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FCO Strategy for the Prevention of Torture

2011 - 2015

Human Rights and Democracy Department

October 2011



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FCO Strategy for the Prevention of Torture: [DATE] 2011

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EXECUTIVE SUMMARY

The Strategy for the Prevention of Torture sets out FCO policy and offers guidance to FCO posts on how they can further the torture prevention agenda overseas. This will primarily involve working in partnership with other countries and organisations to tackle the problem. On pages 14 and 15 of the Strategy, desks and posts will find ideas for action to implement the three goals identified in the Strategy.

Why is torture prevention important?

There is an absolute prohibition on torture in international law. This is contained in various treaties and is a rule of customary international law binding on all States.

The UK considers torture to be an abhorrent violation of human rights and human dignity, and consistently and unreservedly condemns the practice. Preventing torture and tackling impunity for those who torture are essential components of safeguarding Britain's security; and it is integral to fair legal systems and the rule of law. Torture prevention work also reinforces our Consular work when British nationals imprisoned abroad allege mistreatment.

The activities proposed in this strategy to prevent torture also apply to tackling other cruel, inhuman or degrading treatment or punishment.

What do we want?

Our objective is to contribute to international efforts to prevent torture globally by working to ensure

- Legal frameworks to prevent and prohibit torture are in place and are enforced, e.g. encouraging states to sign, ratify and implement the UN Convention Against Torture and its Optional Protocol and to implement the recommendations of bodies which monitor compliance with UN and other treaty obligations;
- States have the political will and capacity to prevent and prohibit torture, e.g. bilateral lobbying, public statements, including suggestions on combating torture in Universal Periodic Review recommendations;
- Organisations on the ground have the expertise and training to prevent torture, e.g. funding criminal justice reform projects or projects to develop strong domestic bodies to monitor places of detention.

We will continue to co-ordinate with other government departments responsible for domestic human rights and torture prevention policy in working towards this objective.

OUR POSITION

The Government considers torture to be an abhorrent violation of human rights and human dignity, and unreservedly condemns the practice. International action against torture has long been a priority for the UK and we have a reputation as one of the most active countries in the world on the subject. Torture prevention is a component of safeguarding Britain's security as, aside from the appalling physical and psychological harm for victims, the sense of indignity and injustice it creates can radicalise individuals and communities and brutalise the societies they live in. Preventing torture can help to break that pattern. Torture prevention sits firmly within wider rule of law work being done to build fair legal systems, security and stability overseas. It also reinforces our Consular work to address the mistreatment of British detainees overseas. The UK has contributed to the UN Voluntary Fund for Victims of Torture which provides assistance to victims of torture and members of their family.

The UK is an important international centre of expertise for torture prevention and redress work. Many British individuals have leading roles in the torture prevention community. This community has translated its expertise into practical tools and 'how to' guides for applying academic expertise in an accessible way to non-experts. Handbooks developed with funding from the FCO are used by governments, international organisations and NGOs around the world to educate officials in preventing torture and to reform criminal justice institutions. The reputation and expertise of the British police, prison and other criminal justice institutions while not perfect is amongst the most human rights compliant and technically efficient in the world. This is an asset, and this reputation should be harnessed to ensure that expertise on human rights compliant practices can be shared practitioner to practitioner overseas.

The UK's central torture prevention policy is to encourage states to sign, ratify and implement the UN Convention against Torture and its Optional Protocol. We also support action against torture through bilateral lobbying campaigns to develop and strengthen National Preventive Mechanisms (domestic bodies that monitor places of detention) and multilateral engagement in the EU and UN as well as practical support to criminal justice reform. We will continue to co-ordinate with other government departments responsible for domestic human rights and torture prevention policy in working towards our torture prevention objectives.

In order to achieve this agenda, HMG must have a good record itself. As the Foreign Secretary has said, where problems have arisen that have affected the UK's moral standing we will act on the lessons learnt and tackle the difficult issues head on. We will use these lessons to inform the torture prevention work that we do overseas. The position of the Government is clear: the prohibition on torture applies to all individuals. The Prime

Minister has said, “I think torture is wrong ... there is ... a moral reason for being opposed to torture – and Britain doesn't sanction torture... I would say if you look at the effect of Guantánamo Bay and other things like that, long term that has actually helped to radicalise people and make our country and our world less safe”. Our reputation on torture prevention worldwide is boosted by showing how the UK achieves compliance with our legal obligations to prevent, prohibit and punish torture.

The Government is committed to transparency and accountability. In July 2010 the Prime Minister announced the establishment of an Inquiry in to whether the UK Government and intelligence agencies were involved in, or aware of, the improper treatment, or rendition, of detainees held by other countries in counter terrorism operations overseas. The Prime Minister has made it clear that he wants the Detainee Inquiry, chaired by Sir Peter Gibson, to examine what happened, identify lessons learned and make recommendations for the future.

THE LEGAL FRAMEWORK

The prohibition of torture is absolute and carries a special status in international law. It is so fundamental a principle that even if a state has not ratified a treaty prohibiting torture, the prohibition against it binds that State. No circumstances whatsoever, including for example war or a public emergency, can ever justify torture.

The prohibition of torture is set out in a number of international treaties and instruments including:

- the Universal Declaration of Human Rights (1948), Article 5;
- the International Covenant on Civil and Political Rights (1966), Article 7;
- the European Convention on Human Rights (1950), Article 3;
- the American Convention on Human Rights (1978), Article 5;
- the African Charter on Human and People’s Rights (1981), Article 5;
- the Geneva Conventions (1955); and the Additional Protocols of 1977
- the Inter-American Convention to Prevent and Punish Torture (1985).

Central to the UK’s torture prevention policy is the primary international instrument which aims to protect this fundamental right:

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

The CAT defines torture 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 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 person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.¹ Under CAT there are four key elements to the definition of torture: intent; purpose; severe pain or suffering; public official involved.

In addition to setting out a definition of torture for the purposes of the Convention, the CAT obliges States Parties to take measures to prevent acts of torture in any territory under its jurisdiction. State Parties must:

- ensure that all acts of torture are offences under their national criminal law and ensure that there is no safe haven for individuals accused of committing acts of torture by, for example, requiring States Parties to take an alleged torturer into custody, to extradite him or her or to submit the case to their competent prosecuting authorities.
- educate all officials involved in the custody, interrogation or treatment of any individual who has been arrested, detained or imprisoned about the prohibition of torture.
- conduct a prompt and impartial investigation where there are reasonable grounds to believe that an act of torture has been committed in its jurisdiction.
- provide redress and compensation to victims of acts of torture.

As well as encouraging more states to ratify and implement CAT, we will remind States Parties of their obligations under the Convention as necessary.

MONITORING COMPLIANCE WITH THE LEGAL FRAMEWORK

The Optional Protocol to the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (2002) (OPCAT)

While the main aim of the CAT is to oblige states parties to criminalise and prevent torture, the main aim of the OPCAT is to put monitoring and reporting mechanisms in place to prevent torture from happening. It does so by requiring states parties to establish a dual system of regular visits to places of detention. The first involves an obligation on states parties to set up, designate or maintain a national preventive mechanism with training, monitoring and sanctioning authority. The second is through visits by the UN Subcommittee for the Prevention of Torture to monitor places of detention. The UK was instrumental in

¹ Article 1. The UK definition is set out in the Criminal Justice Act 1988, s134.

drafting and securing initial international agreement for the introduction of OPCAT. As well as encouraging states to ratify OPCAT, we can support work to help signatories and prospective signatories establish or improve their national preventive mechanism.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) (ECPT)

The ECPT applies to all Council of Europe members and contains provisions for monitoring and encouraging the implementation of torture prevention measures. It established the Committee for the Prevention of Torture (CPT) which visits places of detention in order to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed and confidential report of findings, recommendations, comments and requests for further information to the state concerned. The CPT requests a detailed response to the issues raised in its report.

THE PROBLEM: TORTURE

Despite all these international commitments to the prohibition of torture and its status as one of the few universally recognised human rights, torture is still widely practised. Analysis of available statistics suggests that torture occurs frequently in over 40% of countries.²

Torture is most likely to occur during criminal investigation or state security processes. It is likely to be perpetrated by those who have the power to detain or who have access to people who have been detained: prison officers, the police, the military or paramilitary, state-controlled counter-insurgency forces or even doctors or other health professionals.

It is a serious crime and a human rights violation which must be investigated, prosecuted and punished. Evidence suggests that the main reason why torturers engage in the practice is because they believe it will achieve a purpose, for example, to intimidate, punish or to extract information or a confession. They may also think they can get away with it. But torture does not work as an interrogation technique. Information obtained under torture is notoriously unreliable as an individual being tortured will often say anything to put a stop to the torture. Information derived in this way is inadmissible in court. Professional interrogators say that humane methods such as persuasion and tricking are more effective.

Torture can happen in any location, but the risk is highest where interviews or interrogations are carried out, for example in police stations or other places of detention. Unacknowledged or secret places of detention carry a particularly high risk of torture and torture can also occur in a victim's home or on the way to a place of detention. Incommunicado detention is a high risk factor for torture as the lack of access for the

² CIRI Human Rights Data Project, www.humanrightsdata.org. Accessed 30 August 2010.

detainee's lawyer and family means there is less external monitoring of the detention. In some cases, poor conditions of detention can in themselves amount to cruel, inhuman or degrading treatment or punishment.

There are factors which may indicate whether a state is more likely to use torture: for example civil war; lack of democracy; or if it is facing terrorist threats. States are less likely to use torture as they become more economically developed. A BBC survey in 2006 showed that individuals in countries facing political violence are more likely to accept the idea that some degree of torture is permissible. The survey showed that 29% of the 27,000 respondents in 25 countries thought it was acceptable to use some degree of torture to combat terrorism.³ For these reasons, the FCO's work on democracy and conflict resolution reinforces the torture prevention agenda.

OUR APPROACH

Approaches to torture prevention need to be different for individual countries. In seeking positive changes we must work in partnership with governments and non-government actors in ways which are suited to the grain of the societies we are working with. Internal factors, such as the political and criminal justice systems will be taken into consideration, and a tailored approach developed for each country.

Our focus will be on preventing torture but underscoring all our engagement on torture must be the Foreign Secretary's commitment that "we will raise our concerns about human rights wherever and whenever those concerns arise ... We will promote human rights painstakingly and consistently."⁴ This will mean calling for accountability when there are credible allegations of torture and we believe it is effective and appropriate to do so.

³ <http://news.bbc.co.uk/1/hi/6063386.stm>

⁴ Speech at Lincoln's Inn, 15 September 2010

WHERE SHOULD WE FOCUS?

HMG opposes torture in all contexts but we will focus our effort on countries where:

- We have serious concerns based on reporting under the FCO Torture and Mistreatment Reporting Guidance, Consular cases, UN, NGO and other reports;
- We can make the greatest difference, for example where there is already momentum to implement CAT or OPCAT or make reforms, although we will raise our concerns wherever torture arises;
- On project work, where we can collaborate with others or are already well established as donors. We want to build on existing projects and initiatives;
- Where we have other interests such as security, prosperity and British nationals in prison abroad.

HRDD will ensure that Posts have access to the necessary advice to tackle the issue of torture with host governments. We will monitor and evaluate the effectiveness of the work that we are doing throughout and adjust our approach and priorities where necessary. Better reporting on incidents of torture and mistreatment through the Torture and Mistreatment Reporting Guidance, launched in March 2011, will help to inform this work (see Annex 1: Resources).

Through their work with detained British nationals, consular officers are likely to have useful information about criminal justice systems to share with political colleagues.

CHALLENGES

Publicly, almost all governments oppose torture. But it remains a widespread practice. One of the reasons for this is that torture takes place in secret, away from public scrutiny. If robust measures are not taken, perpetrators think that they can get away with it. A high degree of political will, persistence and vigilance is needed to prevent torture and to bring perpetrators to justice.

Governments may deny that there is a problem with torture and be unwilling to engage in tackling the problem. In these circumstances, where appropriate and safe, we should use opportunities to discuss credible NGO and other reporting that comes to our attention. If appropriate, we can also raise individual cases with the host government or make public statements.

Governments may not effectively investigate and prosecute allegations of torture which come to their attention, resulting in impunity for torturers and a message that torture is

acceptable. We can encourage governments to conduct independent investigations and share UK practice into investigating and prosecuting alleged abuses.

Governments may have a genuine lack of knowledge about effective measures to take to prevent torture and a lack of awareness of legal standards. In these circumstances, we can put governments in touch with experts and share UK practice.

Governments may accuse the UK of meddling in their internal affairs or their justice system. We should be constructive in our approach but be clear that torture is a matter for the international community. Torture prevention is an important part of criminal justice reform, rule of law and security work.

Discrimination can also be a problem. Governments may in practice fail to protect certain types of citizens, for example giving lesser protection to individuals who belong to minority groups or who have been accused or convicted of particular offences. We must reinforce the universality and non-discriminatory nature of a State's obligation to prevent torture.

CONSISTENCY

The work that we do to contribute to preventing torture globally is underpinned by our wider engagement overseas and our domestic reputation and practices. All this work should be mutually reinforcing and we will co-ordinate with the Ministry of Justice and other government departments. Torture prevention activities should be incorporated into country business plans and are incorporated in to the Human Rights and Democracy Programme Fund for 2011/12. Torture prevention should also be built into other programmes, training and assistance (especially in the security and justice sector) which provide access to relevant foreign interlocutors.

There are further strategies and guidelines which are relevant to torture prevention and which should be considered as complementary to this strategy, for example the EU guidelines on human rights defenders and violence against women and HMG's action plan for UNSCR 1325 on Women, Peace and Security. We will also try to ensure that good practice on torture prevention is shared between our overseas posts.

We recognise that there are different positions on the Government's use of Deportation with Assurances. The programme is used in circumstances where foreign nationals pose a national security threat to the UK but cannot be returned to their own country without assurances because there are substantial grounds for believing that otherwise they will face a real risk of mistreatment on return. We believe that the Government's approach to Deportations with Assurances demonstrates a strong commitment to dealing with a vital security issue in a way that complies with our domestic and international human rights obligations.

WHAT WE WANT

Legal frameworks to prevent and prohibit torture exist and are enforced

Lobbying states to sign, ratify and implement CAT and OPCAT has long been part of the FCO's torture prevention policy. Notwithstanding the status of the prohibition of torture as a peremptory norm of international law, clear and definite treaty obligations in respect of torture prevention strengthen the nature of a state's commitment to prohibit and prevent torture. It also gives us a further basis on which to challenge policies or acts of a state which are in violation of their treaty obligations. Visits to places of detention, as set out in OPCAT and the ECPT, help to ensure that the legal frameworks to prevent and prohibit torture are being adhered to. They also allow experts to make specific recommendations for states to implement to improve their processes and practices. As a growing number of states sign up to CAT and OPCAT it draws attention to states that lack the political will to address the problem of torture. Support for the bodies related to CAT and OPCAT and ensuring that individuals elected to them are well qualified reinforces the effectiveness of the oversight of these bodies and increases the chances that violations come to light and states are held to account. We can also consider offering assistance to states with law reform and policy implementation.

States have the political will to prevent and prohibit torture

It is not possible for a state to prohibit and prevent torture without the highest levels of government giving clear messages to their officials that torture is wrong. We will continue to encourage them to do so. Senior politicians set the tone for their officials' behaviour. Statements and commitments they make should be backed up by concrete acts or reforms, including educating all relevant government bodies in how to prevent torture. If a state is committed to preventing and prohibiting torture we are also likely to see evidence of independent investigations, prosecutions and convictions where there are allegations of torture as well as victims of torture receiving reparations and redress. Encouraging the political will to prevent torture does not need to be confrontational; it can be approached from the perspective of criminal justice reform. Respect for human rights in criminal justice systems has positive practical effects. Bilateral dialogues whether formal or informal on human rights, justice and security can be used to discuss tackling torture and, if appropriate, we can raise individual cases to draw attention to the specific problems. We will also seek to follow up on UPR recommendations.

Organisations on the ground have the expertise and training to prevent torture

States are more likely to adhere to their obligations to prohibit torture if they have strong, effective and independent domestic institutions which can ensure compliance with their

international obligations on torture, irrespective of whether the government or individual actors within the state are supportive. As well as contributions to police, prison and other criminal justice reform projects, the development of strong National Preventive Mechanisms for torture must be a priority. This is a requirement of OPCAT. Encouraging states to ratify OPCAT remains part of our strategy, but we will focus more effort on helping states which have already signed or are considering signing OPCAT to be able to implement this requirement effectively, including by exchanging expertise with national partners. As well as assisting National Preventive Mechanisms, we will consider supporting civil society actors which support and strengthen this work for example NGOs, national human rights institutions, Bar and medical associations, educators and religious leaders. The UK is a global centre of research and thought on torture prevention and we should capitalise on this.

IMPROVING THE IMPACT OF INTERNATIONAL EFFORTS

While we strengthen the UK's approach to tackling torture overseas, we will also seek to strengthen international approaches to torture prevention.

Within the EU, we will advocate the use of the EU Guidelines on Torture and Ill Treatment and actively participate in the review of the Guidelines to ensure they remain robust and practical. Staff should be aware of the EU Guidelines and apply them overseas (see Annex 1: Resources). Posts should also play a key role in influencing the drafting and execution of EU human rights country strategies and objectives including by encouraging EU delegations or local Presidencies to incorporate torture prevention as a priority where appropriate. We will play an active role in the EU Human Rights Working Group (COHOM) work on torture, the COHOM Torture Task Force and in joint EU lobbying and demarches where appropriate. Where possible, through our posts we will also seek to influence the allocation of EU funds (primarily the European Instrument for Human Rights and Democracy) to torture-related projects. The UK will seek to influence the agendas for EU-third country human rights dialogues, encouraging torture prevention to be included as a topic of discussion where appropriate.

Within the UN, we will continue to work for strong UN General Assembly and Human Rights Council resolutions and statements on torture, and related issues, and to support the work of Special Procedures. We will support work to ensure the Committee against Torture and the Sub Committee for the Prevention of Torture can work efficiently and effectively. We will put forward torture prevention recommendations during the Universal Periodic Review process and encourage States to adopt these and other recommendations addressing torture. We will also encourage states to adopt the recommendations of the Committee against Torture and the Subcommittee for the Prevention of Torture. In country, posts should be linked in to OHCHR, UNDP and UN regional office torture prevention initiatives.

Within the Council of Europe, we will encourage states to implement and publish the recommendations of the Committee for the Prevention of Torture.

We will explore what further opportunities there may be to further torture prevention work within the Commonwealth and the Organisation for Security and Cooperation in Europe (OSCE). We will also consider the inter-relationship between different torture prevention mechanisms to seek to ensure there is not duplication and that activities are complementary.

Where we are funding project work, we will try to ensure work is co-ordinated with other donors and encourage other states to support torture prevention work.

OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

There is also an absolute prohibition on cruel, inhuman and degrading treatment or punishment ('CIDT') under international law and the Government has consistently made clear its absolute opposition to such practices and its determination to prevent them. The activities proposed in this strategy to prevent torture therefore also apply to tackling CIDT. Further advice on what type of actions could amount to CIDT is available from HRDD or legal advisers.

Human Rights and Democracy Department
October 2011

TORTURE PREVENTION ACTIVITIES

The activities below are for Posts to consider including in Country Business Plans, to seek funding opportunities for and which will assist in pursuing torture prevention objectives in other contexts. This is not an exhaustive list – e.g. see EU Guidelines on Torture for further suggested activities.

Goal: Legal frameworks to prevent and prohibit torture exist and are enforced	In-Country (Posts)	<ul style="list-style-type: none"> - Lobby for ratification and effective implementation of CAT and consider facilitating technical assistance. - Lobby for ratification and effective implementation of OPCAT and consider facilitating technical assistance. - Consider assistance on law reform and policy development and implementation. - Lobby for implementation of UPR recommendations and consider funding support for implementing these recommendations. - Observe relevant trials. - Above activities in conjunction with EU/ OHCHR/ UNDP/ others.
	Global (HRDD, UKMis)	<ul style="list-style-type: none"> - Make robust statements, including in multilateral organisations and by Ministers. - Support resolutions on torture and ensure that they build on existing international standards and commitments. - Put forward and vote for high calibre experts on UN Committee against Torture, UN Subcommittee on the Prevention of Torture, and the European Committee for the Prevention of Torture. - Support the work of the UN Special Rapporteur on Torture.
Goal: States have the political will and capacity to prevent and prohibit torture	In-Country (Posts)	<ul style="list-style-type: none"> - Assistance with criminal justice reform (prison, police, judiciary, etc). - Where appropriate, raise individual cases. - Lobby to abolish judicial corporal punishment. - Include torture prevention in bilateral dialogues on human rights, justice and security and encourage it to be included on the agendas of EU-third country dialogues, as appropriate. - Encourage States to respond to recommendations made by National Preventive Mechanisms. - Encourage States to implement relevant UPR recommendations and consider funding support for implementing these recommendations. - Raising cases of unlawful, arbitrary or incommunicado detention. - Monitor reports on the implementation of CAT to the Committee against Torture. - Above activities in conjunction with EU/ OHCHR/ UNDP/ others.

		<ul style="list-style-type: none"> - Encourage the EU to include torture prevention as a priority theme in EU human rights country strategies, if appropriate.
	Global (HRDD, UKMis)	<ul style="list-style-type: none"> - Use the Universal Periodic Review to raise torture issues with UN members and encourage States to implement relevant UPR recommendations. - Encourage governments to consider the recommendations of relevant Committees and Special Rapporteurs. - For Council of Europe members, encourage the implementation and publication of CPT recommendations.
Goal: Organisations on the ground have the expertise and training to prevent torture	In-Country (Posts)	<ul style="list-style-type: none"> - Training/sharing British expertise with NPMs or bodies carrying out similar duties (monitoring places individuals are detained). - Fund criminal justice reform projects and projects aimed at preventing torture (Human Rights and Democracy Programme Fund 2011/2012) - Promote use of FCO funded handbooks for criminal justice professionals aimed at combating human rights abuses. - Support national human rights institutions and National Preventive Mechanisms on torture prevention. - Support NGOs and other actors in torture prevention work. - Encourage establishment of independent complaints mechanisms in the criminal justice context. - Encourage public involvement in monitoring/lay monitoring of places of detention - Support the empowerment of vulnerable groups (e.g. children, women, minorities, migrants) to ensure they are aware of their rights. - Above activities in conjunction with EU/OHCHR/UNDP/others - Encourage EU delegations on the ground to use their EIDHR funds on appropriate torture prevention projects.
	Global (HRDD, UKMis)	<ul style="list-style-type: none"> - Fund global torture prevention work through the Human Rights and Democracy Programme Fund - Promote and support the international work of the NPJA, IPCC, Prisons Monitoring Board, HMIP, NPM and similar bodies. - Promote the UK as global centre of research and thought on torture prevention and support wider (non-government) UK initiatives on torture prevention and related areas.

Appendix 1: Resources

[FCO Torture and Mistreatment Reporting Guidance](#)

[EU Guidelines on Torture](#)

[Amnesty International's 12 Point Programme for the Prevention of Torture](#)

[Association for the Prevention of Torture](#)

[Defusing the Ticking Bomb Scenario: Why we must say No to torture, always \(APT, 2007\)](#)

[International Centre for Prison Studies](#)

[UN Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment](#)

[UN Standard Minimum Rules for the Treatment of Prisoners](#)

Handbooks:

[Torture Reporting Handbook](#)

[Combating Torture - A Manual for Judges and Prosecutors](#)

[Guidelines for the Medical Investigation and Documentation of Torture](#)

[A Human Rights Approach to Prison Management \(2nd edition 2009\)](#)

[Ethical Investigation: A Practical Guide for Police Officers](#)