



# ARREST

This is resource note 4.2 of the [CTI practical Police Resource Toolkit](#) for professional, human rights-compliant Policing.

## BACKGROUND

1. Arrest refers to the lawful act of apprehending or charging a suspect for the alleged commission of an offence and taking them into custody. Arrest is a form of deprivation of liberty and is part of the daily function of police and other law enforcement officials. Other forms of deprivation of liberty considered in this practical resource toolkit include 'stop and search', 'police custody' and 'transport'.
2. The effective implementation of legal and procedural safeguards upon arrest (set out below) is key to observing the dignity of persons being arrested and reducing the risks of abuse of power which can lead to arbitrary detention, torture or other ill-treatment. Respecting the rights of suspects during arrest reduces the chance of the charge being dismissed or any collected evidence (including confessions) being rejected by the courts because of an unlawful arrest and interview, thereby advancing and reinforcing the fairness and efficiency of criminal trials and the rule of law.
3. The right to liberty and security of the person imposes limits on who can carry out an arrest and when an arrest is considered lawful. An arrest can usually only be carried out by an authorised official (although, in some countries, a citizen's arrest is possible), and the power of arrest is limited to those circumstances that are established in law and other regulations. The person being arrested must be informed that they are under arrest and of the grounds upon which the arrest is being effected. In many jurisdictions, the applicable standard permitting arrest is where there are *reasonable grounds*<sup>1</sup> to suspect that a person has committed an offence, is in the process of committing an offence, or is about to commit an offence. Mere suspicion is not sufficient grounds for an arrest. Arrests that are carried out outside these strictures may be considered arbitrary and/or unlawful.
4. As far as possible, any arrest should be carefully planned to uphold the dignity of the suspect and reduce risks, for example, of absconding or violent confrontation. Police officers should, as far as possible, avoid arresting a suspect in front of their children, family or neighbours, for instance. Showing such empathetic considerations and respect can increase communication with the suspect and the flow of information.

<sup>1</sup> Although national definitions of 'reasonable grounds' may vary, an arrest is generally considered lawful through evaluating the evidence/information at hand, and there is reason to believe that it is more likely than not that the suspect has committed the crime. A good test of whether there are reasonable grounds to suspect is whether an independent person would come to the same conclusion if they looked objectively at all the facts.

Whether an arrest should be effected will depend on the assessment of available information and alternative options. Alternatives to arrest, such as cautioning a subject, are appropriate for law enforcement officials to consider as part of such an assessment. Furthermore, not all arrests must result in being held in police custody or subsequent forms of detention, such as where the suspect has agreed to provide a statement or, having provided a statement, there are no longer justified grounds to hold the suspect (for example, the suspect may be innocent, or police can no longer argue that there are risks that the suspect may destroy evidence, influence or intimidate victims or witnesses, etc.). As an alternative to arrest, suspects may be given a summons to appear or be released on their own recognizance.

5. When an arrest is effected, it is important for law enforcement officials to respect the dignity, privacy and any particular vulnerabilities of the person being arrested, always taking into account that they are presumed to be (and, therefore, must be treated as) innocent until proven guilty by law. Additional safeguards or adjustments for individuals in situations of vulnerability are set out below.
6. International standards provide that law enforcement officials may only use force under the conditions provided in their legislation, when it is strictly necessary, and that any force used be strictly proportional to the seriousness of the offence and the legitimate objective to be attained (in this case, the arrest). Lesser means (such as information and communication) should always be applied first, unless such lesser means are obviously not sufficient to handle the situation and to carry out a lawful arrest. Any use of force should stop immediately when the arrest has been successful, keeping in mind that the highest considerations are the protection of the rights to life, liberty and security of the person and the preservation of public safety and social peace, and that principles of fair trial apply from the moment of arrest. (For more information, see also the resource note on 'lawful use of force and firearms').

## SAFEGUARDS, PROCEDURES AND RECOMMENDED PRACTICES

This non-exhaustive list of safeguards aimed to help improve the protection of human rights during arrest procedures, to better regulate these practices, and to protect against unlawful deprivation of liberty or torture and other ill-treatment. They also help to reinforce the integrity criminal investigations, the fair administration of justice and the criminal justice system as a whole.

7. **Legal basis:** The practice of arrest has to be based on and in accordance with law which indicates with sufficient clarity and precision the scope of the power, the appropriate procedures, the maximum duration conferred on the competent authorities and the manner of its exercise.
8. **Notify arrested person of their rights:** Upon arrest, law enforcement personnel are to inform the persons arrested of their rights. Such information entails:
  - the reason for the arrest and any charges laid against them, and the procedures that will be followed;
  - their right to a lawyer, or to have one appointed to them should they not be able to afford one, or other arrangements available for legal counsel. (For more information on prompt access to a lawyer and on legal aid, see also the resource note on 'police custody');
  - the right to remain silent;
  - the right to have someone informed of their arrest, or to a phone call. (For more information on notification of family or a third party, see the resource note on 'police custody');
  - where applicable, the right to interpretation;

- where applicable, the right to access consular services; and
  - the right to be brought promptly before a judge to, depending on the national legal system, either confirm the arrest or custody period, or approve any extensions.
9. **Procedural guidelines:** Sometimes, the provision of information on rights is denied or delayed, such as where officers stop short of arresting a person, and instead wrongly assign them a procedural status, such as ‘person of interest’, or treat them as a witness. Denying or delaying access to such information could lead to any evidence collected being thrown out in court, or even the whole case against a suspect being discontinued on grounds of breach of fair trial rights. Clear guidelines spelling out the treatment of suspects, witnesses and victims, and especially when and how to handle any change in their legal status, are considered good practice.
  10. **Notification of relatives:** Notification of and communication with relatives or a third party upon arrest also ensures that any necessary assistance can be organised, such as arranging to bring food and/or warm clothes, which may be required in certain detention facilities, and to contact a lawyer and/or legal aid provider on behalf of the detained person.
  11. **Time limits on custody and questioning:** Time limits on how long someone can be held for questioning should be clearly set out in law and monitored, and the suspect informed accordingly. Many systems impose a limit of 48 hours prior to requiring a court order either permitting any extension or requiring release. Only in exceptional circumstances should time limits beyond 48 hours be allowed, and these should be prescribed by law. Arrests that result in being detained beyond the set time limits for questioning give rise to additional safeguards and rights. (For more information, see the resource note on ‘police custody’).
  12. **Non-discrimination:** All of these safeguards are important for persons arrested, irrespective of their alleged crime, their age, gender, state of health, nationality, physical or mental disability, or any other protected status or characteristic which may make a person particularly vulnerable. Legislation and guidelines that allow and positively encourage authorities to adapt their procedures as needed to ensure that these and other groups can avail themselves effectively of their rights are recognised good practice. Furthermore, any possibilities offered to the authorities to delay the exercise of one or other of the arrested person’s rights in order to protect the interests of justice should be clearly defined in law, and their application be strictly necessary, proportionate and limited in time.
  13. **Use of force and restraints:** Force may sometimes be necessary to make an arrest or prevent a suspect from absconding. Police and other law enforcement personnel may only use force when it is lawful and necessary to achieve a legitimate objective, and also proportionate to the seriousness of the offence and the objective to be achieved. Lesser means (e.g., information and communication) should always be applied first. Restraints, such as handcuffs, leg cuffs and body cuffs, can also constitute force, and their use should be carefully regulated, as with all other types of force. (For more information, see also the resource note on ‘lawful use of force and firearms’).
  14. **Safety for transportation:** Moving a person from the point of arrest into a custody environment can present certain risks both for the arrested person and the law enforcement personnel carrying out the arrest. Good practice is that, prior to transporting a detainee in a police vehicle, an assessment is conducted which considers the physical condition of the individual to be transported and any vulnerabilities, as well as the potential for the person to use violence or attempt to escape, the length of the journey, and staff resources during the transport. The law enforcement officials carrying out the arrest benefit from being sufficiently trained on safety matters and first aid. Where it is strictly necessary that a child be arrested and transported to a police station, the child must not be transported with an adult who is in police custody. At all times during

transportation the child should be accompanied by a police officer. (See also the resource note on ‘transport procedures’).

15. **Frisking (pat-down) body searches:** As part of an arrest, suspects are often frisked or patted down to locate and remove dangerous or prohibited goods or substances (e.g., weapons or drugs). Good practice is to inform the person about the purpose of the search, and ask the person if they are carrying anything that is illegal – providing them with an opportunity to hand it over without additional embarrassment. (For more information on frisking/pat-down of women and children, see the resource note on ‘stop and search’. For more information on intrusive body searches, such as strip and body cavity searches, see the resource note on ‘police custody’).

## SPECIAL SAFEGUARDS FOR PERSONS IN SITUATIONS OF VULNERABILITY

16. Some arrested persons may face barriers understanding and/or accessing information due to particular vulnerabilities, such as age, language barriers, physical or mental disability, illiteracy or lack of education, or intoxication with alcohol or drugs, requiring additional safeguards.
17. **Specific safeguards for children:**
  - Where the person arrested is a child (any person under the age of 18), the parent(s) or guardian need to be notified immediately, or as soon as possible thereafter.
  - A detained child should never be subjected to police questioning or be requested to make or sign any statement or document without the presence of a lawyer and, in principle, a trusted adult person. The possibility to opt out of the right to a lawyer should not apply to children.
  - A child shall be treated in a manner consistent with their dignity and their age, maturity and intellectual and emotional capacities. The child’s rights must be explained and provided in a manner that the child understands, and all efforts should be made to ensure that the child is interviewed by a police officer with specialised training in child-sensitive communication and interviewing. (For more information, see the resource note on ‘interviewing children’).
  - When the arrested person is a child, deprivation of liberty should be a measure of last resort, and only for the shortest appropriate period of time. In exceptional cases where an arrested child is held in police custody, the child should be brought before a competent authority (a judge) within 24 hours to examine the legality of the deprivation of liberty.
18. **Specific safeguards for persons with mental health conditions or physical disabilities:**
  - It is important for police and other law enforcement officials to take into account the different ways in which mental health problems or physical disabilities can increase individuals’ vulnerabilities before, during and immediately following arrest, and to adapt their behaviours as needed. Training, sensitivity and awareness will help to ensure equitable treatment of individuals with disabilities.
  - Persons with mental health problems or learning difficulties may have greater difficulty in understanding standard police cautions and, as a result, extra care, time and attention may be needed to ensure that messages are fully understood. A lack of understanding can cause confusion and distress, exacerbating what may already be a tense situation.

- Poor or inadequate communication can lead to the disproportionate use of force against and traumatic experiences for persons with mental health problems. Restraints and other measures of control the police have at their disposal tend to be designed more for those who are violent through ill will, rather than those who are agitated because of mental distress. The use of inappropriate techniques can increase the risk of further distress and harm. Also, care should be taken by police to avoid carrying out an arrest if the matter could be better addressed with a health or social services response. It is good practice for police to be well-acquainted with and have the contacts for local health and social services that can be called upon to assist with such cases.
- Persons with physical disabilities, including individuals who are deaf or hard of hearing, or who have speech disabilities or intellectual disabilities, or who are blind or visually impaired, may not recognise or be able to respond to police directions. Special training on communication in a broad range of scenarios is best practice, so as to avoid reaching erroneous conclusions about a person's behaviour. Dedicated translation/communication tools for smartphones can provide a practical solution in overcoming some of the obstacles during an arrest. The use of physical pressure or restraints, as well as the use of standard transport practices, on persons with mobility disabilities may be dangerous, and may also unnecessarily impact on the individuals' dignity. For instance, lifting or moving a person with a mobility disability without sufficient prior communication, or removing visual or mobility aids to purposefully disorient a person with disabilities, is an infringement of their dignity.

## COUNTRY EXAMPLES



### Bangladesh: Directives on safeguards during arrests

On 24 May 2016, the Appellate Division of the Supreme Court of Bangladesh upheld 15 directives on safeguard measures to be followed in the case of arrest without warrant, detention, remand and treatment of arrested persons by law enforcement agencies. Among the issues considered, the Supreme Court determined that law enforcement agencies could no longer arrest suspects without a warrant. It also stipulated that officers must inform suspects of the reason for their arrests within three hours, as well as notify their relatives. In addition, the court order requires officers to be in uniform and to identify themselves by showing their badges during an arrest.



### India: Making arrests in the presence of witnesses

In India, the Criminal Procedures Code provides that arrests are to be made in the presence of witnesses, and that the witness and the arrested person must sign a 'contemporaneous memorandum'. In practice, while making an arrest, every police officer must bear an accurate, visible and clear identification of their name which will facilitate easy identification. Furthermore, a memorandum of arrest must be prepared by the arresting officer which has to be attested by at least one witness who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made, and also countersigned by the person arrested. If the memorandum is not attested by a member of the family, the arrestee must be informed about their right to have a relative or a friend be informed of the arrest.



### **Benin: Basic safeguards included in revised Code of Criminal Procedure**

The adoption and entry into force in 2012 of a revised Code of Criminal Procedure, which includes provisions relating to safeguards on arrest, as well as efforts to raise awareness of the Code among police officers and gendarmes have had a positive impact on the observance of basic legal safeguards. For example, article 59 of the Code of Criminal Procedure guarantees the right of detainees to be informed of the reasons for their arrest and their rights to be represented by counsel, to be examined by a doctor of their choice, and to notify a family member of their arrest and receive a visit from them.



### **Cyprus: Immediate access to a lawyer provided by law**

The law on the rights of suspects, persons arrested and detained (Law No. 163 (I) of 2005) sets out the fundamental legal safeguards for persons in pretrial detention and persons arrested and in custody. The law provides that detainees have the right to contact a lawyer and relatives immediately after the arrest, without the presence of the authorities (Article 3 (1)), and cites the specific grounds on which third-party notification can be delayed for up to 12 hours (Article 3 (2)).



### **Estonia: Notification of rights reinforced through leaflets**

Like in many other countries, in Estonia the Ministry of Justice has produced leaflets that provide information on the rights and obligations of persons during the different stages of criminal proceedings, including during arrest, and on how to access a legal representative or legal aid, along with other relevant information. These are available for free in both Estonian and Russian in all rooms of authorities involved in different stages of criminal proceedings and are given to suspects and accused persons in criminal proceedings. They are also available online.



### **Fiji: Legal aid within the first hour of arrest or detention**

Fiji's Legal Aid Commission continues to ensure legal representation on arrest, including in rural areas, through the 'First Hour Procedure', whereby police agree to hold off interviewing after an arrest and must contact a lawyer at the Legal Aid Commission within the first hour of arrest or detention. A lawyer rostered for that day and night then arrives at the police station and explains to the suspect the rights of persons in custody, including the right to counsel. The suspect then decides whether they would like the lawyer to remain as counsel, or whether to waive the right. Waivers after a lawyer has explained these rights personally are more likely to survive a challenge in court.

## KEY RESOURCES: STANDARDS AND GUIDELINES

### International standards and recommendations:

- [United Nations Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment](#), adopted by General Assembly resolution 43/173, 9 December 1988.
- [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, September 1990.
- [UN Human Rights Council Resolution 31/31 on safeguards to prevent torture during police custody and pretrial detention](#), A/HRC/RES/31/31, 21 April 2016, in particular, paras. 5, 6 and 9.
- [UN Human Rights Council Resolution 46/15 on the roles and responsibilities of police and other law enforcement officials](#), A/HRC/RES/46/15, 1 April 2021, in particular, paras. 3, 4, 14.

### Regional standards and recommendations:

- [Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#), adopted by the African Commission on Human and Peoples' Rights (ACHPR), 2014, in particular, Checklist 1, Category 1: Legislative, policy and administrative framework for arrest.
- [Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas](#), approved by the Inter-American Commission on Human Rights, 2008.
- [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#), CPT standards on Police/Law enforcement.
- [Directive 2013/48/EU](#) of the European Parliament and of the Council of 22 October 2013.

## KEY RESOURCES: PRACTICAL TOOLS AND MANUALS

- African Commission on Human and Peoples' Rights (ACHPR), [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#) (Luanda Guidelines) Trainer Manual, 2017.
- European Union Agency for Fundamental Rights, ["Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings"](#), 2019.
- United Nations Office of the High Commissioner on Human Rights (OHCHR) and United Nations Office on Drugs and Crime (UNODC), [Resource book on the use of force and firearms in law enforcement](#), 2017, pp. 136, 140-150.
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), ["Preventing police torture and other forms of ill-treatment – reflections on good practices and emerging approaches"](#), 2019, CPT/Inf(2019)9-part, paras. 64, 66 and 85.



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Police and other law enforcement actors in all societies play an incredibly important role so that ordinary citizens can go about their daily lives without fear. Professionalism and integrity are fundamental for them to be able to perform their functions safely and effectively. Police and other law enforcement officials contribute to building a fairer administration of justice by maintaining law and order, preventing and responding to crime and keeping communities safe, while respecting and protecting the rights of suspects, victims and witnesses who come into contact with the criminal justice system. Their work is also central to the fight against torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment).

Despite a large volume of international, regional and national handbooks, guidelines and other tools on best police practices, awareness, accessibility and training on these standards by policymakers and police practitioners are still a challenge. The resource notes included in this practical resource toolkit for professional, human rights-compliant policing compile existing international law, standards, practices, guides and examples on best ways to improve performance and the protection of human rights. These resource notes can inform police reforms, improve efficiency, fairness and transparency in policing and law enforcement, and reduce risks and incentives to use torture and other forms of coercion.

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