcomes.

Acts of terrorism, by their very nature, infringe upon individual and collective rights of the targeted civilian population, the very rights that States are bound to protect. It is, therefore, wholly counterproductive for governments or their agents to transgress or violate those rights, principles and standards in the purpose of countering terrorism, as doing so only serves to weaken the ethical foundations of rules-based society, undermining those very efforts in the long run. Recognising, respecting and protecting human rights must be an integral part of a strategy that aims to prevent terrorism while upholding democratic values and the rule of law. The DMM is structured to support counter-terrorist practitioners in this regard.

Benefits of using the DMM

The DMM can be applied in dealing with spontaneous and unplanned incidents where immediate action is needed, or in preparing for events, operations or investigations where there is sufficient time and opportunity to strategise and plan. It encourages the assessment of threat risk at the earliest stages and throughout the decision-making process in order that appropriate strategies can be developed to eliminate and/or to mitigate that risk. It can be used individually or by groups and teams and is most effective when introduced across organisations where it can help to promote consistency. It promotes accountability, transparency and improvement through a parallel process of continuous and detailed recording. Central to its purpose, the DMM places human rights and ethical considerations at its core, integrating and referencing them at every stage of the deliberative and iterative process.

In summary, the DMM offers numerous benefits, including enhanced clarity, consistency, objectivity and the ability to more effectively manage threats and risk. By providing a structured and systematic approach, the DMM supports better analysis and promotes improved communication, and continuous learning, ultimately leading to more effective and informed decision-making.

About the toolkit

This toolkit is not intended as a legal volume or an exhaustive academic exploration of human rights legislation and conventions. There is already an abundance of such works easily available and accessible online or on the library shelves. It is rather intended as a practical, quick reference handbook designed to assist counter-terrorist field practitioners in making effective, ethical and human rights compliant decisions when operating in dynamic, volatile, complex and uncertain environments often presented by counter-terrorist investigations and operations.

Structure of the toolkit

The main body of the toolkit provides guidance on the practical application of the DMM in the course of law enforcement and counter-terrorist operations. The toolkit also provides an overview and understanding of the conscious and subconscious human decision-making processes, describing the common traps and pitfalls associated with inherent cognitive biases and mental shortcuts that can often skew our judgement, leading to unintended and negative outcomes, and offers strategies to avoid and mitigate such harmful effects.

The toolkit then focuses on assisting the user in ensuring that they are ethically and human rights compliant whilst carrying out the most common and, from a human rights perspective, most intrusive counter-terrorist related duties. By referencing the 'Human Rights Checklists', toolkit users are prompted to comply in their practice with rules and guidelines reflecting best current practice drawn from the broad body of international human rights conventions, charters and legislation.

CHAPTER 2

Human Rights Compliant Decision-Making Model (The DMM)

The DMM consists of two integrated parts: (i) the Centre of the DMM, (ii) the Outer Circle:



Figure.1 The Centre of the DMM

(I) The Centre or Core of the DMM

Every decision made and action taken using the DMM must align with the core's values and standards. It is intended that the considerations at the core of the model DMM should permeate and inform every stage of the decision-making cycle, prompting users to continuously question:

- What is my Mission? Why am I doing and to what purpose?
- Am I prioritising the protection and the sanctity of all human life?
- Am I applying the appropriate core personal and organisational **ethical standards and values**?
- Are there **human rights concerns**?
- Is there existing human rights legislation or case law that applies or is relevant to decision?
- Are there other less intrusive options available to me?
- If the use of force is being considered, is it lawful, graduated and proportionate to the threat being countered?
- Am I ready to be fully accountable for my decision?
- Is my decision, or any action(s) flowing from it in line with the **fundamental principles of law enforcement**:
 - P**roportionate
 - L**egal
 - A**ccountable
 - N**ecessary
 - N**on-discriminatory

Fundamental principles of law enforcement

In maintaining fulfilling their fundamental duties of maintaining public safety and order, preventing and investigating crimes, and upholding the rule of law, counter-terrorist practitioners will be required to exercise intrusive powers which impinge upon the fundamental human rights of their fellow citizens. The five fundamental principles that should be considered at all times by practitioners when exercising these intrusive powers are:

- **Proportionality:**
Any action taken should not affect human rights in a way that is disproportionate to the action's legal aim or objective. The level of force or intervention used applied in enforcing the law should be appropriate and not excessive relative to the circumstances.
- **Legality:**
All actions must be conducted within the framework and provisions of relevant domestic legislation, international legislation and constitutional provisions.
- **Accountability:**
Decision-makers and actors should be held fully accountable in their jurisdictions to the appropriate and legal entities and forums. Accountability is facilitated through transparency in practices, access to mechanisms for redress and complaint, and answerability for misconduct or abuses of power.
- **Necessity:**
Any actions taken should not affect or restrict human rights any more than is necessary to achieve a legitimate objective, such as maintaining public order, preventing crime, State security, or protecting life and property.
- **Non-discrimination:**
Individuals should be treated fairly and without prejudice or bias and should not be treated unfairly or less favourably based on characteristics such as race, gender, religion, disability, age, sexual orientation, or other personal attributes.

In the English language these fundamental principles may be memorised using the initialism:

P L A N N

Core Ethical Standards and Values

Ethical values and standards are the internal guiding principles which govern the behaviour of individuals, organisations and societies. They help us to discern what is right from what is wrong and to establish what behaviour is acceptable in any given context or situation. Ethical standards are placed alongside human rights considerations at the centre of the DMM to remind practitioners that that any decision or action under consideration, must be consistent with fundamental ethical principles such as honesty, integrity, and respect for others. The following ethical standards should direct all areas of activity and decision-making and should be applied in all interactions with colleagues and the public:

- To always uphold the law.
- To always do the right thing for the right reason.
- To be honest and truthful and to report wrongdoing when encountered.
- To treat all individuals with dignity and respect, regardless of their background, beliefs, or status.
- To always respect and value diversity and promote inclusivity.
- To always maintain the highest professional personal and organisational standards.
- To always respect the privacy and confidentiality rights of all stakeholders.
- To always communicate honestly with all stakeholders.
- To always be transparent and accountable.
- To always lead and serve ethically.
- To consider whether, in the future you would be confident explaining, justifying or defending your actions in any public forum.
- To always take responsibility for your actions and decisions, acknowledge your mistakes and to work towards rectifying them.

Core human rights considerations

Striking a balance between maintaining effective state security and safeguarding individual freedoms is a challenging task for counter-terrorist professionals. At its core, the DMM prompts counter-terrorist decision-makers to consider and apply universal human rights principles, ensuring that efforts to deter, prevent and respond to terrorism do not violate or undermine the very rights they aim to protect. The following principles at the core of the DMM should permeate and inform every stage of the decision-making cycle:

Universality, equality and non-discrimination: every person is entitled to equal treatment under the law and to observance of their human rights, regardless of their gender, ethnicity, race, religion, sexuality, other individual attributes or any other status. Discrimination on any grounds must be avoided at all costs.

Legality & compliance: all decisions made, and actions flowing from them, must be grounded in law and comply with fundamental human rights principles and international human rights law.

Necessity: Any counter-terrorism measures or actions taken should not affect or restrict human rights any more than is necessary to achieve a legitimate objective.

Proportionality: Any decisions made, or actions taken should not affect human rights in a way that is disproportionate to the legal aim or objective.

Inclusivity: Decision-makers should assess and evaluate the potential impact and risk of harm posed by their decisions and actions. Individuals whose human rights may potentially be affected or impacted by decisions or actions should, where practicable, be consulted.

Accountability & Oversight: Decision-makers must be accountable for their actions. Effective accountability is facilitated through transparency and oversight and monitoring by independent oversight bodies and by judicial review.

Redress & Remedy: Those adversely effected by decisions should be provided avenues to seek remedies, redress and compensation for violations of their human rights.

Training & Awareness: Those who are entrusted to make decisions that impact the human rights of others must be appropriately trained and knowledgeable in domestic and international human rights norms, laws and frameworks.

REFERRING TO THE CORE OF THE MODEL

Remember to refer to the core of the model at each stage of the process, continuously checking that the decisions you are making and actions you are taking are contributing to successfully achieving your mission, that they are ethical and that they comply with the fundamental principles of international human rights.

(II) The Outer Circle

In the outer circle of the DMM, the process of decision-making consists of five iterative stages, used in a continuous cycle, through which new information and/or intelligence is continuously reviewed as it becomes available. Those using the model should perform each stage of the decision-making process in sequence. Each stage of the process requires that the user makes a range of considerations. The following are the main body of considerations:

1. Gather information and intelligence.
2. Assess any threats and risks and develop a working strategy.
3. Consider legal powers, policies, procedures and the decision-making environment.
4. Identify available options and contingencies.
5. Take action, review and reassess.

1. Gather information and intelligence



Figure.2 Gather information and intelligence

Information and intelligence are at the core of decision-making in counter-terrorism and form the basis of all decisions we make. In a counter-terrorism/law enforcement context, decisions made are generally highly consequential and must often be made using incomplete, ambiguous and inaccurate information. It is, therefore, imperative that you continually strive to gather as much accurate information as possible throughout the decision-making processes. Each time significant information is received, it should be processed using the model to help us determine the most effective, most ethical and human rights compliant course of action:

- Gather all relevant information/intelligence: What is happening or has happened? What do I know now? What do I need to know? What needs clarification?
- Fact V Supposition: What do I know that **is probably true** (fact) as distinct from what I believe **may be true** (supposition) based on available information? When working with limited or

incomplete information, you may be required to make decisions based on supposition. When doing so, one should acknowledge and record that it is the case.

- Identify potential credible sources of further information/intelligence.
- Grade the quality and reliability of the information/intelligence and the source(s).
- Determine the scale and scope of the issue.
- Are vulnerable persons, groups or populations at risk? If so, what am I doing about them?
- Do I need advice? Identify and consult with trustworthy, reliable and experienced advisers only.
- Ensure accurate notes and records are kept. Where practicable, employ a dedicated note-taker(s) at the earliest instance and opportunity. Where technology is employed to assist in record keeping, where practicable, ensure that it meets court evidence standards.

2. Assess the Threat/Risk and Develop a Working Strategy



Figure.3 Assess Threat/Risk & Develop a Working Strategy

This analytical stage of the process involves assessing the situation for threats and the risk of harm and developing strategies to eliminate and or reduce them. Where they cannot be eliminated or reduced, efforts must be made to mitigate their effects. Consider the following:

- What is the source and level of the threat?
- Who is at risk? Assess the level of risk to all persons involved or affected, including victims, suspects, witnesses, public, and colleagues then prioritise them in order of the speed and nature of the attention they require.
- **Do I need to take immediate action?** If the level or proximity of the threat dictates, and life is at risk, then you will need to take action accordingly and in a timely manner.
- What information/intelligence do I need?
- Consider what might go right and what might go wrong?
- Are the personnel involved adequately and suitably trained and equipped?
- Do I need more resources? Do I have the appropriate and necessary resources to assist in eliminating or reducing any risk, or, where risk cannot be eliminated or reduced, in mitigating the effects of the risk? If not, what am I going to do about it?
- Do other organisations or agencies need to become involved. If so, what do I need to do about it?
- Recognise the necessity to balance the rights, needs, and expectations of all impacted by the decision or action under consideration.
- Remember that employing structured decision-making processes should **never interfere with your ability to act in a timely and effective manner as required to protect the lives and the safety of others** and/or to eliminate, reduce or mitigate any threats and risks.

REMEMBER to refer to the core of the model at each stage of the process. Continuously ask yourself whether your decision(s) and/or actions flowing from them are ethical and in compliance with the fundamental principles of international human rights.

3. Legal Powers, Policies/Procedures and the Environment



Figure. 4 Legality, Policies/Procedures & the Environment

All decisions made and actions taken must have and be shown to have a clear basis in both domestic and international law. Consider the following:

- What are my legal powers in this situation (federal, State local ordinances)?
- Are there jurisdictional issues to be considered?
- What legal action am I obligated to take or prohibited from taking?
- Have I any discretionary power in this situation?
- Identify and apply the limits of discretionary powers.
- Identify and acquire knowledge of all relevant legal powers and proofs.
- Identify and acquire knowledge of relevant human rights standards and case law and apply **PLANN** principles of proportionality, legality, accountability, necessity and non-discrimination.
- Apply relevant best practices of evidence gathering methods, and management of operational and investigative resources.
- Identify relevant external and internal clients and partners. Who else can assist or advise?
- Identify any opportunities for initiatives and innovation.

Policies, Practices and Procedures

Policies are guiding principles used to set direction in an organisation. They outline what an organisation hopes to achieve and the methods and principles it will use to achieve them. Practices and procedures describe specific steps to be followed as a consistent and repetitive approach to accomplish organisational goals. Within any organisation, personnel are obligated to be aware of the relevant and most current organisational policies, practices and procedures applicable to actions being considered and to apply them reasonably and appropriately. Consider the following:

- What are the current organisational policies that apply to the actions you are considering?
- What is best current organisational practice in this situation?
- Within your organisation, what are the procedures that are relevant to the action you are considering?

The Operating Environment

Protecting the public is at the core of counter-terrorist operations and investigations. The maintenance of their trust and consent is of paramount importance and all decisions made must take account of the needs and expectations of the public and any other stakeholders affected directly or indirectly by the operation or investigation. Adopting a collaborative and consultative approach is essential to achieving this goal. Consider the following:

- What are the specific needs of the public or any stakeholders in this environment?
- How does any decision taken directly or indirectly impact the public or stakeholders?
- Is it necessary or achievable, within the time available, to carry out an assessment of the potential impact on public/ stakeholders?
- Are there collaborative, consultative approaches that I can take in order, where practicable, to address the needs and concerns of the public or stakeholders?

4. Identifying Options and Contingencies



Figure. 5 Identify Options & Contingencies

Identify viable options and contingencies based upon the working strategy developed at stage 2. It is impossible to even try to identify every single available option that might be available. In challenging circumstances, you should be trying to identify the best available options or, in the most challenging of cases, the 'least bad' options. Your primary option should be the option that offers the greatest likelihood of successfully fulfilling your mission.

Contingencies should be considered in the event that your main option fails, or you are faced with foreseeable problems that require you to deviate from the primary option. The number of contingencies does not need to be exhaustive but should reflect the most likely problems that may arise. Consider the following:

- Critically analyse and justify all options and contingencies and record your rationale for selecting them.
- Record and provide evidence of the options that you have considered, the options selected and those you have discounted.
- Explore and test any limitations to the option selected.
- Options/contingencies should be proportionate to the threat.
- Ask yourself whether you have appropriately prioritised public safety and the sanctity of life?
- Consider 'tactical parameters': any restrictions and/or controls which you deem necessary on tactics or methods which may be employed.
- Ask yourself if you have time to develop a more detailed plan?
- Remember, the DMM also protects you by helping you to develop decisions which are defensible under post event scrutiny and analysis.
- Consider seeking **advice** before acting. Who knows more than me? Who might know what I need to know?

TAKING ADVICE

Seeking specialist advice or guidance from others is an essential part of good decision-making. We all have limitations in our knowledge and experience. A specialist or more experienced person or people may provide insights and knowledge that will not otherwise be available to you as they:

- May have significant experience in making similar decisions in similar circumstances.
- May help in identifying more information that might not have been obvious to your untrained or less experienced eye.
- May provide you with solutions which you might not have identified or considered.
- May provide a different and objective perspective.
- **Remember:**
Advice tendered should be used or discounted as the decision-maker sees fit.
- **Remember:**
Record the advice given and your rationale for using or discounting it.
- **Remember:**
Advisers advise, and decision-makers decide, the roles are separate and distinct.

5. Take Action, Review and Reassess



Figure. 6 Take Action & Review

The final steps are to implement the selected options and contingencies and to review and assess their effectiveness. Consider the following:

- Have actions taken been executed in accordance with the relevant decisions?
- Has the desired outcome been achieved? Has the operational picture changed as I wished it to?
- Is it necessary to do more or to do less, or to stop and consider implementing any appropriate contingencies?
- Am I being appropriately flexible and adaptable in my approach?
- Have I made the right decision for the right reason? Do the decisions and actions meet with personal and organisational ethical standards? Refer to Model Core.
- Have I taken responsibility and ownership for any decisions, or actions taken on foot of those decisions.
- Are there any other considerations?
- Evaluate. What lessons can be learned and implemented in the future through personal or organisational change and/or retraining?

Recording

Remember that you are accountable for your decisions and actions, and that in order to facilitate transparency, accountability and learning, you will be required to provide a record of those decisions and actions and the information and rationale supporting them. In many instances there may be a statutory or organisational requirement to do so, however, in most circumstances, it would be unreasonable to expect that every single action or decision be recorded, and professional judgement and discretion should be used to decide what to record based upon seriousness and consequence. It is recommended that in more challenging instances that decision-makers should delegate responsibility for record-keeping in order to reduce the administrative burden that recording brings, and that available technology should also be employed to assist in the task.

- Record your decisions, actions and supporting information for accountability purposes.
- Record the options considered and acted upon and those considered and those discounted.
- Where practicable, record any potential personal or organisational learning.

Monitor

- What happened as a result of your decision?
- Has the operating picture changed as you desired and intended?

Review

If the incident, event or matter you are dealing with concludes or your decision-making, orders and actions have achieved their purpose, review what has happened using the DMM to discover anything that can be learned from events or that can be done differently in the future.

Repeat

If the incident, event or matter you are dealing with is ongoing, as the operating picture continues to change, continue to cycle new information and each new decision through the iterative DMM process as described above. Remember, this is a constant, cyclical process which continues until the problem are fully resolved.

REMEMBER

Again, remember to **refer to the core of the model at each stage of the process**. Continuously ask yourself whether your decision(s) and/or actions flowing from them are ethical and in compliance with the fundamental principles of international human rights.

CHAPTER 3

Decision Processes and Traps

Law enforcement and counter-terrorist operators are sometimes sceptical about the practicality of applying the model's processes in the challenging environment in which they operate, particularly where there is significant time constraint. It is of course desirable that we be analytical and unrushed in our decision-making where time allows and the rational decision-making processes, upon which the DMM is based, reflects this type of considered approach to making important decisions. But, what about those consequential decisions which must be made instantaneously or in short time? How can the time-consuming analytical process encouraged by the DMM help us with those? In this chapter, we will attempt to answer these questions by providing an understanding of how the human mind copes with and processes problem-solving and decision-making in these contrasting circumstances and environments.

Decision-making can also be frequently affected and adversely influenced by various innate and unconscious cognitive prejudices or biases that may be at odds with our otherwise rational judgement or reasoning. Being aware and having a working knowledge of the most prevalent of these biases is absolutely essential in enabling us to counter them and to safeguard our decision-making from any potentially negative effects that they may cause. In this chapter we will examine and explore some of the most common biases and traps and provide strategies for avoiding them or mitigating their most harmful effects.

The Decision Process:

Dual Processing

Dual processing is a foundational psychological theory that separates human cognitive processes into two systems or modes of thinking, one fast, and intuitive and the other slower and analytical. Both systems have their pros and cons and understanding how the two systems function and interact can help us improve our cognitive performance and make better decisions:

System 1: Is fast, automatic and intuitive. It entails subconscious, effortless, emotional, non-verbal processing, but can often deliver inconsistent and often poorer quality outcomes.

System 2: Is slow, deliberate and analytical. It involves a more conscious, effortful, unemotional, verbal processing and tends to deliver higher quality and more consistent results.

System 1 processing is generally considered beneficial and more applicable when there is little or no time to deliberate in situations where immediate or rapid action is required. It involves rapid processing

of sensory information gathered from the immediate environment to solve routine or pressing problems, and often allows us to apply mental shortcuts or 'rules of thumb', known as 'heuristics' to help us solve those problems quickly and with minimal mental effort, for example: the rapid decision a law enforcement officer might make to use force in protecting themselves or others from an immediate lethal threat. However, using these shortcuts, and the absence of deliberation, can expose our decision-making and problem solving to detrimental influences.

Because **System 2** processing is rational and deliberative, it is slower than System 1. By example: during an investigation, the lengthy and complex deliberation and consideration involved in deciding whether and when there is sufficient evidence available to support arresting a suspect and bringing them before the courts. It is important to understand that both systems are often working simultaneously and can support and complement each other when solving multiple simultaneous problems, with System 1 processing freeing up precious cognitive resources we might need to make more weighty, complicated and time-consuming decisions. Both systems have their advantages, however, where time and opportunity are available, System 2 processing, upon which the DMM is based, is less likely to yield inconsistent or error prone decisions.

The DMM, whilst plainly more easily applied in System 2 processing, is designed to assist decision-makers in both modes. As a matter of course, users in the counter-terrorism field can anticipate that rapid decision-making will likely be required in the course of their duties and they can acquire sufficient competence in using the model through practice, that they can apply as much process as is possible or practical in pressured situations, without interfering with their ability to decide and act effectively as required.

It is important to remember that no urgent decision should ever be delayed through using the DMM. It is intended to be an aid rather than a hindrance to decision-makers. Understanding and being able to recognise both systems can help us to achieve a balance in how we apply them and use them to our advantage.

Recognising and understanding the cognitive biases that can affect or impeded good decision-making is an essential step in avoiding or mitigating their potentially harmful effects. The following comprises a list of the main biases that can impact decision-making:

- **Confirmation Bias:** Over-focusing and/or over-relying upon information that confirms one's own existing beliefs and opinions whilst ignoring alternatives facts and contradictory evidence.
- **Anchoring Bias:** Over-focusing and/or over-relying on 'anchoring' ones' beliefs on the first piece of information (the 'anchor') encountered or proffered to you when making decisions.
- **Availability Heuristic:** Over-valuing the truth or importance of information that is readily available, more easily attained, or most recently encountered to the exclusion of information which may be more accurate but may need to be sought out or discovered through inquiry or research.
- **Overconfidence Bias:** Overestimation of one's own abilities, skills, and ability to forecast events leading to inappropriate risk-taking.
- **Dunning-Kruger Effect:** Overestimation by persons of low or limited competence of their true capabilities or skills due to their underestimating the degree of difficulty of a task or skill. Conversely, some individuals with high ability can underrate their true competence and underestimate their knowledge and skills.
- **Loss Aversion:** Exaggerated fear of loss leading to an over-avoidance of risk-taking at the cost of gaining any potential benefits.

- **Hindsight Bias:** Incorrectly believing that, in hindsight and after the fact, one had accurately predicted the future. This can lead to a misplaced overconfidence in ones' ability to predict future outcomes.
- **Status Quo Bias:** Preference for maintaining the current state of affairs despite the fact that it may be less than optimal can lead to inappropriate resistance to change.
- **Framing Effect:** The same or similar information 'framed' or presented differently, can support different and contradictory choices or decisions.
- **Groupthink or Bandwagon Effect:** Thinking or doing the same thing as others out of a fear of making independent decisions or taking independent action.
- **Sunk Cost Fallacy:** Continuing in an endeavour even when it may be wrong, unprofitable or unbeneficial, solely because of the effort, time and resources already invested.
- **Recency Bias:** The tendency to focus more on more familiar recent, rather than more distant past events and experiences can lead to errors in decision-making.
- **Self-Serving Bias:** The inclination to take personal credit for successes whilst blaming other people and external factors for one's failures. This can affect one's ability to be properly accountable and to learn from one's mistakes.
- **Cognitive Dissonance:** The uneasiness experienced when one holds two or more conflicting or contrary beliefs or opinions at the same time. This can lead to can lead to rationalising decisions to align with existing beliefs in an effort to reduce that dissonance.
- **Expectation bias:** Hearing or seeing what you expect to hear or see contrary to the reality, where expectation of an outcome overrides reality and existing information.
- **Complacency:** Uncritical satisfaction or over-confidence with one's circumstances leading to an underestimation of potential risks or hazard.

Understanding and being able to identify these cognitive biases and 'decision-traps' allows individuals and organisations to avoid them, to eliminate, reduce and/or mitigate the dangers and harmful effects posed by them, and to exploit them to their advantage.

Heuristics:

Heuristics are cognitive shortcuts that simplify the decision-making processes and help us in making rapid decisions or judgements and are often effective and efficient for reaching a satisfactory solution quickly. Heuristics are particularly useful in situations where a full analysis is impractical due to time or resource constraints. Here are some common types of heuristics. They are a natural part of human cognition and can be very useful, but they can also lead to biases which may lead in turn to errors of judgement. Understanding heuristics helps in recognising these biases and making more informed decisions. Here are several different types of commonly encountered heuristics in:

- **Affect Heuristic:** Making an intuitive decision based on cursory impressions or 'gut-feelings' of how one 'feels' about a situation.
 - **Commonsense Heuristic:** Applying solutions to a problem based upon one's subjective, experienced-based observations of the situation.
 - **Familiarity Heuristic:** Basing how one approaches a familiar or regularly encountered problem by simply applying successful solutions previously used.
 - **Representativeness Heuristic:** Estimating the probability of an event based on how much it resembles cases or stereotypes that are known to us, whilst ignoring or neglecting the actual statistical probabilities.
 - **Recognition Heuristic:** Placing higher value upon and choosing options that are familiar and recognised rather than options that are unfamiliar but may in fact be superior.
 - **Gaze Heuristic:** Rapidly judging the distance, speed and angle of travel of moving objects and adjusting one's gaze or position to maintain, close or increase the distance, speed and angle between oneself and that object.
 - **Fluency Heuristic:** Preferring to use solutions that are more easily discovered or processed in the misguided belief that a simple solution is more likely to be correct than a complicated solution.
 - **Satisficing Heuristic:** Accepting an easily available 'satisfactory' solution rather than searching more painstakingly for the optimum solution.
 - **Similarity Heuristic:** Basing a decision on the perceived similarity of a situation with past situations or events in the potentially incorrect assumption that the decision will lead to the same or similar outcomes.
 - **Default Heuristic:** This involves choosing the default or typical option when faced with a decision, assuming that the default option is the most appropriate, more familiar, or that it requires the least effort.
 - **Social Proof Heuristic:** Making decisions based on the behaviour of others in one's social environment. Assuming that, if many others are engaging in a particular behaviour or activity, then it must be correct, safe, or preferable.
 - **Scarcity Heuristic:** Perceiving a commodity, option or solution to be more valuable than it actually is because it is scarce or limited in availability, and conversely underestimating true value based on ready availability.
 - **Take-the-Best Heuristic:** This involves comparing options by considering their most important cues or attributes first and choosing the first option that has the best attribute without considering other attributes.
 - **Familiarity Heuristic:** Assuming that successful solutions applied in solving past problems can be just as successfully applied in solving new problems although the problems and the circumstances may be somewhat or entirely different.
 - **Effort heuristic:** Assuming that the worth of a task or an object may be determined by the amount of time and effort put into completing the task or producing the object.
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MITIGATING EFFECTS OF DECISION TRAPS, BIASES & HEURISTICS

Effectively mitigating the decision traps caused by biases and misused heuristics is essential. The following strategies and measures can assist in that regard:

- **Awareness and education:** Being aware of and being able to recognise common decision traps and cognitive biases and the potential influence they can have on decision-making processes is essential.
- **Structured Decision-Making:** Applying methodical approaches and structured frameworks such as decision models, checklists and analytical tools, can eliminate reduce or mitigate harmful effect.
- **Independent & Diverse Perspectives:** Seeking advice and encouraging input from independent and diverse people or groups promotes objectivity.
- **Critical Thinking:** Creating and encouraging a culture where critical thinking and questioning of assumptions is important.
- **Pre-Mortem Analysis:** Anticipating and predicting what failure might look like and what might cause it, in advance of an operation or investigation, can allow us to eliminate it or mitigate its harmful effects.
- **Debriefing, review & feedback:** Establishing effective and regular procedures for reviewing and obtaining feedback on past performance can help us to learn from our successes and failures.
- **Accountability:** Ensuring that decision-makers are held accountable for their actions encourages them to be more careful and deliberate and reduces bias.
- **Transparency:** Ensuring that the decision-making process is accurately recorded and that records are readily available for appropriate disclosure, promotes better quality decision-making and supports personal and institutional learning.

CHAPTER 4

Detention and Custody

Detaining those suspected of committing terrorist offences is one of the most frequent and onerous tasks which must be carried out by investigators. The right to liberty is universal and is protected in all of the major international and regional conventions on civil and political rights. Deprivation of that right is justified only in the enforcement of domestic criminal laws which, in turn, must accord with international human rights laws and conventions. Detention can never be arbitrary and must always be carried out within the rule of law.

Unlawful practice and abuse of powers relating to detention and custody pose significant dangers to individuals and society, undermining the rule of law and eroding the most fundamental rights of liberty and security. They can also lead to and facilitate further human rights abuses such as torture, inhumane treatment and the infliction of physical and psychological damage or harm. Such abuses can cause serious and enduring damage to the relationship between the State and its citizens, eroding public trust and diminishing support, engagement and cooperation.

Further consequences include the undermining of investigations and prosecutions, legal challenges, payment of compensation and the imposition of penalties. Significant damage can also be caused to the international reputations and relations of State's involved, potentially leading to diplomatic tensions and sanctions.

It should always be remembered that the presumption of innocence applies to all persons detained prior to trial and detainees, and those in custody should not be treated as guilty until their guilt has been established through the process of a fair trial.

VALID REASONS FOR DETENTION and CUSTODY

Detaining a person under law is amongst the most intrusive of powers exercised in the course of law enforcement and counter-terrorist duties. Valid reasons for detaining a person typically include:

- **Arrest on Suspicion of Criminal Activity:**

Persons reasonably suspected of committing crimes may be detained for the purposes of questioning and investigation within the parameters and conditions set out in relevant human rights compliant domestic legislation.

- **Flight Risk:**

Persons charged with committing crimes who not yet been tried or convicted may be detained on the orders of a court or other competent judicial authority to ensure their attendance at trial and to prevent them fleeing or evading the judicial process.

- **Bail Violations:**

Persons who have been granted release from custody prior to trial on condition that they do not evade or hamper the judicial process, may be arrested if they are in breach of such conditions.

- **Parole or Probation Violations:**

Persons serving court-imposed sentences who have been granted conditional release and who are in breach of those conditions may be arrested.

- **Contempt of Court:**

Persons who disobey court orders or who disrupt court proceedings may be detained for contempt of court.

- **Preventive Detention:**

Where credible evidence exists indicating that persons may pose a threat national security or

to public safety or may impede or interfere with the judicial process, they may be arrested in certain circumstances.

- **Extradition Proceedings:**

Persons who are subject to extradition requests from other countries may be arrested to ensure that they remain available for extradition hearings and legal proceedings.

- **Violation of Immigration Laws:**

States may detain individuals who are in violation of immigration laws pending immigration hearings or deportation proceedings.

- **Mental Health Concerns:**

Where persons may pose a risk to themselves or to others due to mental health concerns, they may be temporarily detained.

- **State of Emergency:**

In circumstances where there is an immediate threat to the security of the State, the safety of the public and the maintenance of good public order such as during natural disasters, pandemics or other such crises, authorities may be empowered to detain persons.

In broad terms, the use of pre-trial detention must balance the interests of State security and public safety with the rights of those suspected or accused of criminality or terrorism as they await trial, given that they are presumed innocent until otherwise proven. It is important to remember that, with the exception of those rights limited by being lawfully incarcerated, detainees retain all other of their fundamental human rights. The following are the main human rights considerations for counter-terrorism operators regarding detention and custody:

HUMAN RIGHTS CHECKLIST

Detention and Custody - Considerations

- Is the detention in accordance with domestic law and has any requisite legal threshold (e.g. reasonable cause or suspicion) justifying the detention been met?
- Is the detention necessary or has a less intrusive action been considered (e.g. issuing of a summons, scheduling an interview by appointment)?
- Is the detention proportionate in the circumstances in relation to the offence being investigated?
- Is an arrest warrant or other legal permission required in the given circumstances?
- Has the detainee been promptly informed of the reasons for their detention in a language which they can clearly understand?
- Has the detainee been informed of their rights, including the right to remain silent, the right to legal representation, and the right to communicate with a family member or third party (e.g. family, friend, or embassy/consulate)?
- Is provision being made to bring the detainee before a judge or other officer authorised by law at the earliest opportunity?
- Has it been ensured that the detention is not arbitrary, and that the person is not being detained by way of punishment or for exercising one of their fundamental rights as set out under the Declaration of Human Rights and human rights treaties, such as the rights to freedom of opinion and expression, freedom of association, or the right to leave and enter one's own country?
- Has it been ensured that the detention is not for discriminatory reasons based on sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status?
- Has the detainee been accorded access to legal consultation and representation?
- Has the detainee been afforded appropriate medical care if so required or if so requested?
- Has it been ensured that the detainee's conditions of detention (food, water, hygiene etc.) are adequate and do not in themselves amount to inhuman degrading treatment of the detainee?
- What time limits apply to the detention? Is the detainee being held beyond a period allowed by the law or a term to which they have been legally sentenced?
- Is the detainee a minor and if so, have arrangements been made to contact a parent or legal guardian?
- Is the detainee an otherwise vulnerable person and if so, have arrangements or special provisions been put in place to effectively address or mitigate such vulnerabilities?
- Has the detainee or his legal counsel sought to challenge the lawfulness of their detention before a court, and if so, are appropriate arrangements being made to this purpose?
- Has the detainee been provided with due access and means to mount such a challenge, including allowing them (or their legal representative) access to appropriate records and/or other relevant evidence?
- Have the reasons and details of the detention been properly recorded for accountability and learning purposes? Are all legal and procedural records being properly kept and safeguarded?

CHAPTER 5

Search and Seizure

The search of persons and property and the seizure of personal property are essential law enforcement and counter-terrorist tools and are critical to maintaining public safety and security, but they may also encroach upon several fundamental human rights, including privacy and property rights. The unlawful violation of personal privacy, the violation of personal dwellings or spaces or the inhibition of personal liberty can cause significant inconvenience and distress and should be avoided. Search and seizure activities must be conducted in a manner that is as least intrusive as possible, that respects the human rights and dignity of individuals and are strictly within the requirements of any investigation or operation.

When investigators search persons or property or seize evidence, they must adhere to several human rights considerations to ensure that the seizure is lawful, fair, non-discriminatory and respectful of individual rights. The following are the main human rights considerations for investigators in regard to the search and seizure of evidence:

HUMAN RIGHTS CHECKLIST

Search and Seizure - Considerations

- Is there a basis in law for the search and seizure of evidence, such as a legislative power or the existence of a valid search and seizure warrant issued by a judicial authority or legal authorisation granted under relevant domestic laws and regulations?
- Is the search and seizure necessary for the proper investigation of the crime and has a less intrusive action been considered in the circumstances?
- Has it been ensured that any property seized is relevant to the investigation and that is reasonably believed to be connected to the alleged offence.
- Are the powers of search and seizure being exercised proportionate in the circumstances to the offence being investigated?
- Have the requisite details and information in relation to the search and seizure, including dates, times, locations, and circumstances of the search and seizure, as well as the identities of the individuals involved or affected, been properly recorded for accountability purposes and in order to establish and maintain a chain of evidential care and custody?
- Have those who are being searched or whose property is being seized been promptly informed of the reasons in a language which they can clearly understand?
- Has it been ensured that those affected are being treated equally before the law and that any exercising of the powers of search and seizure are not arbitrary or discriminatory in their nature or intent?
- Search and seizure of evidence are subject to review and oversight by independent judicial authorities or other appropriate oversight bodies to ensure compliance with legal requirements and human rights standards. Are you satisfied that you have facilitated such accountability and the rightful pursuit of remedy and redress through the appropriate mechanisms?
- Have any complaints or allegations of misconduct or impropriety been promptly and effectively investigated, addressed and facilitated through appropriate mechanisms.
- Where force has been used or is being considered in exercising powers of search and seizure, is it necessary in the circumstances and, is it proportionate to the legal purpose being pursued?
- Where privileged or protected information such as medical records or client-lawyer communications are involved, have any requisite special procedures and protections been put in place?

CHAPTER 6

Command and Planning Obligations

Commanders and managers play a crucial role in planning, coordinating, managing and overseeing law enforcement and counter-terrorist operations, investigations and incident response. It is their responsibility to ensure that such activities are conducted safely, lawfully, and effectively, maximising the safety of those involved and minimising risk to those who may potentially be affected and to the broader community.

They are expected to oversee broad strategic aspects of the operation, from planning and preparation to execution and post-operation review. To that purpose, they must develop comprehensive strategies, plans and tactics that will ensure that they successfully achieve their legitimate aims and objectives. They must allocate resources effectively, including personnel, funding, equipment, and support services, to support the successful implementation of operational plans.

All of this they must do whilst actively safeguarding the dignity and human rights of all involved in or affected by the law enforcement activity.

A Commander's ability to assume command & effectively perform their command function will be dependent on a number of basic factors:

- Access to all available pertinent information and intelligence relating to the event, investigation or operation. A commander must be properly briefed.
- The ability to effectively communicate with and control their subordinates.
- Access to appropriate expert advice.
- Access, where practicable, to a suitable environment from which to exercise the command function.

Commanders will be subject to the highest level of accountability and scrutiny and to that end they must ensure that they keep accurate and comprehensive records of the decisions they make and the orders they issue, and the information and rationale that support them. The following are the main human rights considerations for counter-terrorism commanders regarding command and planning obligations:

HUMAN RIGHTS CHECKLIST

Command and Planning - Considerations

- Has a thorough assessment evaluating the feasibility of the operation/investigation and potential threats and risks to those who may be affected been carried out?
- Are effective strategies, plans, and measures in place to eliminate or reduce threats, to mitigate risks and to ensure the safety and well-being of any persons who may be affected by the operation or intervention?
- Have clear and effective command, control, communication, and coordination structures been established at the earliest instance in order to ensure the safety of all personnel involved or affected by the operation?
- Are adequate assets and resources available to successfully fulfil the mission in hand?
- Is there adequate and appropriate technical equipment available to support operations (e.g. administration, communications, lighting, barriers)?
- Has the resilience, health and safety of staff been properly planned for over the projected lifespan of the operation?
- Is it necessary or prudent to conduct a community or stakeholder impact assessment?
- Is it necessary or prudent to consult with community representatives and other stakeholders potentially affected by the activity?
- Has it been ensured that the operation complies with national laws and organisational policies and that all necessary authorisations, permissions or warrants have been obtained?
- Has it been ensured that sufficient guidance and oversight is in place to ensure that officers behave lawfully and are respectful of human rights and conducted within the bounds of authority?
- Where the use of force is being considered, is the nature and extent of that force proportionate to the threat being confronted? Is its use necessary (or absolutely necessary in the case of the use of lethal force) to achieve a lawful purpose. Have all other less intrusive means been exhausted or deemed inadequate or ineffective?
- Have all personnel involved been adequately briefed and are they fully understanding of their obligations, roles, and responsibilities?
- Are specialist adviser(s) required to inform and facilitate effective decision-making by commanders in areas beyond their normal field of competence? Are the services of a specialist human rights adviser required?
- Has the incident or scope of any operation been adequately contained in order to minimise the impact and risk to the safety and lives of all who may be potentially affected?
- Have you coordinated with other entities and agencies in establishing and operating cordons and carrying out evacuations and issued clear and adequate instructions to civilians in that regard?
- Are sufficient arrangements in place to ensure that accurate and detailed records are maintained regarding the planning, execution, and outcomes of the operation to facilitate subsequent accountability and learning processes including records of incidents, decisions made and actions flowing from them?
- Are arrangements in place to conduct a comprehensive after-action review to evaluate the effectiveness of the operation or response for accountability and learning purposes?
- Is there a voluntary code of ethics for law enforcement personnel in place.
- Have all personnel involved received adequate instruction and training in human rights compliance?
- Are the personnel trained suitably and currently trained, experienced, and equipped to allow them to competently discharge their assigned roles and responsibilities?

- If firearms or other weapons are being used, are there adequate regulations in place, including effective supervision and inspection, regarding the control, storage and issuing of such weapons and associated equipment and ammunition?
 - Has adequate provision been made to ensure that medical assistance and aid are secured to treat or evacuate any injured person at the earliest possible opportunity?
 - Have adequate provisions been put in place concerning the health, safety and welfare of law enforcement and other emergency service personnel involved, both during and in the aftermath of the incident or operation?
 - Where death or serious injury has occurred, have relatives or associates of the injured or affected person been notified at the earliest opportunity?
 - Where force or firearms have been used, has the incident been reported truthfully and promptly?
 - Are adequate mechanisms in place to investigate or facilitate the investigation of any misconduct or illegality?
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CHAPTER 7

Use of Force

The use of force by law enforcement agents and counter-terrorist operators is an unfortunate but necessary aspect of their work in the field of maintaining public order and safety and State security and is only authorised in gaining compliance with a legal order or purpose and in protecting themselves and others from harm, injury or death. Given its grave impact on human rights and freedoms and the potential consequences of its application, it is essential that force should only be used when strictly necessary and within the bounds of legality, proportionality and accountability and in line with international human rights and standards.

The use of lethal force by law enforcement agents has obvious and even graver consequences. In the context of counter-terrorist operations, it is essential to gain a clear understanding of the circumstances in which lethal force can be contemplated or used by law enforcement officials. In broad terms, it is lawfully permissible to use lethal force in the following limited circumstances:

- In defending oneself or other persons from unlawful violence.
- in effecting lawful arrest.
- In preventing serious crime in certain circumstances.
- In preventing the escape of a felon in certain circumstances.
- In quelling insurrection or serious riot.

The use of lethal force is commonly and explicitly recognised in international and domestic legislation. It is also commonly qualified in its application by the principles of '**absolute necessity**' in contrast with

'necessity' in the case of less than lethal force. The right to life clearly imposes a negative obligation on States to refrain from the unlawful and arbitrary taking of life, but also places positive obligations on States to criminalise, investigate and prosecute where there has been an unjustified and arbitrary taking of life by State actors. States are also obliged to put proactive measures in place to reduce the risk of the violation of the right to life by its agents such as proper training, the availability of suitable equipment and effective planning, management and supervision.

The following are the main human rights considerations regarding the use of force during counter-terrorism operations and investigations:

HUMAN RIGHTS CHECKLIST

Use of Force - Considerations

- Is the type and extent of the force being considered in accordance with the law in the given circumstances, and is it the minimum amount of force required to achieve my legal objective(s)?
- Have all other non-violent means been exhausted?
- Is the degree and/or type of force being considered capable of being escalated or de-escalated based on the threat anticipated or encountered.
- If appropriate in the given circumstances, should warnings be issued in advance of force being used?
- Has it been ensured that the force being considered is not being used by way of punishment or reprisal?
- What options other than the use of force are being considered?
- In the event that those options are discounted, what is the supporting rationale?
- Is the method, type and extent of force being considered in accordance with police procedures and training?
- Has an effective and clearly understood chain of command/management been established at the earliest instance?
- Are all personnel involved, including commanders/managers adequately and appropriately trained and experienced in their relevant roles?
- Do all personnel involved clearly understand their roles and responsibilities?
- Have all personnel involved been appropriately briefed?
- Is there a range of tactical options available that will allow for escalation and de-escalation, based on the threat anticipated or encountered (e.g. less lethal weapons, protective equipment)
- Is there adequate and appropriate technical equipment available to support operations (e.g. lighting, communication)?
- Is there a need to consult specialist advisers? Are appropriately experienced and trustworthy specialist advisers available to provide advice and facilitate effective and decision-making?
- Have adequate provisions been put in place concerning the health, safety and welfare of law enforcement and other emergency service personnel involved, both during and in the aftermath of the incident or operation?
- Where death or serious injury has occurred, have relatives or associates of the injured or affected person been notified at the earliest opportunity?
- Where force or firearms have been used, has the incident been reported truthfully and promptly?
- Are sufficient and adequate arrangements in place to ensure that accurate and detailed records are made and maintained regarding the planning, execution, and outcomes of the operation to facilitate subsequent accountability and learning processes including records of incidents, decisions made and actions flowing from them?

CHAPTER 8

Surveillance and Data Collection

There are many international conventions, treaties and legislative frameworks that provide guidance and standards for human rights compliant and ethical surveillance and data collection. It is essential that counter-terrorist investigations and operations strike an appropriate balance between security and safety needs and individual freedoms and dignity in this regard, particularly in the era of expanding digital and online data transactions and communications.

Surveillance describes the monitoring of individuals, groups or systems for the purposes of gathering information, often for security, law enforcement or intelligence purposes and comprises:

- Physical surveillance: monitoring physical movements and activities including by use of cameras.
- Communication interception and surveillance: the monitoring, interception or tracking of communications including postal, online, social media and internet communication.
- Data surveillance: interception, collection, analysis or monitoring of any data, including electronic data.

The use of surveillance and data collection to suppress fundamental freedoms and human rights is unlawful and unethical and must be avoided. No actions taken should arbitrarily or unlawfully interfere with the fundamental rights of privacy and freedom of expression. It is imperative that counter-terrorist operations and investigations should handle acquired data responsibly, ensuring that it is collected and used within the boundaries of applicable laws, with appropriate safeguards to protect privacy and prevent misuse. It is also important to note that information, evidence or data gathered unlawfully may subsequently jeopardise investigations and/or legal proceedings and may subsequently be deemed inadmissible in evidence.

In many jurisdictions surveillance and data collection have been misused without appropriate legal or legitimate basis for the purpose of coercion and enforcing political control over groups or individuals. Some of the most common human rights abuses relating to the misuse of surveillance are:

- Unwarranted or unauthorised surveillance or monitoring.
- Indiscriminate or mass collection of data.
- Illegal or inappropriate targeting or harassment of groups or individuals.
- Disproportionate surveillance of specific individuals based on characteristics such as race, religion, ethnicity, gender or political beliefs, also referred to as 'profiling'.
- Unlawful or inappropriate use of computer algorithms, artificial intelligence or mass data analytics to identify targets for surveillance.
- Collection of evidence through surveillance or data collection without proper accountability or oversight.
- Insufficient accountability or transparency or failure to comply with existing oversight processes or measures making it difficult or impossible to challenge abuses.
- Poor handling, security or storage of collected information or data.
- Using collected information or data for reasons or purposes other than those originally intended.

The following are the main human rights considerations for counter-terrorism operators regarding surveillance and data collection:

HUMAN RIGHTS CHECKLIST

Surveillance and Data Collection - Considerations

- Do all actions have a basis in law and are they demonstrably necessary in achieving a legitimate legal aim such as national security or public safety?
- Is the activity in compliance with domestic law and international human rights legislation and standards?
- Are all actions taken proportionate in their level of intrusion to the offence being investigated and are they the available actions that are least likely to impact on privacy and human rights?
- Have the necessary authorisations, permissions or warrants required in law for you to carry out the relevant surveillance, interception or monitoring activities been obtained?
- Is the relevant activity precise in its legal aims and objectives and not arbitrary, broad or imprecise in its nature?
- Where it is reasonable and practicable, personal data and information should be collected directly from individuals or groups or with their informed consent. Has it been ensured that covert surveillance and data collection is necessary in this instance?
- Is the data being collected limited to that which is strictly necessary for the relevant operation or investigation?
- Have necessary security measures such as secure storage and data anonymisation been put in place to protect collected data and to prevent unauthorised breaches, access or misuse.
- Has it been ensured that collected data is being retained for no longer than is necessary and within the time limitations set out in domestic legislation and that it is appropriate to achieving the legitimate objectives of the investigation or operation?
- Have all the necessary independent accountability and oversight regulations or requirements been strictly adhered to and reported, where required, to any regulatory bodies?
- Where privacy rights have been breached or violated, affected groups or individuals have a right to challenge such measures and to seek rectification or compensation. Have their rights to access to effective review, redress and remedy been appropriately facilitated?
- Has all relevant documentation relating to surveillance, interception and collection of data, including authorisations, warrants, reports and other written records have been appropriately retained and made available for disclosure for evidential and accountability purposes?
- Has it been ensured that any surveillance or data collection practices and measures taken do not unfairly or disproportionately targeted individuals or groups based on their characteristics such as race, religion, ethnicity, gender or political beliefs?

CHAPTER 9

Victims and Witnesses

Victims and witnesses play a pivotal role in the criminal justice system by providing testimony and evidence that help in establishing the facts of a criminal case or prosecution. Protecting the rights of witnesses is important from a humanitarian and rights perspective but is also essential in ensuring their cooperation, maintaining the integrity of legal proceedings, and promoting a fair and effective justice system.

Ensuring the physical safety of victims and witnesses, treating them with equality, respect and compassion, and safeguarding their dignity are all essential elements in ensuring that they feel safe, secure and trustful enough to participate in, and contribute to the legal criminal justice process.

Along with protecting them from intimidation and retaliation, it is also essential that their psychological and mental health and well-being be protected, and law enforcement agents and operators should be proactive about informing them of, and helping them secure any available supports, protections and special measures, particularly those who are vulnerable or at risk.

In building and maintaining trust in the criminal justice system, it is essential that all those who interact with victims and witnesses should proactively comply with, respect and protect their international human rights standards and obligations. The following are the main human rights considerations for counter-terrorism operators in regard to the treatment of victims and witnesses:

HUMAN RIGHTS CHECKLIST

Victims and Witnesses - Considerations

- Have any victims involved been informed of their rights within the criminal justice process?
- Have any victims involved been informed of support services available to them to facilitate their appropriate active and meaningful participation in the criminal justice process including legal representation and counselling?
- If multiple agencies and organisations are involved in service provision, has appropriate care been taken to ensure that victims are not disadvantaged or that they fail to benefit as a result of poor communication or coordination?
- Are victims being kept duly informed of progress of their relevant cases and being made aware of any opportunities for them to participate in relevant legal processes?
- Have appropriate effective measures been put in place to protect victims from intimidation, harassment, and retaliation?
- Have appropriate effective measures been put in place to protect the personal information of victims and is all such information being handled with sensitivity and confidentiality?
- Are any victims involved are being treated with dignity, respect, sensitivity and compassion having due regard to any trauma they may have experienced?
- Have any victims involved been informed of their right to seek redress and/or compensation for damages suffered and as a result of criminality or terrorism and, has appropriate provision been for them to seek financial compensation for such losses such as medical expenses, damage to property, and/or loss of earnings?
- Have any victims involved been informed of their right to seek redress and/or compensation for costs or losses incurred as a result of their participation in the legal process?
- Have effective measures been made to identify vulnerable witnesses at the earliest possible instance in order that appropriate special measures for their protection and well-being can be put in place?
- Are appropriate measures being taken to ensure that all victims are being treated without discrimination based on factors such as race, ethnicity, gender, sexual orientation, religion, or socio-economic status?
- Have any witnesses been provided with clear and understandable information about their rights, their role in the criminal justice system and of any support services that may be available to them?
- In respecting witnesses right to confidentiality and privacy, is their personal information being handled with sensitivity?
- In cases where there is a credible threat of intimidation or reprisal, are the identities of witnesses being protected to the greatest possible extent?
- Have witnesses been informed of their right to access support services, including counselling and legal advice or representation in certain circumstances?

- Are adequate resources being allocated to provide them with supports required to assist them in dealing with the consequences and impact of their involvement in any investigation or legal proceedings?
- Have witnesses been made aware of their right to be reasonably compensated for expenses incurred in connection with their participation in legal proceedings?
- Have necessary steps been taken to ensure that witnesses are duly reimbursed for reasonable expenses, such as travel and accommodation costs?
- Have witnesses been made aware of their right of seeking legal advice and representation, in certain circumstances, particularly in cases where their testimony may have legal implications for them? If so, have reasonable efforts been made to facilitate them in availing of this right?
- Have vulnerable or potentially vulnerable witnesses (including children or individuals with physical or mental disabilities) been identified at the earliest instance in order that any necessary special measures or procedures afforded them to ensure that they can give their testimony in a safe and secure environment?
- Are all witnesses relevant to your investigation or operation being treated without discrimination based on factors such as race, ethnicity, gender, sexual orientation, religion, or socio-economic status?

CHAPTER 10

Vulnerable Persons and Populations

In legal context, the terms vulnerable persons, groups and populations are used to describe individuals or groups who may be at risk of harm, exploitation, or discrimination due to inherent physical, mental and/or social characteristics or their given circumstances. These characteristics or circumstances can expose them to being targeted and exploited by criminals or terrorists, and to adverse consequences in their dealings with law enforcement and justice systems and this may necessitate the application of special considerations or protections.

Legal systems often establish specific provisions and safeguards to protect the rights and well-being of vulnerable persons. These measures may include enhanced legal representation, privacy protections, and social services aimed at addressing their unique needs and vulnerabilities. The recognition of vulnerable persons in legal contexts reflects a commitment to ensuring equal protection and access to justice for all individuals, regardless of their characteristics or circumstances.

It is important to identify vulnerability in all individuals and stakeholders including victims, witnesses and suspects at the earliest instance of engagement with criminal justice systems in order to ensure that their rights and well-being are adequately protected. Specific definitions and categorisations of vulnerable persons may vary across jurisdictions and legal systems, but common characteristics include:

- **Children and young persons:**
Persons below the age of legal consent or adulthood.
- **Elderly persons:**
Persons who are physically frail or in cognitive decline due to their advanced age who may be dependent on others for support and care.
- **Persons with physical disabilities:**
Individuals with physical illness or disability may have difficulty in accessing or advocating for their rights or accessing services.
- **Mentally ill or disturbed persons:**
Persons who may be mentally ill or disturbed or who those suffering from intellectual or cognitive impairment.
- **Displaced persons, refugees or asylum seekers:**
Displaced persons or those seeking refuge or asylum from conflict or persecution.
- **Minorities:**
Persons, groups and populations who are in the minority within any jurisdiction, whether based on ethnicity, race, religion, language, sexuality or gender identification or other characteristics, if they are subjected to discrimination or marginalisation.
- **Victims of human trafficking:**
Persons who have been subjected to human trafficking, forced labour, sexual exploitation.
- **Detained persons:**
Persons who are imprisoned or detained may be considered vulnerable due to the restriction of their freedoms.
- **Women and girls:**
Women or girls are often subjected to physical, sexual or mental abuse, violence or exploitation based upon their gender.
- **Persons in limited economic resources:**
Persons experiencing extreme poverty or economic hardship with limited access to health, education and other public services.
- **Drug abusers and addicts:**
Persons who engage in drugs and substance abuse or who are suffering from any form of addiction.

The following are the main human rights considerations for counter-terrorism operators in regard to the treatment of vulnerable persons and populations:

HUMAN RIGHTS CHECKLIST

Victims and Witnesses - Considerations

- Have sufficient efforts been made to recognise and identify vulnerability or potential vulnerability in the persons with whom you are interacting?
- Has consideration been given to whether a person's vulnerability requires that special provisions or measures should be put in place to protect their rights and their well-being?
- Are there any such measures or provisions required by law in the given circumstances?
- Have any vulnerable persons been informed of their rights and of any support services that may be available to them?
- Have all relevant staff have received adequate training to be able to recognise and respond to the needs of vulnerable persons?
- Have sufficient efforts been made to ensure that support services such as counselling, social services, and advocacy have been made available or provided to assist vulnerable persons in their interaction with the legal process?
- Have vulnerable persons relevant to your investigation or operation are being treated without discrimination based on factors such as race, ethnicity, gender, sexual orientation, religion, or socio-economic status?

Relevant International Sources of Codified Human Rights

CHAPTER 4 Detention and Custody

Universal Declaration of Human Rights (UDHR), 1948

Article 3:

Right of every person to life, liberty and security of the person.

Article 9:

Protection against arbitrary arrest, detention or exile.

Article 10:

Right of every person to a fair and public hearing by an impartial court or tribunal.

International Covenant on Civil and Political Rights (ICCPR), 1966

Article 9:

Protects against arbitrary arrest/detention and guarantees the right to be informed of the reasons for arrest/detention, the right to legal representation and the right to appeal or challenge the lawfulness of the arrest/detention.

Article 10:

Mandates that all persons deprived of their liberty must be treated with humanity and respect for their dignity.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984

Article 2:

Requires States to take measures to prevent torture and to ensure that no one is subjected to torture or ill-treatment whilst in custody or detention.

Article 11:

Obligates States to systematically review interrogation methods and custody arrangements in order to prevent torture and inhuman or degrading treatment or punishment.

European Convention on Human Rights (ECHR), 1950

Article 5:

The right to personal liberty and protection from arbitrary arrest and detention. It guarantees the right to be informed of the reasons for detention and the right to judicial review of detention.

Article 3:

Prohibits torture, inhuman or degrading treatment or punishment and is particularly relevant to those who have been detained or are in custody.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987

Article 3:

Mandates regular visits to places of detention to monitor conditions and treatment of prisoners and detainees in member States.

American Convention on Human Rights (ACHR), 1969

Article 7:

The right to personal liberty and protection from arbitrary arrest and detention. It guarantees the right to be informed of the reasons for detention and the right to judicial review of detention (habeas corpus).

Article 5:

The right to humane treatment for all including those detained and in custody, safeguarding the right to be treated with respect for inherent dignity.

African Charter on Human and People's Rights (ACHPR), 1981

Article 6:

The right to liberty and security of the person and protection from arbitrary arrest and detention.

Article 7:

Guarantees the right to a fair trial and the right to appeal detention.

United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela rules), 1955

Guidelines for the humane treatment of prisoners.

Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (1988)

Principles for the protection of detainee's and prisoner's rights.

CHAPTER 5

Search and Seizure

Universal Declaration of Human Rights (UDHR), 1948

Article 12:

Specifically addresses protection from arbitrary interference with privacy, family, home, or correspondence, and protection against attacks on one's honour and reputation. It states.

International Covenant on Civil and Political Rights (ICCPR), 1966

Article 9:

This article protects individuals from arbitrary arrest or detention, which is closely related to unlawful searches and seizures. It requires that anyone who is arrested must be informed of the reasons and brought promptly before a judge.

Article 17:

This article specifically protects individuals from arbitrary or unlawful interference with privacy, family, home, or correspondence, and ensures that any such interference must be lawful, proportionate, and necessary:

European Convention on Human Rights (ECHR), 1950

Article 8:

This article protects the right to respect for private and family life, home, and correspondence. It prohibits arbitrary or unlawful searches and seizures, providing that any interference with these rights must be in accordance with the law and necessary in a democratic society.

American Convention on Human Rights (ACHR), 1969

Article 11:

This article provides protection from arbitrary interference with privacy, family, home, and correspondence, similar to Article 8 of the ECHR. It emphasises that such interference must be legal and justified.

Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), 1984

Article 16:

Prohibits any other acts of cruel, inhuman, or degrading treatment, which may occur during unlawful searches or seizures, particularly in cases involving coercion or abuse by police.

United Nations Human Rights Committee, General Comments, 2014

General Comment No. 35 on Article 9 (Liberty and Security of Person):

Expands on the protection against arbitrary detention and related issues such as unlawful searches.

CHAPTER 6

Command and Planning Obligations

United Nations Basic Principles on Use of Force and Firearms by Law Enforcement Officials, 1990

Principle 1:

Governments and law enforcement agencies should adopt and implement rules and regulations on the use of force and firearms during operations, including command and planning obligations to minimise the use of force.

Principle 2:

Law enforcement agencies should develop a range of means and equip officials with weapons which allow for the differentiated use of force. Commanders and operations planners must ensure that less-lethal options are available, and their use considered.

Principle 20:

Those commanding and planning law enforcement operations, particularly those involving use of force or firearms, must ensure no excessive force is used, that the risk to life and of injury is minimised and that adequate medical assistance is made available.

Principle 24:

Commanders of law enforcement operations should ensure that the use of force or firearms in the course of duty is fully and promptly reported for reviewing and accountability purposes.

United Nations Code of Conduct for Law Enforcement Officials, 1979

Article 1:

Outlines the obligation on law enforcement officials to uphold the law and respect human rights in the performance of their duties including the command and planning of operations.

Article 2:

Outlines the obligation on law enforcement officials to respects and protect human dignity and uphold the human rights of all persons.

Article 5:

Outlines commander's responsibilities for ensuring that all subordinates are aware of, and act in accordance with human rights obligations, particularly where force may be used.

International Covenant on Civil and Political Rights (ICCPR), 1966

Article 6:

Everyone has the inherent right to life which is protected by law. No one shall be arbitrarily deprived of the right to life.

Article 7:

No one shall be subjected to cruel, inhuman or degrading treatment or punishment.

Article 9:

Protects against arbitrary arrest and detention. Law enforcement commanders must ensure that any force used, or arrests and detentions made are lawful and necessary.

European Convention on Human Right (ECHR), 1950

Article 2:

Regarding the right to life: police commanders must plan operations in a way that respects the right to life ensuring that the use of lethal is proportionate to the threat and absolutely necessary.

Article 3:

Prohibition of torture: Commanders and planners must ensure that operations do not involve torture or inhuman or degrading treatment.

Article 5:

Right to liberty and security. Planning must ensure that arrests and detentions are not arbitrary or unlawful.

African Commission on Human Rights and People's Rights Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa, 2014

Guideline 8:

Law enforcement officials and commanders must ensure that arrest and detention procedures are followed and that any use of force is lawful and proportionate and minimises the risk of harm or injury.

Guideline 9:

Law enforcement commanders and supervisors must ensure that operations are conducted in compliance with international human rights standards and that personnel involved are adequately trained to that end.

Organisation for Security and Co-operation in Europe (OSCE) Guidebook on Democratic Policing, 2008

Section 4:

Underscores the importance of accountability and oversight of policing operations and that commanders are responsible for ensuring that they are planned and carried out lawfully and in compliance with international human rights standards.

Section 5:

Emphasises the necessity for clear command structures and accountability mechanisms in police operations.

**United Nations Human Rights
Committee General Comment No. 36
on Article 6 of the ICCPR, 2018**

Paragraph 13:

States that law enforcement operations must be planned and controlled so as to minimise the risk to life and that commanders must ensure that force is used only where strictly necessary and where all other available alternatives have been considered.

Paragraph 14:

Requires that lethal force be used only as a last resort and under strict conditions with which commanders in planning operations are required to comply.

**United Nations Handbook on Human
Rights and Policing, 2011**

Provides guidance on the planning, execution and review of policing operations to ensure compliance with international human rights standards and underscores the responsibility of the commander's role in ensuring that operations are lawful, necessary and proportionate.

CHAPTER 7

Use of Force

**Universal Declaration of Human
Rights (UDHR), 1948**

Article 3:

Right to life, liberty and security of the person.

Article 5:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**International Covenant on Civil and
Political Rights (ICCPR), 1960**

Article 6:

Everyone has the inherent right to life which is protected by law. No one shall be arbitrarily deprived of the right to life.

Article 7:

No one shall be subjected to cruel, inhuman or degrading treatment or punishment.

**Convention Against torture and
Other Cruel, Inhuman or Degrading
Treatment or Punishment (CAT), 1984**

Article 2:

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Article 10:

Requires that law enforcement personnel are adequately trained and educated regarding the prohibition of torture.

**United Nations Basic Principles on
the Use of Force and Firearms by
Law Enforcement Officials, 1990**

Principle 4:

Law enforcement officials should, as far as possible, apply non-violent means before resorting to the use of force and firearms.

Principle 5:

Where the use of lawful force or firearms is unavoidable, law enforcement officials shall exercise restraint, act in proportion to the seriousness of the offence at hand and in pursuit of the legitimate objective being achieved and should minimise damage and injury and preserve human life.

Principle 9:

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, in the prevention of serious crime involving a grave threat to life, or in arresting a person who presents such a danger and is resisting their authority, or to prevent their escape, and only when less extreme means are insufficient to achieve these objectives.

**United Nations Code of Conduct for
Law Enforcement Officials, 1979**

Article 2:

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

Article 3:

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

Article 5:

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment.

Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment, 1988

Principle 6:

No person under any form of detention or imprisonment shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Rome Statute of the International Criminal Court (ICC), 1998

Article 6:

Defines genocide.

Article 7:

Defines 'crimes against humanity', including acts such as murder, extermination, enslavement, deportation and other inhumane acts causing great suffering or serious injury to body or to mental or physical health, when committed as part of a widespread or systematic attack directed against any civilian population.

Article 8:

Defines war crimes and crimes of aggression by States including wilful killing, torture, or inhuman and degrading treatment in conflict situations.

European Convention on Human Right (ECHR), 1950

Article 2:

Protects the right to life and sets out the strict conditions under which the use of force by State actors may result in the deprivation of life.

Article 3:

Prohibits torture and inhuman or degrading treatment or punishment, including the improper use of force by law enforcement officials.

European Code of Police Ethics, 2001

Principles and guidelines for the overall objectives, performance and control of the police in democratic societies.

African Charter on Human and People's Rights (ACHPR), 1981

Article 4:

Guarantees the right to life and integrity of the person and States that no one should be arbitrarily deprived of this right.

Article 5:

Prohibits all forms of exploitation and degradation of man including slavery, torture, cruel, inhuman or degrading punishment and treatment.

American Convention on Human Rights (ACHR), 1969

Article 4:

Right to Life: Ensures that no one shall be arbitrarily deprived of life and sets out the conditions under which use of force that may result in death is permissible.

Article 5:

Right to humane treatment, prohibiting torture and cruel, inhuman and degrading treatment or punishment.

CHAPTER 8 — Surveillance and Data Collection

Universal Declaration of Human Rights (UDHR), 1948

Article 12:

Prohibits arbitrary interference with privacy, family, or correspondence

International Covenant on Civil and Political Rights (ICCPR), 1966

Article 17:

Guarantees the right to privacy, prohibiting unlawful or arbitrary interference with one's privacy, family, or correspondence.

Convention on the Rights of the Child (CRC), 1989

Article 16:

Includes specific protections for children's privacy.

European Convention on Human Rights (ECHR), 1950

Article 8:

Protects the right to respect for private and family life.

Charter of Fundamental Rights of the European Union (CFR), 2000

Article 7:

Respect for private and family life.

Article 8:

Protection of personal data.

American Convention on Human Rights (ACHR), 1969

Article 11:

Protection of privacy.

African Charter on Human and Peoples' Rights (ACHPR), 1981

Though less explicit on privacy, the charter promotes personal integrity and dignity.

General Data Protection Regulation (GDPR), 2016

A comprehensive framework governing data processing, which applies to police where appropriate.

United Nations Guiding Principles on Business and Human Rights (UNGPs), 2011

Address private-sector roles in data collection.

CHAPTER 9

Victims and Witnesses

Universal Declaration of Human Rights (UDHR), 1948

Article 5:

Prohibits torture or cruel, inhuman, or degrading treatment.

Article 8:

Ensures the right to an effective remedy for violations of rights.

International Covenant on Civil and Political Rights (ICCPR), 1966

Article 7:

Prohibits torture and ill-treatment, applicable to how victims and witnesses are treated during investigations.

Article 14:

Guarantees the right to a fair trial, including the protection of witnesses.

Article 2(3):

Requires an effective remedy for victims of rights violations.

Convention on the Elimination of All Forms of Discrimination Against Women, 1979

General Recommendation No. 33 on women's access to justice emphasises gender-sensitive approaches for victims and witnesses.

Convention on the Rights of the Child (CRC), 1989

Article 19:

Requires States to protect children from abuse and exploitation, ensuring sensitive handling of child victims and witnesses.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984

Article 13:

Mandates that States protect individuals who report or testify about torture or ill-treatment.

International Convention on the Elimination of All Forms of Racial Discrimination, 1965

Article 5(a):

Prohibits discriminatory treatment of victims and witnesses based on race or ethnicity.

European Convention on Human Rights (ECHR), 1950

Article 3:

Prohibits torture and inhumane treatment, including during police interactions with victims and witnesses.

Article 6:

Right to a fair trial, ensuring the protection of witnesses.

American Convention on Human Rights (ACHR), 1969

Articles 5 and 8:

Protect dignity and guarantee fair trial rights.

African Charter on Human and Peoples' Rights (ACHPR), 1981

Articles 4 and 5:

Emphasise the rights to integrity, dignity, and protection from ill-treatment.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985

Principle 4:

Recognises the need for fair treatment, support, and access to justice for victims. Highlights the responsibility of law enforcement to provide protection, avoid secondary victimization, and ensure victims' participation in proceedings.

Guideline 10 of the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, 2005

Outlines best practices for handling child victims and witnesses, emphasising dignity, safety, and age-appropriate communication.

UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions, 1989

Principle 18:

Mandates protection of witnesses and family members of victims in investigations.

Code of Conduct for Law Enforcement Officials, 1979

Article 2:

Emphasises respect for human dignity and the rights of individuals, including victims and witnesses.

Rome Statute of the International Criminal Court (ICC), 1998

Article 68:

Requires protection of victims and witnesses, including psychological support and measures to prevent re-traumatisation.

UN Convention on Transnational Organized Crime, 2000

Article 24:

Protects witnesses involved in cases of organized crime.

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (The Palermo Protocol), 2000

Articles 6 and 7:

Establish victim protection measures, including psychological and physical safety.

The Istanbul Protocol, 2004

Section 4:

Guidelines for investigating and documenting torture and ill-treatment, including how to work with victims and witnesses.

CHAPTER 10 — Vulnerable Persons and Population

Universal Declaration of Human Rights (UDHR), 1948

Article 1:

Recognizes the equality and dignity of all individuals.

Article 5:

Prohibits torture and degrading treatment.

Article 7:

Ensures equal protection of the law for everyone, including vulnerable persons.

International Covenant on Civil and Political Rights (ICCPR), 1966

Article 2(1):

Obliges States to protect all individuals without discrimination.

Article 7:

Prohibits torture and ill-treatment, applicable in interactions with vulnerable persons.

Article 14:

Provides fair trial rights, including witness protection and special accommodations for vulnerable individuals.

Article 17:

Protects privacy, relevant to vulnerable populations such as LGBTQ+ persons.

Convention on the Rights of the Child (CRC), 1989

Article 3:

Prioritizes the best interests of the child.

Article 12:

Ensures children's voices are heard in matters affecting them, including legal proceedings.

Article 19:

Protects children from abuse and exploitation.

Convention on the Rights of Persons with Disabilities (CRPD), 2006

Article 13:

Guarantees access to justice for persons with disabilities, including accommodations in police procedures.

Article 16:

Protects persons with disabilities from exploitation and violence.

Convention on the Elimination of All Forms of Discrimination Against Women, 1979

Article 2:

Prohibits discrimination against women and mandates protection from gender-based violence.

General Recommendation No. 33:

Highlights the need for gender-sensitive justice systems.

International Convention on the Elimination of All Forms of Racial Discrimination, 1965

Prohibits discrimination and mandates protection for racial and ethnic minorities in interactions with law enforcement.

UN Refugee Convention (1951) and Protocol (1967)

Protects the rights of refugees, ensuring they are treated with dignity and respect by police and provided access to justice.

European Convention on Human Rights (ECHR), 1950

Article 3:

Prohibits torture and inhumane treatment, relevant to the treatment of vulnerable individuals.

Article 14:

Ensures protection from discrimination.

American Convention on Human Rights (ACHR), 1969

Articles 5 and 8:

Protect dignity and ensure fair trial rights, including accommodations for vulnerable witnesses.

African Charter on Human and Peoples' Rights (ACHPR), 1981

Article 4:

Protects life and dignity.

Article 18:

Emphasises the protection of vulnerable groups like women, children, and persons with disabilities.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985

Promotes respectful treatment of victims and their families. Encourages the provision of assistance and support, particularly to vulnerable groups.

UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, 2005

Establishes principles for the protection and participation of child victims and witnesses, emphasizing age-appropriate communication and safeguards.

UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2012,

Stresses the importance of providing free or affordable legal aid to vulnerable populations.

Code of Conduct for Law Enforcement Officials, 1979

Article 2:

Requires police to respect and protect human dignity and uphold human rights for all individuals, particularly vulnerable persons.

UNHCR Guidelines on Refugee Protection, 2017

Provide standards for the treatment of refugees and asylum seekers by police, including non-discriminatory practices and trauma-informed approaches.

Rome Statute of the International Criminal Court (ICC), 1998

Article 68:

Requires protective measures for vulnerable victims and witnesses, including confidentiality and physical safety.

UN Convention Against Transnational Organized Crime, 2000

Article 24:

Mandates protection of witnesses, especially those from vulnerable populations, in cases involving organized crime.

Palermo Protocol on Trafficking in Persons, 2000

Article 6:

Protects victims of trafficking, ensuring sensitive treatment and access to remedies.

Istanbul Protocol, 2004

Provides standards for investigating torture and ill-treatment, including handling vulnerable victims and witnesses sensitively.

Minnesota Protocol, 2016

Offers guidelines for investigating potentially unlawful deaths and safeguarding the rights of witnesses and vulnerable persons.

Interpol Guidelines for Witness Protection, 2014

Focuses on ensuring the safety and dignity of witnesses, particularly vulnerable ones, during international investigations.

WHO Ethical and Safety Recommendations for Researching Violence Against Women, 2001

Advises on the treatment of women who are victims of violence, including when police are involved.



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