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Master thesis

**PROMOTING POLICE OBSERVANCE OF HUMAN RIGHTS :
A MODEL OF INCORPORATING HUMAN RIGHTS EDUCATION
IN POLICE TRAINING**

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Dedication

This thesis is dedicated in loving and fond memories of my beloved, dearest mother, Paulina Chigwedere. She was one in a million and a million in one. *Amai*, I will always love you!

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Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
APT	Association for the Prevention of Torture
CAT	Convention Against Torture
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CID	Criminal Investigation Department
CRC	Convention on the Rights of the Child
GA	General Assembly
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MDC	Movement for Democratic Change
NCA	National Constitutional Assembly
NGO	Non Governmental Organisation
POSA	Public Order and Security Act
SADC	Southern African Development Community
SAHRIT	Human Rights Trust of Southern Africa
SARPCCO	Southern African Regional Police Chiefs Cooperation Organisation
UDHR	Universal Declaration of Human Rights
UN	United Nations
ZANU PF	Zimbabwe African National Union-Patriotic Front
ZLR	Zimbabwe Law Report
ZRP	Zimbabwe Republic Police

1 Introduction

Police play an important role in society in the protection of human rights by maintaining law and order, which are a precondition in the enjoyment of human rights. They are entrusted with powers to assist in their role of maintaining social order. However if these powers are not exercised properly, they can result in violations of human rights. Respect for human rights by the police enhances their effectiveness, and they are seen as part of the community performing a valuable social function. It is therefore important that police respect and uphold human rights of all persons¹. On the other hand, human rights violations by the police worsens public disorder and creates barriers to effective policing.

Human rights standards that are applicable to policing are contained in among others, the International Covenant on Civil and Political Rights, (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR).

For police to respect and uphold human rights they must undergo human rights training, indeed it has been rightly pointed out that;

... standards as such lack practical value unless their content and meaning, through education and training and through monitoring, become part of the creed of every law enforcement official²

Human rights education in police training therefore becomes one of the most important precondition for the observance of human rights by the police. For human rights to be enjoyed or made practical they must be understood and applied to police duties and functions.

¹ .see Article 2 of the UN Code of Conduct for Law Enforcement Officials

² See Preamble of the Code of Conduct for Law Enforcement Officials

It should be pointed out that lack of human rights knowledge per se is not the only reason why police fail to observe human rights. There are other factors which equally contribute to non observance of human rights. These factors include repressive legal framework, political interference in the work of the police, and lack of oversight monitoring institutions. However these other factors notwithstanding, the main thread of this thesis is that human rights education is an important aspect in realising the observance of human rights standards by the police. When police understand human rights standards they are able to apply them in all their duties thereby protecting human rights of citizens they police.

There has been a lot of work in the human rights and policing field over the years. Standards relating to human rights and policing have been proclaimed in UN treaties, standard minimum rules and guidelines and in regional treaties. Human rights and policing standards have also been elaborated in articles, journals and books. The aim of this thesis is therefore not to add on to the already existing information on standards for human rights and policing, but to explore in detail how these standards can be practically and effectively used by police officers. It is aimed at realising the practical value of human rights standards for policing, by developing a model that can be used to incorporate human rights education in police training. It lays the practical steps that can be followed in the process.

This thesis will critically analyse and build upon methods of incorporating human rights education in police training. The programme carried out by the Human Rights Trust of Southern Africa (SAHRIT), a Non Governmental Organisation (NGO), will be used as a case study to critically develop effective methods that can be used in the process of incorporating human rights education in police training.

The thesis is divided into four parts as follows:

- ❖ The first part will outline the relevance of human rights to policing and the international human rights standards for law enforcement. It will analyse how police duties and functions (investigation, arrest, detention, search and seizure, use of force and maintenance of law and order), impact on human rights standards. It will also explore the challenges of human rights and policing.
- ❖ The second part describes the model on incorporating human rights education in police training. The steps in the model include the following, needs assessment study, methodology workshop, curriculum development, training, material development and evaluation.
- ❖ The third part will examine opportunities and strategies for using the model on incorporating human rights education in police services at the regional level. Police chiefs in the southern African region have recognised the importance of human rights standards as an important tool in the professionalisation of police services³. They are in the process of developing a regional framework for human rights and policing.
- ❖ The fourth part will make recommendations on the model on incorporating human rights education in police training at the national and regional levels.

The thesis will conclude that human rights education is one of the most important tools in facilitating the observance of human rights by the police. The methodology for incorporating human rights education in police training therefore becomes the most crucial aspect in ensuring the effectiveness of a human rights and policing programme.

³ Preamble of the SARPCCO Code of Conduct

2 HUMAN RIGHTS AND POLICING

2.1 Concept of Human Right and Policing

Human rights have been defined as *more than aspirations or assertions 'of the good' but claims of entitlements and corresponding obligations*".⁴ They are due to every individual by virtue of being human. Paragraph one of the preamble to the ICCPR, defines the nature of human rights when it states that:

...recognition of the inherent dignity and of the equal and inalienable rights of members of the human family is the foundation of freedom, justice and peace in the world.⁵

The sources of human rights standards relevant to policing are mainly derived from treaties and customary international law. Treaties create legally binding obligations on states that are party to them. Customary international law is said to exist if almost all countries consistently act in a certain way out a belief that this practice is a matter of law 'opinio juris'⁶

A number of UN Conferences under the theme of crime prevention have developed a number of principles, standard minimum rules, guidelines etc. These are normally classified as soft law in international law. They are not legally binding on states in the same manner as treaties; they are regarded as merely recommendations to member states that consideration should be given to their use within their national legal framework or practice.⁷ There has been a trend in considering that such documents embody some form of pre legal, moral or political obligation and that they play a significant role in the interpretation and application of existing law.⁸

⁴ "Rights Here and There", Vol. 81, 1991 Columbia Law Review 1582.

⁵ Similar provision in the IESCR and the UDHR.

⁶ Akerhurst

⁷ see UN Norms and Guidelines in Criminal Justice Working Paper, prepared by the secretariat A/Cnonf 87/8 1980

⁸ Strydom p.3, M.Bothe @legal and non Legal Norms' in ix Netherlands year Boook of International Law (1980) 65, N.S Rodley Soft Law Tough Standards in 7 Inter rights Bulletin

The effect of international law in Zimbabwe is that it does not become immediately applicable on ratification or accession of treaties. Zimbabwe follows the dualist theory, which views international law and national law as distinct systems with no jurisprudential relationship. For international law to become applicable at the national level it has to be incorporated normally through an act of parliament.⁹

The relevant treaties creating binding legal obligations on human rights standards relevant to policing in Zimbabwe are the ICCPR and the ACHPR. These have both been ratified by Zimbabwe without reservations.

The principle purpose of international law is to establish international standards and induce states to conform their legal system to these standards. Therefore when a country's laws fulfil international standards, and it enforces the standards and provides effective remedies for violation, the state becomes *ipso facto* in compliance with international law¹⁰.

States have an obligation to implement treaty provisions of human rights instruments that they are party to. The obligations include requiring states to refrain from interfering with rights of its citizens, adopting national legislation to ensure its conformity with the treaty concerned among others.¹¹ Police are state players who are expected to respect human rights in their work. The police are part of the executive branch of government who are tasked to enforce laws. The functions of the police are generally the prevention and detection of crime, maintaining or restoring social order. Policing can therefore be seen as a means in the protection of human rights especially civil and political rights and by its

No.3 (1993) 4, G. Aranglo-Ruiz, The Normative role of General Assembly of the UN and Declarations of Principles of Friendly Relations, in Recueil des Cours 1972, III,431.

⁹ See Hinkin, p.65

¹⁰ Hinkin p.204.

¹¹ Article 2, ICCPR.

contribution to the maintenance of social order. This social order is important in the enjoyment of human rights, as provided for in Article 28 of the UDHR;

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this declaration can be fully realised

It was aptly pointed out that:

... The role of the police in a democratic society is pivotal if the rule of law is to remain meaningful and human rights are to be protected and enjoyed by everyone. It is not contradictory to say that the police are essential protectors of human rights in a democratic society (protecting our lives, our homes, e.t.c.), but that the nature of their work can also make them responsible for human rights abuses (through excessive use of force, through discriminatory practices etc).¹²

Respect for human rights by the police result in, public confidence being built, community cooperation being fostered, legal prosecutions being successful in court, the fair administration of justice being served, an example being set for the respect of the law by others in society and support being elicited from all sectors of the society. On the other hand, violations of human rights by the police results in the erosion of public confidence, the hampering of effective prosecutions in court, the isolation of the police from the community, the guilty going free and the victims being left without redress and forcing police agencies to be reactive, rather than proactive in their approach to crime.¹³

2.2 Police Powers

The main functions of the police are to protect the public by preventing crime, bringing to justice those who have committed crimes and maintaining law and

¹² See J Dinsdale opening address in *Human rights and the police* Council of Europe 1997 pg 8

¹³ see page v *Human Rights and Law Enforcement*, United Nations, 1997,

order. These duties require some form of power to implement them. The Criminal Procedure and Evidence Act [Chapter 9:07], is the statute in Zimbabwe that confers upon the police the powers of investigation, arrest, detention, search, entry and seizure.

2.3 Investigation

Investigation of crime is the first step in the administration of justice. The purpose of investigating a crime is to gather evidence, to identify the criminal and to present evidence before a court. It is the manner in which those suspected of having committed an offence are brought before the court. More specifically investigation has been described as the:

...Systematised search for the truth and is primarily aimed at the positive clarification of the crime situation on the basis of objective and subjective traces. Objective traces can be typified as the material proof and the objective explanation thereof that is the so called mute, indirect or circumstantial evidence, subjective traces are the evidence of persons...who are directly or indirectly involved in the commission of crime. Crime investigation therefore means to observe intensely, to question systematically and to gather information, which will reveal the truth¹⁴.

The police in this stage may arrest, detain and enter the premises of suspects and seize property suspected to have been used in the commission of a crime or that was obtained through the commission of a crime. Police often use torture to obtain a confession from suspects by forcing them to admit guilt of an alleged offence. Section 256 of the Criminal Procedure and Evidence Act makes a freely and voluntarily made confession of commission of an offence admissible against an accused, this it has been argued influences police to exert pressure on accused persons to make confessions.¹⁵

¹⁴ C.W Marais and H.J.N. Van Rooyen in C. Masango, Police Powers of Investigation, 2001, unpublished paper.

¹⁵ See A. Matulich, Policing Tortious Policing, 2000

2.4 Search and seizure

Police are entrusted with power to search individuals and their property and to seize items suspected to have been involved in the commission of a crime. Searches especially of individuals, their homes, other property and vehicles and the interception of correspondence, telephone messages or other communications must be strictly legal and necessary for legitimate law enforcement purposes.

2.5 Arrest

The term *arrest* has been defined in the Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment as:

...the act of apprehending a person for the alleged commission of an offence or by the action of an authority.

The purposes of arrest in law enforcement are:

- to prevent a person from committing or continuing to commit an unlawful act
- to enable an investigation to be carried out in relation to a n alleged unlawful act committed by the person arrested or
- to present a person before a court for consideration of any charges against him or her

2.6 Use force and firearms

Police are given power under the law to use force. Article 3 of the UN Code of Conduct provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. The Basic Principles on the Use of Force and Firearms also lays out the principles for the use of force and firearms. The main principle being that peaceful means should first be attempted before force is applied and that only minimum levels of force are to be applied. Police may use force in the following circumstances:

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life¹⁶.

Unlawful use of force results in serious human rights violations, such as deprivation of life, wrongful arrests and detention.

2.7 Maintenance of law and order

Police are entrusted with the duty of maintaining law and order. Social order is necessary for the enjoyment of human rights. This duty entails dispersing unlawful and non-peaceful demonstrations or rallies so as to protect the lives and property of others.

When using the powers described above, police should always apply human rights standards. The main examples of human rights standards that should be adhered to when using this police power are: right to life, prohibition against torture, liberty, privacy, and protection of the law, expression, assembly and association.

These human rights standards will be examined in relation to police duties and functions. It should be emphasised that police powers entail great responsibilities and impact heavily on the relationship between police and the public. If the police do not respect human rights or fail to apply human rights standards; the relationship with the public will be impaired and will make policing difficult. Effective policing requires maximum co-operation with the public.

¹⁶ Principle 9 of the Basic Principles on the Use of Force and Firearms.

2.8 Selected Human Rights Standards relevant to policing

2.8.1 Right to life and security of the person

Article 6.1 of the ICCPR provides that everyone has the inherent right to life, which shall be protected by law. It also prohibits the arbitrary deprivation of life.

The Human Rights Committee (the supervisory body for the ICCPR in its General Comments on Article 6 of that treaty, has interpreted the right to life as:

.... the supreme right from which no derogation is permitted even in time of public emergency, which threatens the life of the nation. The protection against arbitrary deprivation of life is of paramount importance. ...State Parties should take measures not only to prevent and punish deprivation of life by criminal act, but also to prevent arbitrary killings by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore the law must strictly control and limit the circumstances in which a person may be deprived of life by such authorities.

Arbitrary deprivation of life includes deaths arising from torture and ill treatment.

The role of the police is to prevent and to detect unlawful killings by bringing offenders to justice. In the performance of their duties police should not arbitrarily deprive persons of their right to life, by for instance using excessive force or firing randomly.

2.8.2 Right to Liberty

Article 9 of the ICCPR provides for the right to liberty and security of the person. It prohibits arbitrary arrest or detention. It provides that deprivation of liberty should only be on grounds and procedures established by law. The phrase *arbitrary arrest* has been interpreted to include;

...elements of inappropriateness, injustice and lack of predictability and due process of law...this means that...remand in custody must further be

necessary in all circumstances, for example to prevent flight, interference with evidence or recurrence of crime¹⁷.

The right to liberty of a person is a fundamental human right that is essential for the enjoyment of all other rights. The power to arrest and detain directly impacts on the right to liberty. Most countries empower police to deprive a person of his or her liberty when there is reasonable suspicion that the person has committed an offence, when it is reasonably considered necessary to prevent the person from committing an offence and when it is necessary to maintain or restore public order.

A person deprived of their liberty requires special and humane forms of protection, as they are vulnerable to ill treatment and torture. The ICCPR¹⁸, provide forms of protection for people deprived of their liberty.

Detention

Detention, like arrest, involves the deprivation of a person's liberty. Detainees in police custody have not been convicted of any crime. They are suspects in respect of whom the presumption of innocence applies. Police conduct towards detainees should be humane and in strict compliance with the law and guidelines governing treatment of people in custody. This is particularly important when police are interviewing or interrogating persons suspected or accused of committing a crime. Detainees are subject to a legally sanctioned process and they are a category of persons who benefit from specific forms of protection based on the following principles; prohibition of torture and ill treatment and requirements for humane treatment.¹⁹

¹⁷ In *Albert Mukong v. Cameroon*, case No. 458/1991, Human Rights Committee 1994 Report, Annex IX, sect. AA, para.9.8.

¹⁸ Articles 9 and 10.

¹⁹ Article 10 of ICCPR. *S v Makwakwa* 1997 (2) Zimbabwe Law Reports (ZLR), 298, *Muzonda v Minister of Home Affairs and Another*. 1993 (1) ZLR93 and *Botha v Zvada and the Minister of Home Affairs* SC 83/97.

2.8.3 Freedom from Torture, Inhuman and Degrading Treatment or Punishment

Torture is a particularly serious violation of human rights and is strictly prohibited and condemned by international law in the following instruments: the UDHR, ICCPR, and Code of Conduct for Law Enforcement Officials and the Convention Against Torture.²⁰ The provisions state that no one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment.

Torture is defined as:

Any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as 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 to have 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 a public official or other person acting in an official capacity.²¹

The prohibition of torture is absolute and without exception. There is no justification for torture whether on the grounds of superior orders, or exceptional circumstances such as a state of war or threat of war, a threat to national security, internal political instability or any other public emergency. The scope of prohibition of torture covers all aspects of law enforcement and is not limited to detention only. The role of the police with regard to this right is to abstain from torturing suspects.

2.8.4 Right to Privacy

International law²² prohibits arbitrary searches and protects the individual's right to privacy. It protects individuals from arbitrary or unlawful interference with their

²⁰ Zimbabwe is not party to CAT, but is bound to prohibition of torture under customary international law.

²¹ Article 1 of CAT.

²² Article 17 of ICCPR

privacy, family home or correspondence, including unlawful attacks on their honour or reputation. The Human Rights Committee has outlined the requirements of this right in as follows:

Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment. So far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex.²³

Exceptions to this general principle includes where the law makes provisions for the enforcement of the law in circumstances where there are reasonable grounds for believing that the search or entry is necessary for the prevention, investigation or detection of a criminal offence, for the seizure of any property which is the subject matter of a criminal offence or evidence relating to a criminal offence or for the lawful arrest of a person.²⁴

2.8.5 Freedom of Association and Assembly

The ICCPR provides for these rights in Articles 21 and 22. These rights enable people to freely assemble and associate with others, including the right to form and join trade unions for the protection of their interests. People are therefore entitled to assemble and associate peacefully with each other in rallies or demonstrations. It should be noted that these rights are not absolute. These rights are enjoyed subject to restrictions requiring the respect for the rights and freedoms of others, public order and safety, national security and public health and morals. The police will be called upon to put these restrictions into effect in circumstances where it is deemed necessary in a democratic society.

²³ General Comment No. 16

²⁴ Section 17 of the Zimbabwean Constitution.

2.8.6 Freedom of Expression

Article 19 of the ICCPR provides for the right of individuals to freedom of expression which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. This right is enjoyed subject to respect of the rights or reputations of others and for the protection of national security or of public order (*ordre public*), or of public health or morals. The role of the police with regards to this right is mainly in the maintenance of social order in which this right can be enjoyed by individuals.

2.8.7 Equality before the Law

Article 26 of the ICCPR provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Laws should therefore prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This right requires the police in carrying out their duties to do so in a non-discriminatory manner. They should not discriminate on the stipulated grounds.

2.9 Challenges of Observing Human Rights in Policing

As pointed out earlier, human rights knowledge on its own is not sufficient to encourage respect of human rights by the police. Some police officers in the ZRP programme admitted that they were familiar with human rights standards that were applicable to their duties but could not implement them because of other factors that hindered them to do so. It is therefore important that such factors be identified and addressed in a training programme for police. Some of the major challenges faced by the police are discussed below.

2.9.1 Undemocratic legislation

The functions of the police among others are to enforce laws. If a country has legislation that does not meet minimum human rights standards, police still have to enforce them. Undemocratic legislation therefore is a challenge in human rights and policing because the laws are such that police cannot help but violate human rights. It has been pointed out that:

The extent to which law enforcement agents respect fundamental human rights of any society largely depends on freedom and democratic ideals of any society in which they function as instruments of power.²⁵

For police to implement human rights, it is imperative that a country has legislation that is human rights friendly.

In Zimbabwe, there exist some pieces of legislation that do not meet the international minimum human rights standards. The Public Order and Security Act, (POSA)²⁶, which impinges on the rights of freedom of association and assembly is one example. It among other things regulates against public meetings without prior permission of the police. Some of its provisions cannot be said to be reasonably justifiable in a democratic society. It is clear that enforcement of POSA by the police will and has resulted in human rights violations.

The general trend in human rights law is to adopt the exclusionary rule where evidence is obtained through unlawful means as part of protecting the rights of the individual²⁷. This is not the case in Zimbabwe. Section 256 of the Criminal Procedure and Evidence Act provides that such evidence is admissible.

The Zimbabwean Constitution provides the right to silence of an accused but Section 257 of the Criminal Procedure and Evidence Act provides that failure by an accused person to mention facts in his defence may be used against him in a

²⁵ C. Mwalimu in I. Chukwuma, *Police Reform in Nigeria: Issues at Stake*, 1999, Unpublished.

²⁶ No. 1 of 2002, Chapter 11:17.

court of law. This is clearly unconstitutional and does not meet international standards. If this provision were to be challenged before the Supreme Court, there is a great probability that it will be struck out.

2.9.2 Culture and Subcultures

A police culture which appears to be directed towards achieving results in the work place and not towards respect for human rights has been identified.²⁸ It has been argued that this neglects human rights as it influences behaviour in which the end justifies the means as securing evidence which points towards conviction of an accused becomes the prime objective.

Human rights training can change attitudes but not necessarily behaviour of police. Subcultures within the police often resist change. It is often that police within sections of the organisation will form themselves into groups and abide to identified values and norms that apply to the closed group. More often, these groups develop an attitude that they can do whatever they like and get away with it. Members become loyal to each other, sticking together and covering up for each other and showing hostility to external influences. What happens at police station including human rights violations is accorded a shield of secrecy. Several reasons have been identified as having nurtured subcultures²⁹, these include the following: buddy system (whereby each look out for each other), elitism within different units, lack of accountability, sense of impunity, culture of secrecy and macho aspects of policing. This becomes a challenge in respecting human rights values as these sub groups tend to put their values above human rights values, thus if a member of a subgroup is accused of violating human rights, the other

²⁷ See also Article 15 of CAT which prohibits evidence obtained through torture.

²⁸ Matulich

²⁹ See A.Minnaar, Seminar Report, Policing and Human Rights in the Southern African Development Community (SADC), 2000 (unpublished)

members will cover up for that member. This encourages repetitions as it sends a signal that there is little risk of detection and punishment.³⁰

2.9.3 Political Interference

Political interference was the most cited reason in the ZRP, as being a challenge in respecting human rights.

Political interference occurs when politicians manipulate police officers by giving instructions contrary to human rights. This has resulted in human rights violations of opposition party members, civic groups, etc. The rights violated include freedom of expression, association, life, torture, liberty and security of the person. It has been pointed out that:³¹

Political manipulation of the police subverts the rule of law and undermines the professionalism of officers, deterring the best recruits and reducing police capacity to combat crime effectively.

Political misuse of the police is against international human rights standards for policing. Article 26 of the ICCPR provides for equal protection of the law without discrimination. It has often been alleged that the government of Zimbabwe has misused the police to harass, disrupt or discourage the activities of civil society organisations. An account of how police were partisan in the presidential campaign period revealed that police refused to allow government opponents to hold rallies, or give them protection and actually arrested opponents.³²

2.9.4 Superior Orders

³⁰ see Goredema and Matulich

³¹ See A1, Policing to Protect human rights, pg 24 Amnesty International publications 2002

³² *ibid.* Human Rights and Zimbabwe's Presidential Election: March 2002,

Police officers often point out that they do not violate human rights willingly, but that they are given orders by their superiors, which result in human rights violations. Junior officers are afraid of refusing to obey such orders. The obedience to carrying out unlawful orders is not in line with Principle 26 of the UN Basic Principles on the Use of Force and Firearms, which states that:

Obedience to superior orders will be no defence if law enforcement officials know that an order ...was manifestly unlawful and had a reasonable opportunity to refuse to follow it...

2.9.5 Lack of Oversight Complaints Mechanisms

Police should be subjected to independent scrutiny as means of ensuring their respect for human rights. Lack of such mechanisms is a challenge in the observance of human rights, as there are no deterrent mechanisms. Erring officers are not punished. Accountability by the police helps to increase public confidence as negative behaviour is dealt with.

Indeed this holds true since the police are tasked to enforce and uphold the law and not to break it. There should be mechanisms to investigate and deal with human rights violations by the police such as torture, murder and other violations.

Allegations of human violations of human rights by the police should therefore be investigated, the victims offered redress and the perpetrators brought to justice. Failure to do so seems to sustain the view that violations are tolerated and can be repeated.

2.9.6 Perceptions of human rights by the police

Some police officers hold the view that human rights are not relevant to their work. They have various perceptions on human rights including the perception that respecting human rights will make them weak and ineffective. Some of the common perceptions are discussed below.

Human rights is opposition politics

Some police officers genuinely believed that human rights were opposition politics, meant for discrediting the ruling party by opposition political parties, NGOs and western countries. This perception affects political rights such as freedom of association, assembly and freedom of expression. If NGOs or opposition political parties applied for clearance to conduct peaceful demonstrations, these were automatically denied.

Human rights soften the police

A perception that police recruit training is geared towards producing a tough and hardened police officer is widely held. This approach it is argued makes the officer unable to appreciate human rights as they view the prohibition of excessive use of force as not in line with being an effective police officer. Police therefore view observing human rights softening them. This view is especially held by officers in the criminal investigation department and those who attend to riots. This perception erodes the requirements of the principles of the use of force where it is stated that peaceful means should be sought before using force.

2.10 Strategies for Addressing challenges of Human Rights and policing

In formulating strategies to address challenges discussed above, it is important to bear in mind that:

If police are to be human rights defenders rather than human rights violators, there must be clear standards for police conduct; proper training, tools and other support for meeting these standards; effective mechanisms for public oversight and accountability; and a relationship of trust with the communities they are policing.³³

The following are strategies that can be adopted to address challenges of observing human rights in policing:

- training police personnel at all levels on observance of human rights

³³ Defenders of Violators? The need for human rights based policing, <http://www.amnesty.ca/library/policingagenda.htm>, visited on 23 September 2002.

- advocating for the repeal of laws that hinder the effective enjoyment of human rights
- sensitising politicians on the importance of an impartial and professional police service so that they do not abuse the police for their political ends.
- discouraging the indiscriminate and oppressive use of police powers of arrest, search detention and use of force and firearms.
- taking disciplinary action against police members who wilfully violate human rights.
- establishing oversight monitoring bodies to ensure police accountability. These bodies should be independent preferably constituted by civilians. The functions of these bodies would include monitoring the policing process to ensure that citizen's complaints by the police are effectively dealt with and by providing recourse to dissatisfied citizens with complaints against the police.
- increasing supervision, monitoring and evaluation of police officers so as to reduce the incidents of human rights violations and promote human rights observance.
- formulating clear human rights policies and standards for human rights values in police services.
- Training other sectors in the criminal justice system on human rights, such as prosecutors, judges and magistrates so that they can appreciate and deal with claims of violations of human rights that are raised by suspects.

3 A MODEL OF INCORPORATING HUMAN RIGHTS EDUCATION IN POLICE TRAINING

Human rights education is one of the means that can facilitate observance of human rights by the police when carrying out their duties. Knowledge of human rights standards relevant to policing therefore becomes a prerequisite in policing that meets human rights standards. A focused and systematic model of integrating human rights in police training is therefore important if the training is to be effective and sustainable. This part will present the model that has been developed for incorporating human rights in police training. The steps in the model include the following, needs assessment study, methodology workshop, sensitisation workshop, curriculum review, training, material development and evaluation.

This chapter will also briefly outline the background of the ZRP and the human rights and policing programme that SAHRIT conducted. The human rights programme will be used as a case study upon which information for developing this model was derived.

3.1 Background to the Zimbabwe Republic Police and the Human Rights and Policing Programme

3.1.1 Background to the Zimbabwe Republic Police

Section 93(1) of the constitution of Zimbabwe provides the mandate of the ZRP as follows:

There shall be a Police Force, which, together with such other bodies as may be established by law for the purpose, shall have the function of preserving the internal security of and maintaining law and order in Zimbabwe.

The Zimbabwe Republic police was established in 1980 after the independence of Zimbabwe from Britain. Its predecessor, the British South Africa Police, (BSAP), was used as a tool of colonial imperialism and racist oppression, the laws which it enforced were brutal and oppressive.³⁴ The ZRP tasked itself to transform itself into a peoples force so as to remove the colonial image of brutal oppressors. As part of this initiative the ZRP adopted the Service Charter which is a document informing the public on service standards to be expected from the police. It states among other things, that the ZRP is committed to providing the most efficient and effective service to the public.

The organisational values of the ZRP are also outlined in the service Charter; they include among others, highest quality service to the public, highest professional standards in its operations, transparency and accountability. It further lays out values that individual police officers should adhere to in carrying out their duties, these include diligence, courtesy, fairness, honesty, integrity and with due respect of human rights. The extent to which these values are complied with are outside the parameters of this discussion but suffice to mention that of late police have been accused of not living up to these standards they set for themselves.

3.2 The project on incorporating human rights in the Zimbabwe Republic Police

As was mentioned in part one, the case study used is the human rights and police programme that was carried out by SAHRIT and ZRP. The case study depicts the practical process used by SAHRIT to enable the practical realisation of human rights standards in policing. SAHRIT is a southern African regional NGO based in Zimbabwe. SAHRIT's focus is to facilitate the protection and promotion of human rights in southern Africa. In this regard, SAHRIT focuses on mainstreaming human rights within public institutions in its quest to fulfil the United Nations Decade for Human Rights Education (1995-2004) and the Vienna

³⁴ Supra Matulich

Declaration of Human Rights (1993), which call upon states and stakeholders such as NGOs, to introduce human rights education in all their institutions.

The objectives of the programme included integrating human rights and gender in police training, development of human rights and policing materials and training human rights.

The following factors contributed to the successful implementation of the programme, endorsement and commitment to the programme by senior police officials who initially approached SAHRIT to assist them to implement human rights, enthusiasm for the programme within the police organisation as demonstrated by police officers who participated in activities on this programme. They showed a high degree of enthusiasm by sharing their experiences, challenges and providing suggestions on how best to embrace human rights in their work, participation in the programme by all stakeholders in the ZRP, this made the programme acceptable and inculcated a sense of ownership for the programme, pool of human rights and policing experts from within and outside the ZRP. This enriched the programme, as there was a lot of exchange and sharing of information on best practices of human rights and policing.

The process implementation of the programme encountered some problems such as negative publicity caused by allegations of excessive force in quelling riots and a number of alleged unlawful shooting incidents by the police and the political environment which affected the observance of human rights by the police. Police officers consistently mentioned pressure from politicians as affecting the way they discharged their functions. The number of claims of police brutality increased during the running of the programme, with the police coming under fire from the public. Police were accused of using excessive force in suppressing riots.

Some achievements of the programme included, police trainers and commanders being trained on the concepts of human rights and on the training techniques, the development of human rights and materials and the introduction of a compulsory human rights question in all promotional examinations.

Experiences on the process leading to the realisation of these outputs are the basis on which the model is developed.

3.3 Human Rights Education

Human Rights education has been proclaimed in a number of global and regional instruments since 1945. The UN charter called for:

Co-operation in promoting and encouraging respect for human rights and fundamental freedoms ³⁵.

Human rights education is a strategy of preventing human rights violations and as a technique of empowering people to meet their needs based upon their knowledge and use of these rights. The GA proclaimed the UDHR

...as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms ... to secure their universal and effective recognition and effective recognition and observance...

Human rights education is therefore seen as a tool for promoting the respect for human rights.

Article 26 (2) of the UDHR clearly states that;

Education shall be directed to the full development of the human personality and to strengthening of respect for human rights and fundamental freedoms

The importance of human rights education can therefore not be over emphasised. The ICCPR and the International Covenant on Economic, Social and Cultural Rights, (IESCR), (which create legally binding obligations), and all the regional

³⁵ Article 1, sec 3

human rights instruments, the African, the American and the European, recognise this standard. The African Charter sets out the clearest guidelines on the methodology for human rights education, Article 25 states that;

State parties shall have the duty to promote and ensure through teaching, education and publication, the respect for human rights and freedoms contained in the present charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood

This article makes provision that it is an obligation for state parties to ensure that these rights are taught and understood. It has been correctly observed that:

to say that government responsibility to teach human rights should also ensure their understanding is an innovative standard and an important addition to international discourse. ...The standard suggests that those obliged to teach human rights should also ensure that such programmes are effective in that people accept and understand their rights and that they are thereby empowered to use them and can benefit by exercising them³⁶

From the above discussion, it is clear that human rights education is an important tool in promoting respect for human rights, that it is the obligation of Governments, NGOs and society at large to engage in human rights education and that strategies should ensure that human rights education is effective.

For police to respect human rights it is therefore important that they undergo human rights training. Police should learn the applicable human rights standards that are relevant to their work. Any programme for human rights education for the police should be designed to be effective in building a human rights culture and the methods to be used should be geared towards contributing to this need. Three

³⁶ See R.P Claude Methodologies for human rights education. A project of the independent commission on human rights education, <http://www.pdhre.org/materials/methodologies.html> visited on 1 September 2002]

operating models of enhancing effectiveness of human rights education have been proposed³⁷.

The models are; the values and awareness model whose main focus is to transmit basic knowledge of human rights issues and to foster its integration into public values. The second model, the accountability model, assumes that participants will be directly involved in the protecting individual and group rights. Threat of violation of rights is seen as inherent to their work, it sensitises participants about the nature of human rights violations and potentials within their professional role, not only to permit abuses but also to promote dignity. Examples of programmes falling under this category are training for lawyers, judges, police and prison officers. The third is the transformational model which is geared towards empowering the individual to recognise human rights abuses and to commit their prevention.

These models are useful tools for classifying educational programmes and clarifying their target groups. It is important to note though, that in adopting one model, elements of other models should not be left out, if a human rights education model is to be effective. Take for instance; if one adopts the accountability model for a police programme, it should also include elements from the awareness and values model and from the transformational model. In the ZRP human rights programme, police officers felt that human rights education ought to start within their organisation. They strongly felt that the manner in which they are treated within their organisations impacted on the way they treated members of the public. They argued that if their dignity was respected at the work place, they were likely to respect the dignity of others, especially members of the public they came into contact with. In view of this, the accountability model should therefore first inculcate the values of human rights so that the police feel that they are also

³⁷ See F. Tibbitts: Emerging models for human rights education, <http://usinfo.state.gov/journals/itdhr/0302/ijde/tibbitts.htm> visited on 5 September 2002]

entitled to human rights. Elements of transformational model are equally important. It is critical that police receive education that is geared towards empowering them to both recognise human rights abuse and to commit to their prevention. This will put them in a position to recognise and protect human rights of those they come into contact with.

3.4 Methodologies of incorporating human rights education in Police Training

The objective of incorporating human rights education in police training is to facilitate the respect for human rights by the police when carrying out their duties.

The objectives of human rights education have been stated as follows:

- to make students aware of the universal yearning for human rights so that they can have a sense of human community
- to transmit to students basic knowledge concerning international instruments to protect human rights and their associated institutions
- to give students experience in thinking critically about these issues and their application in particular cases of denial of human rights
- to encourage a concern or empathy for those who have experienced violations of their rights.³⁸

It has further been pointed out that:

Since human rights embrace the totality of the human condition, it is imperative that they be understood, thus human rights education, training and information play a crucial role in the promotion and full realisation of human rights.³⁹

The focus of this chapter is on human rights education as a tool of promoting the respect for human rights by the police.

³⁸ See A. Chanda, *Methods of Human Rights Training in Towards Creating a sustainable culture of human rights*, UNESCO, Gamsberg Macmillan, 1998, pg 78

³⁹ N. Rembe, *Methods of human rights training in Towards Creating a sustainable culture of human rights*, UNESCO, Gamsberg Macmillan, 1998, pg 78

3.5 Principles to be considered when incorporating human rights education in police training

The most important principle that contributed to the success of the ZRP programme was that of ownership of the programme by the police. A deliberate effort was made to ensure that police had ownership and control of the process of incorporating human rights in the ZRP training. SAHRIT's strategy was that for the human rights programme to work, ZRP had to totally own the processes. SAHRIT's role was to merely facilitate the incorporation of human rights in police training by providing financial resource, technical expertise and developing materials. Ownership was facilitated by including the police in all decision making processes relating to activities of the programme, by providing them with an opportunity to participate in training programmes that were conducted and in the development of all the materials. A joint task team was set up with members from SAHRIT and the ZRP with the responsibility of implementing the programme. The participation of the police in the programme was genuine and not token. This principle proved to be effective in implementing the programme. It is very important that the target group do not feel that the programme is being imposed on them, they should feel that the programmes theirs as this leads to commitment. According to research findings in social psychology, change agents encounter more difficulties in introducing innovation into groups through reliance on outsiders to the exclusion of in-group participation.⁴⁰

The other important principle that was considered was based on the premise that since police are potential violators of human rights, a proactive rather than a reactive intervention was more useful. Basically that it is better to carry out activities that prevent human rights violations rather than acting after a violation has occurred. There were actually some views by some civil society members and some funders that it was wrong to work with a government that was allegedly violating human rights. The argument justifying working with a government

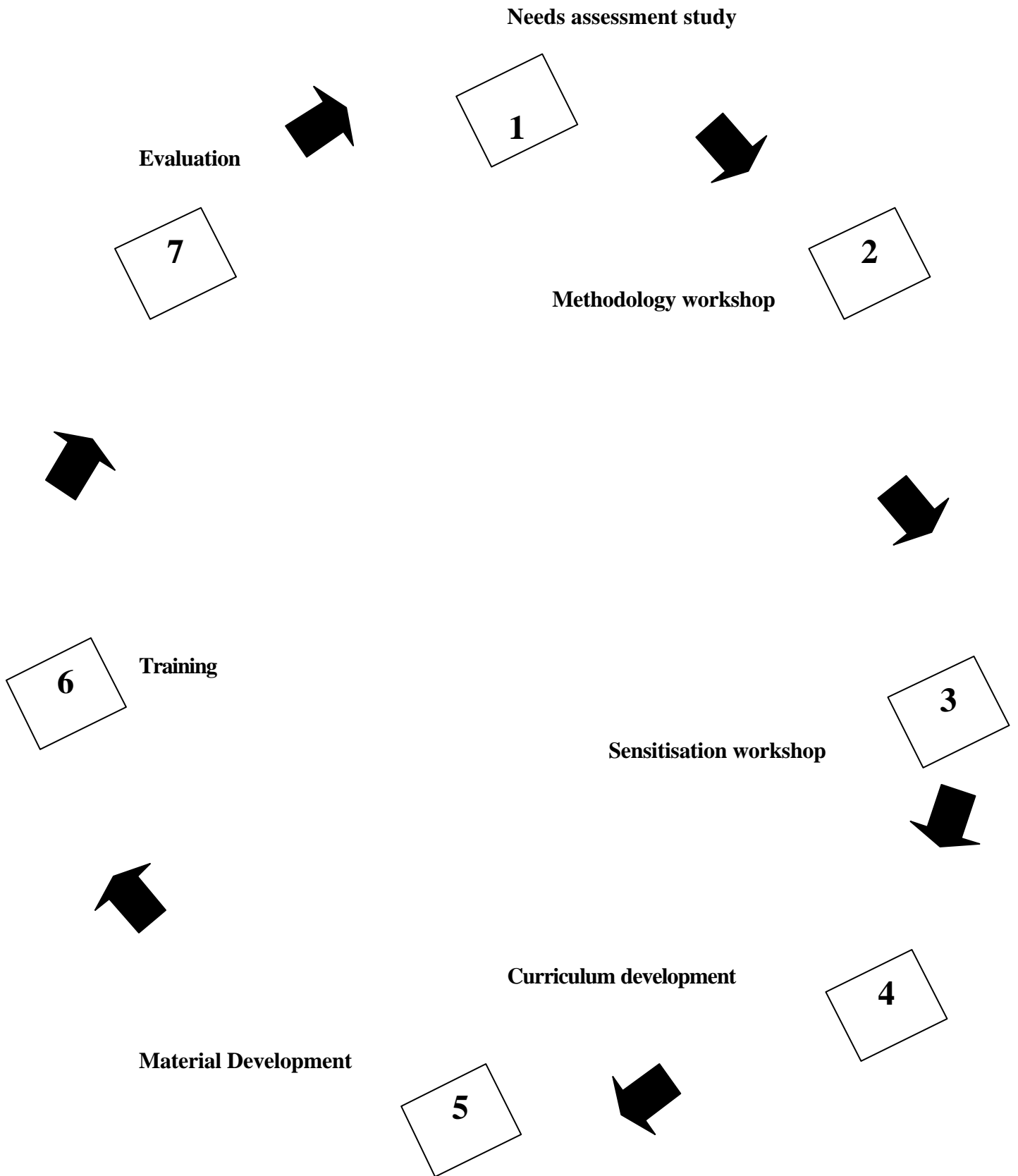
⁴⁰ E. Katz and P.H. Lazarsfeld, *Personal Influence* Glencoe, ILL: The Free Press, 1955

seemingly violating human rights, is that it is when a government is violating human rights that there is a greater need to intervene, rather than working with a government that is respecting human rights. It has been demonstrated that if the police fully understand human rights they can be empowered to refuse to obey unlawful orders from authorities, as was the case in the Philippines and in the Former Yugoslavia. Human rights education therefore can therefore be used to protect human rights by the police.

3.6 Model of Incorporating Human Rights Education in Police Training

A model on steps to be taken on effectively incorporating human rights education in police training is illustrated below, it has the following stages, Needs Assessment study, Report back workshop, sensitisation workshop, curriculum development, material development, training and evaluation.

Model of Incorporating Human Rights Education In Police Training



The steps in the model will be discussed below.

3.6.1 Needs Assessment Study

It is always important to identify the needs of beneficiaries before implementing a programme. This helps in addressing the needs and concerns of beneficiaries. The other advantage is that it encourages participation in the programme thereby enhancing a sense of ownership, which results in sustainability. For a programme on incorporating human rights in police training – the needs assessment study should focus, on current human rights programmes, in-service training facilities and available materials, it should also focus on what needs to be developed, the human rights aspects to be taught and methodologies for incorporating human rights. SAHRIT and ZRP conducted a Needs Assessment Study, the findings constituted the basis for the programme implementation.

3.6.2 Methodology / Report Back Workshop

This workshop is where the findings of the Needs Assessment Study are reported to the target group, who will be involved in the training. It is very important that beneficiaries formally verify and confirm the findings. This avoids a situation where beneficiaries at a later stage will say they were not involved. The methodology aspect looks at formulation of strategies that will be used in implementing the programme. Participants may be divided into groups and tasked to work on issues raised by the needs assessment study and to then devise methods of implementing the programme.

3.6.3 Sensitisation Workshop

Once the needs of the programme have been identified and methodologies established the next step is to sensitise officers who will be involved in implementation on the basic concepts of human rights and policing so that they understand the concepts. It would be difficult and ineffective if the programme

were to be implemented by people who were not conversant with the concepts of the subject matter. The sensitisation should focus on the international, regional and national standards on human rights and policing.

3.6.4 Curriculum Development

A curriculum outlining the syllabus of the training should be developed, it should focus on both the theoretical and practical aspects of a human rights and policing course. It should set out the parameters of the programme and be developed together with police trainers. It should be approved by senior police officers.

3.6.5 Material Development

Materials on human rights and policing are important in the training of police officials. Material development requires a highly participatory approach with police officers taking an active role in all the stages. They should contribute to the contents and substance of the materials. This is especially crucial since police can come up with their daily experiences, challenges and problems they face in their duties. These practical experiences are essential to link up with the theoretical aspects of human rights and policing. The following materials may be developed for police training; resource book, trainer's guide, pocket book, pamphlets and brochures.

3.6.6 Training

Training should be designed for various groups in the police organisation. These groups would include trainers; hands on people e.g. those responsible for public order, investigation etc and commanders. Training of the specific groups is outlined as follows.

Training of Trainers

The training of trainers is considered to be the most important training for the incorporation of human rights education to be sustainable. Officers at different

levels should be trained, i.e., those who train recruits and in-service personnel. A detailed and thorough programme for trainers should be designed. It should be based both on the training techniques and on substance of human rights and policing. The training should be as practical as possible.

Commanders

Police commanders are responsible for issuing policy matters, instructions and orders. It is therefore important that they are aware of human rights standards so that their orders and instructions do not conflict with human rights standards. It was correctly pointed out that:

The police force is hierarchical and regimented and so political support or lack of it by senior officers would determine the success or failure of the programme. ... Once the senior officers had gone through the programme and got new knowledge that would positively influence their work, they were able to support the programme and they have been able to do that.⁴¹

Specific groups

Police organisations are divided into different departments with personnel entrusted with specific duties, e.g. public order, criminal investigation and use of force and firearms. Focused training programmes should be conducted with emphasis on human rights standards likely to be violated when carrying out their duties, for instance the investigators should be trained on standards they should adhere to in their investigations such as prohibition of torture, right to remain silent. For those dealing with public order, the training should focus on the following aspects, freedoms of association and assembly and on standards for the use of force and firearms.

⁴¹ E. Njovana, Evaluation Report: Incorporating Human Rights and Gender in the Zimbabwe Republic Police, 2002, unpublished

Training Techniques

These are methods trainers can use in the training. The methods should be chosen carefully taking into consideration that adult learning requires a lot of participation, since they usually have practical experience. The training should include varied methods which include, group discussion, role-play, debates and buzz groups.

Training Content

The content should cover all aspects of human rights and policing concepts. It should cover the theoretical and practical aspects of international, regional and national human rights standards on specific duties of policing e.g. investigation, arrest, detention, etc, and standards for dealing with treatment of vulnerable groups such as juveniles, women and victims of crime. The training should clearly emphasis the potential areas of human rights violations by the police. The training content should also include the aspect that police themselves are entitled to human rights. The rights of victims of crime should also be emphasised to dispel the widely held perception amongst police officers that human rights only protects criminal suspects.

Evaluation

Evaluation is a process whereby efforts are undertaken to assess results or outcomes, of a programme as measured against some criteria, usually the objectives. Evaluation should be carried out at two levels, by the participants, on the programme and by facilitators assessing the participants.

Participant Evaluation

It is important to evaluate training programmes so as to assess the effectiveness. There are a variety of evaluation techniques. A written examination is arguably the best technique that can give immediate reflection on whether participants have understood the concepts of human rights and policing. Usually a structured question is given to participants, it covers questions such as how they found the

relevance of the training to their work and whether the theoretical aspects of the training were effectively covered.

Workshop Evaluation

Participants should be given an opportunity to evaluate the training programme this is important as it enhances the quality of the programme. It enables participants to point out gaps in the programme that can be improved upon

Recommendations

In addition to evaluation participants should also be given an opportunity to give recommendations on the programme and matters of human rights and policing generally. Recommendations cover broader areas that are not covered in the evaluation, which is more specific. Most recommendations identified factors that could make observance and respect of human rights effective e.g. that other stakeholders involved in the criminal justice system should be also be trained in human rights, e.g. prosecutors, magistrates and the general public.

3.6.7 Programme Evaluation

The final step in the model of incorporating human rights in the police training is evaluation. The main purpose would be to assess the success of the programme, in meeting with the objectives and examining gaps that would need to be addressed.

Evaluation and monitoring on the observance of human rights should be a continuing process in the police training. For all the steps outlined in this model to work a number of factors should be in place, these include commitment to the process by police heads, adequate financial and human resources and a willingness on police officers to embrace changes in their attitudes that support the observance of human rights. Each of the steps outlined has some threats which

should be considered and guarded from materialising. For the model to be effective all the steps should be taken.

This model, if implemented successfully would result in the practical aspects of human rights and policing being realised as it has been clearly demonstrated that human rights education is the link between human rights and policing standards and observance of human rights by the police.

4 OPPORTUNITIES AND STRATEGIES FOR USING THE MODEL ON INCORPORATING HUMAN RIGHTS EDUCATION IN POLICE TRAINING AT THE REGIONAL LEVEL

4.1 Background to Regional Policing

The human rights education model can be used by both individual national police services or through regional and sub regional police groupings. Preconditions for the success of the model include the following requirements; finances, technical expertise and a commitment to the process by police heads.

National police services the world over are collaborating in policing functions especially in areas of transnational crimes. Transnational crimes, by definition, involve two or more countries, each claiming sovereignty and exclusive criminal jurisdiction within its own borders⁴². Hence, when a criminal crosses the border, any pursuing police officers lose their jurisdiction. Traditionally the international law principle of territorial jurisdiction⁴³ dictates that states can exercise their criminal jurisdiction within their territory. Borders were therefore established to delineate the jurisdiction claimed by each state, and crossing national borders has often provided criminals with a way to mitigate or avoid the consequences of illegal acts, as they are aware of limits imposed by territorial jurisdiction.

There has been an increase in the internationalisation of crime, whereby criminals acting individually or in organised syndicates cross national borders to engage in "transnational crime". Such crimes include the trafficking of illegal drugs, people and weapons, and money laundering. The increase in trans border crimes has

⁴² Anthony J. Balzer, International Police Cooperation: Opportunities And Obstacles available at <http://www.ncjrs.org/policing/int63.htm>, visited on 16 october 2002 and Adrian Beck International and Regional Initiatives: Providing Appropriate International Assistance, available at <http://www.kas.org.za/Publications/SeminarReports/Crimeandpolicingintransitionalsocieties/beck2.pdf>, visited on 16 October 2002

⁴³ see Akehurst, Modern Introduction to International Law, pg 110.

been fuelled by factors including improved transportation systems, particularly airline and automobile travel and improved communication systems most notably the internet, satellite and fiber optic telephone, television transmission and computer information storage, processing, and transmission.⁴⁴ Criminals commit crimes with impunity knowing that they are safe from prosecution as they are aware of the difficulty that police have in crossing borders for the purposes of investigations.

The police services in Southern Africa have responded to this phenomena described above by establishing themselves into an organisation called Southern African Police Chiefs Cooperation Organisation and by signing the Cooperation and Mutual Assistance Agreement. SARPCCO seeks practical means by which regional law enforcement agencies could co-operate with one another in attaining shared anti-criminal objectives

The main objective of SARPCCO as set out in its constitution includes the following:

to promote, strengthen and perpetuate cooperation and foster joint strategies for the management of all forms of cross-border related crimes with regional implications.

The SARPCCO Constitution also commits its members to ensure efficient operation, exchange of information, management of criminal records and effective joint monitoring of cross-border crime taking full advantage of the relevant facilities available through Interpol. The principles of Co-operation of SARPCCO include, observance of human rights respect for national sovereignty; equality of police services/forces and non-political professionalism.

In order to combat the crimes identified above, government ministers responsible for the police signed the Cooperation and Mutual Assistance Agreement 1997.

⁴⁴ *ibid*

The main feature of the agreement is Article 3, which deals with the **Right of Entry of Police Officials**. This article provides that, “any police official of a country that is party to this agreement may enter into and be present in, or travel through or cross, the territory of another for the purpose which include among others; police investigation or the seizure of exhibits relating to an offence or suspected offence committed in or in respect of the territory or state of the visiting police officials and tracing and questioning a witness in connection with any such offence and taking the steps authorized by law to obtain his or her presence in a court of competent jurisdiction. The right of entry, presence and travel contemplated in this Article is exercised subject to the municipal laws of the hosting state. During such entry, the hosting police service is responsible for the following; arresting, detaining suspects and searching and seizing any exhibit known or suspected to be involved in the commission of any such offence.

It is clear that SARPCCO carries out policing duties such as arrest, investigation, detention search and seizure as a region. As such it is imperative that these joint regional police operations be carried out with due regard to human rights standards relevant to policing. Joint human rights education is a strategy that can be used to facilitate the observance of human rights in regional police operations, the model therefore becomes useful in this regard.

4.2 Using the model at the regional level

A research carried out by SAHRIT in 1999 and in 2002 identified a trend in Southern African police services of human rights reforms. All the SADC countries had started to incorporate human rights norms in their organisations. Some had gone as far as changing their curriculum, developing materials and conducted training. Some countries were at an advanced level regarding this trend and some were just starting off. The opportunities for using this model are therefore plentiful.

Before opportunities and strategies that can be used at the regional level can be discussed, it is important to understand the importance of the regional dimension of protecting human rights and to particularly explore human rights and policing in the sub regional framework of southern Africa.

The important aspect of the regional dimension is that the world is now a global village and that increasingly events in one country may affect the other country. This is the case where there are violations of human rights in one country for instance; people will flee to the other country, as refugees and this will put a strain on its resources. It is therefore important that regional standards be developed for all so as to contribute to stability and development. It has also been rightly observed that:

A regional scheme ... enables the peoples and governments of the region to deal with gross violations of rights committed in a member state, at least in the first instance. In this way international intervention, not fully sensitive to local conditions, can be kept out. It was the failure of regional initiatives in East Timor that further internationalised the problem, and brought in outside powers to restore order and protect the East Timorese.⁴⁵

It was further observed⁴⁶ that regional arrangements therefore provide additional security for the enjoyment of human rights by supplementing national and international protection. Regional institutions are more accessible than international institutions, and they frequently have greater powers of enforcement.

The benefits of having a regional framework for incorporating human rights in policing cannot be over emphasised. Already SARPCCO has made remarkable strides in developing a regional framework for human rights and policing and are

⁴⁵ Speech of Prof. Yash Ghai at the Launch of the Chinese Version of the Asian Human Rights Charter, available at: http://www.ahrchk.net/charter/mainfile.php/chinese_launch/50/, visited on 11 September 2002

⁴⁶ Supra

in the process of implementing far reaching reforms in terms of incorporating human rights in policing.

It has been rightly advanced that ‘regional initiatives hold a fair measure of potential for effecting organisational change within member agencies’, may ‘enhance the organisational capacity within individual policing agencies’ and results in a ‘mobilisation of policing resources may be one way of bolstering the organisational capacity of policing agencies in the face of some formidable challenges’.⁴⁷

The opportunity to use the model on incorporating human rights education at the regional level presents itself as police had already realised the need of incorporating human rights at the regional level, as noted above, observance of human rights is one of the principles of co-operation of SARPCCO member states. In order to make this principle effective, human rights education must be incorporated in all SARPCCO training and activities in line with a SARPCCO provision in the Constitution, which calls for the formulation of training policies for the region as the need may arise from operational exigencies.

4.3 Strategies for Effectively Implementing the Model

The model can be used at the regional level by incorporating it in the regional framework by conducting all the steps at the regional level, by for instance carrying out a regional needs assessment study, regional report back, regional materials and regional human rights curriculum. Steps of the model assume a regional dimension. The whole intention being that SARPCCO policing operations are carried out in conformity to the human rights standards and also that member states are able to incorporate these regional processes in their

⁴⁷ Van der Spuy, *Regionalism in Policing: From Lessons in Europe to Developments in Southern Africa*

national countries. For instance with regards to the materials, member states can take the materials and use them in their contexts, the only thing they would need to do is add national laws to the materials. The following strategies can be used when implementing the model on incorporation human rights education in police training at the regional level.

4.3.1 Making the code of conduct enforceable

Police Chiefs adopted the SARPCCO Code of Conduct for Police Officials in 2002. It lays out principles, which advance the observance of human rights by the police. It was developed in line with the SARPCCO police chief's recommendation that a protocol aimed at better integrating human rights into police training and practices, be developed. This protocol could serve to disseminate best practices and strengthen respect for human rights in the sub region, in line with the SARPCCO constitution.

The Code is not a legally binding treaty. At best, the Code is in the hierarchy of "soft law" of international law⁴⁸. The adoption of the Code of Conduct by Southern African police chiefs is a commendable step in that they have recognised that their activities and operations should be based on the respect for the rule of law (Article 1) and that they should adhere to the rule of law (Article 7).

The major weakness of the Code, though is Article 3, which states that:

Police officials may only use force when strictly necessary and the extent required for the performance of their duties *adhering to national legislation and practices*" (*sic*).

The effect of this clause has been aptly summarised as follows:

The reference to national legislation and practices has subjected the commitments to what prevails already in local jurisdictions, which significantly devalues the objective of a regional set of policing standards and practices in the SADC. Moreover, the expansive nature of the limitation in fact clashes with the Article 1 (the human rights clause) and Article 7 (the rule of law clause) as well as other commitments in the

⁴⁸ supra Akehurst

Code. The requirement that when interpreting the Code, there must be strict adherence not only to national legislation but also to practices would end up protecting the very practices that are offensive to human rights and the rule of law. While the principles of respect for human rights in Article 1 and the rule of law in Article 7 have been accepted by police officials, they have been made subject to national law and practices under the claw back clause in Article 3⁴⁹.

The Code does not have a machinery of enforcement this therefore renders it elective. There are no penalties or mechanisms for non-compliance with its provisions. For human rights to be meaningful they have to be enforceable.

4.3.2 Harmonisation of national legislation in conformity with international human rights and policing standards

Member states of SARPCCO should strive to have their national legislation conform with international human rights standards, as it would be meaningless to discuss human rights and policing at the regional level when the national systems do not protect human rights. Strengthening national police services capacity for protecting human rights therefore becomes a necessary foundation for the regional framework to work.

4.3.3 Cooperation with inter- Governmental and Non Governmental Organisations

The use of inter-governmental and non-governmental organisations can also be used as strategies for using the model.⁵⁰ Governments may request the assistance of intergovernmental organizations, national institutions and non-governmental organizations to promote an increased awareness of human rights and mutual tolerance. The advisory services and technical assistance programmes of the United Nations system may be requested by sub-regional groupings or individual states to provide support for educational and training activities in the field of

⁴⁹ Michelo Hansungule, Human Rights and Law Enforcement with Special Reference to Articles 1 and 7 of the SARPCCO Code Of Conduct, 2002, unpublished.

human rights as well as for special education concerning standards as contained in international human rights instruments and in humanitarian law and their application to special groups such as military forces, law enforcement personnel, police and the health profession.

NGOs play an important role in the promotion of all human rights and in humanitarian activities at national, regional and international levels, by among others; increasing public awareness of human rights issues, conducting human rights education, training and research, and the promotion and protection of all human rights and fundamental freedoms. Continued dialogue and cooperation between Governments and nongovernmental organizations in this regard can therefore be used as a strategy for implementing the model.

4.3.4 Exchange of information

Some countries in the SARPCCO sub-regional groupings are more advanced than others in the incorporation of human rights and policing standards in their training, e.g. Zimbabwe and South Africa, while others are just starting out, for instance Swaziland and Lesotho. Those starting can learn from those that are advanced. Exchange of information therefore becomes an important strategy. Information from other countries can be used to develop regional training programmes, best practices and materials on the incorporation of human rights and policing, using steps outlined in the model.

All the steps outlined in the model can be used at the regional level

It is therefore concluded that sub regional dimension can accommodate the use of the model on incorporating human rights education in police training at this level. The importance of human rights training is indeed paramount especially where the police are undertaking joint policing operations that can potentially violate human rights of people they deal with. The model therefore offers a

⁵⁰ see also articles 38 of the Vienna Declaration and A82 of the Vienna Programme of Action

systemised approach of making human rights standards practical at a sub-regional level.

5 CONCLUSIONS AND RECOMMENDATIONS ON METHODOLOGIES FOR INCORPORATING HUMAN RIGHTS IN POLICE SERVICES

CONCLUSIONS

The role that police play in the promotion and protection of human rights is an important role, for without it, it would be difficult to create the social order in which human rights can be enjoyed. As such it becomes critical that human rights education be part of police training.

The need to make human rights practical has been demonstrated. There is no benefit in discussing human rights and policing standards without exploring the methods of practically realising them. The steps in the model create the enabling mechanisms for transforming theory into practice.

The model further is an important realisations of aspirations enumerated in UN, regional, sub-regional and national human rights instruments, in that it assists putting into practice the norms that are contained in these instruments.

A police service or a regional grouping that incorporates human rights in its training will succeed in its role of protecting and respecting human rights of individuals.

RECOMMENDATIONS

For the model to be effective at both the national and regional levels the following are recommended:

An enabling environment with legislation that reflects human rights and policing standard. National laws, regional and sub regional standards should incorporate the UN and Africa charter, human rights and policing standards. Undemocratic legislation is a hindrance in the implementation of human rights standards relevant to policing.

There has to be political will to support reforms in police services of incorporating human rights education in police training. Clear policy frameworks of human rights should be developed in police services.

Resources are needed to put the model in to practice, these resources are required for capacity building and material development.

Participation of all stakeholders in implementing the model at all stages is a prerequisite in ensuring its success. Once beneficiaries own the process they are committed to its success.

Mechanisms other than human rights education should be used to strengthen the incorporation of human rights education in police training, both nationally and regionally.

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