

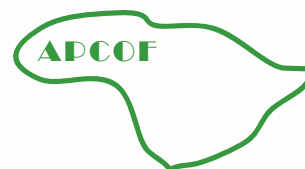
# TRAINING MANUAL

## Building capacity in the civilian oversight of African policing



independent  
complaints directorate

Department:  
Independent Complaints Directorate  
REPUBLIC OF SOUTH AFRICA



AFRICAN POLICING CIVILIAN OVERSIGHT FORUM

 **Trilateral Cooperation Fund (TRI-CO Fund)**

# INVESTIGATOR TRAINING AGENDA

## DAY 1

Introductions and expectations	9.00 – 9.45
<i>Tea</i>	9.45 – 10.00

### SECTION 1

Oversight: An Introduction	
Powers of oversight bodies	
The resources of oversight bodies	10.00 – 12.30
Stakeholders	
<i>Lunch</i>	12.30 – 1.30

### SECTION 2

Basic elements in an Investigation	1.30 – 3.00
<i>Tea</i>	3.00 – 3.15
Prioritising the case	3.15 – 4.00
Wrap up and instructions for homework	4.00 – 4.15

## DAY 2

Review of reading	9.00 – 9.30
-------------------	-------------

### SECTION 3

Conducting the Investigation: The Physical Evidence	9.30 – 10.30
<i>Tea</i>	10.30 – 10.45
Discussion on case study	10.45 – 11.30

### SECTION 4

Verbal Evidence - Dealing with witnesses, victims and suspects	11.30 – 12.00
<i>Lunch</i>	12.00 – 1.00

### SECTION 5

Interview role plays	1.00 – 3.00
<i>Tea</i>	3.00 – 3.15
Continue Role Plays	3.15 – 4.00
Wrap up and instructions for homework	4.00 – 4.15

## **DAY 3**

Review of statements	9.00 – 10.00
<i>Tea</i>	<i>10.00 – 10.15</i>

### **SECTION 6**

Police officers as the subject of investigation	10.15 – 12.30
<i>Lunch</i>	<i>12.30 – 1.30</i>

### **SECTION 7**

Investigating torture, deaths in custody	1.30 – 3.00
<i>Tea</i>	<i>3.00 – 3.15</i>
Investigating torture, deaths in custody	3.15 – 4.00
Wrap up	4.00 – 4.15

## **DAY 4**

### **SECTION 8**

Investigating Sexual Offences	9.00 – 10.30
<i>Tea</i>	<i>10.00 – 10.15</i>

### **SECTION 9**

Writing a report	10.15 – 12.30
<i>Lunch</i>	<i>12.30 – 1.30</i>

### **SECTION 10**

Ethical and political dimensions of investigations	1.30 – 3.00
<i>Tea</i>	<i>3.00 – 3.15</i>
Recap of course, wrap up of expectations, evaluations	3.15 – 4.00
Departure	

# CONTENTS

Key	ii
Foreword	iii
Agenda	v
Section 1	2
Section 2	13
Section 3	22
Section 4	28
Section 5	38
Section 6	41
Section 7	45
Section 8	56
Section 9	77
Section 10	86
Section 11	99
Answers to crime scene scenario questions	102
Sources	107
APCOF Overview	110
Contents of the CD	111

# KEY

## TO ICONS USED IN THIS MANUAL



Discuss



Note or definition



Role-play



Case study



Optional extra reading or activity



Homework

# FOREWORD

Oversight and accountability are one of the hallmarks of a democratic government. Nowhere is the importance of accountability more evident than in the security sector.

The African Policing Civilian Oversight Forum (APCOF), the South African Independent Police Investigative Directorate (IPID) – formerly the Independent Complaints Directorate (ICD) – and the German Agency for Technical Cooperation (GTZ) GmbH, through the Trilateral Cooperation Fund, have cooperated to produce this training manual for use in building the capacity of independent civilian oversight in investigation skills.

The manual provides context-relevant training material to build nascent oversight capacity in Africa. It is generic in its approach but with a specific focus on the oversight of police. The initial stages of the project involved desk research and review of similar manuals used by oversight agencies and police in Africa.

The desk research was complemented with a series of in-depth interviews with ICD investigators and staff of the South African Judicial Inspectorate and the South African Human Rights Commission to understand aspects of their work and the specific challenges encountered by these investigators. The draft manual was tested from 16 to 19 August 2010 in training sessions with participants from the following organisations: ICD, Judicial Inspectorate, South African Human Rights Commission, Lesotho Police Complaints Authority, Kenyan National Commission on Human Rights, and the Tanzanian Commission for Human Rights and Good Governance.

This manual is intended for the training and development of police oversight bodies across Africa but is designed in such a way so that it can be adapted to local context. This edition has been specifically designed for training purposes of the Kenya National Commission on Human Rights and the Tanzanian Commission for Human Rights and Good Governance for use in Kenya and Tanzania.

The project partners wish to thank all who contributed to the development of the manual, in particular David Bruce, Amanda Dissel and Greg Moran for the research; Liesa Jossel for developing the material; Karen McKenzie for the assistance in presenting the test training; and the invaluable inputs of Danaline Franzman, Joyce Tlou, Winfred Lichuma, Victor Lando, Anne Ngugi, Umesh Raga, Shadrack Sibanyoni, Jamila Sisulu, Yohana Mcharo, Matsipa Kalimiloe, Marethabile Nts'oane, Marosa Tsehlo, Mpanza Maza, Mote Matlakeng, Tommie Lyons and Arius Dathi.

We would also like to extend our thanks to the Independent Police Complaints Commission, the office of the Ombudsman of Northern Ireland, and the Office of Police Integrity, Victoria, Australia.

Finally, we owe thanks to Mokgapi Maleka of GTZ and Tommy Tshabalala of the ICD, Florence Simbiri Joako of the KNCHR and Justice Manento of the CHRAGG for their leadership throughout the development and application of the manual.

Sean Tait, APCOF  
Cape Town, September 2010

# BEFORE YOU BEGIN

To conduct this course, you will need the following **materials**:

- ≡ Pens
- ≡ Paper
- ≡ Koki pen
- ≡ Flip chart and pens for writing on it
- ≡ Prestick
- ≡ Name tags

**PowerPoint** – make sure there is a projector and screen and that they are functioning. Make a copy of the power point slides – 4 or 6 to a page – that you can refer to during the course.

# DAY 1

Purpose of training, expectations  
House rules  
The course pack

## **SECTION 1**

Oversight: an introduction  
Powers of oversight bodies  
The skills and resources of oversight bodies

## **SECTION 2**

Stakeholder management and relations  
Basic elements in an investigation  
Prioritising cases for investigation

# SECTION 1

## 1 **OVERSIGHT: AN INTRODUCTION**

Oversight bodies are concerned with ensuring that organisations adhere to principles of good practice in the work that they do.

Organisations that do oversight include:

- ≡ Human rights commissions
- ≡ Specialised investigative bodies
- ≡ The Ombudsman
- ≡ The Auditor General
- ≡ The Public Protector
- ≡ Prison inspectorates

This course is concerned with the oversight of state organisations such as the police and prisons, by various bodies, and their concern with effective investigations.

**All of the oversight bodies listed above conduct oversight in different ways, depending on their mandate and powers.**

**National human rights institutions** are established to support constitutional democracy through the promotion and protection of human rights. The commissions are generally involved in three broad types of investigations or inquiries:

- ≡ Individual complaints (or complaints of small, easily identifiable groups). These are usually reported to the commission, but they may also be identified from the reports of others, media reports and the like.
- ≡ Major events – such as violence following elections, violations by the military and outbreaks of xenophobic or ethnic violence.
- ≡ Systemic violations.

How each agency responds to these will depend largely on:

- ≡ their functions and powers in the Constitution and their founding Acts
- ≡ the wishes of victims (or their families)
- ≡ the objective of the investigation and
- ≡ the capacity to deal with the investigation.

In addition, the agency might choose to enquire into what led up to the event and who the perpetrators were, or it may specifically be requested to conduct an investigation by Parliament or the President.

In the former case, it will usually be up to the agency to determine its procedure and the ambit of its inquiry for itself. In the latter, Parliament or the President may set out specific terms of reference for what to investigate and how and when the investigation should take place.

In addition to identifying and inviting victims and witnesses to testify at the inquiry, you may also need to visit the scene, take photographs and video,

collect physical evidence, conduct research into the causes and effects of the event and monitor trials that may be taking place simultaneously.

**The offices of the Ombudsman** are another such body. The Rwandan Ombudsman promotes good governance and ensures checks and balances. It operates independently from other institutions to prevent and combat injustice, corruption and other related offences in public and private administration

**Civil society** includes the media, special interest and lobby groups, non-governmental organisations (NGOs) and the religious community. It plays an important role in police oversight by stimulating debate, monitoring policing, ensuring information is disseminated and encouraging participation. Independent research is recognised as one of the more important contributions civil society can make along with networking and awareness raising, advocacy, training, and monitoring.

**Internal oversight mechanisms** are common across police jurisdictions. Often this is the only oversight of police. In Senegal, the Administrative Police are responsible for the borders, general intelligence and immigration. Oversight of the Administration Police is carried out by the Directorate of Inspection Services, which investigates and reports to the police disciplinary authority on allegations of misbehaviour and brutality by the police. The minister responsible takes responsibility for sanctions following the outcome of investigations.

The **Independent Police Investigative Directorate (IPID) – previously the Independent Complaints Directorate (ICD)** – in South Africa is a specialised police oversight body, which was established in 1997 soon after the transition to democracy. The IPID's mandate is to investigate any complaint against or misconduct by a police member, as well as deaths in custody or as a result of police action.

The IPID has had many years to develop a best practice approach to investigations. This course aims to share some of those best practices with members of human rights commissions.

## 2 FORMS OF OVERSIGHT AND OBJECTIVES OF INVESTIGATIONS

Oversight agencies have different mandates. Therefore, their responses to allegations of human rights violations have different objectives.

No matter what the objective is, members of oversight agencies need knowledge and skills regarding investigation and inquiry practices to be able to operate efficiently and meaningfully. This course aims to impart some best practice investigation and inquiry skills.

The oversight mandate of the IPID is to establish whether there was a human rights violation or crime committed by the police and, if so, to make a recommendation that could lead to criminal prosecution.

Human rights commissions do not usually make recommendations directly to the prosecuting authority in a criminal case. They can however report the matter to the police for investigation and prosecution. They may do this after the violation has been fully investigated or, if the police can be trusted to investigate properly, once it becomes clear that a crime or crimes have been committed.

They can also:

- ≡ **Bring a civil action** (either for civil damages or to prevent the harm from continuing or arising again)
- ≡ **Hold an inquiry** (usually following a major event or into systemic violations).
- ≡ **Make recommendations to Parliament** including for compensation to victims and their families.
- ≡ **Refer the matter** to another or better placed national or international institution, or to a relevant civil society organisation.
- ≡ **Mediate and negotiate.**

They may also **educate and inform the public to try to put an end to the harmful practice, to end discrimination, build tolerance, etc.**

### 3 FUNCTIONS OF THE KENYAN NATIONAL COMMISSION ON HUMAN RIGHTS

Let's look now at the functions of the Kenyan National Commission on Human Rights.

The functions of the Commission are found in Section 16 of the Kenya National Commission on Human Rights Act (Act 9 of 2002).

**Those highlighted in bold are of particular relevance to this section.**

16. (1) The functions of the Commission shall be-

- (a) **to investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of any human rights;**
- (b) to visit prisons and places of detention or related facilities with a view to assessing and inspecting the conditions under which the inmates are held and make appropriate recommendations thereon;
- (c) to inform and educate the public as to human rights for the purpose of enhancing respect for such rights by means of a continuing programme of research, publication, lectures and symposia and by such other means as the Commission may deem fit;
- (d) **to recommend to Parliament effective measures to promote human rights, including the provision of compensation to victims of violations of human rights or their families;**
- (e) to formulate, implement and oversee citizens of and other persons resident in Kenya, awareness of their civic responsibilities and an appreciation of their rights and obligations as a free people;

- (f) to act as the chief agent of the compliance with its obligations under international treaties and conventions on human rights;
- (g) to encourage the efforts of other institutions working in the field of human rights and **cooperate with such other institutions for the purpose of promoting and protecting human rights in Kenya;**
- (h) **to investigate and conciliate complaints on its own initiative** where the nature of the alleged human rights violation makes conciliation both possible and appropriate; and
- (i) to perform such other functions as the Commission may consider necessary for the promotion and protection of human rights.

#### 4 **FUNCTIONS OF THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE (CHRAGG) IN TANZANIA**

The CHRAGG derives its powers from Section 129 of the Constitution (where it is referred to as a 'Permanent Commission of Enquiry').

**Those highlighted in bold are of particular relevance to this section.**

It has the following functions:

- ≡ Promotion, protection and preservation of human rights in accordance with the Constitution and the law of the land.
- ≡ **To receive complaints of human rights violations.**
- ≡ **Conduct enquiries into matters involving the violation of human rights and the contravention of the principles of administrative justice.**
- ≡ Conduct research and educate the public.
- ≡ When necessary, **to institute proceedings in court designed to terminate activities involving the violation of human rights or redress the right or rights so violated, or the contravention of the principles of administrative justice.**
- ≡ **Investigate the conduct of any person or institution** to which the provisions of this section apply.
- ≡ **Investigate or inquire into complaints** concerning practices or actions by persons holding office in the service of the government, public authorities or other public bodies, including private institutions and private individuals where those complaints allege abuse of power, injustice, unfair treatment of any person, whether complainant or not, in the exercise of their official duties.
- ≡ **Visit prisons and places of detention or related facilities** to assess and inspect conditions of the persons held in such places and making recommendations to redress the existing problems in accordance with the provisions of this Act.
- ≡ Take steps to secure the remedying, correction, reversal or cessation of violations through fair, proper and effective means, including the institution of legal proceedings.
- ≡ Advise government and other public organs and private sector institutions on specific issues relating to human rights and administrative justice.
- ≡ Make recommendations relating to any existing or proposed legislation, regulations, or administrative provisions to ensure compliance with human rights norms and standards and with the principles of good governance.

- ≡ Promote ratification of or accession to treaties or conventions on human rights, harmonisation of national legislation and monitor and assess compliance by the government and other persons, with human rights standards provided for in treaties or conventions or under customary international law to which the United Republic has obligations.
- ≡ Under the auspices of the government, to cooperate with agencies of the United Nations, the OAU, the Commonwealth and other bilateral, multilateral or regional and national institutions of other countries which are competent in the areas of protection and promotion of human rights and administrative justice.
- ≡ Take such measures as may be appropriate for the promotion and development of mediation and reconciliation amongst the various persons and institutions who come or are brought before the Commission.
- ≡ Perform such other functions as may be provided for by any other written law.

## 5 THE WORK OF OVERSIGHT BODIES

There are two main ways that oversight bodies can enhance their oversight function using investigation:

- ≡ **By monitoring investigations carried out by the police or other agencies and**
- ≡ **By conducting impartial and independent investigations.**

## 6 INCIDENT INVESTIGATIONS AND BROAD INQUIRIES

There are two types of investigations when alleged human rights violations are involved:

1. **Incident investigations:** Human rights violations often involve violations of the law by individuals. Investigations of alleged human rights violations can therefore lead to people being prosecuted. For a prosecution to have the chance of being successful, investigations must be of a standard that can be used in a court of law. However, not all investigations of individual incidents can be linked to prosecutions. Some are complaints that can be dealt with by mediation, negotiation or litigation.
2. **Broad inquiries into human rights violations:** The second kind of investigation is where there is a pattern of human rights violations, or the violations impact on a large number of people, or where individual incidents raise underlying issues to do with practices which are widespread in a specific country or organisation (for example, a specific state department). In these cases, it is important to document the incidents and address these issues. This kind of investigation is broader than the prosecution of individuals. However, these investigations may raise issues to do with criminal liability or even recommend that individuals be prosecuted.

**This manual deals with incident investigations.**



### Key points to make

1. Oversight involves more than just investigation.
2. There are different ways the oversight bodies use investigation
3. Make the distinction between offences and human rights violations. Are these the same? Discuss the differences.
4. Violations of human rights standards might not necessarily be violations of the law and therefore may not be prosecutable.

### Discuss

1. What oversight models does your country have?
2. Which of these bodies use investigation?
3. How do they use investigation?
4. What types of investigation do they use?
5. Who or what do investigations tend to focus on?
6. What are the challenges you face?
7. How could they be improved?



## 7 THE POWERS AN INVESTIGATION AGENCY NEEDS TO CONDUCT A PROPER INVESTIGATION

Notes

In addition to a legal mandate, resources will determine the things you can and cannot do.

The South African IPID provides for identified members of the IPID to be specifically authorised 'to exercise those powers and perform those duties conferred on or assigned to police officers by any law. While this is a fairly general provision, it is specific enough to indicate that IPID investigators exercise the same powers as police. They have the powers to:

- ≡ take control of and carry out investigations at crime scenes
- ≡ effect an arrest
- ≡ obtain search warrants, and in certain circumstances conduct searches without a warrant and seize items of evidence (powers of 'search and seizure')
- ≡ subpoena witnesses, documents and other evidence
- ≡ compel people to make statements
- ≡ hold identification parades
- ≡ carry out surveillance activities
- ≡ protect complainants and witnesses
- ≡ compel police cooperation
- ≡ request and obtain assistance

---

---

---

---

---

---

---

---

---

---

---

---



- ≡ **People with investigative experience** – e.g. interviewing skills, statement taking skills. Ideally this would be someone of the same gender to make the person feel at ease.
- ≡ **Medical experts** – to assess the scene from a medical point of view, or to examine victims.
- ≡ **Ballistics experts** – these are experts who are called out to when an expert assessment of the evidence regarding the use of firearms is needed.
- ≡ **Fingerprint experts** – to take fingerprints at the scene.
- ≡ **Laboratories** – for testing forensic evidence including biological evidence and ballistic evidence.
- ≡ **Psychological experts** – to deal with trauma, etc.
- ≡ **Translators** – to help with language issues.
- ≡ **Video equipment or tape recorders** – to record witness interviews.

---

---

---

---

---

---

---

---

---

---

In order to clarify what investigation your organisation could conduct you will need to assess the skills and resources your organisation has at its disposal or has access to. Some skills and resources might be available in your agency. Others might be available externally.

**Discuss**

- Which of the above categories of skills does your organisation have internally?
- How many resources or personnel in each category does your organisation have?
- If you do not have them internally, can you access them externally?
- If so, how good is the access?
- What do you have to do to access them. For example, do you have to pay for services, do you have MOUs with some organisations?
- Can you have confidence in their quality and impartiality and professionalism?
- What do you do if your country does not have any people skilled in these areas?



**Complete the grid below**

	Internal / external / no access	Comments
General investigative experience		
Crime scene experts		
Finger-print experts		
Ballistics experts		
Laboratories for testing forensic evidence including biological evidence and ballistic evidence		
Forensic pathology services		
Other		



# 10 STAKEHOLDER MANAGEMENT AND RELATIONSHIPS

While resources in your agency might be limited, you may have access to other resources, some of which we have already mentioned before, such as forensic and ballistics experts.

Stakeholder management is relevant to enhancing the effectiveness of the investigation by building up the skills and resources which the agency has access to. However, the issue of stakeholders is much broader than this. Stakeholder relationships, including those with the general public, the media, politicians and so on are relevant throughout the course.

## Discuss

1. What do you think about the police in your country?
  - 1.1 Do they respect rule of law?
  - 1.2 Are they professional?
  - 1.3 Are they all the same?
2. What kind of relationship does your organisation have with the police?
3. What kind of co-operation do you get from them?



## Police as stakeholders

Whether cases specifically involve investigation of alleged or possible violations committed by police, it is likely that an agency involved in investigating human rights violations will involve engagement with police. This becomes more and more likely the greater the degree to which the agency makes use of resources or skills located within the police agency. Throughout this course we will deal with specific issues related to the police.

In some countries, the police are required by law to report all deaths as a result of police action or deaths in custody. This is the case in South Africa, where the SAPS must report these deaths to the IPID. The police must report the death whether or not there is an allegation of a human rights violation or of neglect by the police to follow procedures. Although this is a mandatory provision, it is still important to build a good relationship with the police.

In your relationship with the police, it may be useful for you to emphasise the importance of public support for and respect for the police, and the way that human rights violations undermine the potential to win this kind of respect.

You should also stress the positive role which the agency can play in supporting improvements in policing.

One practical way of working with the police is to have a cooperation agreement between your agency and the police. This may include issues such as:

- ≡ The prompt reporting of specific categories of cases to the agency.
- ≡ Provision for the agency to refer cases to the police.
- ≡ The management, processing and protection of crime scenes.
- ≡ Any forensic services that the police may provide.
- ≡ Assistance in the carrying out of arrests.



# SECTION 2

---

---

---

---

---

---

---

---

## 1 BASIC ELEMENTS IN AN INVESTIGATION

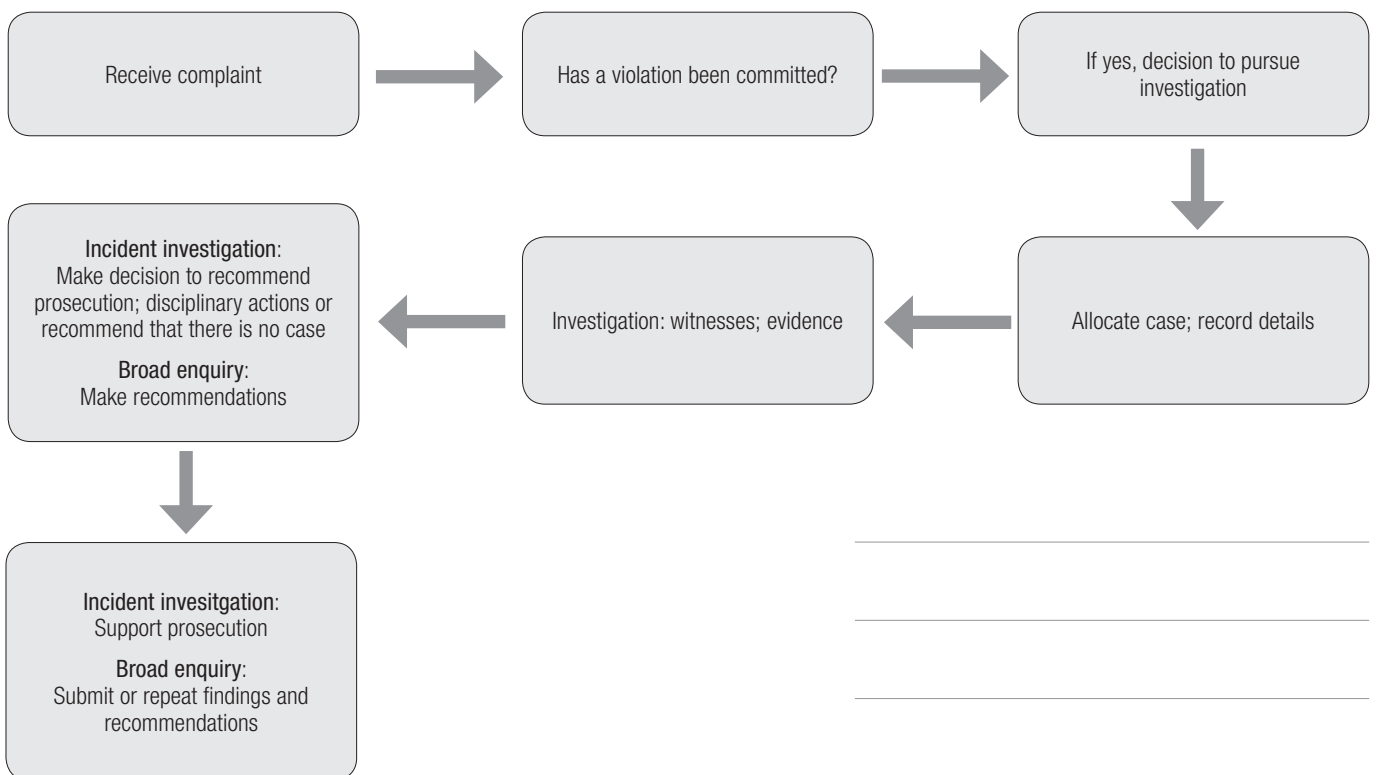
The section below discusses elements of the investigative process. You may do them all, and you may do only a few. You may or may not follow a specific order.

Although we present them here in a series of sequential steps, the steps you actually follow will depend on your investigation. For instance, if there is a 'crime scene' where evidence may be gathered one would seek to ensure that all possible evidence is gathered at the scene as soon as possible after receiving notification about the case and then evaluate how (if at all) to proceed with the investigation.

We describe them here to give an overview of what is involved in the investigation procedure.

In this section, we begin to break down the investigative process.

### The investigative process



---

---

---

---

---

---

---

---

### Receiving the complaint

Earlier in this manual, we discussed the different ways an event can come to your attention. Some ways include: a call from the police, an item in the media, via the pathologist, etc.

As soon as you get the complaint, you should record it in a register. Even if you later decide not to investigate the case, you may use the records to examine trends in reporting or complaints.

**Has a violation been committed?**

To confirm whether a crime has in fact been committed, you need to ask yourself: **Is the event a crime? What are the specific elements of the violation?** Where it is unclear whether violations have been committed, one thing which the investigation needs to do is clarify whether a crime or violation has been committed.

- ≡ Sometimes this is done right at the beginning of the investigation (and the investigation is focused on identifying a perpetrator and/or proving that a certain individual is responsible).
- ≡ Sometimes the question of whether a violation has in fact been committed is something that one has to prove by means of investigation.

Different offences are typically distinguished by specific elements. Read up on what they are in each country. Some offences are crimes in the statute books, others are common law crimes. Some offences are human rights violations in terms of international standards, even if they are not part of your country's legal system.

---



---



---



---



---



---



---



---



---



---

**Discuss**

Read the case studies below. It is clear in each case that the police killed a man. However, is there any *evidence* that the killing was a human rights violation? Give your reasons for each of the cases below and say which ones you would investigate.

**Case study 1**

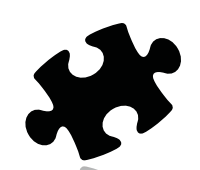
You arrive at the scene of a police shooting. The dead men are all heavily armed and were involved in a bank heist at the time of the shooting. The police admit to the shooting. The statements given by the police are not identical but are generally consistent with each other. In addition, there is other information which appears to support what they are saying. This suggests that the shooting in question was a justified police shooting.

**Case study 2**

You arrive at the crime scene. A dead man is lying on the ground with a gun nearby. All of the police who were present at the shooting say that the deceased drew a gun on the police. There are no witnesses who contradict this version of events. There is a possibility that sophisticated ballistics tests would demonstrate that the police version of events is implausible – but they might not necessarily do so.

**Case study 3**

You arrive at the crime scene. A dead man is lying on the ground with a gun nearby. All of the police who were present at the shooting say that the deceased drew a gun on the police. However, you notice the man has a bullet wound in his back. This seems to render the police version of events implausible.



## Prioritising the case for investigation

Where investigative resources and skills are limited one has to make optimum use of those resources and skills which one has access to. This means that one has to be selective about the cases which one gives dedicated attention to. This issue is discussed in more detail in the following section and is an important element of the investigative process.

## Allocating the case and Recording the details of the case in a file

Within your agency, you should have some kind of allocation procedure to identify the investigators who will take on the case and be responsible for its progress and outcome.

It is important to record as much information as possible about all cases which are reported to the agency, not only for the purpose of investigating individual cases, but also so that the agency can analyse trends including trends in reporting and trends in human rights violations.

Each specific case should also have its own file, which should contain every possible piece of evidence, including statements.

## Conducting the investigation

Here you would deal with the crime scene including evidence, witnesses and all follow-up investigations. You would track the progress of any forensic evidence and record all the details.

We will deal with these steps in detail later in this course.

## Analysing the evidence and writing it up in a report

From the time you start collecting evidence, you will be engaged in a process of thinking about it and analysing it. When your investigation is complete, you should include a covering report with the docket.

## Making conclusions and recommendations

A successful investigation does not necessarily result in a conviction. In the field of crime investigation, it is acknowledged that in their enthusiasm to 'solve' a case, investigators may end up generating a case against an innocent person rather than the actual perpetrator, (or proving that an act which was not actually a crime was a crime). This is probably less of a risk in investigations against police. Nevertheless, this speaks to the need for the investigation to be conducted with a high level of integrity.

Your investigation could be considered successful if you:

- ≡ correctly conclude that someone who was accused or suspected of an offence was not in fact guilty of the offence
- ≡ correctly conclude that although there was an act, there was no human rights violation and
- ≡ where examining a pattern of violations, make recommendations to address these.

### Generating a case against the perpetrator or suspect

The task of generating a case against the perpetrator is intertwined with that of confirming whether or not a crime has been committed, and identifying the perpetrator. This involves putting together a case which can be used in court to demonstrate convincingly the culpability of the perpetrator.

Although the decision to prosecute is made by the prosecutor, investigators may motivate for a prosecution to be instituted in the investigative file which they compile. Alternatively, you might motivate that a prosecution is unlikely to be successful and might motivate instead for disciplinary charges or a civil claim to be instituted.

The investigation process frequently involves investigators in a contest over the truth with the alleged perpetrators. The person who protests his or her innocence may be innocent, but may also just be acting like any perpetrator would do. While the job of investigators is to establish the truth, in practice, you may have to do this by demonstrating that the person is being deceitful.

### Supporting successful presentation of the case in court in a way that secures a conviction of the perpetrator

This involves assisting the prosecutor in ensuring that relevant evidence is successfully presented in court. It may include ensuring that physical evidence is available and that witnesses attend court. You may also have to give verbal evidence in court.

## 2 PRIORITISING CASES FOR INVESTIGATION

Not all cases will or should be investigated by your agency. You will have to make decisions at every step of the investigation process about your agency's involvement in specific investigations.

#### Discuss

- Are there any categories of incidents which it is mandatory for your agency to investigate?
- Does your agency have a screening process? How does it work?



Here are some of the questions your agency should ask when deciding whether to take on a case:

### Is your agency the right body?

In some situations, your agency is the body responsible because of legislative or other provisions that make this kind of investigation mandatory. In South Africa, the IPID is required by law to investigate all deaths in police custody or as a result of police action.

Having ratified the UN Convention Against Torture, South Africa is bound to ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable grounds to believe that an act of torture has been committed in any territory under its jurisdiction.

There may be public and political expectations for a body to investigate. The name 'Independent Complaints Directorate' implies that it is the body responsible for complaints against the police and creates an expectation that the IPID will deal with any complaint which is brought to it.

### Is it strategic to investigate this case?

The investigative body should try and follow a strategic approach to investigations. This involves making judgements around questions like:

- ≡ What are the key human rights violations that call for investigative attention? and
- ≡ What kind of cases should be investigated in order to have the greatest impact on these types of human rights violations?

### Do we have the resources to investigate this case?

We have already spoken about the issues of human or other resources to deal with cases in general. The larger the number of cases, the less the investigative body will be able to give focused and dedicated attention.

Agencies may therefore need to reduce their workload. Some of the ways in which the South African IPID deals with cases in order to reduce its case load are:

- ≡ In some provinces where there are large numbers of deaths, they do **not take over all death investigations from the police**. The police are obliged to investigate all deaths in terms of the Inquest Act and only do not investigate the deaths where the IPID takes over the investigation from them. When the IPID receives information that someone has been killed by police or died in police custody, their investigators will go to the scene of death to carry out a preliminary investigation. **Only where there are aspects of the incident that appear to call for a more in-depth investigation do they take over the investigation.**
- ≡ **Referring cases to the police** – some of the other complaints received by the IPID are referred to the police for police investigation. The IPID then monitors these investigations.

## Is the case solvable?

You may also want to conduct an initial **screening** of the case before deciding whether to pursue an investigation. One of the questions is whether the case is solvable or not.

Detectives classify cases into:

- ≡ **Self-solvers** – A typical case is where a shoplifter is found in possession of stolen property while leaving the shop. Similarly if a murderer is found at the scene of the crime with the gun in his hand and witnesses confirm that he was not acting in self-defence the case might also be said to have ‘solved itself’.
- ≡ Cases that might be solved with **some investigative effort**; and
- ≡ Those which **cannot be solved** with a reasonable amount of effort or cannot be solved at all.

Source: Tilley, Robinson & Wright, 2007: 226–254

Similarly, in the investigation of alleged or possible human rights violations, it is not only reasonable but also necessary to take the approach that investigations need to focus on cases which are **prioritised for investigative attention**. These might be those cases where the investigation is most likely to conclude that a violation has taken place, and be successful in identifying the perpetrator where this is not known.

## Is there a reasonable prospect of identifying the perpetrator?

Once you have established that violations have been committed, your next goal is to establish the identity of the actual perpetrators. In some investigations, this is not a big issue, for example:

- ≡ **the police admit to the shooting, but claim that it was legally justified**
- ≡ **in torture or an assault cases alleged to have taken place after an arrest or during interrogation, the police are easy to identify – but deny that torture has taken place** and claim the person was resisting arrest and that the minimum force necessary to overcome this resistance was used.

Some cases are more difficult to identify:

- ≡ A person is killed and there may be allegations that the person was killed by police but no police openly acknowledge responsibility.
- ≡ A person may allege that she was assaulted or tortured by police under circumstances where it the police took trouble to avoid being identified.

Questions to ask yourself about identifying the perpetrator include:

- ≡ Is a suspect named?
- ≡ Are there any specific distinguishing features of the suspect?
- ≡ Was there a witness to the crime (or to related events which preceded or happened subsequently to it) who can identify the suspect (for instance in an identity parade)?
- ≡ Was there a vehicle used by the suspect which can be identified?
- ≡ Is physical evidence present which might be linked to the suspect?
- ≡ Is there a distinguishable *modus operandi* (MO)?

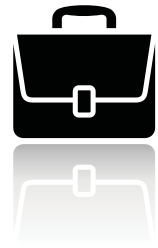
Source: Osterburg & Ward, 1992



## Homework

You must read the 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Study on police oversight mechanisms' by Philip Alston.

We will discuss it at the next session.



# DAY 2

Review of reading

## **SECTION 3**

Conducting the investigation: the physical evidence  
Discussion on case study

## **SECTION 4**

Verbal evidence – dealing with witnesses, victims and suspects

## **SECTION 5**

Role-plays

### **Discuss**

You have read Philip Alston's 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Study on police oversight mechanisms'. The report deals extensively with extrajudicial killings by the police around the world and describes the mechanisms in some countries for police oversight. It makes some recommendations about external police oversight mechanisms, in addition to internal police investigations, internal discipline, the criminal justice system, and legislative oversight.

- What struck you as interesting or important?
- How does what you read fit in with your country's situation?
- What could you take forward out of the recommendations for your country?



# SECTION 3

## 1 CONDUCTING THE INVESTIGATION

### The physical evidence

We have dealt with issues around receiving the case, and screening the case. In this section, we start to look at the details of conducting the investigation. We first focus on physical evidence and the location where the incident took place ('the crime scene') as a source of physical and other evidence.

In some investigations you would hope to find useful evidence at the scene where the incident took place (Some people would call this an in situ inspection. Others would call it a crime scene investigation). For some types of investigations the visit to the area where the incident took place is mainly done to meet with and interview victims and witnesses. In addition to finding victims and other witnesses an investigative agency might go to the scene in order to collect physical evidence or to monitor the police investigation at the scene. In this section we talk about the approach that is applied by the IPID when it goes to the location where an incident has taken place. This is similar to the approach followed by police when investigating a crime scene and we refer to this location as 'the scene'.

### Before you leave for the crime scene

Assuming it is not an emergency and you have time to gather the things you need, you should take the following to the crime scene:

- ≡ Pen and paper for taking notes and drawing sketches
- ≡ Camera to document the scene
- ≡ Plastic bags for evidence
- ≡ Labels
- ≡ Plastic banners to cordon off the crime scene area.

You should have these packed and ready to go at your desk at all times, so that you do not have to waste time gathering them.

### Arriving at the scene

In investigative work the scene where the incident took place is regarded as a potentially valuable source of information, partly because of physical evidence which may be available but also because people who may have useful information and may potentially give evidence in court. Where a person is killed their body may provide vital evidence too.

The scene is often a fixed geographical location (indoors or outdoors) but may also be mobile (usually a vehicle). Scenes are not necessarily a single location but may include different locations which may or may not be in close proximity to each other.

Police arriving on the scene may face safety issues, if, for example, the crime is still in progress. They may also have to call for medical help for the injured. However, it is only likely that these kinds of issues will affect you if you are the first official arriving at the scene .

The ICD reports that when members attend the scenes of fatal shooting incidents, police (including the police involved in the shooting and others who have arrived subsequently) are generally at the scene and the scene has frequently already been processed by crime scene experts.

### **Knowledge of crime scene processes**

It is important that you understand as much as possible about forensics, ballistics and crime scene procedures as possible.

Demonstrating that you understand the procedures involved can contribute to ensuring that those conducting the search follow the appropriate professional standards in their processing of the scene.

It is important to follow a consistently rigorous approach to all crime scene investigations, as a crime scene cannot be reconstructed retrospectively.

It is very important that all places where someone has died or there is an allegation of torture to be searched, as it is possible that torture equipment will be discovered. Crime scenes may provide significant evidence in some other cases as well.

### **Best practice at the 'crime' scene**

1. **Arrive promptly** at the scene – get to the scene as quickly as possible.
2. Ensure that the **integrity of the scene is properly preserved** – you need to establish a firm **boundary** on the perimeter of the scene which only authorised people may enter. This is to preserve the integrity of the evidence, which includes the body of the deceased. It is crucial that the body is not subjected to further injury between the incident and any post-mortem.
3. Ensure that any **witnesses**, or people who may be able to identify witnesses, who may be at the scene are identified and that their identity and **contact details** are reliably recorded.
4. Ensure that the **scene is searched thoroughly** and all potential **evidence** is located.
5. Ensure that the overall scene and any potential **evidence is properly documented**. This should include ensuring that photographic (or video) records of the scene are made and a sketch or sketches made of the layout of the scene identifying relevant locations (such as where and how the body of the deceased was lying and other relevant items).
6. All evidence collected must be **packaged** and **labelled** in a way that it can be easily ascertained where it was found. The sketch of the scene should show this too. Physical evidence is best kept in sealable tamper proof bags.

## 2 DEALING WITH PHYSICAL EVIDENCE

In this section, we deal with physical evidence. Later we will deal with witnesses.

### What is physical evidence?

The term **physical evidence** is used in this manual to refer to a variety of different types of evidence. It includes:

- ≡ **Evidence collected at the scene** – (including biological evidence such as hair or blood samples, fingerprints, and evidence related to the use of firearms or other weapons at the scene).
- ≡ **Documentary evidence** – for example, registers kept at police stations. These are used to clarify issues relating to cases which they are investigating and in some cases these may be used as evidence. Computers are also sometimes seized as physical evidence where it is believed that documents contained on their drives might provide evidence of a certain kind of offence.
- ≡ **Records** – for example, cellphone records can be used to roughly identify the broad area from which certain calls were made.
- ≡ **Photographic or video/film evidence** – this may include photographs taken during a crime or at a crime scene, or footage from closed-circuit television (CCTV) as well as sketches.

### **The purpose of physical evidence and preserving its integrity**

Physical evidence can sometimes be the only link to a specific person in the crime (such as semen in a rape case or fingerprints on a firearm). It can also be used to prove the inconsistency or the implausibility of a statement. For example, if someone says he slipped in a muddy area but there is no mud on his/her clothes.

It is crucial that the integrity of the physical evidence be preserved. This means that it must be possible to show that the evidence was not interfered with or altered from the point at which the alleged crime was committed to the point where it was examined by a forensic expert or is presented in court.

## Using firearms identification and ballistics to obtain evidence

In addition to taking finger-prints from the firearms, some of the other analyses that can be carried out by suitably qualified people relating to the use of firearms in an incident include:

- ≡ **Standard firearms identification tests** – whether bullets or shells were fired from a particular gun.
- ≡ **Residue examinations** – determine whether gunpowder or lead residues have been deposited. When a firearm is discharged a residue is usually left on the hand of the person who pulled the trigger. There could also be residue surrounding the wound or other point at which a bullet entered, particularly if this was at close range (although if a gun was held against someone's skin there may not be any residue). Residue could also be left on clothing. Residue examinations could support fingerprint evidence. However, this type of evidence is not conclusive. In a closed space where everyone in the locality may test positive. At the scene of a police shooting, it is important to check for this evidence from any police officers involved in the incident as well as anyone shot by police who is alleged to have shot at them.
- ≡ **Trajectory analysis examinations** – determine the angle and direction of fire and the location or positioning of a shooter through the geometric measurement and analysis of bullet holes.
- ≡ **Terminal ballistics** – the typical behaviour of different types of ammunition on hitting the target. For example, some bullets fragment on contact with human tissue.
- ≡ **Ejection pattern testing** – defines the position of a shooter based on the location of spent cartridge shell casings in crime scene reconstructions. The exception is a revolver.
- ≡ **Shot pattern examinations** – help to determine the distance of a shooter from a target through analysis of the change in the spread of shot pellets after a shotgun was discharged.

## Disproving a version of events through ballistics

Firearms can also be used to disprove a particular version of events. For instance, the nature of wounds might render a police version doubtful such as where the police say that a person was turning towards them but wounds are squarely in their back.

## Noting and securing firearms and other weapons

When dealing with firearms discharged by police officers, taking the serial number of a firearm which has been recovered at the scene may be adequate for purposes of ballistics tests. However, with some firearms it is possible to swap the barrel and slide. This would mean that the firearm can no longer be linked to bullets which were discharged from it. Ideally, therefore, the entire firearm should be placed in a sealed tamper-proof bag. It is not ideal to rely on the serial number.

In South Africa, the reality is that sometimes there are no plastic bags and as yet there is no standard practice on seizing firearms. Often, only after they have left the scene, will the police officer take the gun and hand it in to the evidence store [SAP 13].

### The difficulties of proving that firearms have been planted at the scene

One IPID investigator indicated that it is very difficult to establish that the deceased in fact had no firearm. Even the absence of physical evidence such as primer residue on the deceased person's hands is not conclusive proof that he didn't fire the weapon. At scenes where the police point to a firearm which they claim belonged to the deceased, it is tempting to just confirm the police version.

Some of the options for an investigator who wishes to clarify the plausibility of claims that a deceased person pointed or fired a firearm at police include:

- Where police say that the person was wanted for one or more crime, you should check the dockets on these cases to check whether there are in fact any statements linking the person to the crime.
- Check on the criminal record of the deceased. If this indicates that the person has a history of the use of illegal firearms, this might lend credibility to the police version of event.
- Get character evidence from family or others living in the area.
- Evaluate the reaction of the community. If it is a known criminal, there might be modest interest or they might even want to burn the body. If the community is outraged, then this may indicate that an innocent person has been shot and that police claims that he was carrying a firearm should be treated with caution.

However, note that such information cannot necessarily be used in court to prove that the deceased did not have a firearm. Even if a parent says in court that their son did not have a firearm they might be asked 'would your boy tell you if he had an illegal firearm'. Your investigation might therefore strengthen your own belief that the police are not telling the truth, but you may not be able to put together the evidence which will enable them to be convicted.

'When dealing with people who are professional in doing these things [planting evidence] it is difficult to convince the court – they don't take circumstantial evidence', an investigator said.



### Clothing

One form of physical evidence that is more problematic to collect is the clothing of a police officer. This may partly be relevant as residue from the firearm which was discharged would be likely to be on the clothes of the police officer, although crime scene experts are able to use an on-scene procedure to check for gun-shot residue on the hands or clothing of someone at the scene.

It may also be relevant where police say they were involved in a physical struggle with someone. In this case, one solution might be for photographs to be taken of the police officer's clothing.

### Documentary evidence

It is crucial to ensure that any document you obtain is the original. Be aware that photocopies of documents may not truly depict the original document. Photocopies will not show up Tippex or pencil erasures.

The entire original logbook is needed as pages may have been removed.

Notes

---

---

---

---

---

---

---

---

## Case study: Crime incident location scenario

Read the crime scene scenario and answer the questions that follow.

Go back through the manual to refresh your memory on best-practice investigation procedures.

Investigators A and B, responsible for investigating human rights violations, arrive at the scene of a fatal shooting incident. It is nearly 9 a.m. The day is overcast and it seems like it might have been raining earlier on. They received a report of a police shooting at about 7 a.m. but have taken more than an hour to get to the scene partly as they had to travel over 100km and the roads were not good.

There is a body lying on a bit of short grass about 10m in front of a small house. There are three police in uniform standing around, two of them smoking cigarettes. A police vehicle is parked nearby. There is also a crowd of maybe 30 people standing around looking on at the scene. Some of them are in small groups while others are standing around individually.

There is no clear indication as to whether any part of the 'crime scene' is supposed to be 'cordoned off' and some of the people are standing quite close to the body. The door of the house is partly open and 5 elderly women arrive and enter the house as the investigators are getting out of their vehicle.

Just after they do so, another police officer comes out of the house and ambles over towards the other three police officers. There is a sound of someone wailing inside the house. The body is lying face down on the ground. It almost seems from the way in which the body is lying, that the deceased person might have been shot after coming out of the house, or might even have come out of the house after being shot inside the house, as the body is lying in a direction facing away from the house.

You are investigator A and are in charge of your investigating team (i.e Investigator B). Discuss the following:

1. What should be the priorities for your investigative team at the scene?
2. What is the first thing that you do when you arrive at the scene?
3. What are the first instructions (or the first request) that you make to investigator B.
4. Is it necessary for you to verify whether the person on the ground is in fact dead?
5. What, if anything, should you do regarding control of the crime scene? Can you assume that one of the police at the scene is currently in charge of the scene? Would you want to take over control of the scene from the police? Would you want to try and ensure that the crime scene is managed properly through giving instructions or making requests to the police officer in charge?
6. How should you approach the three police officers standing at the scene? What should you say to them?
7. How do you establish the parameters of the crime scene? What do you do to ensure that the crime scene is properly protected?
8. List the main kinds of evidence to look out for at the crime scene that might assist you in finding out what has happened.
9. Who is responsible for searching the crime scene? Is it you or are there other people who will be responsible for this?
  - a. If it is you: how would you go about searching the scene?
  - b. If it has already been done by someone else: what would you want to establish from this person?
  - c. If it is to be done by someone else: what instructions or requests would you give them/make of them?
10. What would you do in order to identify possible witnesses at the scene?
11. What assumptions, if any, should you make about the events which have taken place?
12. What equipment will you need?
13. Are there any people who you should call in to assist you at the scene?



# SECTION 4

## 1 **VERBAL EVIDENCE: DEALING WITH WITNESSES, VICTIMS AND SUSPECTS**

An important source for this section is a handbook produced by the Centre for Violence and Reconciliation in February 2008 called *Witnesses and Victims: A guide for police on good practice*.

### Who is a witness?

Witnesses may include:

- ≡ People who were **present when an incident took place** – complainants, suspects, victims and third parties.
- ≡ People who were **present during events which are apparently related to an incident**, such as people who were present when a person, who later died in custody, was arrested.
- ≡ **'Expert witnesses'** – psychiatrists, ballistics experts, pathologists, etc.
- ≡ People who were **not present but may have information** to help make an informed judgement about an incident. One example is people who can tell you whether police claims that a certain person was in possession of a firearm may reasonably be true. These people may give you information which helps you to analyse and understand a case that you are dealing with, but it may not actually be useful as evidence in court.

### What is meant by 'vulnerable witnesses'

There is no standard definition of the term 'vulnerable witnesses' but one description is:

'vulnerability [can be] an individual thing, related to one or more of: age, sex, experience, social and emotional maturity, disability, communication difficulties, dependence on those you are minded to criticise, misunderstanding of what is at issue, anxiety to please, a misplaced sense of guilt, general fears of unknown consequences, lack of experience of anyone wanting your opinion, cognitive disability, learning disability.'

### General guidelines for working with witnesses

- ≡ Introduce yourself as a representative of your agency.
- ≡ State that you are not a police officer.
- ≡ Explain that you are there to discover the truth, not to 'nail' them.
- ≡ Make sure you properly record the witness's words.
- ≡ Deal with issues such as the fear that the witness will be harmed as a result of giving evidence.
- ≡ 'Witness intimidation' has different elements to it including:
  - » physical danger (this may apply even where people have not been threatened)

- » threats of physical or other harm
  - » fear of what the consequences of cooperating with an investigation might be.
- ≡ Try to minimise the inconvenience and stress of serving as a witness at court and supporting them in presenting their evidence.
  - ≡ Have present a support person in interviews.
  - ≡ Use an accredited interpreter where possible to put the person at ease and also to get a more accurate statement.
  - ≡ Use someone from the agency of the same gender if that would make the person more comfortable.

### Identifying and interviewing witnesses at the scene

The approach to interviewing witnesses will vary from situation to situation. If there are only one or two individuals you may take statements right there, provided other investigators are dealing with other aspects of the scene. If the witnesses are able to wait until you are free to interview them, you could take them to somewhere private. Some witnesses prefer to give a physical demonstration of what happened, so you might take them back to the scene. Alternatively, you could get their contact details to interview them later.

It is important to interview witnesses individually and not in the presence of other witnesses, so they don't hear each other's versions. Also, you should take a statement as soon as reasonably possible (such as on the day of the event) as people's memories often lose their clarity relatively quickly.

When you interview them, you should emphasise the need to 'explain only what you have seen' and that they should not 'exaggerate'. Even where interviews are done quite promptly there might be differences between different witness versions on specific details (such as the number of gunshots which they heard) but where there is agreement on the main details this may indicate that the statements are reasonably reliable.

Some witnesses like to do a physical re-enactment. If resources are available, your agency could record a 'walk through' with a witness on video.

### Establishing rapport

Whether approaching police officers, complainants or other witnesses, you should establish a rapport with the person. When there is a sense of rapport between two people, there is a feeling of ease and possibly even trust which enhances the potential for good communication.

### Working with complainants or victims

It is important that you relate to complainants in a **respectful** but **direct** way. You may need to emphasise to them the importance of being able to substantiate their allegations if a case is going to be pursued.

At the same time, it is important **not to anticipate the outcome of the case**, even if the evidence looks strong and the outcome seems likely. You should not make promises that you can't fulfil regarding things that you can't control in order to get people's cooperation. You have to emphasise to them that the results cannot be predicted and you can't guarantee an outcome. You should stress that there are a number of factors that affect the outcome of a case.

During the course of the investigation, you may need to motivate them to **maintain their commitment** to the case. The investigation and prosecution of a case sometimes extends over a considerable period of time. Staying in contact with the complainant and keeping them updated is likely to be beneficial in maintaining such a commitment.

### **Motivating suspects and witnesses to cooperate**

Once you have approached the witness, you need to motivate them to cooperate. One IPID investigator suggested that where witnesses are reluctant, you should try to convince them that giving evidence is the **honourable** thing to do.

You might also explain **what the mandate is of the agency** you work for and emphasise that by giving evidence you will make people less vulnerable to this kind of violation. So their evidence will be of benefit to others.

When dealing with **suspects**, you can also:

- ≡ appeal to the suspect's conscience
- ≡ identify and point out contradictions in the suspect's denial and story
- ≡ offer moral justifications or psychological excuses for the crime and
- ≡ use praise and flattery.

## **2 GETTING COOPERATION IN INVESTIGATIONS WHERE THE POLICE ARE INVOLVED**

All the principles we have discussed about approaching interviewees applies to the police as well. Police are most likely to be cooperative in situations (such as shooting incidents) where they are confident that they have acted within the law and have nothing to cover up.

Securing police cooperation as witnesses will generally otherwise be difficult (although police may provide you with an account of the events that misrepresents what actually happened).

This means that the potential to successfully pursue an investigation against the police may depend substantially on the availability of non-police witnesses and corroborating stories.

Frequently the only witnesses, other than the complainant (and the only witnesses in cases of death), are other police officers. The experience of the IPID is that it is rare to get police witness statements that implicate their colleagues.

Police will often give **very similar or even identical statements** (sometimes called 'homogenised' statements) to people carrying out an investigation against them. This is part of the phenomenon of the 'blue curtain' in terms of which police are known to place a strong emphasis on backing up their colleagues. When they do not back-up the version given by their colleagues they may simply say that they did not see anything relevant to the alleged offence.

Where the members of a group of police were **involved in an activity together** during which abuses were committed, it seems that there is little chance that they will give evidence against colleagues. However, there may

be individuals who were part of the group who did not approve of what the group was doing – or even expressed their disapproval. This does not mean that they will cooperate with investigators as they may feel compelled to fall in with the group.

Nevertheless, it may be a mistake to regard all members of a group as having the same attitudes and motivations and there may be situations where an individual can be motivated to cooperate with an investigation, even though other members of the group that he was part of are not willing to do so.

---

---

---

**Discuss**

Are there any circumstances in which a police officer may give evidence against another?  
How could you encourage this?



Circumstances in which police may act as witnesses against colleagues include:

- ≡ Where a police officer has been killed or victimised by another police officer.
- ≡ When the case is taken seriously by senior state or police officials within the police and there is a concern that their jobs or careers might be jeopardised if they don't cooperate with the investigation. One IPID investigator said that this was most likely to be in cases involving state property or money.
- ≡ In situations where the suspect is a member of a lower (formal or informal) status – i.e. where a higher ranking officer gives evidence against a lower ranking officer. The reverse may occur if the higher ranking officer is unpopular or has treated them badly.
- ≡ Another factor is the nature of the evidence – if the member does not perceive it to be damning – although in the context of other evidence it may nevertheless contribute to proving the case.
- ≡ Where police killings are related to personal arguments, or took place off-duty while they were drunk there, is also less of a tendency for police to protect each other.
- ≡ Where police are not from the same unit.

---

---

---

---

---

---

---

---

---

---

**③ USING THE LAW TO GET INFORMATION**

If you are unable to motivate a suspect or interviewee to cooperate, you may be able to use the criminal laws in your country around immunity or compelling people to give information. However, it is much more useful if witnesses are positively motivated in relation to the prosecution.

Also, remember that suspects are people who may potentially be charged for an offence (such as a police officer involved in killing someone) and have the

---

---

---

---

---

**right to remain silent** in the same way that other people do.

In South Africa, a person may be granted **immunity** in some circumstances by the court if they agree to give evidence and the court is satisfied that they have answered questions fully and honestly (Section 204 of the Criminal Procedure Act).

South African criminal procedure also allows for the possibility of **compelling witnesses to give statements**. Section 205 of the Criminal Procedure Act allows for people to be compelled (under threat of a prison sentence) to provide information relating to an alleged criminal offence which they have information on.

## 4 TESTING INFORMATION THROUGH CORROBORATION

You should always try to corroborate witness's statements.

This includes allegations from complainants. You need corroboration to ascertain if the complaint is true.

Sources of corroboration include:

- ≡ other witnesses
- ≡ physical evidence (post-mortems, reports, fingerprints, clothing, etc.) and
- ≡ other facts which show that the version is consistent or inconsistent with the version given.

### **Case study:**

**An example of where the facts were inconsistent with the police version.**

**The facts:** A boy was arrested after community members complained that he had lit a fire in an area where cattle were grazing. Eight hours later, the boy's body was brought to the local hospital. There were no visible injuries on him, and his clothes were wet.

**The police's version:** The boy had died after complaining of pains in his chest. They did not explain why his clothes were wet.

**Inconsistencies revealed:** The boy's body was examined by an independent pathologist. The post-mortem revealed that his liver was damaged in a manner consistent with being kicked so as to force ribs inwards.

There was no evidence that it had been raining. The bag in which he was brought to the forensic examination was also not wet.

**Conclusion:** The boy had collapsed while being tortured and that the police had thrown him into water in order to try and revive him.



# 5 INTERVIEWING TECHNIQUES

## Common features of good investigative interviewing:

- ≡ Careful preparation prior to the interview, including being aware of the conditions that would have affected what the witness was able to perceive.
- ≡ Establishing a rapport with the interviewee, treating him or her with respect and demonstrating cultural sensitivity.
- ≡ Being careful when dealing with those who are vulnerable, suggestible or suffering from learning difficulties, although it should be noted that the identification of vulnerabilities remains a problem.
- ≡ Allowing the witness to provide an account without interruption from the interviewer – sometimes known as ‘free recall’.
- ≡ Checking and clarifying the account provided against what is known or can be ascertained.
- ≡ Concluding the interview on a positive note and leaving the interviewee with an invitation to provide additional information in the event he or she remembers something new.

Source: Williamson, 2007:81

---

---

---

---

---

---

---

---

### Discuss

The distinction is often made between interviewing (of victims and witnesses) and interrogation (of suspects). The assumption behind this distinction is that suspects often try to conceal information from investigators.

Do you agree with this?

Should one group be treated differently from the other when being questioned?



### DISCUSS

Open a brief discussion about this distinction. Ask whether they would treat suspects differently from victims. If so, how? Would they read both groups their ‘right to silence’, for example? Would they be hostile towards suspects? End by saying that many policing and other investigative agencies have moved towards adopting a fairly standardised approach, whether the interviewees are suspects, complainants or witnesses. Standardised doesn’t necessarily mean identical. For example, the focus of interviews may be different. Witnesses and victims may be required to recall events they observed, whereas suspects would be expected to focus more on their actions and intentions.

Here are another set of principles for investigative interviewing:

- ≡ The **objective** of the investigative interview is to obtain **accurate and reliable accounts** from victims, witnesses and suspects in order to discover the truth about the subject matter under investigation.
- ≡ You should approach the interview with an **open mind** and **test the information** obtained against what is already known or what can be reasonably established.
- ≡ You must always **act fairly** in the circumstances of each case.
- ≡ You are **not obliged to accept the first answer given** and persistent questioning does not have to be seen as unfair.
- ≡ You have **the right to put questions** to the interviewee, even in cases where the interviewee chooses to exercise his or her right to silence.

---

---

---

---

---

---

---

---

- ≡ During interviews, you are **free to ask questions to ascertain the truth**, except in cases of child victims of sexual or violent abuse, which are to be used in criminal proceedings.
- ≡ Victims, witnesses and suspects who are **vulnerable** must always be treated with special consideration.

Source: Gudjonsson, 2007: 470

**Questioning techniques**

We dealt briefly with the need to interview witnesses separately and if possible, in private. We also dealt with the need to interview them as soon after the event as possible and to remind them to only say what they saw or heard.

The questions you ask witnesses will provide you with different kinds of answers.

<p><b>Inviting questions</b> Tell me about...</p>	<p><b>Specific questions</b> What specifically did you notice on her clothing?</p>
<p><b>Open-ended questions</b> What do you know about....?</p>	<p><b>Closed questions</b> Did you see ....?</p>

**Leading questions**

Leading questions are questions which provide hints to the interviewee as to what the answer should be. They amounts to a form of suggestion – conduct on the part of the investigator which influences the evidence of the witness (perhaps intentionally or unintentionally) For instance the question ‘Was the car red?’ is a leading question. A person being interviewed merely has to say yes or no to this and does not have to come up with their own answer. A professional investigator would simply ask ‘What colour was the car?’ Similarly it would be better to ask ‘Did the man have a weapon in his possession’ and then ‘What kind of weapon?’ rather than asking ‘Did he have a gun?’

**Active listening**

In addition to knowing which questions to use to elicit the information you need, it is also important to listen actively.

When you listen actively, you focus on the person you are listening to. The purpose of your listening is clear: to understand what they are saying. An active listener should be able to repeat what the person says. This does not mean you agree with what they say, but that you understand it.

While you listen:

- ≡ Consider if the speaker is tired? Nervous? Tired? Traumatized?
- ≡ Think about the non-verbal cues that show the speaker's frame of mind.
- ≡ Make eye contact with the speaker.
- ≡ Give the speaker time to respond. Don't show impatience.
- ≡ Don't agree or disagree or argue.
- ≡ Let the speaker answer in full. Don't interrupt.
- ≡ Summarise what the speaker has said to show that you understand.
- ≡ Express appreciation to them so that you can build trust.
- ≡ Make sure your body language is non-threatening.

### **The actual interview**

This section gives you a possible format to follow when interviewing witnesses, so that you get the maximum amount of relevant information out of your interview.

The template below is a guideline for interviewing a **victim of torture**. The actual questions asked may vary according to the circumstances. You may also ask the questions in a different order, remembering that people are not always able to recall or tell their story in a logical sequence.

Before you start the interview, record the following details:

- ≡ Name of the interviewer
- ≡ Time and date of the interview (if interview is conducted over several sessions, each session must be recorded)
- ≡ Place of the interview
- ≡ Name of the interpreter or the assistant interviewer
- ≡ Any other people present at the interview.

Details of the interviewee:

- ≡ Details of the interviewee
- ≡ Name (first name, family name and nickname)
- ≡ Age
- ≡ Gender
- ≡ Prisoner identification number (if they have one)
- ≡ Prison/section/police station where they are being held in custody
- ≡ Name and contact details of closest family members
- ≡ Address and contact details outside of prison/police detention
- ≡ Nationality, ethnicity, religion
- ≡ Occupation.

Details of arrest/detention (this may be relevant where a person was tortured shortly after an arrest. It is less relevant in the case of a prisoner who has already spent some time in prison before being tortured):

- ≡ Who arrested the person? Names and identification if possible.
- ≡ When and where did the arrest take place?
- ≡ Who else was arrested with the person?
- ≡ Was there anyone else who saw the arrest taking place?
- ≡ Was an arrest warrant presented?
- ≡ Did the arresting officers say anything during the arrest, and did they state any reasons for the arrest?

- ≡ Was any force or violence, or threatened force or violence used during the arrest?

#### Circumstances of torture:

- ≡ In which prison/police cell or location did the torture occur – bear in mind that the victim may have been tortured in several different locations, or have been booked out and have been taken away from the police station altogether.
- ≡ What questions were asked of the victim?
- ≡ Was any reason given for the torture? (E.g. to get information, punishment, etc.)
- ≡ Who participated in the torture? There may have been many different people present, but people may also have come and gone during the torture. Try and get as much detail of the people participating, including names, identifying details, and information on when they were present. Also find out what official body they were from (police, prisons, army, etc.), the uniforms and any rank insignia.
- ≡ Whether a medical officer was present during the torture, and details of that person. Did this person participate in the torture?
- ≡ Whether the victim saw a medical practitioner before or after the torture?
- ≡ Details of physical torture – include details of what instruments, if any, were used and by whom. On what part of the body was the torture inflicted, and for how long?
- ≡ Details of any emotional or psychological torture – include details of what was said, how often and what other forms were used.
- ≡ Duration of the torture (for how long).
- ≡ Frequency of the torture (how often).
- ≡ Physical symptoms immediately after the torture, and how any symptoms may have developed over time.
- ≡ Description of mental, emotional or physiological impact, immediately after the torture, and over a period of time.
- ≡ Did the victim sign any statements? Who were these made to? Did the victim say anything or complain about the torture in court or to another official.
- ≡ Was the victim charged after the torture?

#### Circumstances following torture:

- ≡ Details of any attempt to obtain medical treatment, and the response given or treatment received. Details of the medical practitioner and date, time and location of any examination.
- ≡ Diagnosis following the examination.
- ≡ Is the victim still in detention, or what was the date of his release?
- ≡ If the person is still in detention, record any details of any change in his/her detention circumstances (e.g. removal to another detention facility or section, etc.).
- ≡ Access to a lawyer.

#### Current situation and symptoms:

- ≡ Victim's state of health prior to the torture
- ≡ Current symptoms and pains experienced
- ≡ Current mental state
- ≡ Any medical treatment the victim is currently receiving, including details of any counselling received.



# SECTION 5

## 1 INTERVIEW ROLE-PLAYS

### Role-play

We are now going to practise some interviewing scenarios. There are two role-plays, one with five and one with six players.

As you prepare your role-play, think about:

If you are the investigator:

- ≡ What is the purpose of your interview?
- ≡ How will you approach your witness?
- ≡ Who the witness is: Suspect? Victim? Police?
- ≡ Vulnerabilities: child, blind, afraid, doesn't speak your language, other?
- ≡ What are the essential questions you need to get answers to? Write a list.
- ≡ How will you motivate the witness to cooperate?
- ≡ What corroborating evidence you would need?
- ≡ What kinds of questions to ask to elicit maximum information?
- ≡ How will you show that you have understood the witness?
- ≡ If you are one of the witnesses:
  - » Who are you?
  - » How do you feel about being a witness?
  - » Do you have any vulnerabilities?

After the role-play, you will reflect on the following:

1. Clarify purpose
2. Engage in active listening
3. Do they observe body language?
4. What type of questions did they ask?
5. Did they use the recall techniques?
6. What did they do to make the interviewees feel at ease?
7. What strategies did they use to get optimal information?
8. How did they establish rapport?
9. Did they take the interviewees back to the situation?



## Role-play 1: GROUP

### Facts

The widespread belief in witchcraft and fear of witches has led to numerous cases of the killing of alleged witches by people claiming to be victims of witchcraft, relatives of victims, or mobs. In one area alone, 60 elderly individuals were murdered on suspicion of being witches during the year; 56 of the victims were women.

At the same time, recent reports in the media have suggested that people with albinism are being killed for their body parts – either by ‘witches’ or by people who kill them and then take their body parts to ‘witches’ – in the belief that their body parts could create power and wealth. There have been approximately 50 murders since 2007.

Three weeks ago, a 14-year old boy with albinism was found murdered with both of his legs removed. The body of the boy was discovered by his friend, Abraham Kaunda. The mother of the boy has reported the matter to the police and to the Human Rights Commission. Since then, afraid for her life, she has fled from her community and no one knows where she is.

The three investigators arrive at the community hall to be met by Abraham Kaunda and two community members, Samuel and Florence.

### You need to:

- ≡ Interview Abraham Kaunda, Samuel and Florence to find out what happened.
- ≡ Discuss your conclusions and decide on a preliminary course of action after the interviews have been completed.

### Three investigators:

You are members of your country’s human rights commission who have been called to the community to take the statements of anyone who can help you to understand what has happened and how to deal with it.

### Abraham:

You found the body hidden in some bushes near your house when you were hunting. You are still terribly shocked. You don’t really want to discuss it with anyone and your answers need to be ‘dragged’ out of you.

### Florence:

You are a 60-year old woman. Three of your friends have been killed over the past two years as suspected witches. In fact, you have heard rumours that people are starting to accuse you of witchcraft (ever since two of the neighbours you have been fighting with died in a bus accident). You are very scared, very excitable and you want the commission to take action NOW!!!

### Samuel:

You are a 20-year old man with albinism. You have recently started university and have been doing research into albinism in your country. You have seen numerous reports detailing attacks on people with albinism in your and in neighbouring countries – these are usually based on the belief that body parts can be used to bring good luck, but also because some of the ethnic groups in these countries have a ‘cultural’ belief that people with albinism are ‘devils’. You are extremely scornful of the commission – why haven’t they done anything until now? Why does it take the murder of a young boy to get them to do anything? What do they even think they can do to stop the attacks?



## Role-play 2: PAIRS

### Facts

Your organisation has been notified that a prisoner, Joe, has been severely assaulted in prison. He has been hospitalised as a result and is still unconscious. The organisation has been instructed to go to the prison to find out what happened. Looking through your records, you see that there have been several reported incidents of assaults by prison officials on staff in the past. As far as you know, disciplinary steps are being taken against some of the officials, but these proceedings are dragging on and have not yet been finalised.

The investigators approach a group of prisoners who were living with Joe in the same cell and were present at the time of the assault. Role-play the interview with the prisoners.

You are the investigators, and you only have the facts outlined above. You must establish rapport with the prisoners and try and get the details of events from them, to determine what happened, who they key role-players were, and whether there was any fault or alleged human rights violation on the part of the prison officials.

### Benjamin:

You are a member of an opposing gang to the one to which Joe belonged. You saw Joe assaulted by prison officials after Joe had been involved in a fight with members of his gang. You don't want to give information on Joe's assault, because you do not support this gang and you believe that Joe 'got what he deserved'. Your gang has an arrangement with some of the prison officials to buy dagga which they smuggle into the prison and which your gang later sells to other prisoners.

### Stanley:

You are not a member of any gang, and you are in fact scared of all the gangs in the prison. You try to avoid getting into trouble and don't want to draw attention to yourself. You will be in prison for another six months, and you want to try and get away without being assaulted or ending up on wrong terms with the authorities or prisoners. You are afraid to talk about the incident because you are afraid that you will be punished by Benjamin and his gang. You also believe that you will get into trouble if you say anything to implicate the authorities. You know that Benjamin's gang actually cooperates with the authorities and will carry out an instruction to assault or kill you if you talk about the role of the authorities in the assault.



# SECTION 6

## 1 **TAKING A STATEMENT**

An important part of your investigation is taking down a statement from the witness. A statement is a record of what a witness has said and should be as accurate a record as possible.

It consists of:

- ≡ a preamble
- ≡ the content
- ≡ a certificate by a commissioner of oaths.

### **The preamble**

This contains personal details including:

- ≡ Full name, including nicknames
- ≡ Age
- ≡ Sex
- ≡ Occupation
- ≡ Home language and whether the statement was translated and, if so, from which language
- ≡ Address
- ≡ Telephone numbers (including home, work and cellphone numbers, or the numbers of a neighbour or relative if witnesses don't have access to a phone)
- ≡ Any other relevant particulars that will help investigators to find witnesses again
- ≡ Any reference or case number for the case.

We recommend that you write this personal information on one page, which is separate from the rest of the statement. This is to avoid giving the accused (defence) this information about the witness, which the accused may use to intimidate the witness. If the defence asks for the statement, you can give it without the page with the personal details.

### **The contents**

This is the 'body' of the statement, where the story is told. Ideally, it should cover all information relating to the elements of the offence that the witness is able to provide. If the witness has information dealing with a number of different offences, the elements of each of these need to be included in the statement, in so far as they are able to provide information on them. The statement should also cover:

- ≡ The witnesses' involvement in the matter, if any.
- ≡ Basic information about the offence, such as:
  - » At what time it took place.
  - » Who was involved: was it just one person or more than one?

- » Who saw it.
- » What injuries were sustained.
- » Who the suspect is.
- ≡ If the witness doesn't know the suspect but saw them committing the crime, it should say what the suspect looked like, what he or she was wearing, and anything else that will help to identify them.
- ≡ If the witness was not an eyewitness but rather corroborating evidence, it should say what evidence they are corroborating and provide information relevant to this.

---

---

---

---

---

---

---

---

**The certificate of a commissioner of oaths**

Each statement should end with a certificate stating that the witness:

- ≡ Knows, agrees to and understands the contents of the statement.
- ≡ Has no objection to taking an oath that what they said is true.
- ≡ Considers the oath to be binding on them.

After this certificate, the particulars of the commissioner of oaths (usually the police officer taking the statement) should be written down and the commissioner of oaths must sign it.

**Write**

Think back to one of the interviewees in the two role-plays you did. Choose one of the characters. Write a statement for that character. Make sure you include all the information listed above.



**Homework**

Read the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Read the report of the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment by Manfred Nowak, including the assessment of conditions of detention.



# DAY 3

Review statements

**SECTION 7**

Police officers as the subject of investigation

**SECTION 8**

Investigating incidents in custody: torture, deaths in custody and sexual offences

## REVIEWING STATEMENTS

Swap the statement you wrote with someone else in the group. Go through their statement according to the following checklist:

	YES (AND NOTES)	NO (AND NOTES)
<b>INVESTIGATOR DETAILS</b>		
Full details of investigator who took the statement		
<b>INTERVIEWEE DETAILS</b>		
On separate page		
Full names, including nicknames		
Age		
Sex		
Occupation		
Home language		
Was statement translated? From which language?		
Address		
Telephone numbers (including home, work and cellphone numbers, or the numbers of a neighbour or relative if witnesses don't have access to a phone)		
Any other relevant particulars that will help investigators to find witnesses again		
Any reference or case number for the case		
<b>CONTENTS</b>		
What the incident was		
Time of the incident		
Who was involved: was it just one person or more than one?		
Who saw it?		
What injuries were sustained?		
Who is the suspect?		
If the witness doesn't know the suspect but saw them committing the crime, it should say what the suspect looked like, what he or she was wearing, and anything else that will help to identify them.		
If the witness was not an eyewitness but rather corroborating evidence, it should say what evidence they are corroborating and provide information relevant to this.		
<b>OTHER</b>		
Was the statement written in a neutral style? (i.e. not judgemental)		
Was there evidence of exaggeration?		
<b>CERTIFICATE OF COMMISSIONER OF OATHS</b>		
Witness knows, agrees to and understands the contents of the statement.		
Has no objection to taking an oath that what they said is true.		
Considers the oath binding on them.		
Signature of commissioner of oaths		
Date and signature		

# SECTION 7

## 1 POLICE OFFICERS AS THE SUBJECT OF INVESTIGATION

This section focuses on issues to do with investigating the police. Police actions that you may have to investigate as human rights violations include: killings by police, a death in custody alleged to be connected to police action, torture, sexual violence against people in custody and corruption. We have discussed some of these earlier in this course.

### The use of excessive force

The use of force is part of the police role but where force is used it is supposed to conform to certain principles.

The basis of any investigation into the use of force will either be:

- ≡ an allegation of a crime related to the use of force by the police, or
- ≡ the need for official exercises of power and authority to be subject to scrutiny.

We have noted that in so far as it is possible for an investigation to do so, the investigation will in many circumstances serve to verify that police have acted within the law.

In other circumstances, the investigation may conclude that there is no evidence, or no substantial evidence, that the police have acted outside the law.

In still others, the investigation may conclude that the use of force was unlawful.

In talking about the use of force by police people often distinguish between:

- ≡ Lethal force ( or 'deadly force') – when discussing lethal force people usually focus on the use of firearms by police but lethal force may be understood more broadly to refer to any use of force by police capable of causing death.
- ≡ Non-lethal force – most of the time when police use force it falls into this category. However because lethal force has more serious consequences, investigations into the use of force by police are often focused on incidents of lethal force rather than non-lethal force.

Police are generally authorised to use force which is necessary to achieve a lawful objective and proportional to the circumstances. This means that:

- ≡ Necessary – if there are reasonable alternative means to achieve the objective they should not use force. The force used should be no more than is necessary to achieve the lawful objective.
- ≡ Proportional – this applies to both of the following:
  - » Where a person threatens or resists the police - this means roughly the same as the 'necessity' principle i.e the force

must be proportional to the resistance or threat and not more than is necessary to overcome it.

- » Where a person is fleeing from police - laws in many countries do authorise police to use force to prevent a person from fleeing. Here proportionality concerns the seriousness of the offence which the fleeing person is suspected of. If it is a high level of force such as shooting at the person then the person must be suspected of a serious offence. There should also be very strong grounds for believing that they have committed the offence.

---

---

---

---

---

---

---

---

Generally it is only when police use force which is not necessary or proportional that one would regard the force as 'excessive'. In such incidents police may be charged with criminal offences including: offences of murder or culpable homicide (where someone is killed), assault with intent to inflict grievous bodily harm (assault GBH) or common assault.

**Why do police use excessive force?**

**Discuss**

What makes police officers use excessive force? Or torture? Are they just bad apples? Trigger happy? Or are there other factors?

What implications do these factors have for human rights agencies?

What could you do about it?



Reason why police use excessive force	What the implications are for the oversight agency

---

---

---

---

In the section below, we focus mainly on investigating lethal force and killings by police.

**Circumstances of police killings**

Killings by police take place in a number of different circumstances. These include:

- ≡ **In the course of police duties** – e.g. during a crime which they encounter in progress, when they are carrying out arrests, or during investigations.
- ≡ **Off-duty** – police sometimes ‘place themselves on duty’ when they are off-duty and encounter crimes in progress so that killings ‘in the course of duty’ may take place when police are off duty.
- ≡ **Unrelated to police duties** – e.g. an argument or dispute involving police officers.

---



---



---



---



---

Reasons why police use excessive force	Implication for human rights agencies
<p><b>Inadequate training</b></p> <p>Where police are using excessive force or torture, it may reflect a lack of skills and expertise to achieve their ends lawfully.</p>	<p>Investigations into human rights abuses may succeed in discouraging police from abuses. The consequence may be that they also contribute to neutralising police efforts against crime and feed into demoralisation in the police agency.</p> <p>Efforts to clamp down on abuses therefore also need to be accompanied by measures intended to support police in providing effective policing services while adhering to human rights standards as well as in developing a vision of policing which involves effective policing which conforms to human rights standards.</p>
<p><b>Encouragement to use excessive force or torture</b></p> <p>Their managers or supervisors encourage them to use torture or excessive force – or deliberately ignore information to the effect that they are involved in these practises. Often managers know that these things are not supposed to be done but they are also reluctant to take steps to discourage these practises. They too may believe that these practises are necessary for police to get their work done and are not conscious of the type of guidance which would assist police in understanding how else to do their work.</p> <p>Likewise police and even political leaders also send out messages which implicitly or explicitly encourage torture. For instance they may encourage police to show no mercy to criminals.</p>	<p>The role played by the investigative agency may be met by ambivalence or even hostility from those managers and supervisors within the police as well as politicians. One may have a situation of mixed messages where they for instance claim to support accountability but also undermine the investigative agency.</p>
<p><b>Public pressure to combat crime</b></p> <p>Public pressure on the police may also reflect on combatting crime and violence by any means.</p>	<p>The agency may not be able to take public support for granted and may have to continually work to defend its legitimacy.</p>
<p><b>Inadequate legal framework</b></p> <p>High levels of the use of lethal force may partly reflect the fact that legislation does not restrict the use of lethal force in an appropriate way.</p>	<p>If the law does not restrict the use of lethal force in an appropriate way then the investigative agency may have little authority to question the many shootings which take place.</p>

## Questions to ask when dealing with killings by police

Here are some questions you should ask yourself when you investigate killings by police.

### Was the death actually caused by the police?

The evidence has to actually prove that the death was in fact caused by the police. For example, a person who was shot in the leg by the police and alive, but who is then run over by a car and dies, may not be said to have been killed by the police.

### Were the police acting in self-defence?

#### What was the conduct of the deceased person during the incident?

Usually the justification given by the police for the use of lethal force is that it was necessary for their own defence. As the UN Special Rapporteur on Extrajudicial Executions says: 'The official police account of any killing is generally predictable: the suspect was an armed criminal, there was a 'shoot-out', and the police reacted with appropriate force.'

To rely on self-defence as a justification for killing someone, a person must be able to show that the threat was of a serious nature, such as a threat of death or serious bodily harm and that the force used was immediately necessary to prevent the threat from materialising.

### Is there any evidence which corroborates or contradicts the police version of events?

- ≡ Why did the police believe that they were in danger?
- ≡ Was the deceased person armed? If so, with what weapons?
- ≡ If not a firearm, could the police have overcome the threat posed to them without using lethal force? Were there alternatives open to the police?

### Was the deceased person armed?

To justify a killing in self-defence the police usually need to show that the person who was killed was armed with a potentially lethal weapon.

### If the person was killed while fleeing:

- ≡ What legal provisions are there relating to the use of lethal force by the police? What does it say about the use of lethal force against fleeing people?
- ≡ What offence do the police say the person was suspected of?
- ≡ What evidence do the police have against the person whom they killed? Do they have substantial grounds for suspecting him or her of the offence in question?
- ≡ Were there reasonable alternatives available to the police to apprehend the person at this point or later on?

### How many police officers were present?

- ≡ How many police officers were at the scene?
- ≡ Which police officers were actually involved in the shooting?

**Questions on the use of firearms:**

- ≡ What was the nature of the wounds?
- ≡ Where were they located on the body of the victim?
- ≡ What do they indicate about the direction from which the person was shot?
- ≡ What do they indicate about the distance (range) from which the person was shot?
- ≡ Is this consistent with the police version of what happened?

**2 POLICING OF PUBLIC GATHERINGS**

You may have to investigate the police's use of force related to public gatherings. There are two issues that emerge as relevant to the policing of public gatherings: denial of the right to freedom of expression and assembly; the excessive use of force.

Your focus here would be similar to an individual incident. In the event of death or injury, did the person present a threat of such a nature that it created the need for force or lethal force to be used for defence? If no justification is found, the police may be charged with murder, culpable homicide or assault (or with assault GBH).

You may also focus on whether the police had some justification for disrupting the demonstration or gathering. Here the focus would depend on what legal provisions allow for demonstrations and what these say (or imply) about when police may disrupt or interfere with a demonstration.

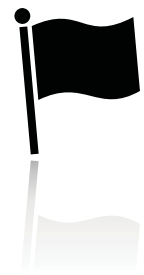
Some possible questions to ask when investigating police violence in a public gathering situation:

- ≡ Are there indications that political leaders or government objected to the demonstration? What was the political context and what were the circumstances before the demonstration(s)? Were any statements issued by government officials regarding particular political parties or individuals or demonstrations? Did government officials issue any warnings beforehand?
- ≡ Had authorisation been granted?
- ≡ Was violence used by the demonstrators (or *agents provocateurs* amongst the demonstrators)? Were armed, intoxicated, or aggressive individuals present? Were gunshots fired from within the crowd?
- ≡ How many police were at the location? Which branches? Who had overall responsibility for the demonstration? What type of weapons and other instruments were at the disposal of the police? Did they use *agents provocateurs*?
- ≡ What tactics were used by law enforcement officials? Were peaceful means used before resorting to force? Were demonstrators dispersed? How? Did the police pursue fleeing individuals? For how long? Were the police seeking to arrest individuals?
- ≡ How many victims were there? What was the nature of their injuries or cause of death?
- ≡ Were members of the police force injured or killed? How many? What was the nature of the injuries? Where did they occur? (e.g. near where the alleged killing occurred?)
- ≡ Were there any witnesses to the use of force? Were a large number of individuals arrested following the incident? Were there cases of alleged ill treatment? Were any charges brought? Did the police harass witnesses to the killings or relatives of the victims? Did the police charge witnesses?

### 3 CHALLENGES YOU MAY FACE WHEN INVESTIGATING THE POLICE

#### Note

Investigations of police uses of force are not necessarily investigations of alleged crimes, unless it is specifically alleged that a crime has taken place. Where there is no such allegation, the basic motivation for your investigation is the need for official exercises of power and authority to be subject to scrutiny and is therefore one of the ways in which society ensures the accountability of the police.



There are many specific challenges that you will be faced with when investigating the police. Some of them are discussed below.

#### Discuss

Brainstorm the challenges that you might face or have faced when investigating the police.



#### Abuses and violations not reported

Notes

The reasons why police violence is often not reported include:

- ≡ the marginal status of the victims – they may be poor, illiterate, immigrants and therefore less likely to follow formal channels for lodging complaints)
- ≡ fear (often victims are explicitly threatened by police), and
- ≡ sometimes victims do not regard an assault as very serious or have other reason why they think it is not worthwhile to report an allegation.

---

---

---

---

---

---

---

---

---

---

#### Attitudes, beliefs and concerns about being held accountable

In some cases, police believe that it is necessary for them to commit certain types of violations as a way of achieving the 'crime fighting' mission of the police. Even members who are not implicated in the abuses may be sympathetic to those who are alleged to have committed the violations and may therefore be hostile to the investigation. An independent agency which investigates alleged or possible abuses by police is often not welcomed by police.

Some police are also accustomed to regarding themselves as 'untouchables' who are above the law. They may find it very difficult to accept the fact that they are subject to oversight and accountability from other agencies with investigative powers.

Even where they feel that they have acted within the law and in terms of standards of integrity, they may feel anxious about submitting a statement to investigators in case they inadvertently say something that ends up being held against them. They might feel that after a shooting incident where they have acted in terms of their duties, they should be seen as deserving of support rather than treated 'like a suspect' and may feel that the investigative agency is treating them like suspects

Sometimes police may be falsely accused of abuses such as torture or assault. They may be afraid that the agency will confirm some allegations of this kind against them despite their innocence.

### **Generalised non co-operation**

Related to some of these attitudes there may be a generalised hostility to the investigative agency. Police may feel threatened by being subject to scrutiny so that investigators may sometimes face a generalised sense of resistance and non-cooperativeness from the police which is not related to a specific matter which they are investigating. This may even come from senior police officials.

### **Knowledge and access enable them to interfere with investigation process**

Due to the fact that they police are able to obstruct investigations in a number of ways. Including:

The police are a key cog in the machinery of the criminal justice system and have knowledge, access and power in terms of which they are able to obstruct investigations against them.

- ≡ Sometimes the police (even senior police) may prevent investigators from getting access to police stations.
- ≡ The police may move suspects who have been subjected to abuse to another station in order to prevent investigators getting access to them.
- ≡ Police officers suspected of offences may refuse to make themselves available to stand in ID parades.
- ≡ The police actually involved in a shooting may deliberately leave the scene and make a point of avoiding investigators who are trying to contact them.
- ≡ Police are well placed to interfere with investigations by tampering with evidence or interfering with witnesses – for instance it is often relatively easy for them to plant firearms at the scene of shooting incidents partly because in the course of their work they come into contact with illegal firearms and so have ready access to weapons to plant at these scenes. In addition, the police may be relatively well placed to intimidate witnesses.
- ≡ In cases where the complainant alleges that he was assaulted by the police, one of the tactics sometimes used by police to prevent the charges from being proved is to lay charges against the complainant



## 4 BEST PRACTICE IN ADDRESSING THE CHALLENGES OF INVESTIGATING THE POLICE

### Public trust and cooperation

Motivate cooperation by pointing out the fact that the police are subject to scrutiny. This can help to increase trust and cooperation with members of the public. For instance, where an independent agency finds that there is no evidence to indicate that a criminal offence has been committed, this is more likely to be believed by members of the public. Where the police just say this themselves, members of the public are more likely to see this as a possible cover-up.

### Proving that the police in fact acted within the law

We have noted that investigations into the police use of force must only be seen as investigations of a crime if there is an allegation of a crime. Otherwise, the basis for the investigation is just one of police oversight and accountability.

The importance of accountability – when investigating killings by police, it may be worthwhile to emphasise the fact that all killings should in principle be accounted for and that it is undesirable that there be no accountability for such actions as this feeds into a climate of impunity. Investigations are therefore a means of ensuring adherence to the law.

### Professionalism and objectivity

The fact that the investigative agency approaches things from a professional point of view will assist you in earning the respect of the police as well as discourage abuses. You should emphasise your professionalism and objectivity to the police and that, in so far as it is possible for an investigation to do so, your investigation will serve to verify that police have acted within the law.

### The benefits of complying with high standards

At the end of the day, the investigative agency can only win respect for its role if there is support from the police for a style of policing which is based on respect for human rights. The key point here is that public cooperation is critical to the effectiveness of the police and can best be achieved if the public themselves trust the police and have confidence that the police adhere to professional standards. This includes respecting human rights.

### Make sure your powers are known

With problems of non-cooperation, it may be helpful to make sure that the officials that you are dealing with are aware of your powers. The fact that IPID investigators are provided with the powers exercised by police officers, and that state agencies have a general duty to cooperate with them, gives them considerable authority to require cooperation from the police.



### **A pattern of fatal shootings**

One IPID investigator referred to a pattern of killings involving a specific specialised unit in the area in which he is working. The typical shooting involving members of the unit entering a house. If there is a witness in the house then the witness is removed from the house. Then the suspect is taken to a bedroom where, it is claimed, he reached for a firearm and was then shot. Similar killing also take place during 'pointing outs' when suspects who are in custody are taken out by investigators 'on investigation' and supposedly agree that they will show investigators where a weapon or other object taken in a crime or used in the commission of a crime may be found. The killings are characteristic of a specific unit and the names of the same individual police officers associated with this unit come up again and again. Other similar units in the province are not associated with killings. The investigator noted that, even if you have suspicions, you can't prove that there is anything unlawful about these shootings which are consistently presented as shootings in self-defence. But he said you have to conclude that 'either they are very unlucky' in that they keep encountering circumstances in which suspects pull firearms on them, or there is something else going on.



# SECTION 8

---

---

---

---

---

---

---

---

---

---

## 1 INVESTIGATING INCIDENTS IN CUSTODY: TORTURE, DEATHS IN CUSTODY AND SEXUAL OFFENCES

There is frequently a need for incidents or allegations connected to custodial environments to be investigated. We will focus on three of the most serious types of cases which take place in these kinds of environments: torture, death in custody and sexual offences (sexual offences are of course not restricted to the custody environment – most sexual offences involve people outside of custody).

Though there are other types of custodial institutions (such as mental institutions) the main places where these kinds of cases take place are police custody and prisons.

### Association of torture, deaths in custody and sexual offences with the police and prison custody environments

	Police Custody	Prisons
Torture	When torture takes place this is often when people are in police custody.	Allegations of ill-treatment relating to people in prison do not usually amount to allegations of torture and may often be described as allegations of 'cruel, inhuman or degrading treatment' (see box below).
Deaths in custody	Deaths in custody tend to be the result of (i) natural causes (with alcohol or other substance use sometimes being a complicating factor); (ii) suicide; (iii) injuries. In police custody the injuries are sometimes sustained by people prior to them being taken into custody (they may be injured by the police, members of the public or, for instance, in vehicle accidents). Where injuries are sustained in custody this may be at the hands of police or other inmates.	Deaths in prison have some common characteristics with deaths in police custody but also have differences. For instance: there are probably more deaths from natural causes related to the fact that people spend longer periods of time in prison (with bad prison conditions being an aggravating factor).  Substance abuse is less likely to play a role as people have less access to large quantities of alcohol etc.  In so far as injuries are a cause of death these are mostly injuries sustained while people are in custody.
Sexual offences	People in custody are vulnerable to rape or other sexual offences both from police and other inmates.	Though people in custody are vulnerable to rape or other sexual offences both from officials and other inmates in many countries the more serious part of the problem is sexual offences by fellow inmates

---

---

---

Note in relation to deaths in custody that:

- ≡ They are not necessarily linked to offences as they may be the result of natural causes or the result of self-inflicted injuries or suicide. (Even in cases where a person dies as a result of injuries inflicted by another the person may not be guilty of an offence – if, for instance, s/he was acting in self defence.) However, even where they are the result of natural causes, issues to do with conditions in custody – such as access to medical treatment may be a contributing factor.
- ≡ They are sometimes linked to torture (or other assaults or ill-treatment) so that a death-in-custody case may be both a death-in-custody and a torture case.

---



---



---



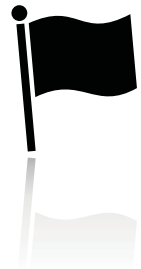
---



---

### What is cruel, inhuman or degrading treatment or punishment (ill-treatment)?

- ≡ Cruel, inhuman or degrading treatment or punishment is usually less severe treatment than torture. In addition, an act which might constitute torture in one context might be ill-treatment in another. For example, whipping a prisoner might constitute torture when the person is deprived of their liberty, it might constitute ill-treatment if the person is not in custody. Ill-treatment does not always involve intent, nor is it necessarily inflicted for any purpose.
- ≡ Ill-treatment in the context of a person deprived of their liberty might involve:
  - » Harsh or neglectful treatment – such as poor or unhygienic conditions; lack of bedding or clothes; overcrowded conditions.
  - » Unlawful or excessive punishment or physical abuse of prisoners.
  - » Failing to protect prisoners against sexual abuse or rape by other prisoners. However, if a warder intentionally puts a female prisoner in a section together with males knowing she will be raped, this may constitute torture.
  - » In some countries, torture is a criminal offence whereas cruel, inhuman or degrading treatment or punishment is not. However, any of these acts may constitute an existing statutory or common law offence, such as assault, intimidation, etc.
  - » It is not always necessary to distinguish between torture or ill-treatment, except for the purposes of prosecution. In terms of the UNCAT, 'states must take legislative and administrative actions to prevent both torture and other forms of ill-treatment'.



### Discuss

What do you know about the prevalence of torture, death in custody and sexual offences in your country?

What is the government's attitude to it? Is your country party to The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)?



## Case study

The pages that follow contain fairly detailed information on Investigations into torture and deaths in custody. Use a case study you have been involved in or read the scenario below. It involves allegations of torture and a death in custody. Analyse the scenario in terms of the questions.

Read the information on torture and death in custody.

### Facts

Mrs Mabaso comes to your organisation's office in a state of distress. She tells you that two weeks ago on a Saturday there was a riot in her neighbourhood. The mayor's house was burnt down.

Later that night, her son, Eugene and three of his friends were arrested at their houses. She has not seen Eugene since then. Yesterday, one of the friends, Themba, came to her house and told her that he had just been released by the police. He came to tell Mrs Mabaso that Eugene is dead. She believes the police tortured and killed her son.

On her request, you investigate the matter. First, you contact Themba and the other two friends, Simon and Frank and take statements from them. Themba tells you that he was not involved in the riot. He was actually visiting a friend in another village that day, and was arrested when he got home. He says they were arrested at about 11pm that night and taken to a building near the police station in District 5.

The four young men were kept in a room in this building all night. In the morning, a police officer in plain clothes took him to another room, where there were two policemen, also in plain clothes. They questioned him about the events of the Saturday, and in particular they were interested in a person called Levo. He told the police that he was nowhere near the riot, and that he didn't know Levo. Themba describes the room where they were interviewed as an ordinary office with a desk, some chairs and a filing cabinet. He was then taken back to the room where the other three were waiting. He says that one police officer then took Eugene out of the room. He says he was gone for about half an hour.

The policeman then came back to the room and took Simon to the interviewing room. Simon says that when he got to the room, Eugene was sitting on a chair, but he looked very dazed. The police officer told Simon to help him back to the room where the friends were being held. Simon did this, but he says Eugene's legs kept going slack, and he had to half drag him across the courtyard to the room. Eugene did not talk, and when they got him back to the room he seemed to fall asleep. Soon, he was making snoring noises.

Frank was never taken out of the room and did not meet with the policemen. He says he heard a shout at some stage while Eugene was with the policemen. He says that during the afternoon, the snoring noises Eugene was making continued and at one stage there was foam coming out of his mouth. The friends tried to wake Eugene, but could not. They shouted for the police, but it was only late afternoon on Sunday that the police came to take the boys and admit them to the police station. The four were put into a cell. Again they tried to tell the uniformed policemen that something was wrong with their friend. However, they were ignored.



### Case study continued...

When a new shift came on duty at about 8pm, one of the police responded to their cries. He took Eugene out of the cell. That was the last time the three friends saw Eugene alive. All four young men are between 18 and 21, and are currently unemployed. Simon has a charge of public violence related to another incident outstanding against him.

Themba says that when he was released, one of the uniformed policemen at the police station said, 'It's a pity your friend didn't make it.' When Themba asked what had happened, the policeman told him that he had died in hospital.

You conduct an investigation at the police station. The police station is an old one, with a cell block some distance from the charge office, and also some distance from the administrative office. You ask to be shown the room where the friends had been held, and the place where they were interviewed. They had been held in a shack adjacent to the police cells. The interviewing room was an ordinary office, as described by Themba, with desk, chairs, and a metal filing cabinet. Everything looked clean and orderly, and your search revealed no bloodstains or obvious instruments of torture. You checked the cell registers, and see that the friends were only admitted to the police station at 4 p.m. on the Sunday. There is no record of any complaints made by them, until it is noted by the new shift that one of the inmates (Eugene) was sick and was taken to hospital. You see that the friends were discharged from the police cell two weeks later, and that no charges were laid against them.

You make enquiries about what happened to Eugene and are told that he was admitted to hospital, but died at about midnight on Sunday. The hospital records confirm this and state that death was as a result of a suspected epileptic attack. There was a post-mortem performed on the body by the local district surgeon. It does not seem to be very thorough. No obvious markings on the body were reported, but there was bruising on the right side of his head near his temple. There was no fracture in his skull, but there was some evidence of a cerebral haemorrhage. The body was released. Unfortunately, you cannot perform a second post-mortem because the body was cremated. The police tell you that they tried to contact the family, but had been unable to locate them.

You try to interview the three police officers who interviewed Themba and Eugene. They refuse to talk to you, but hand you copies of their written statements. All of the statements are very similar. They state that they arrested the friends on suspicion of public violence. They were interviewing them to obtain details of the event of the Saturday when the mayor's house was burnt down, and also to find out whether they knew who else was involved. They say they were following standard techniques. When they interviewed Eugene, they asked about Levo. Suddenly, they say, Eugene stood up in a state of panic and tried to run out of the door. But as he was running, he slipped on a carpet and fell, hitting his head on the steel cabinet in the corner. They said that they revived Eugene, and realised that he was in too much pain to continue the interview, whereupon they called Simon to help take him back to their holding room. They say that none of the friends had been handcuffed during the interview.

You make enquiries about this police station, and learn that there are numerous allegations of police violence against suspects, and that some people who have been arrested have complained of torture before.

You are going to have a meeting with your supervisor to discuss the case. She has requested that you analyse the evidence collected so far to decide whether there appears to be a human rights abuse and if so, whether there are any further steps you need to take in your investigation. In your analysis, you need to consider the following:

**Case study questions**

1. What are the possible human rights violations or other infractions that could have occurred during this incident?
2. What evidence can you gather and which of the allegations can you best substantiate?
3. How do the statements of the friends corroborate or conflict with the allegations of abuse? How reliable is their evidence?
4. How would you evaluate the statements of the police, in terms of credibility?
5. Whose evidence appears to be more plausible ? Why?
6. What other evidence or information might you be able to obtain?
7. What difference would this make to the type of charges you would put to the police?

## 2 TORTURE

### What is torture?

Article 1 of UNCAT provides the following definition of torture:

'Torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes of obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.



### Summarised definition of torture

To summarise this definition, there are four essential elements to torture which may distinguish it from other forms of cruel, inhuman or degrading treatment or punishment.

- ≡ Torture must cause **severe mental and/or physical pain or suffering**. Torture can also be caused by omission, for example by refusing to provide food or water to a detainee. The severity of the suffering is what distinguished torture from cruel, inhuman or degrading treatment or punishment, though severe physical injury is not a required element.
- ≡ Torture must be caused **intentionally**. Negligence does not amount to torture.
- ≡ It must be for a **purpose**. Article 1 above lists several possible purposes for torture, but these are not exclusive.
- ≡ Torture must be committed by **a public official**, or with the consent or acquiescence of a public official, or with their instigation. It may also be committed by a person acting in an official capacity. Torture may also include inter-prisoner abuse if it occurs with the acquiescence of the state.

Notes

### Examples of forms of torture

Torture can take many forms, including

- ≡ Blunt trauma – assault, kicking, punching, pushing or beating with whips or truncheons or falanga (beating on the soles of the feet)
- ≡ Positional torture – suspending a person, stretching their limbs apart, or requiring them to stand or sit in a certain way
- ≡ Burns – with electrical instruments, cigarettes, heated metal
- ≡ Electric shocks
- ≡ Asphyxiation – tying a wet or dry cloth or piece of rubber or plastic around a person's mouth and nose.
- ≡ Crush injuries
- ≡ Pharmacological torture – using toxic doses of a chemical substance

- ≡ Water torture – submersion, water-boarding, forced ingestion of liquids or food
- ≡ Sexual violence – sexual injury, rape or molestation
- ≡ Amputation of limbs or body parts
- ≡ Conditions in custody – deprivation of light, air, water and food, solitary confinement in extreme circumstances, unhygienic conditions, extreme heat or cold and extreme noise
- ≡ Deprivation of stimuli – such as lack of sound or light.

Torture is not always physical, but can include psychological and emotional torture, such as:

- ≡ Humiliation – verbal threats or being forced to carry out a humiliating act
- ≡ Threats of death or harm to oneself, family or friends
- ≡ Being forced to witness or participate in torture or atrocities committed on others
- ≡ Psychological techniques – to break down a person's resistance; make a person scared or vulnerable, exposure to ambiguous messages
- ≡ Behavioural techniques – forcing a person to act in a way contrary to their beliefs – for example being forced to eat pork if one is Jewish.

Torture may result in physical injuries or harm or death. However, often the physical symptoms may be hard to detect, or will have faded by the time of a medical examination. This should not prevent the investigator from believing that torture did occur. Some physical effects last for many years after the event, and torture victims may suffer from badly repaired bones, nervous or muscular damage and other symptoms for long periods, or even permanently. It is necessary for a medical expert to diagnose the physical symptoms and to indicate whether it is likely to have been caused by torture, and by what kind of act.

Torture victims often suffer from psychological or emotional symptoms for long after the event. This may be a result of the physical torture, as well as any psychological torture. This is because the torture aims to destroy the victim's sense of self. Many victims suffer from symptoms of Post-Traumatic Stress Disorder (PTSD). This is a collection of symptoms which may include: constant re-experience of the trauma; hyper-arousal; avoidance or emotional numbing; depression; dissociation and distancing of the events; sexual dysfunction and substance abuse. A psychologist would need to examine a victim to diagnose these or other symptoms.

## Investigating torture

Investigating torture is the process of collecting facts which would establish whether an act of torture has been committed. This is for the purpose of assisting to bring about the prosecution of any perpetrators of torture, as well as to prevent further occurrences of torture.

Torture investigation consists of three steps:

STEP 1 Gather material evidence	STEP 2 Interviews	STEP 3 Assessing the evidence
<ul style="list-style-type: none"> <li>• Medical evidence</li> <li>• Photographs of the scene</li> <li>• Physical torture instruments</li> <li>• Official documents and correspondence</li> <li>• Site inspections</li> </ul>	<ul style="list-style-type: none"> <li>• Victim</li> <li>• Key witnesses</li> </ul>	<ul style="list-style-type: none"> <li>• Evaluation of the evidence to determine whether it indicates that torture has occurred.</li> <li>• The assessment must establish whether the facts fit with different elements of torture.</li> </ul>

## Receiving the complaint

When a detainee, relative or lawyer lodges a torture complaint, an inquiry must always take place. Complaints of torture must be dealt with immediately and investigated by an impartial authority which has no relationship to the organisation or individual which is being investigated or which is prosecuting the alleged victim.

## Details needed in the complaint notification

A complaint may be lodged with the Human Rights Commission by an affected individual, a family member or an interested party. The notification of the complaint should outline the basic details of the complaint, sufficient to allow the investigator to understand who has been affected by the alleged torture; where this has happened; and when this has happened. If necessary, the investigator can conduct follow up phone calls, or enquiries, or even conduct a brief visit to the prison to find out about the allegation. Acknowledge receipt of the complaint.

## Authorisation and mandate to investigate

Get a senior official at your organisation to authorise an investigation of this matter and to outline the scope of the mandate of the investigation.

The mandate should outline that the investigation deals with an alleged human rights violation. It should specify the location/s in which the alleged violation took place, and identify the victim/s if possible and the time frame. It is useful to have a mandate which can better define the scope of the investigation and which will advise the authorities to be investigated of its purpose. The mandate should be signed by a senior official of the Human Rights Commission or other investigating body. If appropriate, the mandate should identify in terms of which legal provisions it is being conducted.

Sometimes the Human Rights Commission may instruct an investigating body

to conduct the investigation on its behalf, and the investigating body is given such powers to conduct the investigation as the Human Rights Commission would have.

The investigator must respond as soon as possible to a complaint of torture. This is to offer protection to the alleged torture victim, as well as to collect evidence before it is destroyed.

**STEP 1 Gather material evidence**

**Prepare for the investigation:**

Make sure that you understand the definition of torture and ill-treatment

Find out what your Constitution and national legislation says about torture.

**Gather the facts:**

- ≡ List all that you know about the allegation of torture. This will come from details of the initial complaint, and any follow up enquiries or visits that were made.
- ≡ List everything you know about the location where the alleged torture took place.
- ≡ List what it is about the case that you need to confirm through other evidence; what you do not know and have to find out; and what information is missing.

**Seek expert advice:**

It is a good idea to consult with senior colleagues about the case and to ask advice on how to go about the investigation. You can also talk to forensic, legal or medical experts to understand better how to go about the investigation and about what evidence needs to be collected to prove the allegation in the circumstances of this case.

**List possible sources of information:**

When conducting an investigation it is important to interview as many relevant witnesses as you can. Write a list of possible witnesses or sources of information you can approach, bearing in mind that you might expand the list as the investigation progresses. Possible sources include:

- ≡ The head of the institution in which the person was detained or imprisoned.
- ≡ The head of the section; the duty officer; or other officers or officials on duty at the relevant times.
- ≡ Medical personnel from the institution – especially where the person has been given medical treatment. Though this may be relevant even where medical treatment has not been given so as to establish the usual procedure in the event of an injury or illness.
- ≡ Other prisoners or inmates.
- ≡ The victim’s family or support group.
- ≡ Other people or agencies that the victim may have come into contact with either before or after the alleged torture took place. For example, if the person was arrested at work, it might be important to interview some of the person’s colleagues to find out the state of the person’s physical health at the time of the arrest, and also

whether they witnessed any abusive behaviour at the time of the arrest.

- ≡ Any police officer or investigating officer who may have been assigned internally to investigate the allegation.

### **Prepare an interview format.**

### **Assemble a delegation to conduct the on-site investigation:**

- ≡ It is important to visit the location or locations where the alleged torture took place. It may be necessary to obtain written authorisation to go to the scene. The authorisation must allow for the investigators to have unrestricted access to go to any part of the prison, police station or detention facility. Their access should include open and closed spaces, buildings, vehicles, cells, dining areas, medical areas and any other place where the torture may have taken place.
- ≡ Consider the safety of the delegation that will visit the scene and identify any security concerns you may have, and how these may be dealt with. In visiting a prison or police cell it is usually necessary to be accompanied by an official to ensure your security against inmates. However, it is also important to ensure that this is not an official who is implicated in the alleged torture.
- ≡ If you do take a delegation, the following should be borne in mind:
  - » The delegation should consist of people perceived by the authorities and inmates to be impartial.
  - » The members should be trained and competent to carry out the investigation and should have had experience in investigating human rights violations, or of prisons.
  - » The investigation would be strengthened with the inclusion of experts in the group. This may consist of medical, forensic or ballistic experts. If it is not possible to include any of these people in the visits, then it is important to be able to consult with them, discuss the evidence and get advice during the investigation. Any medical evidence obtained will need to be examined by a medical expert.
  - » The delegation should be gender balanced. If you are visiting a female prison, for example, it is important that women are present in the delegation. However, the inclusion of women even when interviewing male detainees is advised as some male victims may feel more comfortable talking to a woman about emotional stress than to a man. You must be able to provide your interviewees with a choice of who will interview them.
  - » Ensure that the delegation is ethnically representative and that there are people who are able to speak the major languages represented by the victim and inmate population. You may need to secure the services of a translator to cater for under-represented language groups or foreigners.

### **Identify and collect material evidence:**

- ≡ The investigator should gather as much physical evidence as possible to establish an incident or pattern of torture. Investigators must document a chain of custody involved in recovering and preserving any physical evidence. This may be difficult where the incident occurs in a place of restricted access like a prison, or where

some time may have passed between the time of the alleged incident and the investigation. Investigators must obtain permission to secure the site where the alleged incident took place in order to examine the place for traces of physical evidence.

- ≡ The site may be examined for traces of bodily fluids (such as semen or blood), human hair, and fibres should be collected, labelled and carefully preserved.
- ≡ If the incident occurred recently enough, fingerprints should be lifted, labelled and preserved.
- ≡ A sketch and colour photographs should be made of the scene indicating key areas such as windows, doors, desks or beds. A record of the identity of any person at the alleged torture scene must be made, include their names, identity numbers, addresses and contact numbers.
- ≡ Clothing worn by the alleged perpetrators and the victim must be secured, preserved and documented.
- ≡ Any implements allegedly used in the torture should be gathered.

### Medical evidence:

Torture often doesn't leave visible traces of injuries, and not all marks or injuries may be as a result of torture. However, physical trauma may be determined by a medical examination. The investigator must arrange for a medical examination of the victim regardless of the length of time since the alleged incident took place. The medical examination should include an assessment of any treatment required in respect of injuries or psychological treatment.

- ≡ If possible, the medical expert or practitioner should be familiar with the various forms of torture, its consequences and physical symptoms and be experienced in conducting examinations of torture victims.
- ≡ If possible, a copy of any other medical examination of the victim should be obtained. This may be the case if the victim obtained treatment from a medical practitioner while in custody, or since his release. A medical report indicating the detainee's state of health immediately prior to his or her arrest or detention would also be useful.
- ≡ If the person has died as a result of the torture, then a copy of any post-mortem report is required.
- ≡ The investigator should obtain an independent assessment of this medical information.
- ≡ The medical examination should indicate whether the physical and psychological findings are consistent with the allegations of torture and list the physical conditions which contribute to these findings. (See the Istanbul Protocol for a detailed description of the requirements for a medical examination.)

### Photographs:

Colour photographs must be taken of the victim, indicating his or her physical injuries. Colour photographs must also be taken at the scene of the alleged incident and any evidence collected at the scene. A measuring tape or other instrument should be used to demonstrate scale in the photograph. The photographs must be carefully labelled and preserved as they form part of a chain of evidence.



**Repeat interviews**

The investigator may need to interview the victim over a number of sessions. Trust needs to be established between the interviewer and the victim. In addition, torture victims are not always able to recall all the facts in one session, and follow up visits may be needed to obtain further details.

**Using interpreters**

Although it is often difficult to work with interpreters, it is often necessary, particularly where people speak a number of different languages or dialects. Preferably an interpreter from the investigating team should be used. Using a family member or fellow inmate should be avoided, as the victim or witness may be reluctant to talk about intimate details in front of someone they know. Inmates who are used to interpret may later be forced by the authorities or perpetrators to disclose what was discussed.

**Information to obtain**

The investigator should try and obtain as much of the following information from the victim as possible:

- ≡ The circumstances leading up to the torture, including details of his or her arrest, detention or abduction.
- ≡ Approximate dates and times of the torture. Confusion regarding the facts or sequence of events does not necessarily mean that the victim is lying. Detainees might not always know the specific time and dates as they don't always have access to calendars or watches. Torture methods are also often designed to confuse, and the person may be blindfolded, held in solitary confinement, etc. If several victims are involved, it might be difficult to obtain a chronology of events. Verbal statements should as far as possible be checked against other evidence and information obtained in the investigation.
- ≡ A detailed description of the people involved in the arrest, detention and torture. This should include names and rank where the victim knows them; description of their physical size and appearance, as well as of clothing; anything unusual about the perpetrator; and whether they were intoxicated at the time.
- ≡ Details of what the victim was told or asked.
- ≡ A description of the usual routine in the place of detention, and of any alterations to this routine.
- ≡ A description of the torture, including of what methods were used, for how long, over what period of time, and the frequency of the torture. It is often difficult for victims to have a precise memory of these events, and an interviewer may need to collect this information over a number of visits.
- ≡ Details of any rape, sodomy or sexual assault. Victims of torture may initially deny sexual assault as a result of their feelings of shame or humiliation. This may also emerge only after a number of interviews have been conducted. Talking about sex is also taboo in many cultures. The interviewer should be aware of the sensitivities around this, and attempt to reassure the victim about confidentiality of his or her statement.
- ≡ Physical injuries suffered during the torture and a description of the pain felt.

- ≡ Where any medical personnel present before, during or after the torture. Did they identify themselves and what was their role?
- ≡ Any medical treatment the victim received before, during or after the event.
- ≡ A description of the weapons or other equipment used in the torture.
- ≡ The identity of any witnesses to torture, including any fellow inmates. (Here the investigator should ensure that the safety of these people is also protected, possibly by using code names.)
- ≡ Details of any complaint lodged by the complainant regarding the torture, listing who the complaint was made with, and any action taken in regard to this.

When conducting the interview with the victim, the investigator must follow the general principles of interviewing witnesses and victims. If possible, the interview should be tape-recorded and a written statement taken as well. The interviewer should use open-ended non-leading questions. Encourage the person to use all their senses in describing what happened – what they saw, smelt, heard and felt.

The interviewer must be sensitive and avoid re-traumatizing the victim during the interview. Because this is a risk, the investigator should consider arranging for a psychologist or counsellor to offer support to the victim during or after the interview.

**Interviewing suspects**

The investigation should include interviews with those directly suspected of perpetrating torture, as well as with anyone holding a position of authority or responsibility in the detention facility. The authorities may have instructed certain officials to conduct the torture, or it may have occurred with their knowledge, even though no direct instruction was given.

Interviews with suspects must be conducted in a professional and impartial manner.

Suspects should be interviewed separately and should not be allowed to discuss the allegations or what they said with each other.

The rights of suspects must be respected and care must be taken not to compromise the legal validity of their statements.

**STEP 3 Assessing the evidence**

After collecting all the evidence, the investigator, perhaps with a senior member of the organisation, needs to evaluate the evidence to determine whether the allegations of torture are substantiated. The investigator is not required to prove torture, merely to establish whether it is probable that it took place. In doing so, the investigator should ask the following questions:

- ≡ Do the acts described by the victims or witnesses constitute torture, ill-treatment or both? Could they be attributed to some other factors, or other forms of violence that occurred before coming into contact with the authorities?
- ≡ Are the testimonies of the victim and witnesses consistent with the allegations? Do they fit with the known patterns of torture? Compare the evidence obtained with what you know of the patterns of torture in your country, or in this particular institution.

- ≡ Is the medical evidence consistent with the allegations? Where possible, all medical evidence should be examined by a medical expert who should provide a report on their findings. Medical findings can indicate whether the medical evidence is 'consistent' or 'not consistent' with the allegation of torture. The medical report could also make a finding that the evidence is 'highly consistent' or 'diagnostic of torture'. Consider that many forms of torture do not leave physical marks or injuries. The psychological or psychiatric symptoms should also be considered in the light of whether they are consistent with the victim's version of events.
- ≡ Reliability of testimony: the investigator should carefully examine the victim's version of events, their description of their injuries and suffering; and their current symptoms and pains. The investigator must also look at whether their testimony concurs with the physical evidence, and with the testimony of witnesses. Is their evidence congruent with known patterns of torture?
- ≡ Inconsistencies in testimony should also be looked at to ascertain whether they could be as a result of the victim's own confusion of events as a result of dishonesty, or reasonable faults in memory and recall. Cultural difference, and the time between the alleged incident occurring and the interview should also be considered. Misunderstanding and problems with interpretation are also factors that need to be considered.
- ≡ Do the responses of the government indicate that it is responsible for this incident?
- ≡ Take into consideration political statements, or the approach of government towards torture, or obtaining confessions from suspects. Look at court testimony of any evidence or allegation of torture made to the courts.

### 3 DEATHS IN CUSTODY

People may die while in custody for a number of reasons. They may die following an assault or torture; or they may die as a result of what appears to be natural causes, such as an illness or old age. However, each death in custody needs to be investigated to determine the cause and circumstances leading up to the death. So-called 'natural deaths' must also be investigated to determine whether it was indeed 'natural' and also to determine whether the authorities took all necessary steps to prevent the death and to ensure adequate medical treatment of the deceased person. The persons responsible for the death need to be identified where possible.

International law protects the right to life and protects against the arbitrary deprivation of life, according to Article 6 of the International Covenant on Civil and Political Rights. It also prohibits torture and other cruel, inhuman or degrading treatment or punishment. The Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment requires that whenever a death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance must be done by a judicial or other authority. An inquest must also be held where circumstances require it and the findings made available on request (Principle 34).

## Issues specific to investigating deaths in custody:

**The role of the detaining authority.** These deaths happen behind closed doors to which the public do not have access. The detaining authority, be it the police or prison service, takes on the responsibility of ensuring a person's safety and security once they are taken into custody. That person becomes reliant on the state or the relevant authority, for their everyday needs including food, water, bedding and health care.

Any death in custody should come under public scrutiny, and the public authority should be investigated to determine whether they demonstrated the due diligence of good care to the inmate.

**Dealing with denials by the detaining authority.** It is not often that the authorities will admit to fault or intention in causing the death of an inmate. They may deny that a person was admitted to the facility or died under their care. Alternatively, the authorities may allege that the inmate died a natural death or the death was caused by fellow inmates.

The investigator therefore has to be careful to collect as much evidence as possible to establish the facts of the case, and must be able to evaluate contradictory evidence to determine the probable cause of death.

Deaths in custody may also indicate certain patterns and trends in treatment or conditions, and an investigation could arrive at recommendations in order to prevent any further deaths. A death in custody might also compromise the good order of the institution, as inmates upset by the death or failure to deal with suspected perpetrators might riot or cause further disruptions.

**Cases which might constitute a violation of human rights.** These include:

- ≡ Abuse of fellow inmates and a failure by the police or prison authorities to protect the safe custody of detainees.
- ≡ Excessive use of force or torture.
- ≡ Poor conditions in custody, neglect or treatment amounting to cruel, inhuman and degrading treatment or punishment.

### Purpose of the investigation

The purpose of the investigation is to gather facts regarding a particular death in order to establish the circumstances of the death, to ensure accountability from the authorities and any individual perpetrators, and to provide answers to the deceased's family.

### Investigating the death of a person in custody

**The scope of the investigation.** The investigation should aim to answer the following questions:

- ≡ What was the cause of the death?

- ≡ What was the manner of death (natural, accidental, homicide, suicide or undetermined)?
- ≡ What were the circumstances surrounding the death?
- ≡ Who were the alleged perpetrator/s or people involved in the events leading to the death?
- ≡ What were the factors which may have contributed to the death?
- ≡ What measures may have prevented the death?
- ≡ What preventative measures have been taken after the death and whether these are sufficient?

**Receiving the complaint.** (See text under TORTURE for this.)

The investigation of a death in custody consists of 3 steps:

STEP 1 Gather material evidence	STEP 2 Interviews	STEP 3 Assess the evidence
<ul style="list-style-type: none"> <li>• Know the law</li> <li>• On-site inspection</li> <li>• Collect evidence</li> <li>• Post-mortem autopsy</li> <li>• Medical evidence</li> <li>• Photographs of the scene</li> <li>• Physical torture instruments</li> <li>• Official documents and correspondence</li> <li>• Site inspections</li> </ul>	<ul style="list-style-type: none"> <li>• Key witnesses</li> </ul>	<ul style="list-style-type: none"> <li>• Evaluation the evidence to determine whether the death in custody was as a result of an act or failure to act by the state authority.</li> <li>• The assessment must establish whether the facts fit with different elements of a death in custody.</li> </ul>

## STEP 1 Gathering the evidence

You need to know all the international and regional instruments and domestic laws related to treatment and conditions of people in custody. Also check the laws related to specific aspects of the death. For example, if the death was due to an alleged excessive use of force by the authorities, check instruments regarding the use of force by the police and other authorities, for instance the UN Basic Principles for the use of Force and Firearms by Law Enforcement Officials.

Find out all you can about patterns of deaths in custody in your country, for example, whether there are a large number of deaths as a result of 'assault'.

Find out all you can about this particular prison or police station.

### Going to the scene of the death

Ideally, an investigator should arrive at the scene of the death as soon as possible after notification and preferably while the body is still on the site, particularly when the death is unnatural or appears to be suspicious. In some jurisdictions, the police or prison services are obliged to notify an independent oversight body as soon as a death occurs so that they can go and investigate. But, even where a completely independent investigation does not occur, an

impartial state-led investigation should occur as soon as possible. However, it often happens that the investigator from an independent body is only notified of the death some time later. This may entail slightly different approaches to the investigation, which we will deal with here.

- ≡ You must inform the head of the detention facility or prison that you have arrived for the investigation, and must be allowed access to all parts of the facility. Give the head of the institution a copy of your mandate to investigate.
- ≡ The death scene should not be disturbed in any way, except so that a person may try to resuscitate the deceased. For instance, if a person has hanged himself, the first officials on the scene should cut him down and attempt to revive him.
- ≡ As soon as the deceased has been certified dead, the body of the person or the crime scene should not be tampered with in any way.
- ≡ The scene should then be preserved, and examined to secure all evidence related to the investigation.
- ≡ The body and the scene should be documented with photographs and descriptions.
- ≡ All evidence collected must be documented and preserved in a chain of custody with a record of the date, time, place and the name of the person to whom the data has been transferred. Material evidence may include spent shell casings, other weapons, pieces of clothing and bedding. Human body fluids should also be collected where they are present, as well as finger prints.
- ≡ The temperature of the body must be obtained to assist with determining the time of death.
- ≡ If you arrive at the scene after the body has been removed, you must try to recreate the scene by obtaining detailed descriptions of the scene from the people who were first on the scene and those involved in the clean up.
- ≡ You must gather all documentary evidence related to the death. This may include admittance records and cell registers, investigation diaries and personal history of the deceased.
- ≡ You must obtain all medical records of the deceased person.
- ≡ Any official and other records pertaining to any investigation or disposal of the body must be obtained.
- ≡ Obtain documents related to the policies and standards of care for detainees or prisoners of the police
- ≡ You may need to visit locations other than where the body was found. For instance, if the person died in hospital as a result of injuries, you may need to visit the cell in which the person was accommodated; the police station where he was arrested; and other places where the deceased may have been taken before being admitted to hospital.

### Post-mortem report or autopsy

The aim of an autopsy is to determine the cause of death, to document all injuries and all relevant pre-existing pathologies. The deceased person may need to be identified in the autopsy. Tests must be done to determine any sexual assault or toxicology. All deaths in custody should be investigated with a full autopsy.

If possible, you should be present at the autopsy. Members of the deceased's family should also be invited to send a representative so as to allow for transparency in the autopsy.

Often, by the time you have been notified of the death, an autopsy has already been performed. In this case, you should obtain a copy of the post-mortem report and any accompanying photographs. It may be necessary under certain circumstances to obtain an independent post-mortem report, or an independent evaluation of a post-mortem conducted by a state pathologist or doctor who conducted the post-mortem examination. This may be necessary, for example, where the statements of independent witnesses indicate that the deceased had injuries that are not reflected in the post-mortem report, or where the deceased's representatives believe that the initial autopsy was not thoroughly or independently completed.

## STEP 2 Conducting interviews

Identify the possible main sources of information and the people that you need to interview in order to obtain information or corroborate evidence.

This may include police officials, prison officials, the arresting officer, witnesses to a person's arrest, fellow inmates, hospital staff, mortuary workers, deceased's legal representatives and the deceased's family.

You should also interview the head of the prison or police station, as they are officials who bear ultimate responsibility for the institution.

## STEP 3 Assessing the evidence

You will need to assess the official version of events and compare them with the evidence obtained and other testimony.

Questions you need to ask yourself as an investigator include:

- ≡ Are the testimonies reliable and consistent with one another? Where are the major forms of difference?
- ≡ What are the reasons for inconsistency in testimony? Is it as a result of lies, mistakes or fear of endangering themselves by disclosing information?
- ≡ Is the incident report consistent with what you know about deaths occurring in custody in that institution, country, or time period?
- ≡ How does the evidence and witness testimony confirm or contradict this version?
- ≡ Is the medical evidence consistent? You will need the opinion of medical experts to assist you in evaluating this evidence.
- ≡ What was the state of the deceased's health before his death. If the person has been in custody for only a short period before his death, you may need to determine his health prior to arrest?
- ≡ What was the state of the deceased's health in detention? This should include an evaluation of what medical complaints the person may have had, what treatment they received and their compliance with medical treatment.
- ≡ Was a post-mortem performed and was the report available for examination?
- ≡ When and by whom was the post-mortem performed?
- ≡ Did the post-mortem follow national and international protocols?
- ≡ What were the findings of the post-mortem and what conclusions were drawn?
- ≡ How does the official post-mortem compare with any other forensic examinations?



# DAY 4

Review statements

**SECTION 9**

Investigating sexual offences

**SECTION 10**

Writing a report

**SECTION 11**

Ethical and political dimensions of investigations

# SECTION 9

## SEXUAL VIOLENCE

Another human rights offence that you may be called to investigate is sexual violence.

### Case study: sexual violence

Read the case study and the questions on it. Then read the information on investigating sexual violence on the following pages. Then give detailed answers to the questions.

#### Facts

Maria was arrested on 15 December 2008 on suspicion of theft and shop lifting. She was admitted to a police station that day and brought before court the following morning. Her case was remanded to January 2009 for further investigation. In January her case was remanded again until May. She was denied bail on the grounds that she was a foreigner and had no right of permanent residence in the country. It was thought that she would be a flight risk. In May, her case was remanded again till November 2009. On this date, she was brought before the court, and the magistrate presiding noticed that she was heavily pregnant. Realising that she could not have been pregnant when she was admitted to custody, he asked her whether she was pregnant, and how this was so. Maria just rubbed her stomach and looked shy. She refused to say anything to the magistrate. The magistrate contacted your office and requested you to investigate the matter fearing that Maria must have been raped while in police custody. Maria was held in police custody at District 9 all this time as the nearby prison was completely full.

You start your investigation with an interview with Maria at the police station. She is brought to see you in a room in the administrative block of the police station. One policeman wants to come into the interview with Maria, but once you explain that your interview must be private, he agrees to leave and stand outside the room. He insists that the door is left open. Your interview with Maria is very difficult. She does not tell you very much, and her answers to you are vague. She seems mentally quite slow, or she may just be very shy. You are not sure. At first she says she doesn't know how she became pregnant. Then she tells you that one of the policemen is her 'boyfriend'. You ask her to explain how this happened. She says she can't remember. Then eventually, she tells you that for a couple of days near the beginning of her stay in custody she was the only woman in detention.

She was approached by a police officer, Constable Bennet, who started to chat her up one night. The next night he came to her cell and said he was coming inside. He unlocked the cell and then locked himself inside. He told her she would never get out of detention, and that her family had abandoned her. He said he could help her. He would make sure she was treated 'right'. At first Maria was very scared of him, but he stayed in her cell for so long, and talked to her trying to persuade her that he was a good guy. Eventually Maria agreed to sleep with him.



### Case study continued...

Over the next couple of months the constable would visit her often in the cell if she was alone and have sex. He would bring her nice food and gave her an extra blanket. Maria says he was very nice. He promised to help her get released from police detention, and said he would take care of her when he left. She says she is in love with him, and will move in with him when she is released. But Constable Bennet is no longer working at the police station, and she hadn't seen him for a while.

You interview some of the other women in the police station at the time. They are currently being held in the same cell as Maria. They tell you that the policemen often 'come onto them' and try and sleep with them. One of the women who was in custody a few months back for prostitution, and is back again now, tells you that the policemen often ask for sex in exchange for the right to make a phone call, or to be released from jail. She has also seen women taken out of the cell from time to time. She doesn't know what happens to them, as the women don't talk when they come back.

You interview the station commander, who tells you that he has a very 'honourable' corps of police officers. He says that his officials are never allowed into the cells with the women, but should always be accompanied by a female police officer. However, he admits that sometimes there are no other female officers on duty. You ask to interview the officials who are on duty at night, as well as Constable Bennet. He says Bennet has been transferred and he doesn't know where he is. As far as he knows, Constable Bennet is married. All the other police officials refuse to speak to you.

You ask for Maria to undergo a medical examination. The doctor confirms that she is pregnant. He says she is also HIV positive, but can't say when she contracted the disease.

You check the cell registers for the period of Maria's detention, and see the admissions of over 30 women during that period. There are sometimes groups of women, and sometimes, only one – Maria. Her cell is fairly small, and there is limited natural light. The women are often allowed to spend the day in a courtyard just outside of their cell. But when there are other women in the cell, and they are locked up, there can be as many as nine at a time, and it is very crowded.

Before continuing with this investigation, you try to assess the allegations and the circumstances. You consider the following:

- ≡ Whether there are any possible human rights abuses, and what these are?
- ≡ Who are the victim/s of the human rights abuses?
- ≡ Who are the perpetrators?
- ≡ Do the statements and the evidence confirm or deny the possible human rights abuses?
- ≡ Do the actions of the police at the police station indicate that the police have acknowledged responsibility?
- ≡ Do you need to obtain further evidence or information to help clarify matters or prepare a case? What evidence would this be, and how would you go about collecting it?

## Definition of sexual violence in general

Sexual violence is any sexual act, or attempted sexual act, or any coercion by one person on another regardless of their relationship to the victim. Sexual violence can involve sexual force, physical force, as well as psychological pressure.



## Kinds of sexual violence

Notes

Sexual violence can include the following types of acts:

- ≡ Rape, and rape within marriage
- ≡ Indecent assault
- ≡ Forced marriage
- ≡ Child sexual abuse or rape
- ≡ Sexual mutilation
- ≡ Forced impregnation
- ≡ War rape
- ≡ Forced prostitution and trafficking for the purposes of sexual exploitation.

Sexual violence can involve either males or females as victims or as perpetrators, though in general, females are more often the victim of sexual violence and males are more often the perpetrators. Sexual violence is an act of domination and aggression. Sexual violence is prohibited under international and national law.

## Definitions vary from country to country

It is important to understand the definition of sexual offences in respect of each country. In Kenya, the Sexual Offences Act (No. 3 of 2006), defines rape as an intentional and unlawful act of penetration of a person with the genital organs without consent, or where the consent is obtained by force, threat or intimidation (Section 3). This is a gender-neutral definition which means that either a male or female can rape or be raped. On the other hand, in Tanzania, the Sexual Offences Special Provisions Act of 1998 defines rape as sexual intercourse by a male with a female without her consent. It is not an offence if the man has sexual intercourse with his wife or his separated wife (Section 5).

## Sexual violence and its relationship to torture

Sexual violence may also be a crime of torture. Acts of ill-treatment are regarded in a more serious light when a person is in the custody of a state official. Sexual violence which occurs to a person in custody by or with the acquiescence of a public official, or with the instigation of a public official, or someone acting on their behalf is likely to constitute torture.

Some examples of where sexual violence may also be an act of torture or cruel, inhuman or degrading treatment or punishment:

- ≡ When a police official rapes or sexually assaults a woman that he has taken into custody to obtain information from her relating to her boyfriend's alleged crimes.
- ≡ When a prison official encourages a prisoner or group of prisoners to rape an inmate to teach them a lesson.
- ≡ When a police official puts a woman into a cell with men knowing that she is most likely to be raped by them, and doesn't do anything to stop them.
- ≡ When prison officials know that prisoners are being frequently raped and sexually assaulted by their fellow inmates and they fail to take any steps to prevent it.
- ≡ When a female prisoner is raped or coerced into having sex with a male official. Coercion may entail a promise of better treatment in prison, or a threat that she may be punished if she does not have sex with the official.
- ≡ When the authorities fail to separate children from adults or women from men in terms of the international and national provisions, and the children or women are raped as a result.

### **The state's responsibility for acts of torture involving sexual violence**

The state could be held responsible by international law for acts of torture which involves sexual violence. The state could also be held responsible when it fails to take action to protect a person, or a group of people against sexual violence. The state may also be held responsible if it fails to investigate sexual violence or to prosecute alleged perpetrators.

If the act of sexual violence is one of torture, then many legal remedies apply. For instance, an impartial investigation into the allegation must happen as soon as possible. The state also has the responsibility to prosecute the perpetrator and to take steps to ensure that such acts do not occur again. The state is also obliged to pay compensation to the victims of torture.

### **Sexual violence in prison and police detention**

Prisoners and detainees are often at risk of being sexually assaulted or raped by police and prison officials, or even by other prisoners. The process of sexual domination may even be part of the prison culture. For example, in South Africa, the number 28 prison gang is known to operate by forcing one male inmate into long-term sexual partnerships with another male inmate. These sexual partnerships are known as 'marriages'. The 'wife' of the relationship fulfils a female role similar to wives in outside society, and he must cook and sew and look after his 'husband' and attend to his sexual needs. People are often forced into these relationships by being threatened with violence. Sometimes, young men are raped, and once they become stigmatised and rejected by the general prison society, they are turned into 'women' and can be further sexually abused by other men.

Sexual violence in prison is often associated with corruption (prison warders colluding with inmates) and other forms of violence – such as gang violence generally.

Homosexuals, transsexuals and trans-gender people are often more vulnerable

to sexual assault in prison. Certain minority ethnic or religious groups may also be more vulnerable.

### Impact of sexual violence on the victims

It is important for investigators to understand the impact of sexual violence on its victims so that you are able to relate to victims when interviewing them. It will also help to understand what action should be taken to assist the victim.

The impact of sexual violence can be both physical and psychological.

Physical impacts include:	Psychological impacts include:
<ul style="list-style-type: none"> <li>• Injury to the genitals or anus</li> <li>• Urinary tract infections</li> <li>• Irritation in the genitals</li> <li>• Sexually transmitted diseases: there is a great change of the transmission of sexual transmitted infections when sexual intercourse is forced, as this may result in tears or bleeding of the tissue.</li> <li>• Unwanted pregnancy</li> <li>• Other physical injuries as a result of the force used.</li> </ul>	<ul style="list-style-type: none"> <li>• Feelings of shame (This may be more pronounced when a male is raped)</li> <li>• Feelings of blaming oneself for the incident</li> <li>• Suicidal thoughts</li> <li>• Post-traumatic stress disorder</li> <li>• Withdrawal</li> </ul>

### Secondary stigmatisation

Secondary victimisation occurs when the victim is traumatised again on reporting the sexual violation, or during further engagement with the criminal justice system or society.

As a result of strong taboos against sex, the victim is sometimes blamed, shamed and shunned by society. Victims may also experience secondary victimization when they have to report the sexual violence to the police or other authorities. Retelling their experience can be as traumatising as the incident itself.

Victimisation may occur at the hands of friends, family, correctional authorities, the police and prosecution. Victims may be disbelieved when they tell their story, or some officials might suggest that they 'enjoyed' their experience. They may be discouraged from reporting or laying the rape or sexual assault charges. The authorities to whom a rape is reported may fail to take the investigation seriously, and they may use biased criteria for deciding to prosecute a case or not. Victims may also be re-traumatised by the invasive questions asked by investigators as well as by the medical examination which is necessary to establish evidence of the assault. These examinations are often insensitive. As a result, many rape victims may be reluctant to report a rape or sexual assault, or try to withdraw it, or be uncooperative with the investigation.

It is important then that an investigator dealing with a victim of sexual violence deals with them in a sensitive manner. Avoid labelling the victim, or responding to their story with visible shock or horror. Be supportive and empathetic towards the victim. Because many victims may be afraid to go through the criminal justice process on their own, it is a good idea to offer for someone

to accompany them to give statements or attend a medical examination. This should be someone that the victim feels comfortable with. This could be someone from the investigative team, or a social worker or family member.

## Investigating sexual violence

### Purpose of the investigation

To collect facts which would determine the nature and circumstances of sexual violence and to assist in presenting a case for the prosecution of the perpetrator. The investigation would also assist in determining what assistance is required for the victim, including victim compensation. The investigation should also aim to develop recommendations for the prevention of further acts of sexual violence.

Investigating sexual violence has three components.

As a human rights investigator, you are more likely to be called into investigate serious allegations of sexual violence which involve the authorities in some way. This may be in the form of sexual torture, of which sexual violence constitutes torture or ill-treatment as illustrated above. You may also be called in to investigate systematic institutional sexual violence, such as gang rapes and sexual coercion.

## Step 1 Gathering the evidence

### Collect background information

- ≡ Find out about what your national legislation says about sexual violence. Carefully check the definitions of different forms of sexual violence and make sure you know what the elements of each offence are. Also look at additional legislative provisions regarding testing for HIV, collection of evidence and protection of the victim.
- ≡ List everything you know about sexual violence in your country. Look at the trends and incidence of sexual violence. Then look at what you know about sexual violence happening in police stations and prisons. Try to find out something about prison culture and any prison gangs operating in the prison.
- ≡ Find out whether there are other cases of sexual violence used as a form of torture and in what circumstances it is used. Who are the likely perpetrators and likely victims?
- ≡ Find out about local organisations that may offer assistance and advice on sexual violence, and those who offer counselling and support for victims.

### Establishing the facts of the case

- ≡ List everything you know about the case. The details of what happened, where and to whom? List what you know about the alleged perpetrators and the role of the authorities.
- ≡ Speak to an expert on sexual violence to find out how you should go about collecting information in this case.

### Visiting the scene

When you select your delegation to visit the prison or police detention facility, make sure that you take people who are sensitive and aware of the issues

relating to gender based violence and sexual violence. If the victim is a woman, it would be important to include a woman in your delegation, especially when you interview the victim. In cases where you are investigating male on male sexual violence, the interviewer must be aware of issues related to homosexuality and male sex in prisons and must not be homophobic. It might be important to take an expert with you, or someone who usually works with victims of sexual violence.

Sexual violence often leaves traces, either on the victim or in the environment. The investigator needs to establish what these are and to collect evidence of them. However, the investigator may be conducting the investigation some time after the incident and should be aware that much of the physical evidence will have been lost or destroyed. Key witnesses, such as prisoner, may have been released and be no longer available for interviews. Failure to find evidence does not necessarily mean that the sexual violence has not taken place.

The authorities might have acknowledged that sexual violence occurred. Collect any document in which this was done.

Collect any documents, reports or statements made by officials, the victim or other inmates related to this case. This may include statements from hospital staff or social workers and legal advice officers.

Medical reports or certificates. If the victim reported the violence, or sought medical treatment after the incident, then a report should have been written up. Check your domestic law to see what forms should have been completed, and whether this was done.

If the victim has not had a medical examination, this must be arranged immediately. Remember that you cannot compel a victim to undergo a medical examination, but you do need to explain to them that any investigation and prosecution of the perpetrators will be greatly strengthened by this examination. The medical examination will note any signs of sexual trauma as well as other physical marks or injuries.

Take colour photographs of any visible marks or injuries.

Ensure that the victim receives the necessary treatment, including treatment to prevent the spread of sexually transmitted infections and HIV.

If the victim has died as a result of the sexual violence, then a post-mortem report is required.

Visit the scene where the sexual violence took place. Document the scene according to the principles discussed under general investigation skills. Be sure to collect all physical evidence, and preserve and document them using a clear chain of evidence.

## STEP 2 Conducting interviews

Considering the cultural taboos surrounding sexual violence, it might be difficult to conduct interviews with victims and other people in the inmate community. You need to find ways of breaking through these barriers.

### Interviewing the victim

The victim may feel more comfortable being interviewed by someone of the same gender as themselves. Some people feel reluctant to talk to someone

who is much younger than themselves. Be aware of your own prejudices and feelings towards sexual violence and how this may affect your interactions with the victim. Try to offer the victim the choice of person to speak to.

Remember that this may be a life-changing event for the victim. Also, be aware of the various ways that the incident may be impacting on them.

The victim may be afraid to talk. Try to reassure them about their safety and discuss ways that you can ensure the safety of the victim. This may involve transferring the person to another section of the prison or to another police station. Conduct follow up visits to the person to ensure that they are not further victimized, either by inmates or the authorities.

Be aware that the victim may have been victimised by many different people or on multiple occasions. The victim may feel very reluctant to report the incident and may have lost any faith that there is any use in reporting the case.

Keep the name of the victim confidential, unless the person wants you to assist in bringing a prosecution or disciplinary action against the perpetrator.

Ask the victim what they would like to happen with their case. Often victims may not want a criminal charge to be laid because they are afraid of victimisation. Discuss what options you or the authorities could follow to ensure their immediate safety.

Be careful not to minimise the event. Do not be judgmental and remain open minded despite how long ago the incident may have occurred.

Reassure the person that the reactions and feelings they may be experiencing are a normal part of the response to rape.

### **Conducting further interviews**

You should try to interview all relevant witnesses and role-players. This may include the alleged perpetrator/s; the head of the police station or prison; the section heads and any other personnel on duty at the time of the incident. You should also interview medical staff, social workers, legal assistance staff and religious workers, where relevant.

Interviews should be conducted with other inmates who may have witnessed the sexual assault, or with whom the victim talked to about the incident.

## **STEP 3 Assessing the evidence**

Check the consistency of the medical evidence with the testimony of the victim. Remember that the absence of physical injury does not mean that sexual violence did not take place.

Check the reliability of the sources. Is the victim's statement consistent with other evidence, including the evidence of other inmates. Are the other sources of information reliable and consistent with the allegation?

### **Assessing the responsibility of the state**

- ≡ Did the government's response meet international and national standards regarding protecting inmates from torture and other ill-treatment?
- ≡ According to the official version, did they follow the correct steps to respond to and protect the victim?



# SECTION 10

## 1 **WRITING A REPORT**

This section is about writing reports. Whether or not you are able to recommend prosecution in your reports or make other recommendations or findings, you will need to know how to write a coherent, factual and comprehensive report.

### **Discuss**

Have you written any investigative reports?

How did you feel about it?

What are the difficulties you faced?



### **Elements of a good report**

You will end your investigation by writing a report on it. In your report, you will make findings, recommendations and conclusions. A good report will cover all the essential elements of the investigation and will show how the investigator came to the conclusion.

### **Discuss**

Put the elements of a report into the order that you think will be most clear for the reader. Number them 1 to 12.

- ≡ Challenges in the investigation, e.g. cooperation, hostility, fear, etc.
- ≡ Executive summary
- ≡ The reporting of interviews: who with, etc.
- ≡ Details of investigator and assistants
- ≡ Assessment of evidence and witness statements: consistency, plausibility, reliability, etc.
- ≡ The purpose of the investigation
- ≡ The crime being investigated: elements, legislation, international instruments, etc.
- ≡ The facts
- ≡ The allegation, date, time
- ≡ The gathering of physical evidence: on site, what was found, forensic/medical reports, chain of custody, etc.
- ≡ Manner of receipt of complaint
- ≡ Conclusion and recommendations



Now that we have discussed the elements of a good report and the order of a good report, let's look at some actual reports.

### **Discuss**

There are two reports on the next few pages. Read through each of them.

As you read, tick the elements of the report you think are good, and put a cross for anything you think is not good or is missing.

Questions to ask yourself while reading:

- ≡ Does the report have all elements of a good report?
- ≡ Does the order make sense?
- ≡ Is the report clear?
- ≡ What has been left out?



## **REPORT 1**

**Republic of South Africa**  
**Case Investigative Report**

### **1. COMPLAINT IDENTIFICATION**

- 1.1 **CCN:** \_\_\_\_\_
- 1.2 Incident Description Code: **103**
- 1.3 Type of Report: **FINAL REPORT**
- 1.4 Report Date: **21 April 2009**
- 1.5 Date of Last Report: **26 March 2010**
- 1.6 Complaint Class: **Class I**
- 1.7 Complainant: **Capt.** \_\_\_\_\_
- 1.8 Date of Complaint: **2009/04/21**
- 1.9 SAPS CR/CAS Number: **705/04/2009**
- 1.10 Suspect Identification: **Community members**
- 1.11 Investigator: \_\_\_\_\_
- 1.12 Assignment: **Full Investigation**
- 1.13 Reporting Staff Member: \_\_\_\_\_

SUMMARY

It is alleged that a suspect stole from the community and was severely assaulted by the community members.

The police officials attended to the scene and rescued the suspect. He was arrested for Theft and was kept at Mahatma \_\_\_\_\_ hospital for medical attention. The suspect later died in hospital. Murder case was opened against the community members who were involved in the killing of the deceased.

EVIDENCE

\_\_\_\_\_

He states that he is the owner of the house that was robbed by the suspect. He states that he screamed for help and the people in the community gathered together. He said he thought people came to defend the suspect but to his surprise, the community members stoned the suspect who was rescued by the police officials.

\_\_\_\_\_

She is the member who attended the scene ,she also collected the exhibit the knife that was used by the suspect to threaten the complainant.

ANALYSIS

The suspect was assaulted by the community members which is confirmed by the complainant. There is no police involvement in this case.

RECOMMENDATIONS

This file can be closed as Unsubstantiated. There is no police involvement in the Murder of the suspect.

.....

\_\_\_\_\_

**SENIOR INVESTIGATOR**

**ICD/** \_\_\_\_\_

APPROVED/NOT APPROVED

.....

\_\_\_\_\_

**ACTING PROVINCIAL HEAD**

**ICD/** \_\_\_\_\_

## REPORT 2

Republic of South Africa

### Case Investigative Report

#### 1. COMPLAINT IDENTIFICATION

1.1	CCN:	_____
1.2	Incident Description Code:	402
1.3	Type of Report:	INTERIM REPORT
1.4	Report Date:	31 May 2010
1.5	Complaint Class:	Class IV
1.6	Complainant:	_____
1.7	Date of Complaint:	2010/05/31
1.8	SAPS CR/CAS Number:	_____
1.9	Suspect Identification:	N/A
1.10	Investigator:	_____
1.11	Assignment:	Full Investigation
1.12	Reporting Staff Member:	_____

## **CONFIDENTIAL**

### **2. IDENTITY OF ICD**

The Independent Complaints Directorate is an independent statutory body under civilian control, created in terms of Section 50(1) (a) of the South African Police Service Act 68/1995. Its principle function in terms of Section 222 of the Interim Constitution Act 200 of 1995 is to ensure that the complaints in respect of the offences and misconduct allegedly committed by members of South African Police Services are investigated in an efficient and effective manner.

### **3. SOURCE OF THE COMPLAINT**

\_\_\_\_\_

### **4. SUMMARY OF ALLEGATIONS**

The allegations are that the Deceased was with the Accused at the unveiling of a tombstone enjoying some intoxicating drinks. They left and went to the Accused home as the Accused was supposed to prepare for work. When they arrived at the home of the Accused here was a birthday party/stokvel. The Accused went inside his rented room with the Deceased. They were joined in that room by Mrs. \_\_\_\_\_, Mrs. \_\_\_\_\_ and Mr. \_\_\_\_\_. They all left the room and the Accused remained with the Deceased in that room.

The music was playing very loud and one speaker of the music centre was taken outside. After a period of about 25 minutes, they heard a loud bang. They thought that it was a gunshot but others thought that it was a cracker. The Accused came out of the room after a period of 20 minutes and asked the people who were enjoying the party about the whereabouts of the Deceased. They told him that the Deceased was in his room and they never saw him going out of his room. They continued to enjoy the music and when they left the party the following morning at about 04:00 the deceased's vehicle was still parked outside. They later heard that the Deceased was dead.

The Accused confessed that the Deceased committed suicide with his service fire arm. That he became afraid to report the incident because the Police will think that he killed the Deceased. That he put the body of the Deceased under the bed and threw him at an open field after five days.

The complainant who is the wife of the deceased is unsatisfied with the service she received at \_\_\_\_\_ SAPS. The members, with whom she reported her husband missing, failed to assist her. She went first to report her missing husband on 2010/05/02, again on 2010/05/03 and several times after that.

### **5. EVIDENCE**

MRS M. -----

Will state that on 2010/05/01 at about 17:30 it was her birthday party. They were having intoxicating drinks and were also playing loud music. The Accused arrived with the Deceased and they went into the room rented by the Accused. They were joined in that room by herself, Mrs. \_\_\_\_\_ and Mr. \_\_\_\_\_. They all left the room and the Accused remained with the Deceased in that room as he was preparing to go to work. The music was playing very loud and one speaker of the music centre was taken outside. After a period of about 25 minutes they heard a loud bang. They thought that it was a gunshot but others thought that it was

a cracker. The Accused came out of the room after a period of 20 minutes and asked the people who were enjoying the party about the whereabouts of the Deceased. They told him that the Deceased was in his room and they never saw him going out of his room. After a few minutes again the Accused came to her room looking for the Deceased and she told him that he must phone the Deceased to ask him about his whereabouts as he was the last person he was with.

MRS \_\_\_\_\_

Will state that she left her husband at the unveiling of a tombstone on 2010/05/01. Her husband failed to arrive at his home on that day. She was informed that her vehicle was parked at the house of the Accused. She went to fetch it on 2010/05/02 but the Accused was not there to explain the whereabouts of the Deceased. The complainant who is the wife of the deceased is not satisfied with the service she received at \_\_\_\_\_ SAPS. On 2010/05/02 she reported to Constable \_\_\_\_\_ that her husband was missing, but the Constable failed to open a case (Missing Persons) for her. On the same day at 21:00 she phoned the Police Station and the phone was answered by a Policeman who identified himself as \_\_\_\_\_. She also requested him to assist her in searching for her missing husband but to no avail. On 2010/05/03 Constable \_\_\_\_\_ who is working on the same shift with her husband arrived at her home looking for her husband in order to take him along for work, but she informed him that he have been missing since 2010/05/03 and a case was not opened. She was only assisted after informing Captain \_\_\_\_\_ about the fact that the Deceased was missing.

CAPTAIN \_\_\_\_\_

Will state that he realized that the Deceased failed to report on duty as he was supposed to. He sent his Colleagues to the Deceased's home to look for him, but when they returned they informed him that the Deceased was not at home. They opened SAPS 55 file for a missing person. The Deceased was found on 2010/05/11 when the Accused confessed that he threw him on an open field.

LT.COL \_\_\_\_\_

Will state that on 2010/05/11 the Accused confessed that he threw the deceased at an open field. He further pointed out where he threw the Deceased's body.

## **6. ANALYSIS OF EVIDENCE**

ICD took over the investigation of this matter on 2010/05/12 after the next of kin of the Deceased came to complain about their dissatisfaction in which this matter was handled by the Police. Statements from different witnesses were obtained. The blood stains of the Deceased were found in the house of the Accused. The Accused confessed to Defeating the Ends of Justice. He alleges that the Deceased shot himself with his (the accused's) fire arm. The Deceased was shot on the head. The entry wound is on the right and exit wound is on the left. The findings of the post-mortem are that the wound was not a close contact wound. It is clear that the Deceased could not have shot himself on the head if it is not a close contact wound. The findings so far of the investigation are that the Accused committed Murder and Defeating the Ends of Justice.

The Accused confessed that the Deceased committed Suicide and that he hid the body under the bed since 2010/05/01 to 2010/05/05. The Accused's confession was taken by L.t. Col. \_\_\_\_\_ who was appointed to lead the investigation into the disappearance of the Deceased. L.t. Col. \_\_\_\_\_ neglected to take the Accused to a Doctor, for the completion of the Medical Report (J88), prior and after the confession. The Accused was also not afforded with the opportunity of pointing out the Deceased, since the deceased's body was found by other members who were present during the pointing out process. The scene was not

photographed while the Accused was doing the pointing out of the scene.

The Bail Application was opposed successfully and the matter was remanded to 20 July 2010. The deceased wife is unsatisfied with the manner in which her complaint of reporting her husband missing was handled, since she reported it several times, but the police failed to assist her.

On 2010/05/02 she reported to Constable \_\_\_\_\_ about her missing husband but the said Constable failed to open a Missing Person for her. On the same day at 21:00 she phoned the Police Station and the phone was answered by a Policeman who identified himself as \_\_\_\_\_. She also requested him to assist her in searching for her missing husband, but to no avail. On 2010/05/03 Constable \_\_\_\_\_ who is working on the same shift with her husband arrived at her home looking for her husband in order to take him along for work, but she informed him that he (her husband) have been missing since 2010/05/03 and a case was not opened. She was only assisted after informing Captain \_\_\_\_\_ about the disappearance of the Deceased.

A Missing Person File was eventually opened after the involvement of Captain \_\_\_\_\_ as per Missing Person file no. 01/05/2010. The said file was booked out to Warrant Officer \_\_\_\_\_. W/O \_\_\_\_\_ was informed about alleged sound of a gunshot, which was supposedly heard at the Accused house on the day the Deceased went missing, but he (W/O \_\_\_\_\_) failed to conduct a search of that particular room.

There was a search team which was sent to \_\_\_\_\_ to conduct a search around the town looking for the Deceased. Captain \_\_\_\_\_ allegedly stopped the search team from continuing with their search duties; by informing them the Deceased was seen leaving \_\_\_\_\_. He did this without ensuring that the Accused house was first searched (based on the allegations that there was a gunshot sound heard at the house of the Accused).

ICD took over the investigation of this matter on 2010/05/12 after the next of kin reported the matter and their dissatisfaction in which this matter was handled by the Police.

CONSTABLE \_\_\_\_\_

Confessed that the Deceased killed himself and that he threw the body at an open field.

## **8. RECOMMENDATIONS**

It is recommended that Service no. \_\_\_\_\_ Captain \_\_\_\_\_, service no. \_\_\_\_\_ Warrant Officer \_\_\_\_\_, Service no. \_\_\_\_\_ Constable \_\_\_\_\_ and Service no. \_\_\_\_\_ all stationed at \_\_\_\_\_ to be charged departmentally in terms of Regulation 20 (F), (P) and (Q) and Service no. \_\_\_\_\_ stationed at \_\_\_\_\_ to be charged departmentally in terms of Regulation 20 (F), (P) and (Q).

\_\_\_\_\_  
INVESTIGATOR

**RECOMMENDED/NOT RECOMMENDED**



**Executive summary**

---

---

---

---

---

---

---

---

---

---

**Details of investigator and assistants:**

---

**The allegation, date, time:**

---

**The purpose of the investigation:**

---

**The crime being investigated: elements, legislation, international instruments:**

---

**Manner of receipt of complaint:**

---

**The facts:**

---

---

**The gathering of physical evidence: on site, what was found, forensic/medical reports, chain of custody:**

---

---

**The reporting of interviews (who with):**

---

**Challenges in the investigation, e.g. cooperation, hostility, fear:**

---

**Assessment of evidence and witness statements: consistency, plausibility, reliability:**

---

**Conclusions and recommendations:**

---

1. (Nairobi) June 17, 2010– Kenyan police at the Somali border and in nearby refugee camps are abusing asylum seekers and refugees fleeing war-torn Somalia, Human Rights Watch said in a report released today. Kenya should immediately rein in its abusive police, and the UN refugee agency should step up its monitoring of the situation and press for an end to the abuses, Human Rights Watch said.
2. Based on interviews with over 100 refugees, the 99-page report, “‘Welcome to Kenya’: Police Abuse of Somali Refugees <<http://lists.hrea.org/phplist/lt.php?id=Kh5QAgZVAA9QAhgGBAQDV04DB1MMBQ%3D%3D>> ,” documents widespread police extortion of asylum seekers trying to reach three camps near the Kenyan town of Dadaab, the world’s largest refugee settlement. Police use violence, arbitrary arrest, unlawful detention in inhuman and degrading conditions, threats of deportation, and wrongful prosecution for “unlawful presence” to extort money from the new arrivals – men, women, and children alike. In some cases, police also rape women. In early 2010 alone, hundreds, and possibly thousands, of Somalis unable to pay extortion demands were sent back to Somalia, in flagrant violation of Kenyan and international law.
3. “People fleeing the mayhem in Somalia, the vast majority women and children, are welcomed to Kenya with rape, whippings, beatings, detention, extortion, and summary deportation,” said Gerry Simpson, refugee researcher for Human Rights Watch and principal author of the report. “Once in the camps, some refugees face more police violence and the police turn a blind eye to sexual violence by other refugees and local Kenyans.”
4. Dozens of asylum seekers from among the estimated 40,000 Somalis who crossed Kenya’s officially closed border near the camps in the first four months of 2010 told Human Rights Watch that police ignored their pleas for free passage from the border. Instead, the police demanded money and deported or detained, beat, and falsely charged them with unlawful presence if they could not pay. A Kenyan refugee aid worker described the police operation between the border and Garissa, the provincial capital, as “one big money-making machine.”
5. “Welcome to Kenya” also documents how the threat of police interception and related abuses forces most asylum seekers to travel toward the camps on small paths away from the main road. There they are also vulnerable to attacks from common criminals, who prey upon them, raping women and stealing the little money they have.
6. Once in the camps, refugees continue to face police violence, according to the report. Police have failed to prevent, investigate, and prosecute sexual violence against refugee women and girls in the camps by other refugees and Kenyans, creating a culture of impunity and increasing the risk of sexual violence.
7. The report also examines Kenya’s illegal policy of prohibiting the vast majority of refugees registered in the camps from travelling to other parts of Kenya, unless they have special permission for reasons such as medical appointments or education in Nairobi. Under international law, Kenya must justify any such prohibition as the least restrictive measure necessary to protect national security, public order, or public health, which it has failed to do. In 2009, the authorities allowed only 6,000 of Dadaab’s almost 300,000 refugees to travel outside the squalid and overcrowded camps.

8. The report documents how police arrest refugees travelling without - and increasingly those with - government-issued "movement passes," extort money from them, and sometimes take them to court in Garissa, where they are fined or sent to prison.
9. "Welcome to Kenya" contends that the organized nature of the police's extortion racket and abuses - extending almost 200 kilometers from the border town of Liboi through the town of Dadaab to Garissa - is the direct result of Kenya's three-year-old decision to close the border. Human Rights Watch said that the related closing of a refugee transit center in Liboi, 15 kilometers from the border and 80 kilometers from the camps, has only made matters worse.
10. Before it closed, the Liboi transit center was a safe place where the vast majority of Somali asylum seekers first sought refuge in Kenya and from which the UN refugee agency, the United Nations High Commissioner for Refugees (UNHCR), transported them to the camps. Without the center, an estimated 300,000 Somalis fleeing their country to Kenya since January 2007 - half of whom have gone to the camps - have had to use smugglers to cross the border. The police take advantage of the clandestine nature of their journey, falsely accusing them of unlawfully entering Kenya and threatening arrest if they don't pay money the police demand.
11. Under Kenya's Refugee Act, all asylum seekers have 30 days after entering Kenya to travel to the nearest refugee authorities to register as refugees, regardless of how or where they entered the country. But the police routinely ignore this right. Echoing Human Rights Watch's recommendations to the Kenyan authorities in a March 2009 report, "From Horror to Hopelessness," the new report reiterates its call on the authorities to open a new center in Liboi where newly arrived asylum seekers can be screened and from which they can be safely transported to the camps.
12. "For more than three years the closed border has benefitted no one except corrupt police officers and has led to untold abuses against hundreds, if not thousands, of asylum seekers," Simpson said. "Kenya needs to guarantee safe passage and protection to Somalia's vulnerable refugees."
13. The Kenyan government has real security concerns relating to the Somali conflict, but its anti-Somali political rhetoric has only reinforced the abusive police behavior, Human Rights Watch said. Asylum seekers say that police accuse them of belonging to the Somali insurgent group Al-Shabaab or to Al Qaeda, or of being "terrorists" before - in some cases - forcing them back to Somalia. Based on eight cases involving the forced return to Somalia of 152 people that Human Rights Watch documented during its research in March 2010, Human Rights Watch believes it is likely that police have returned hundreds, if not thousands, of Somalis to their country in early 2010 alone.
14. International law prohibits the forcible return of refugees to persecution, torture or situations of generalized violence. Although Kenya has the right to prevent certain people from entering or remaining in Kenya - including those reasonably regarded as a threat to its national security, such as al-Shabaab members - it may not close its borders to asylum seekers. International law also forbids the authorities from deporting asylum seekers back to Somalia without first allowing them to apply for asylum.

15. “The police say they are protecting Kenya from terrorists and are enforcing immigration laws when they stop refugees,” Simpson said. “But the fact that they extort Somalis to pay their way through checkpoints and out of police custody suggests more concern for lining their pockets than protecting their borders.”
16. The report calls on the UN refugee agency to improve its monitoring and advocacy with the authorities and to make more frequent visits to police stations near the border, the town of Dadaab and Garissa.
17. With regard to sexual violence, victims told Human Rights Watch that the police either ignore their complaints, tell them to produce evidence, or abruptly drop the cases without explanation. In the rare event that police arrest alleged attackers, the suspects are usually released within hours or days, with little hope for further questioning or accountability. Many women believe their alleged attackers successfully bribe the police to drop investigations or to let the suspects go.

Human Rights Watch said that despite some improvements since the early 1990s, the government’s response to sexual violence in the camps fails because there are too few police in the camps with skills to investigate these crimes and because there is inadequate supervision of police handling of these cases.

18. “Nearly two decades into their existence, the camps remain a place where justice for rape victims is the exception and impunity for perpetrators the rule,” said Meghan Rhoad, researcher with Human Rights Watch’s Women’s Rights Division, who wrote the section of the report on sexual violence. “The refugee women and girls who bravely come forward and report sexual violence to the police deserve better.”

Human Rights Watch Press release

# SECTION 11

---

---

---

---

---

---

---

---

## ETHICAL AND POLITICAL DIMENSIONS OF INVESTIGATIONS

Like police, investigators into human rights violations must demonstrate honesty, integrity, fairness and impartiality in their work. However, upholding these principles is not always a straightforward or easy matter for various reasons.

In addition, while individual motivation and integrity are important, they alone are not sufficient. The agency overall needs to give continual emphasis to supporting members of staff in addressing the moral hazards which they face, and maintaining their integrity and a positive work ethos.

### Ethical issues

#### Discuss

Do investigators in oversight agencies face:

- ≡ Situations where they may expose people to danger through involving them in investigations?
- ≡ The risk of corruption?
- ≡ Situations where they may have to consider using illegitimate (or less legitimate) means to achieve their objectives (ensure that people are held accountable)?
- ≡ Moral doubts about whether their work is for society's benefit or detriment?
- ≡ Danger to themselves as a result of doing their work?



### Danger to others

People who involve themselves in cases as witnesses may face victimisation, including physical harm, or other difficulties as a result of doing so. This presents ethical questions to the investigator as to whether the person's participation in the investigation is justified. While one never wants to exaggerate or enhance people's fear unnecessarily one is also duty bound not to try and pretend that actual threats are not significant (raising the difficult question of how to assess the level of danger to a witness).

---

---

---

---

---

---

---

---

### Risk of corruption – you need integrity

Just as corruption is an occupational risk facing policing, it is also a risk for other investigators. Where investigators are involved in investigations which may lead to people being criminally prosecuted, they wield the same powers as the police. This places them in a position where people, particularly those who are the subject of investigation, may try to corruptly influence their behaviour in order to avoid facing legal accountability. Investigators and other staff

of such agencies therefore need to have integrity to resist the temptations of corruption.

### **Cutting corners or using illegitimate means – your behaviour must be exemplary**

In detective work (and policing generally) police often face a conflict between ends and means, particularly where it seems clear to them that legitimate ends cannot be achieved without using illegitimate means. It may seem unlikely that members of an investigative agency involved in investigating human rights violations would resort to extreme human rights violations such as torture, but they may be inclined to cut corners in other ways, such as by failing to inform arrestees of their rights.

This may be most likely in dealing with high profile cases, which will influence the future reputation of the investigating agency, where the agency is under pressure to deliver results (though, in addition to moral qualms, the potential fall-out for the investigative agency if any malpractices were to be exposed would obviously mitigate against using any illegitimate methods).

Overall, members of such an agency should seek to be exemplary in upholding the rights which they seek to enforce. This extends to the issue of 'case construction'. Investigators should never allow the need to construct a strong case to allow them to lose sight of their duty to pursue the truth.

### **Dealing with moral dilemmas – acknowledge doubts but be clear of your purpose**

Perhaps more importantly when investigating the police, it is unlikely to be left untouched by the moral dilemmas faced by the police. Where police appear to have been pursuing legitimate ends, it may seem that they are not morally blameworthy. Investigators therefore need to be clear about the justification and motivation for the human rights principles which they are supposed to uphold but also acknowledge that moral doubt may sometimes intrude into their work.

### **Support the police to acquire skills**

It is also important to recognise that the process of creating police agencies which adhere to human rights principles, is not only about efforts to improve accountability, it also involves supporting the police in acquiring the skills (such as working with witnesses, carrying out suspect interviews and dealing with physical evidence) which will enable them to do their work effectively without violating human rights. Ideally police leaders themselves should also be committed to this objective.

### **Threats to yourself – you need moral courage**

The people who are the subject of human rights investigations include people such as the police who may use other methods to avoid investigative scrutiny and legal accountability. This may include threats to harm members of an investigative agency involved in investigating them. Investigating human rights violations may therefore require of investigators a level of moral courage as well as clarity in how to assess and respond to such threats.

## Political issues

### Discuss

Police say that they shot dead a widely feared criminal in an armed confrontation. The deceased was wanted for a number of murders and rapes and there seems to be little doubt that the police got the 'right' man. There are witnesses who say that the deceased was shooting at police, but in the end his gun jammed and he was actually killed while trying to surrender.

- What are the implications of investigating this kind of incident for relationships with the police?
- Is there likely to be public support for an investigation into this incident?
- Is it possible to investigate all cases where there is evidence of a violation, without fear or favour irrespective of the circumstances and the identity of the suspects?
- What are the implications from the point of view of managing stakeholder relationships?



Politics often surrounds human rights investigations. These often revolve around, and impact on, whether they are or can be presented as reasonable and credible. Politics may also be influenced by the degree to which the investigative agency depends on the police or other organisations for particular types of skills.

Notes

### Negotiate for optimal cooperation

These politics partly involve a process of continually negotiating for, and seeking to establish, the optimum degree of cooperation in order to carry out the organisation's work in the most effective way.

### Be pragmatic

This may involve pragmatism on the agency's part. While the principles of impartiality should motivate that every investigation be pursued, it may sometimes be strategic to reflect on what is likely to be achieved by the investigation. This would include assessing the level of investment that the investigative agency would need to make in reconstructing an incident, and whether the investigation at the end of the day would be likely to reach a conclusive finding.

### Manage cases politically

If the agency decides to pursue a rigorous investigation, it should recognise that this will need to be managed politically. For instance, the agency will need to be willing to contest any media reports which may portray the agency as acting unreasonably.

## DAY 2 SESSION 3

# ANSWERS TO CRIME SCENE SCENARIO QUESTIONS

**Note:** The following is an attempt to provide 'model answers' to the questions on each scenario. However, the scenario does not only lend itself to 'right' or 'wrong' answers but also to assisting people who are going to become involved in investigations to engage with some of the questions which they will need to clarify and their implications for how they will need to approach crime scene investigation. These include questions about:

- ≡ What powers or legal authority they will exercise.
- ≡ What resources they will have.
- ≡ Whether they will be subject to any policy or law in terms of which it is mandatory for them to investigate (fatal) shooting incidents involving police.
- ≡ What, if any, standardised procedures are followed by the police at the scene of (fatal) police shooting incidents.
- ≡ What facilities will be available to them for analysing physical evidence.

The above may be regarded as 'preliminary questions'. In so far as participants are able to answer these questions they will be able to provide more conclusive answers to the questions provided under the scenario.

### Question 1:

Some considerations relevant to answering this question would be:

- ≡ Investigators who are travelling to a scene may in some cases be able to communicate by cell phone with police who have arrived at the scene before them and who are responsible for controlling it. The scenario seems to imply that the investigators have not been able to do this but in cases where it is possible to communicate with police who are at the scene it would be possible to clarify some of the issues outlined below before arrival.
- ≡ In conventional police work the first priority on arriving at the scene is to establish if the scene is safe or if there is any ongoing danger for instance as a result of the presence of the perpetrator. However, it would seem reasonable to assume that this is not a concern at this scene amongst other reasons because the incident itself took place two or more hours ago and also the demeanour of the crowd and police 'standing around' arguably suggests that there is no continuing source of danger.
- ≡ A key uncertainty in this scenario concerns what is happening in the house. The wailing person might be a relative or another person connected to the person outside who is mourning the death of the person outside. Alternatively it might be a person who is injured in the house (a police officer or another person shot by the police) who is in a lot of pain. It is not clear who is in the house (other police, the police officer in charge, relatives of the [dead] person outside, accomplices [if the person outside was involved in crime], etc.).
- ≡ The scenario also seems to suggest that the scene at this point is not being properly managed as a crime scene. However considerations of protocol would imply that the investigators should first establish which police officer, if any, is in charge and is managing the scene. Presumably the best way to do this would be to approach the group of police officers, greet them, identify oneself and ask who is in charge at the scene. Note that it is unclear whether the group of police are composed of personnel who were involved in the incident and/or who have subsequently arrived at the scene. If there is someone exercising control you will need to either inform them that you are taking over control from them or engage with them to address the following:
  - » If such a person can be identified then it would probably be appropriate to ascertain from them:
    - » The condition of the person on the ground and whether there are any other dead or injured people
    - » What they know about the incident including where the shooting itself is supposed to have taken place and
    - » Related to this – securing their cooperation as quickly as possible in establishing a perimeter for the scene
- ≡ From the description of the scene it seems fairly certain that the person on the ground is dead. Nevertheless, a key priority

would be to check on the condition of the person on the ground (is he or she alive or dead) as well as whether there are any dead or injured people in the house. If there are any signs of life the priority would be to clarify if anything is being done to provide medical assistance to him/her. If not (i.e. the person is dead) it is often regarded as appropriate to cover the body. This should be done while taking some care to avoid interfering with anything that might provide evidence of what happened at the scene.

- ≡ The next priority would be to 'secure and control persons at the scene'.
- ≡ This is partly intended as a first step towards ensuring that the crime scene itself is physically protected. For this purpose it will be necessary also to clarify where the shooting itself took place – if it took place in the house then the house itself as well as the area in front of it should be regarded as the crime scene.
- ≡ It is also intended to identify who the people are at the scene – particularly to identify (i) people connected to the deceased person such as family members or, in their absence, friends; (ii) police who were involved in the incident; and (iii) any possible witnesses, this might include family members or friends, police, or others in the house or in the group of people outside.
- ≡ Following this it would be important to clarify who (you or a police officer) will be in charge of the scene and to establish a clear process for the on-scene investigation, including the proper identification of witnesses and the police involved in the incident and an examination of the scene for physical evidence.
- ≡ The fact that 'the day is overcast and it seems like it has been raining earlier on' may have different implications. It may mean that some of the evidence which is more 'perishable' has already been destroyed. On the other hand it may mean that there is a likelihood of rain in the near future which would mean that there is a chance that remaining evidence at the scene will be affected. This would mean that it is important to carry out the crime scene investigation as quickly as possible as well as giving priority to the collection of perishable evidence (see answers to Question 10 below).

In summary, the above suggests that the first priorities should be understood as:

- ≡ Establish which police officer, if any, is in charge and is managing the scene.
- ≡ Establish what the condition is of the person on the ground and whether there are any other persons who are dead or injured and in need of medical attention.
- ≡ Secure and control persons at the scene.
- ≡ Clarify responsibility for management of the on-scene investigation.

Throughout, the investigators should bear in mind that this is a crime scene. Whilst giving priority to the points mentioned, they should also try to ensure that they themselves do not interfere with or contaminate potential evidence.

## Question 2

The best answer would be to establish which police officer, if any, is in charge and is managing the scene.

## Question 3

This might depend on various things:

- ≡ If there is a need for medical assistance to be called you might ask B to do this urgently.
- ≡ If you confirm that the scene is not being managed – while you go into the house you might ask B to ask the people standing around to stand further back from the body and establish if any of those amongst them witnessed any part of the incident where the person on the ground was shot. B should ask witnesses to stand to one side or if not willing or able to – to provide contact information of some kind. B should establish an appropriate boundary for the scene and if possible clearly demarcate the perimeter of the scene.

## Question 4

Yes. See answers to Question 1 above.

## Question 5

See answers to Question 1 above. You would need to establish whether someone is exercising control or not. If no one is exercising control then you should establish control (assuming that your powers provide you with the authority to do this).

In relation to the questions: Would you want to take over control of the scene from the police? Would you want to try and ensure that the crime scene is managed properly through giving instructions or making requests to the police officer in charge? The answer is that this will depend on what approach is most likely to enable you to ensure that the crime scene is managed and processed in a professional manner. This depends on:

- ≡ If no one is currently exercising control and you have the legal authority to do so, then it would be necessary for you to establish control.
- ≡ If someone is exercising control and you have the authority to take control over from them, then your approach might depend on various considerations including:
  - » What type of capacity the police have to manage and process the scene.
  - » Whether you have confidence that the police will manage and process the scene in a professional way.
  - » Your agency's approach to dealing with investigations of shootings by police and whether you have a policy of investigating all such deaths.
  - » Any laws or policies which might oblige you to investigate the case.
  - » An assessment of any known or easily verifiable information about the circumstances which led to the shooting and whether these motivate that your agency investigate the incident.

Bear in mind that in South Africa the IPID in some provinces has a policy of always taking over control of a death scene. However, in other provinces where the number of deaths is much greater and it is more difficult for the IPID to investigate all deaths, they do not take over scenes as a matter of course. In addition, in the latter provinces they often take over the investigation after the scene has been processed. However, the background to this is that the IPID relies on crime scene experts from the SAPS to do much of the physical search and documentation of the scene.

## Question 6

It is better to approach police (or anyone else) in a warm and relaxed manner. You would need to:

- ≡ Greet them
- ≡ Introduce yourself

As indicated in the answer to Questions 1, it would be appropriate to ask them: Which police officer is in charge here? Or 'Who is the senior officer at this scene' or something to this effect.

To inquire about the condition of the person who is lying on the ground (are they injured, dead, etc.) and whether there are others who are injured or dead.

## Question 7

Potentially the scenes which are relevant to a crime might include more than one physical location. Unless you can confirm and verify that the shooting incident took place entirely outside of the house, it might be appropriate to regard the house itself and the area in front of it as part of the scene. If there are other points of entry into the house, it might be appropriate to consider them as potential parts of the scene as well.

Preferably, you would be provided with crime-scene barricade tape and use this to demarcate the boundaries of the scene (assuming that there are objects around which you can erect the barrier).

## Question 8

Broadly, you are interested in two types of evidence including: (i) witness evidence and (ii) physical evidence. Depending on what facilities you have to process physical evidence the latter might potentially include:

**Ballistic evidence:**

- ≡ Bullet entry wounds or impact marks – these might indicate the direction from which guns were fired or the direction from which deceased or injured persons had been shot.
- ≡ Gunshot residue
- ≡ Firearms purportedly used (or not used) in the shooting incident in the possession of police
- ≡ Gunshot residue on the hands or clothes of anyone (including police and the deceased) who may have been involved in discharging a firearm
- ≡ Gunshot residue surround bullet entry wounds on the body of anyone shot would indicate that they were shot at close range
- ≡ Cartridge cases

**Finger-print evidence:**

Where facilities exist for examining this evidence – touch DNA may also be collected from firearms or other objects in order to verify whether they were handled by specific people.

Any footprints or other evidence of physical activity at the scene. For instance, there might be marks on the ground indicating that the body was dragged to where it is now lying (or that the person on the ground had dragged themselves along the ground). In this scenario a concern would be that there are already a lot of people at the scene and there has already been a lot of physical activity subsequent to the incident potentially implying that evidence of this kind which may have been there has already been spoilt. However if one establishes that some level of control has been exercised over the scene – particularly in the vicinity of the body – then there might be some physical marks which are of potential use.

Photographs of the scene overall indicating the relative position of the body, the way in which the body was lying, and any other potentially relevant evidence.

**Question 9**

See the introductory note at the beginning of this ‘answer’ document in connection with this question. In South Africa the IPID generally relies on a ‘crime scene expert’ from the SAPS Local Criminal Records Centre to do this. However the IPID investigator would in general be advised to check that this has been done properly.

**Question 9a:**

More detailed answers to this question are provided in:

- ≡ ‘Crime Scene Investigation: A guide for law enforcement’ by the Technical Working Group on Crime Scene Investigation. See <http://www.ncjrs.org/pdffiles1/nij/178280.pdf>.

This states that a professional crime scene investigation would include:

- ≡ Preliminary assessment and documentation of the scene
- ≡ Establishing a clearly defined entry/exit to the scene to be used by authorised personnel and
- ≡ Conducting an initial review of the scene (sometimes called a ‘walk through’) where personnel who will be involved in processing the scene establish an overview of the scene and, whilst avoiding contaminating the scene, decide on a procedure for detailed processing of the scene, giving priority to documenting fragile or perishable evidence.

Processing the scene would include:

- ≡ Assessing specialised personnel required.
- ≡ Taking steps to minimise contamination and ensure the integrity of evidence.
- ≡ Documenting the scene by means of photographs, video, sketches, measurements and notes. These should be coordinated so that they support each other.
- ≡ Prioritising the collection of evidence which is perishable.
- ≡ Using a systematic search pattern to collect, preserve, inventory and package the evidence.
- ≡ Transporting and submitting evidence in such a manner as to support the chain of evidence.

### **Question 9b**

Answers to Question 9a would be a guide to answering this question. Basically one would want to verify that the scene had been searched systematically and rigorously and that evidence had been collected in such a manner as to avoid the risk of contamination and ensure that the chain of control over the evidence was maintained.

### **Question 9c**

Answers to Questions 9a and 9b would be a guide to answering this question.

### **Question 10**

An investigator should approach people at the scene and ask them if they witnessed any part of the incident. Particularly, as in this case, where investigators have arrived a fairly long time after the incident, it may also be of interest to find out if people at the scene have witnessed activities at the scene subsequent to the incident.

### **Question 11**

It is not appropriate to make any assumptions. Even the rudimentary information which has been received prior to attending the scene (that the incident involved a shooting by police) should not be taken for an established fact. As illustrated in the answer to Question 1, there are several other aspects of the scene which are unclear and need to be clarified.

### **Question 12**

This depends, amongst other things, on:

- ≡ What resources your agency has access to and
- ≡ To what degree your agency is able to rely on other agencies to perform specific functions.

Comprehensive lists of equipment that may be regarded as 'essential' in resource rich countries are provided on:

- ≡ Pages 33–34 of 'Crime Scene Investigation: A guide for law enforcement' by the Technical Working Group on Crime Scene Investigation. <http://www.ncjrs.org/pdffiles1/nij/178280.pdf>.
- ≡ Pages 13–14 of 'Death Investigation: A guide for the scene investigator'. Developed and approved by the National Medicolegal Review Panel. <http://www.ncjrs.gov/pdffiles/167568.pdf>.

### **Question 13**

The answer might include:

- ≡ Medical personnel – if there is a need for medical assistance and such personnel have not yet been called.
- ≡ Other personnel from your agency – if the crime scene is very complex and large (or there are multiple crime scenes) and you will not be able to manage the crime scene without additional assistance.
- ≡ 'Crime scene experts' or 'ballistics experts' – if such personnel are available and have not yet been called.

# SOURCES

An important source of information for this manual was a number of interviews conducted with Independent Complaints Directorate (now IPID) investigative staff in Pretoria, Johannesburg, North West and Durban. In addition the following were used as sources of reference in compiling the manual.

Adilisha Fahamu (2004) 'Investigating, monitoring and reporting on human rights violations'.

Alston, P. (2010) 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Study on police oversight mechanisms'. Submitted to the 14th session of the UN Human Rights Council, A/HRC/14/24/Add 8.

American Association for the Advancement of Science (2000) 'Making the case – Investigating Large Scale Human Rights Violations Using Information Systems and Data Analysis'.

Amnesty International (2002) 'Monitoring and reporting human rights violations in Africa (a Handbook for community activists)'.

Amnesty International and CODESRIA (2000) 'Monitoring and Investigating Political Killings', The Netherlands.

Amnesty International and CODESRIA (2000) 'Ukweli – Monitoring and Documenting Human Rights Violations in Africa' , The Netherlands.

Amnesty International and CODESRIA (2000) 'Monitoring and investigating deaths in custody', The Netherlands.

Amnesty International and CODESRIA (2000) 'Monitoring and Investigating Sexual Violence', The Netherlands.

Amnesty International and CODESRIA (2000) 'Monitoring and Investigating Torture, Cruel, Inhuman or Degrading Treatment, and Prison Conditions', The Netherlands.

Association for the Prevention of Torture (2004) 'Monitoring places of detention: a Practical Guide', Geneva.

Association for the Prevention of Torture (2006) 'Establishment and Designation of National Preventive Mechanisms', Geneva.

Ball, P., Spierer, H.F., & Spierer, L. (Eds) (2000) 'Making the case – Investigating Large Scale Human Rights Violations Using Information Systems and Data Analysis', American Association for the Advancement of Science.

Bollman, M.D., Tidball-Binz, M., Elger, R., La Harpe, R., & Margin, P. (undated). 'Developing minimal standards for the forensic investigation of deaths in custody', Poster presentation.

Giffard, C. (2000) 'The Torture reporting handbook', Colchester Human Rights Centre, University of Essex. Available at <http://www.essex.ac.uk/torturehandbook/english.htm>.

Centre for the Study of Violence and Reconciliation (2008) 'Victims and Witness – A Guide for Police on Good Practice', Johannesburg.

Commission on Gender Equality (2000) 'Consultative Conference on Virginity Testing Report', South Africa.

Dissel, A., Jensen, S., & Roberts, S. (2009) 'Torture in South Africa: Exploring torture and cruel, inhuman and degrading treatment or punishment through the media', Centre for the Study of Violence and Reconciliation, Johannesburg.

Gudjonsson, G.H. (2007) 'Investigative Interviewing', in Newburn, T., Williamson, T. & Wright, A. (Eds), *Handbook of Criminal Investigation*, Cullompton UK: Willan Publishing, pp.466–492.

'Haiti police slaughtered inmates in prison: report', *France 24*, 24 May 2010. Available at <http://www.france24.com/en/20100524-haiti-police-slaughtered-inmates-prison-report>.

Human Rights Watch (2010) 'World Report 2010'.

Independent Medico-Legal Unit. Available at [http://www.imlu.org/index.php?option=com\\_content&task=view&id=13&Itemid=26](http://www.imlu.org/index.php?option=com_content&task=view&id=13&Itemid=26).

National Medico-legal Review Panel (1999) 'Death Investigation: A guide for the scene investigator', U.S. Department of Justice, Office of Justice Programs. Available at <http://www.ncjrs.gov/pdffiles/167568.pdf>.

Nowak, M. (2010) 'Report of the Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment: Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention', submitted to the 13th session of the UN Human Rights Council, A/HRC/13/39/Add.5.

Office of the United Nations High Commission for Human Rights (2004) 'Istanbul Protocol: A manual for the effective investigation and documentation of torture and other cruel, inhuman and degrading treatment or punishment', United Nations, Geneva.

Osterburg, J.W. & Ward, R.H. (1992) 'Criminal Investigation: A method for reconstructing the past', Anderson Publishing Co., Cincinnati.

Prison and Probation Ombudsman for England and Wales. Available at <http://www.ppo.gov.uk/prison-investigations.html>.

'Reports of the African Commission on Human and Peoples' Rights Special Rapporteur on Prison Conditions and Detention'; and The UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

Sida & Raoul Wallenberg Institute (2008) 'National Inquiries Reference Material', Zambia, November 2008.

South African Human Rights Commission (2006) 'Complaints Handling Manual'.

South African Human Rights Commission (2008) 'Progress Made in Terms of Land Tenure Security, Safety and Labour Relations in Farming Communities Since 2003'.

Technical Working Group on Crime Scene Investigation (2000) 'Crime Scene Investigation: A guide for law enforcement'. Available at <http://www.ncjrs.org/pdffiles1/nij/178280.pdf>.

Tilley, N., Robinson, A., & Burrows, J. (2007) 'The investigation of high-volume crime', in Newburn, T., Williamson, T. & Wright, A. (Eds), *Handbook of Criminal Investigation*, Cullompton UK: Willan Publishing, pp.226–254.

'Two Nigerians killed in Kundana Jail break', *BBC News*, 20 April 2010. Available at <http://news.bbc.co.uk/2/hi/8632085.stm>.

UN Office of the High Commission for Human Rights (2001) 'Training Manual on Human Rights Monitoring'. Available at <http://www1.umn.edu/humanrts/monitoring/index.html>.

United States Department of State (2010) '2009 Human Rights Report: Kenya'.

United States Department of State (2010) '2009 Human Rights Report: Tanzania'.

Williamson, T. (2007) 'Psychology and Criminal Investigation' in Newburn, T., Williamson, T. & Wright, A. (Eds), *Handbook of Criminal Investigation*, Cullompton UK: Willan Publishing, pp.68–91.

Wright, A. (2007) 'Ethics and corruption', in Newburn, T. Williamson, T. & Wright, A. (Eds), *Handbook of Criminal Investigation*, Cullompton UK: Willan Publishing, pp.586–609.

'Zimbabwe's prisons are death traps', *Sokwanele*, 30 March 2009. Available at [http://www.sokwanele.com/articles/sokwanele/zimbabwesprisonsaredeathtraps\\_31march\\_310309](http://www.sokwanele.com/articles/sokwanele/zimbabwesprisonsaredeathtraps_31march_310309).

# APCOF OVERVIEW

APCOF is a network of African policing practitioners drawn from state and nonstate institutions. It is active in promoting police reform through civilian oversight over policing. It believes that the broad values behind the establishment of civilian oversight is to assist in restoring public confidence; developing a culture of human rights, integrity and transparency within the police; and promoting good working relationships between the police and communities. It achieves its goal through raising awareness and sharing information on police oversight and providing technical assistance to civil, society, police and new and emerging oversight bodies in Africa.

APCOF was established in 2004 as a coalition of police oversight bodies and practitioners in Africa. APCOF was registered in 2006 as a not-for-profit company (section 21) under South African Company law.

## **The objectives of APCOF are to:**

- ≡ create and sustain public confidence in police;
- ≡ develop a culture of human rights, integrity, transparency and accountability within the police;
- ≡ promote a good working relationship between the police and communities.

## **The structure works on a range of issues such as:**

- ≡ promoting fair treatment of citizens by police agencies within the continent;
- ≡ the exchange of information and better practices among oversight bodies;
- ≡ campaigning for the establishment of police oversight bodies in countries where they do not currently exist; and
- ≡ encouraging and supporting the formation of networks to promote police reform.

## **The current directors of APCOF reflect the continental expertise from both state and civil society in promoting policing reform:**

- ≡ Prof. Etannibi Alemika, Chair: Criminology, Department of Sociology, University of Jos, Nigeria
- ≡ Edith Kibalama, Executive Director, East Africa Centre for Constitutional Development, Uganda
- ≡ Innocent Chukwuma, Executive Director, Cleen (Center for Law Enforcement Education Network), Nigeria
- ≡ Parry Osayande, Chair Police Service Commission, Nigeria
- ≡ Francois Beukman, Executive Director, Independent Complaints Directorate, South Africa
- ≡ Tommy Tshabalala, Head of Investigations, Independent Complaints Directorate, South Africa
- ≡ Florence Simbiri-Jaoko, Chairperson, Kenya National Commission on Human Rights, Kenya

# CD CONTENTS

## **Audit of Police Oversight in Africa**

1. APCOF (2008) An Audit of Police Oversight In Africa.

## **Common Standards for Policing**

1. CHRI/APCOF (2010) Common Standards for Policing in East Africa.

## **Corruption**

1. Interpol (2009) Global Standards to Combat Corruption in Police Forces and Services
2. Interpol (2009) Resolution on Corruption – Group of Experts.

## **Crime Scene Investigation**

1. US Department of Justice (1999) Death Scene Investigation
2. US Department of Justice (2000) Crime Scene Investigation

## **Human Rights Monitoring**

1. Adilisha (n.d.) Factfinding.
2. Amnesty International and Codesria (2000) Ukweli: Monitoring and Documenting Human Rights Violations in Africa (A Handbook).
3. CCPR (n.d.) Covenant.
4. Ebobrah S & Tanoh A (2010) Compendium of African Sub-regional Human Rights Documents.
5. United Nations (1979) Code of Conduct for Law Enforcement Officials. Adopted by General Assembly resolution 34/169 of 17 December 1979.
6. United Nations (1990) Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
7. United Nations (1998) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

## **Monitoring Places of Custody**

1. Prisons and Police Detention as a Subject of Investigation (Draft) (16 July 2010).
2. United Nations (2004). Istanbul Protocol. Manual on the Effective

Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### **NHRI Acts**

1. Republic of Kenya. The Kenya National Commission on Human Rights Act, 2002.
2. Republic of Tanzania. The Commission for Human Rights and Good Governance Act, 2001.

### **Police Monitoring**

1. Independent Complaints Directorate (South Africa) (2007) An Investigation into Deaths as a Result of Police Action in KwaZulu-Natal, Eastern Cape and Gauteng.

### **Torture, Sexual Offences, Deaths, Suicide**

- a. Amnesty International and Codesria (2000) Monitoring and Investigating Sexual Violence.
- b. Amnesty International and Codesria (2000) Monitoring and Investigating Torture, Cruel, Inhuman or Degrading Treatment and Prison Conditions.
- c. Amnesty International and Codesria (2000) Monitoring and Investigating Deaths in Custody.
- d. Muntingh L (2008) Preventing and Combating Torture in South Africa.
- e. Nowak M (2010) Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an assessment of conditions of detention.
- f. Suicide Risk Assessment Form.

### **Police Oversight**

1. Alston P (2010) Study on Police Oversight Mechanisms.
2. CHRI (2005) Police Accountability: Too Important to Neglect, Too Urgent to Delay.
3. UNDP (2008) Public Oversight of the Security Sector: A Handbook for Civil Society Organizations.
4. Miller J (2002) Civilian Oversight of Policing: Lessons from the Literature.
5. Neild R (n.d.) Themes and Debates in Public Security Reform: A Manual for Civil Society. External Controls.
6. Open Society Foundation for South Africa (2005) Strengthening Police Oversight in South Africa.

## **PowerPoint slides**

### **SAHRC Complaints Handling**

1. South African Human Rights Commission. Complaints Handling Manual.
2. South African Human Rights Commission. Complaints Handling Procedures in terms of the SA Human Rights Commission Act no. 54 of 1994.
3. South African Human Rights Commission. Process and Case Studies.

### **ICD Standard Operation Procedure**

1. Independent Complaints Directorate (South Africa). Standard Operation Procedure.

### **Useful reports and readings**

1. Amnesty International (2010) Senegal: Land of Impunity.
2. Bruce D & Neild R (2005) The Police that We Want: A Handbook for Oversight of Police in South Africa.
3. Commission on Gender Equity (1998) Conference Report: Witchcraft.
4. Human Rights Watch (2009) "Bring the Gun or You'll Die" Torture, Rape, and Other Serious Human Rights Violations by Kenyan Security Forces in the Mandera Triangle.
5. Human Rights Watch (2010) Cote d'Ivoire. Afraid and Forgotten: Lawlessness, Rape and Impunity in Western Cote d'Ivoire.
6. Kenya National Commission on Human Rights (2008) On the Brink of the Precipice: A human rights account of Kenya's post-2007 election violence.
7. Open Society Justice Initiative (2010) Criminal Force: Torture, Abuse and Extrajudicial Killings by the Nigeria Police Force.
8. South African Human Rights Commission (n.d.) Road Closures/Boom Gates.

### **Witnesses and victims**

1. CSVR (2008) Witnesses and Victims: A Guide for Police on Good Practice.