

# THE POLICE AS FRIEND AND HELPER TO THE PEOPLE

Assessing the Lesotho Mounted Police Service performance in terms of the  
Southern African Police Chiefs Cooperation Organisation (SARPCCO)  
Code of Conduct

Amanda Dissel, Themba Masuku,  
Marosa Tshelo and Sean Tait



AFRICAN POLICING CIVILIAN OVERSIGHT FORUM



TRANSFORMATION RESOURCE CENTRE

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## Abbreviations

APCOF	African Police Civilian Oversight Forum
CAT	Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment
CS	Correctional Services
FBI	Federal Bureau of Investigation
FIDA	Federation for Women Lawyers
GCPU	Gender and Child Protection Unit
LMPS	Lesotho Mounted Police Service
M	Maloti (currency of Lesotho)
NGO	Non-Governmental Organisation
NSS	National Security Services
OB	Occurrence Book
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment
SARPCCO	Southern African Police Chiefs Cooperation Organisation
TRC	Transformation Resource Centre
UN	United Nations
US	United States
WILSA	Women in Law in Southern Africa



## Introduction

There is an increasing emphasis on accountability in democratic governance. This trend has emerged in respect of law enforcement, particularly in policing. In 2010, the African Police Civilian Oversight Forum (APCOF), an organisation with a particular interest in policing oversight, developed a set of indicators to assess the state of policing in the southern African region. The first phase of the project involved the drafting of indicators against the principles expressed and agreed to by police agencies in the region as set out in the Code of Conduct of the Southern African Police Chiefs Cooperation Organisation (SARPCCO).<sup>1</sup> The second phase, which runs from 2010 to 2011, marks the tenth anniversary of the Code and involves a review of the performance of state signatories to the Code of Conduct.

APCOF, in partnership with the Transformation Resource Centre (TRC), decided to pilot the indicators in Lesotho with an assessment of the Lesotho Mounted Police Service (LMPS). The active involvement of a partner organisation in Lesotho such as the TRC, the language, and the size of the country and police service were important considerations in the initial piloting of the tool. Importantly, however, the LMPS as a member of SARPCCO is committed to upholding the Code of Conduct and this commitment was demonstrated by the earnestness and sincerity with which the LMPS engaged in the study.<sup>2</sup> Without this willingness to participate, the challenge of undertaking an assessment such as this would have been significantly magnified. The assessment was conducted in Lesotho during the second half of 2010.

The report begins by explaining the development of the SARPCCO Code of Conduct and outlines each article. It describes how a set of indicators were developed by APCOF to measure the implementation of the Code of Conduct by the police. The section that follows outlines the methodology that was used to gather information and develop this report on the LMPS's implementation of the Code of Conduct. A brief overview of the history and development of the LMPS follows. In the discussion of each article of the Code of Conduct, we discuss the situation in Lesotho in respect of each indicator that had been developed. Finally, the report ends with some concluding remarks, and recommendations to the LMPS in respect of each article of the Code of Conduct.

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1 Dissel, A., and Tait, S. (2010). *Indicators for implementing the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) Code of Conduct*. Cape Town: African Policing Civilian Oversight Forum.

2 African Commission for Human and Peoples' Rights, *Report on the Promotional Visit to the Kingdom of Lesotho 3 – 7 April 2006*, para. 82.

## SARPCCO Code of Conduct

The Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) was established in 1995 in order to foster better cooperation and mutual assistance between police agencies in southern Africa.<sup>3</sup> Its objectives are to promote and strengthen cooperation in the region, and to make recommendations to the governments of member countries in regard to training, policing strategies and policing performance requirements.<sup>4</sup> SARPCCO recognised the observance of human rights as one of its central operating principles and, following a workshop in Botswana in 2000, developed a Code of Conduct. This was adopted by the Council of Police Chiefs sitting at the 6<sup>th</sup> General Assembly in Mauritius in 2001.<sup>5</sup>

The SARPCCO Code of Conduct is derived from a range of international and regional human rights instruments. Foremost among these is the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights (UDHR),<sup>6</sup> which sets out the general principles and standards on human rights; the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>7</sup> These three instruments form the backbone of our understanding of human rights, and collectively guarantee the fundamental rights of dignity, equality, the right to life, liberty, and security of the person, among others. Torture and other cruel, inhuman and degrading treatment or punishment are prohibited. Many of these rights are directly affected by actions of law enforcement authorities, so particular attention should be paid to them when assessing the performance of the police.

The fundamental rights expressed in the International Bill of Rights are further amplified in successive treaties, declarations, conventions and principles that have been developed through the United Nations (UN) and regional bodies. They outline responsibilities for each state party in respect of these rights. Those which are relevant to policing include: the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);<sup>8</sup> the Convention on the Rights of the Child (CRC);<sup>9</sup> the Convention against Corruption (CAC);<sup>10</sup> the Convention on the Elimination of all Forms of Racial Discrimination (CERD);<sup>11</sup> the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW);<sup>12</sup> and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (CMW);<sup>13</sup> the Convention for the Protection of all Persons from Enforced Disappearances (CED);<sup>14</sup> and the Convention on the Rights of Persons with Disabilities (CPRD).<sup>15</sup> Conventions are binding on state parties, but also have the force of international customary law when the state is not a party.

Protocols and guidelines are not binding on state parties, but have a persuasive force. Some that are relevant to police include: the Code of Conduct for Law Enforcement Officials;<sup>16</sup>

3 Member countries of SARPCCO are: Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

4 SARPCCO and SAHRIT (2003). *SARPCCO Code of Conduct: Human Rights and Policing: Towards Ethical Policing Resource Book*. SARPCCO and SAHRIT, p. 19.

5 The Harare Resolution on the SARPCCO Code of Conduct for Police Officials was adopted at the 6<sup>th</sup> Annual General Meeting, 27–31 August 2001 in Mauritius.

6 Adopted by the UN General Assembly Resolution 217 A (III) of 10 December 1948.

7 Both the ICCPR and ICSECR were adopted by the UN General Assembly Resolution 2200 A (XXI) on 16 December 1966, and entered into force in 1976.

8 Adopted by the UN General Assembly on 10 December 1984.

9 Adopted by the UN General Assembly Resolution 44/25 of 20 November 1989.

10 Adopted by the UN General Assembly Resolution 58/4 of 31 October 2003.

11 Adopted by the UN General Assembly Resolution 2106(XX) of 21 December 1961.

12 Adopted by the UN General Assembly on 18 December 1979.

13 Adopted by the UN General Assembly Resolution 45/158 of 18 December 1990.

14 Adopted by UN General Assembly on 20 December 2006.

15 Adopted by the UN General Assembly on 13 December 2006.

16 Adopted by the UN General Assembly, Resolution 34/169 of 17 December 1979.



the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;<sup>17</sup> The Standard Minimum Rules for the Treatment of Prisoners;<sup>18</sup> the Basic Principles for the Treatment of Prisoners;<sup>19</sup> and the Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment.<sup>20</sup> The UN Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) outlines standards in respect of individuals in conflict with the law but who are not in custody.<sup>21</sup> Standards governing the treatment of children in conflict with the law include: the Standard Minimum Rules for the Administration of Juvenile Justice (also known as the Beijing Rules)<sup>22</sup> and the Rules for the Protection of Juveniles Deprived of their Liberty.<sup>23</sup>

At the regional level, the African Charter of Human and Peoples' Rights is the founding human rights instrument.<sup>24</sup> Other instruments are the African Union Convention on Preventing and Combating Corruption;<sup>25</sup> the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (also known as the Robben Island Guidelines);<sup>26</sup> and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.<sup>27</sup>

The Southern African Development Community (SADC) also has a range of human rights instruments to guide states in the sub-region.

Based on these international guidelines the SARPCCO Code of Conduct for Police Officials is a set of minimum professional standards for police forces and services in the region. The Code of Conduct refers to fundamental human rights principles, accountability and the management of police use of force and police power, and acknowledges police responsibilities in protecting and serving members of the public (irrespective of gender, ethnic or religious affiliations) and victims of crime. The Code of Conduct presents a commitment to encouraging ethical and professional policing in the region. Each member country undertook to implement the Code of Conduct nationally. SARPCCO has the responsibility to oversee the dissemination, promotion and implementation of the Code of Conduct, as well to monitor its implementation.

## Indicators to measure the SARPCCO Code of Conduct

Countries often encounter difficulties in meeting the established goals and objectives particularly because since many countries in the southern African region are constrained by shortages of resources and skills. Most countries in the region have only relatively recently emerged from repressive or militaristic regimes, and have had to catch up with democratic norms and standards. The establishment of indicators and measures is designed to assist countries and their institutions to move towards the progressive realisation of these goals. Indicators can help to identify specific steps that countries need to take in order to meet these larger goals and objectives, whether they are established at an international or regional level or within a government institution itself.

Indicators can be used at the strategic level in respect of policies and actions at the highest level, as well as at institutional level where they measure the institutional policies and activities of the organisation.

17 Adopted by the Eighth United Nations Congress on the Prevention of Crime and the treatment of Offenders, Havana, 27 August to 7 September 1990.

18 Adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva in 1955, and approved of by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Though this instrument sets out standards for an adequate penal system, it applies to all categories of prisoners, criminal and civil, untried and convicted, including prisoners subject to security measures, and thus applies to detainees in police custody as well as to those in prisons.

19 Adopted by General Assembly Resolution 45/111 of 14 December 1990.

20 General Assembly Resolution 43/173 of 9 December 1988.

21 General Assembly Resolution 45/110 of 14 December 1990.

22 General Assembly Resolution 40/33 of 29 November 1985.

23 General Assembly Resolution 45/113 of 14 December 1990.

24 Adopted by the Organisation of African Unity on 27 June 1981.

25 Adopted by the African Union in Maputo on 11 July 2003.

26 Resolution of the 32<sup>nd</sup> Ordinary Session of the African Commission, October 2002.

27 Adopted by the African Commission on Human and People's Rights in 2001. DOC/OS(XXX)247.

APCOF developed the indicators for policing organisations so as to:

assist external organisations, such as oversight bodies, non-governmental organisations, research bodies and the media, to understand and have oversight over the implementation of good policing conduct and human rights standards by the police; and

[to] establish what standards police managers need to uphold in order to ensure adherence to fundamental rights and minimum standards of practice in terms of the Code of Conduct. The indicators should enable these managers to understand what their responsibilities are and what action steps they need to take in order to achieve defined objectives. They can measure their implementation of these standards over time. The standards can be used by police at various managerial levels, including at the station level, programme level, as well as for senior national managers, depending on their levels of responsibility and access to information.<sup>28</sup>

In developing the indicators, we took each article and standard of the Code of Conduct and developed a set of indicators for the required level of performance. Each indicator has a number of ‘measures’ which are intended to assist the researcher or police manager in measuring the actual performance of the police institution against the indicator. Because it is often difficult to find information to support each measure, the indicator document suggests a number of ‘means of verification’ or sources of information for each ‘measure’. A full outline of the indicators, measures and means of verification for each article of the SARPCCO Code of Conduct is attached as Annexure A.

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<sup>28</sup> Dissel, A., and Tait, S. (2010). *Indicators for implementing the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) Code of Conduct*. Cape Town: African Policing Civilian Oversight Forum, p. 8.

## Methodology for the Study

In designing the indicators, APCOF was aware that in many instances it would be difficult to collect information. In many developing countries, official information is not well documented or publicly accessible, and some information may only be released on formal application. SARPPCO countries also do not have the benefit of a plethora of academic studies that are available in more developed countries. The researcher or manager must therefore be prepared to collect primary data from the source, namely from the police organisation and from police officers and the public who are being policed. The collection of data thus requires a mixture of primary research, such as interviews with key stakeholders, surveys and field observations. But the researcher is also required to collect documents, reports, and articles in the media pertaining to the particular police service so as to conduct a desktop study. In order to present as unbiased a perspective as possible, it is important to obtain the perspective of both official and unofficial sources.

Taking these anticipated data collection challenges into account, APCOF partnered with the Transformation Resource Centre (TRC) in Lesotho to carry out the research for this study. The methodology was applied using a combination of desktop research, and field interviews and observations in Lesotho. The initial part of the research was conducted by an intern from the TRC, but this process was later augmented by the employment of an experienced consultant researcher who visited Lesotho for a week in November 2010. To assist with the interview process, the researcher compiled a detailed list of key questions designed to elicit information for each indicator. Interviews were conducted with 19 key informants. The names of all informants have been kept confidential to protect their identity. Key informants included:

- Employees of four non-governmental organisations;
- A member of parliament;
- Members of three political parties;
- Two journalists – one from a publishing house and one from a radio broadcaster;
- Representatives of the LMPS (including an Inspector and representatives of the Human Resource Office, Gender and Child Protection Unit, Counselling Unit, Complaints and Discipline Office, the Legal Department and the Police Training College);
- One former police officer;
- A magistrate; and
- A representative of the National Security Services.

After collecting the data it was written up into a table format accompanying each indicator. This was later written up into the current narrative report, and the field data was supplemented by further information, largely obtained through internet searches, as well as by the few LMPS official documents that the research team was able to obtain.

This study was greatly assisted by the cooperation of the Lesotho Mounted Police Service. They were notified about the study and, through the office of the Deputy Commissioner for Strategic Management and Support Services in the LMPS, the team was given access to key respondents in the LMPS as well as to key documents. Appointments with members of the LMPS were coordinated through the office of the Human Resources Officer.

Once a draft of the report was prepared, it was submitted to the LMPS for their comment. A meeting was held between members of the research team and senior members of the LMPS on 1 March 2011 to discuss the findings and any inaccuracies in the report. Where appropriate, the concerns of the LMPS have been taken into account in the final draft of the report. A workshop on the report was held with state and civil society stakeholders in Lesotho on 10 August 2011.

## Limitations of the Study

Though we received excellent cooperation from the LMPS and other official structures, there were certain limitations in the information they could provide the research team. Not all of the LMPS data is compiled or stored in a readily accessible format. They could not for instance provide the research team with a compilation of information on disciplinary proceedings and outcomes of disciplinary proceedings against police officials. Our researchers could not look at individual disciplinary files as little or no documentation was available. The Occurrence Book (OB) in which all disciplinary cases were recorded did not provide details of the disciplinary cases – only demographic data and the charge against the individual. There was also concern with the issue of breach of confidentiality. As a result, the officer in charge of the files went through disciplinary cases from the relevant years and the researcher noted down the details.

Crime information was not readily available, and statistics available on the LMPS website were restricted to gender-based crimes and were outdated. Relevant legislation is not available on the police website or through the internet. We were given copies of the Police Act, the Criminal Procedure Act and the Constitution of the Kingdom of Lesotho. A copy of the police annual report was not available when requested, though the LMPS undertook to post this to researchers. However, a copy had not been received by the time of publication.

Although the consultant researcher had previously conducted research in Lesotho and was very familiar with the police, he was not from Lesotho and would not have been part of the history and development of the country. Many of the changes in practice may not have been observed by him, or alternatively may have been over-emphasised from his perspective as an outsider. The final report was written by a researcher who had not been part of the data collection process, but relied on the data from the field researchers.

The limited time frame for the data collection and writing up also impacted on the depth of some of the information collected. For example, the interview sample was relatively small, and the views of the police officers and others interviewed cannot be taken as representative. Still, they provide an explanation and perspective on some of the statistical and analytical data we managed to obtain.

The indicators often require the researcher to check legislation and policy or to read law reports, and it is useful to draw on legal skills when collecting and interpreting the data.

## Overview of the Lesotho Mounted Police Service

The Kingdom of Lesotho is a small landlocked country, entirely surrounded by South Africa. It is a constitutional monarchy with the king largely playing a ceremonial role. However, its turbulent history since its founding in 1818 has impacted on the development and reform of the police service.

The Lesotho Mounted Police Service was established under the British Administration in October 1872. It was known as the Basutoland Mounted Police. The police force was made up with the strength of 110 men who were the sons of local chiefs. At the time, the duties of the police were mainly to support and protect magistrates and to act as interpreters.

In 1878 the police adopted military ranks and structure. By 1957 the size of the police had grown to 519. Adapting to modern challenges in fighting crime, the police developed specialised units such as the Special Branch and Signals, the police Mobile Unit, and the Stock Theft and Criminal Investigation Department. The Police Training College was established in 1946. In 1958 the police adopted civilian ranks.

At the time of independence in 1966, the police force was the main law enforcement agency in the country. The civilian structure was abolished in 1972 and replaced with military ranks and the first African Police Commissioner was appointed. Women were also recruited into the police for the first time. Lesotho experienced *de facto* one-party authoritarian rule between 1970 and 1986, and military rule between 1986 and 1993. The police force was highly politicised during this period and was used primarily to support the authoritarian regime and to undermine political opposition. This increasingly undermined the professionalism and integrity of the police, and many brutalities and repressive measures occurred at the hands of the police and the military.<sup>29</sup>

The return of democracy to Lesotho in 1993 brought about more reforms for the police. The police were moved from the authority of the Ministry of Defence to the Ministry of Home Affairs. The Constitution of 1993 placed the responsibility for law and order with the Lesotho Mounted Police Force, which later changed its name to the Lesotho Mounted Police Service.<sup>30</sup>

This process brought about many conflicts, including the strike of police officers over wages in 1994. There was a similar demand for a wage increase from the military forces, which resulted in violent conflict between the military establishment and the government. The political conflict in the police force resulted in the killing of three police officers. This led to the intervention of King Letsie III when he dissolved the democratically elected Basutoland Congress Party (BCP) and established a transitional council to run the affairs of the country. This triggered further dissent and protests. External actors such as South Africa, Botswana and Zimbabwe intervened to reverse the king's partisan ruling and the BCP was reinstated a month later. There was a further faction fight in the LMPS in 1995 which, as Matlosa says, was a manifestation 'of the contradictions between the past culture of a politicised force under an authoritarian regime and the new culture of a professional service under a democratic order'.<sup>31</sup> The struggle of the BCP to professionalise the police came to a head in 1997 when a faction of the police service attempted a mutiny that was ultimately quelled by the military. Differences of approach between the military and the police began to show during the violent political conflict of 1998 when the police and military exchanged fire in a dispute over how best to re-establish law and order.<sup>32</sup>

According to Matlosa, three main initiatives were introduced to bring about reform. These were the 1997 White Paper on Police Reform, the 1998 Police Service Act, and the five-year development plan for the LMPS for the period 1998–2003. The Act provided the legal framework for reform and a new vision for the police.

29 Matlosa, K. (2007). 'Lesotho'. In Cawthra, G., Du Pisani, A., & Omari, A. *Security and Democracy in Southern Africa*. Johannesburg: Wits University Press IDRC, available online: [http://www.idrc.ca/en/ev-132699-201-1-DO\\_TOPIC.html](http://www.idrc.ca/en/ev-132699-201-1-DO_TOPIC.html), accessed 9 December 2010.

30 The Third Constitutional Amendment, Act 5 of 1998.

31 Matlosa, K. (2007).

32 Matlosa, K. (2007).

The White Paper sought to build a professional police service able to discharge its law and order functions without political bias and in partnership with communities. The White Paper expressed a commitment to maintain an effective, efficient and accountable police service, as well as to enhance internal discipline and to build trust and confidence in the police. Its three strategic goals were the reduction of crime; improvement of service to the public; and the efficient management of police resources.<sup>33</sup> It also envisaged an LMPS that would enhance confidence in the rule of law.<sup>34</sup> The White Paper stressed the independence of the police. There was also an emphasis on a more participatory process of policing, and community policing was introduced, aiming for a partnership between communities and the police to resolve safety problems.

The introduction of the Police Service Act of 1998 brought about a change of name to the Lesotho Mounted Police Service (LMPS) and a re-civilianisation of the police. The police were faced with the challenge of reforming a highly politicised police force and making them subject to a civilian authority. The Police Service Act provided for the establishment of a number of oversight mechanisms for the police. Section 21 established an Inspector of Police with responsibility to monitor the effective and efficient functioning of the police and to make recommendations to the minister in regard to the performance of the police. A civilian Directorate of Policing was also provided for and tasked with overseeing the police and introducing standards of control. A Police Complaints Authority was established in 2003 with the authority to investigate complaints of police misconduct and to make recommendations on disciplinary action to the Commissioner of Police (and possible prosecution). A general Office of the Ombudsman was established in terms of Section 134 of the Constitution. Reporting to Parliament, it investigates violations of the rights of citizens by public and private sector agencies, including the police.<sup>35</sup>

In 2004 a review was conducted to assist in the process of restructuring and professionalising the police which entailed a review of the Constitution, legislation and strategic and development plans of the LMPS. A number of recommendations were made to clarify the functions of the police.<sup>36</sup>

Lesotho appointed its first female Police Commissioner in 1995, a position which she held until 2011. The LMPS employs over 3 489 police officials.<sup>37</sup> Currently, the LMPS falls under the Ministry of Home Affairs and Public Safety.

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33 Ibid.

34 Kingdom of Lesotho (2007). White Paper on Police Reform, 1997. Maseru: Government Printer, quoted in Hendricks, C., and Musavengana, T. (2010). *The Security Sector in Southern Africa*, Monograph 174. Pretoria: The Institute of Security Studies, p. 83.

35 African Police Civilian Oversight Forum. (2008). *An audit of police oversight in Africa*. Cape Town: African Police Civilian Oversight Forum, pp.37- 38.

36 Government of Lesotho. Ministry of Home Affairs and Public Safety. (2004). *Review of the Lesotho Mounted Police Service Reform and Restructuring Programme: Final Report*. Maseru.

37 Information derived from the Lesotho Mounted Police Service website, [www.lmps.org.ls](http://www.lmps.org.ls), accessed 9 December 2010, and Transformation Resource Centre (2006). Mounted Friend and Helper: the History of the Lesotho Mounted Police Service. In *Work for Justice* (74), p. 8.

## Assessing the Lesotho Mounted Police Service against the SARPCCO Code of Conduct

# 1

### ARTICLE ONE: Respect for Human Rights

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

#### Indicator: Police actions are based on law and human rights

##### Legal framework

Lesotho has ratified several of the key international instruments on human rights, including:

- The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.<sup>38</sup>
- The Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment.<sup>39</sup>
- The International Convention on the Elimination of all Forms of Racial Discrimination.<sup>40</sup>
- The Convention on the Elimination of all Forms of Discrimination against Women,<sup>41</sup> and the Optional Protocol to the Convention on the Elimination of Discrimination against Women.<sup>42</sup>
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.<sup>43</sup>
- The Convention on the Rights of the Child<sup>44</sup> and the Optional Protocol to the Convention.<sup>45</sup> It has also ratified the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.<sup>46</sup>

At the regional level, Lesotho is party to:

- The African Charter on Human and Peoples' Rights.<sup>47</sup>
- The African Charter on the Rights and Welfare of the Child.<sup>48</sup>

The Constitution is the supreme law in Lesotho (Act no. 16 of 1993). It provides for the fundamental human rights and freedoms regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Fundamental human rights include the right to life, personal security and the right not to be treated inhumanely. Some of these rights are limited to the extent provided for in the Constitution.

Section 147 of the Constitution provides for the establishment of a police service responsible for the maintenance of law and order having such functions as prescribed by an Act of

38 Ratified on 9 September 1992.

39 Acceded to on 12 November 2001.

40 Acceded to on 4 November 1971.

41 Ratified on 22 August 1995.

42 Ratified 24 September 2004.

43 Ratified on 24 September 2003.

44 Ratified on 10 March 1992.

45 Ratified on 24 September 2003.

46 Ratified 14 June 2001.

47 Ratified 10 February 1992.

48 Acceded to on 27 September 1999.

Parliament. The defining Act is the Police Service Act no. 7 of 1998. Section 3(5) stipulates that, ‘the Police Authority shall exercise his power under this Act in such a manner and to such extent as it appears to him to be the best calculated to promote the efficiency and effectiveness of the police service’. Section 4 of the Act defines the general functions of the police as being ‘...to uphold the law, to preserve the peace, protect life and property, to detect and prevent crime, to apprehend offenders, bring offenders to justice, and for associated purposes’.

#### *Policy framework*

Strategic documents, though not holding the same weight or authority as statute, define how the LMPS is to operate.

The LMPS has developed a Strategic Plan for 2010–2013 which is linked to the goals set out in the National Development Strategies, as articulated in the National Vision 2020, the Poverty Reduction Strategy and the Public Service Delivery Agenda. The LMPS Strategic Plan describes the vision of the LMPS as follows:

By 2016, the LMPS shall be a professional and accountable police service, providing safety and security in partnership with the community, with particular emphasis on crime prevention, reduction, detection and human rights observance.<sup>49</sup>

Recognising a number of limitations, the Strategic Plan outlines various strategic aims. These are:

- To upgrade training programmes;
- Internal capacity building;
- Transformation and restructuring of the LMPS;
- Construction of a new Police Training College;
- Building a police service, individuals and communities committed to be core participants in crime protection strategies and peace-building; and
- Reduction of HIV infection in the public sector.<sup>50</sup>

The LMPS Mission also confirms the need to uphold human rights principles. Cherished values of the LMPS include:

- Social responsibility, accountability, integrity, dedication, discipline, professionalism and loyalty;
- Customer-orientation (smile to every client), transparency, equity;
- Quality orientation, learning and innovation; and
- Cost-efficiency and effectiveness.<sup>51</sup>

The Strategic Plan outlines strategies that define the future direction of LMPS, and aligns the LMPS to the external environment within which it operates. The plan puts more emphasis on professionalising the police service to ensure compliance with international standards and striving towards serving every individual impartially. The strategy aims to help build the relationship between the public and the police with the view to empowering local communities to actively participate in the activities of self-policing in order to maintain peace and security and to protect themselves.

49 Lesotho Mounted Police Service (2010). *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Document produced by Lesotho Institute of Public Administration and Management (LIPAM) for the LMPS. 6 April 2010. Maseru.

50 *Ibid.*, p. 23.

51 *Ibid.*



## Indicator: Police are trained in human rights

### *Police Training Prospectus*

The LMPS provides human rights training for all cadets.<sup>52</sup> Part VI of the police training prospectus indicates that the basic training for all new recruits incorporates human rights training.<sup>53</sup> The Training Manual of Policing and Human Rights in Lesotho is used for the training.<sup>54</sup> The human rights training deals with three categories of human rights as provided for in the Lesotho Constitution, namely, first generation rights or civil and political rights; second generation rights or economic, social and cultural rights; and third generation rights or group rights. The training also deals with human rights and the responsibility of police officers in dealing with suspected criminals.<sup>55</sup> The SARPCCO Human Rights Training Manual is also used as a training manual for new recruits and cadets.<sup>56</sup> This manual deals with international standards, regional treaties and non-treaty instruments.

The course outline shows that new recruits and cadets are provided with both theoretical and practical skills training in human rights. The practical component of the training is based on the scenarios which trainees are required to role-play. However, the time allocated to human rights training was very short, and the materials provided to the researcher constituted only a few pages.

In an important move to provide for external input on human rights training, the training college does allow for human rights lawyers from civil society organisations to participate in the training of new recruits and cadets on human rights. The Federation for Women Lawyers (FIDA) and Women in Law in Southern Africa (WILSA) also provide training on legal issues and gender-based violence to new police recruits at the Police Training College.<sup>57</sup> Although civil society organisations saw this as a positive development, they remain critical of the duration of the human rights training course. They indicated that ‘the training only lasts for a few hours [...]. Unfortunately in that period one can deal only with the legal issues concerning human rights... There definitely is a need to increase the duration of the training because the training being provided is inadequate. We are unable to deal adequately especially with role-playing which is the practical aspect of the training’.<sup>58</sup>

Although all new recruits receive human rights training, no refresher courses are provided, nor is training provided for older recruits who were trained when human rights did not form part of the curriculum. However, senior officials are often invited to workshops and conferences dealing with human rights or with specialised aspects of policing, though no statistics were available indicating how many police officers have been invited to attend workshops and conferences on human rights.<sup>59</sup>

Not all police officials interviewed for this study were happy with the standard of training provided. A former senior police officer indicated that ‘the training provided to police officers is of low standard’.<sup>60</sup>

## Indicator: Violations of human rights are identified and addressed

### *External oversight mechanisms*

A number of external oversight mechanisms have been created in Lesotho, some of which are mandated to have specific oversight over the police, while others have a more general authority.

52 Cadets are police officers who after receiving the six months basic training immediately undergo a more advanced training which lasts for nine months. Cadets are appointed straight to the position of inspector. The LMPS has not recruited cadets since the year 2003.

53 LMPS (2003/2004). *Police Training College Prospectus*. Maseru: Police Training College.

54 Senior Inspector Mokete. (2010). *Human Rights Course Curriculum for Police Recruits*. Maseru: Police Training College.

55 Ibid.

56 Sahrit (2002). *International and Regional Human Rights Standards for Policing*. Human Rights Trust of Southern Africa, Causeway, Harare

57 Interview with a female manager at the Federation for Women Lawyers (FIDA) 24 November 2010. Interview with a female senior manager at Women and Law (WILSA) organisation on 24 November 2010.

58 Interview with a female manager at the Federation for Women Lawyers (FIDA) 24 November 2010.

59 For example training arranged in collaboration with the UNDP on 20 September 2010 involving ten LMPS members in human rights training. United Nations Development Programme, (2010). *Training on human rights for law enforcement agencies*. UNDP Lesotho, available on [http://www.undp.org.ls/news/Training\\_for\\_Law\\_Enforcement\\_Agencies.php](http://www.undp.org.ls/news/Training_for_Law_Enforcement_Agencies.php), accessed 23 December 2010.

60 Interview with a male former senior police officer on 26 November 2010.

The Police Complaints Authority (PCA) is an independent statutory and civilian oversight body that monitors police abuse of power and human rights violations. It is established in terms of Section 22 of the Police Service Act. Its primary objective is 'to oversee the operation of police, their conduct with public, their general protection and conditions under which they work'. However, the effectiveness of the PCA is constrained in certain ways. One of its limitations is that the PCA cannot receive complaints directly from complainants or members of the public. It can only investigate complaints it receives from the Commissioner of Police or the Minister of Home Affairs, and it is the Commissioner who decides which complaints should be investigated. The PCA has the power to summons a person to give evidence or to produce documents, except where the Commissioner of Police certifies that disclosure of the information would be against the public interest or would jeopardise the safety of any person (Section 22(6)). The PCA does not have powers of search and seizure. The arrest of any police officer can only be done by the police on the instruction of the Commissioner of Police. Further, on completion of the investigation, the PCA can only make recommendations to the police on whether to take disciplinary action or prosecute the member.

A review of the LMPS suggested amendments to the legislation so as to enable the Police Authority, on the recommendation of the PCA, to direct the Commissioner to institute disciplinary proceedings against a member of the Police Service. The proposed amendments provide that the PCA and its members should not be interfered with, and that all organs of State should provide assistance. The proposed amendments ensure the protection of the PCA's independence, impartiality, dignity and effectiveness.<sup>61</sup>

The Police Inspectorate is established in terms of Section 21 of the Police Service Act of 1998. The Police Inspectorate is tasked with the responsibility of monitoring the effectiveness and efficiency of the police service, and the extent to which the policing plan for the year has been carried out.

The Directorate on Corruption and Economic Offences was established under the Prevention of Corruption and Economic Crime Offences Act of 1999. According to this Act the Directorate is required to investigate complaints; prosecute corruption subject to the directive of Directorate of Public Prosecutions; prevent corruption; and educate against the evils of corruption. The Directorate is mandated to investigate any complaint of corruption against a public body, including the police service.

The Office of the Ombudsman was established in terms of Section 134 and 135 of the 1993 Constitution of Lesotho to investigate action taken by any officer or any government department, local government authority or statutory corporation in the exercise of the administrative functions of that officer or authority in cases where it is alleged that a person has suffered injustice in consequence of that action. The duties, nature and function of the Ombudsman are described in the Ombudsman Act of 1996. The mission statement stipulates that '[a]n independent institution whose existence is enshrined in the Constitution of the Kingdom of Lesotho, the Ombudsman will protect citizens and the public against infringement of their rights by public sector agencies'. Further, its objectives are to provide efficient, effective and accessible services to clients so that complaints and grievances against public sector institutions are resolved promptly and in an impartial manner. And, to respond on a timely basis, to individual and grievances against public sector agencies by conducting independent investigations in order to promptly recommend remedial action for resolving them and to make follow-ups on the resolution of every case.<sup>62</sup>

The Ombudsman is obliged to submit to Parliament an annual written summary of its investigations and recommendations. The Lesotho Ombudsman Annual Report for 2005 deals with a range of complaints against public sector institutions, including the police. Though the police were not reported on specifically, the Ombudsman dealt with general complaints related to:

61 Proposed amendments to the Police Service Act 1998, contained in Government of Lesotho, Ministry of Home Affairs and Public Safety (2004). *Review of the Lesotho Mounted Police Service and Restructuring Programme, Final Report*. p. 69.

62 Ombudsman, available on the website, <http://www.ombudsman.org.ls/The%20Objectives.html>, accessed 13 January 2011.

abuse of power, arrogance, prejudice, bias, denial of essential services or failure to provide a service, dishonesty, injustice, maladministration, unfairness, unlawful activities, violation of human rights and contractual agreements and corruption.<sup>63</sup>

It has been reported that Lesotho is considering establishing a human rights commission. The Proposal which is contained in the Sixth Amendment to the Constitution Bill of 2010 provides that the human rights commission will monitor and investigate human rights violations; will educate the public; monitor the human rights situation of detainees; and probe rights violations and institute proceedings against rights violators in the courts.<sup>64</sup>

Unfortunately, since updated reports or findings of these mechanisms are not available, we are unable to assess whether they do fulfill an effective oversight function, and the extent to which recommendations following their investigations are implemented.

#### *Internal Oversight Mechanisms*

The Complaints and Disciplinary office within the LMPS receives and responds to all complaints against the police, not limited only to alleged human rights violations. According to police from this office, the largest proportion of complaints received is related to poor or lack of service delivery by police officers.

The Complaints and Disciplinary register indicates that 113 complaints were received in 2007/2008 which resulted in 68 police officers being charged and prosecuted in the internal disciplinary system. In 2008/2009, 91 complaints were received, resulting in 61 police officers being charged and prosecuted in the internal disciplinary system, and this number increased to 121 complaints received in 2009/2010, resulting in 97 police officers being charged and prosecuted in the internal disciplinary system.<sup>65</sup> These cases included charges relating to assault, unlawful arrest, fraud, theft and illegal possession of drugs, and assault of other police officials. These cases were brought against police officials at all levels, including criminal and civil cases brought against the Commissioner of Police and the Deputy Commissioner of Police.<sup>66</sup>

Many of the police officers interviewed for this study were critical of the disciplinary system in the LMPS. They alleged that often the LMPS appointed presiding officers and prosecutors to hear the cases who lacked training and knowledge of the disciplinary procedures. As a result, one member felt that the presiding officers often refuse police officers the right to be represented or the right of disciplinary proceedings to be held in an open and transparent court.<sup>67</sup> The Strategic Plan 2010–2013 identified disciplinary processes as an area which requires ‘strengthening because disciplinary cases took a long time to conclude and the fact that disciplinary officers are often not qualified to preside over disciplinary cases’.<sup>68</sup>

#### *Litigation and civil claims against the police*

Although our researchers could not obtain the actual number of cases filed against the police for human rights abuses, key informant interviews conducted with members of the judiciary, civil society organisations and the police indicate that many civil claims are filed against the police every month resulting from human rights abuses by the police. Parliamentarians also expressed their concern that the Police Commissioner ‘is forced to pay millions of Maloti every year as compensation for police officers abusing the human rights of those suspected to have committed crimes’.<sup>69</sup>

63 Ombudsman 2004/2005 Annual Report. Lesotho p.1. Unfortunately, we were unable to access the latest Annual Report for 2008 from the Ombudsman website.

64 Zihlangu, B. (2010). ‘Government to set up rights watchdog’. *Sunday Express*. Available on <http://sundayexpress.co.ls/?p=3620>, accessed 19 December 2010.

65 Complaints and Disciplinary Record book, Complaints and Discipline office, Police Headquarters, Lesotho Mounted Police Service, Maseru.

66 In 2007 the Commissioner of the LMPS was charged with Contempt of Court after releasing a vehicle which was subject to a court case and failing to appear in court to testify in the trial of one Majake Ramoroke. She was convicted, and was given a six month imprisonment sentence. However, the Chief Justice intervened in the matter, rescinding the judgment against her. (Morake, S [2009]). Police Boss Off the Hook. *Lesotho Times Newspapers*. 24 September, 2009). On the other hand, the former Deputy Commissioner of Police, Bernard Ntaote was charged with fraud in relation to per diems. He was acquitted in the High Court, but the state appealed, and he was convicted on appeal. He was given a six month imprisonment sentence or the payment of a fine of M12 000 which was suspended for three years. (Motopi, L. [29 November 2010]. ‘Former Top Cop walks free’. Public Eye Online, available on <http://www.publiceyenews.com/2010/11/29/former-top-cop-walks-free/>, accessed 10 December 2010).

67 Interview with a female senior police officer on 24 November 2010.

68 LMPS Strategic Plan 2010–2013. LIPAM. Police Headquarters, Maseru.

69 A parliamentarian and member of the ruling party on 26 November 2010.

A number of these cases are brought before the courts for civil litigation, and some of these are published in the law reports.<sup>70</sup> The media also report on successful litigation by the courts.<sup>71</sup>

#### *Media reports*

In many cases, victims of unlawful action do not report their complaints to the police, or do not pursue legal action. Where they do, cases may often be settled or are not reported in the law reports. A review of media articles can provide an indication of the nature of unlawful police action, even though the allegations contained in the articles have not been tested in court. Interviews with senior journalists painted a worrying picture about cases of abuse by the police. Two recent media articles illustrate the allegations:

A Mosotho boy accused of theft in Berea was severely assaulted by the police until he started vomiting blood. Despite his severe injuries he was denied access to a doctor. The mother of the boy was also denied access to her son while he was in custody.<sup>72</sup>

A 65-year-old retired police officer whose son was alleged to have been involved in an armed robbery was suffocated by the police using a latex glove and strangled with bare hands. When this failed to extract a confession the police used a spade and the butt of a gun to hit him on his backside and head. The retired police officer was detained unlawfully overnight and no charge was brought against him.<sup>73</sup>

### **Indicator: Human rights and dignity of police officials is respected**

An important component of human rights and policing is the treatment accorded by the police to its own members. Police officers enjoy the right to join the staff association.<sup>74</sup> While the staff association can represent police members, it is not a trade union and cannot mobilise police officers to bargain on labour rights such as poor working conditions, low salaries, housing and benefits.

There were several court applications dealing with the rights and treatment of police officials. In 2007 a group of special constables (or police assistants) applied for and were granted relief against discriminatory treatment in the LMPS. Some of the constables had been denied the right to attend training courses, and others were not recognised for promotion nor were they appointed as constables on a permanent basis.<sup>75</sup>

In 2005 the Ombudsman conducted visits to 51 police stations and police posts. In addition to commenting on the conditions in detention, the Ombudsman made some comments and recommendations in respect of the treatment of police personnel.<sup>76</sup> These included:

- **Staff complement:** There were too few staff, and they are overworked and demotivated. He recommended increasing staff numbers and the number of new recruits trained. In regard to transfers of officials, he recommended that this be done in good faith, on a rotational basis and not as a form of punishment.
- **Uniforms:** He noted that uniforms were tattered and old, and that some of the new

70 See for instance *Masupha v Commissioner of Police and Another* (CIV/T/149/2005) [2010] LSHC 3 (15 February 2010), <http://www.saflii.org/ls/cases/LSHC/2010/3.html>; *Solane v Commissioner of Police and Another* (CIV/T/16/06) [2008] LSHC 77 (1 October 2008). In this case the application was brought by the brother of the deceased. The application was dismissed; *Machepha v Commissioner of Police and Another* (CIV/T/223/2005) [2007] LSHC 35 (2 April 2007), <http://www.saflii.org/ls/cases/LSHC/2007/35.html>; and *Raposholi v Commissioner of Police and Another* (CIV/T/302/2004) [2007] LSHC 67 (30 May 2007), <http://www.saflii.org/ls/cases/LSHC/2007/67.html>.

71 See the report of a police officer who was convicted of culpable homicide and sentenced to a fine: Molomo, N. (16 December 2010). 'Killer cop escapes jail sentence'. *Lesotho Times*, available on <http://www.lesitimes.com/?p=5108>, accessed 19 December 2010.

72 Staff Reporter (18 March 2009). *Lesotho Public Eye Newspapers*.

73 Caswell, T. (25 August 2010). 'Man pleads trauma after police torture'. *Lesotho Times*. [www.lesitimes.com/?P=4370](http://www.lesitimes.com/?P=4370), accessed 7 December 2010.

74 The Staff Association is voluntary representative body which represents all police officers except for very senior police officers from the rank of assistant commission of police, to commissioner. However, Police officers from the rank of constable to senior inspector are allowed to join the staff association.

75 *Khoekhoe Others v Commissioner of Police and Others* (CIV/APN/285/06) [2007] LSHC 150 (8 February 2007), <http://www.saflii.org/ls/cases/LSHC/2007/150.html>.

76 Office of the Ombudsman (2005). *Report on the inspection of Police cells*. Available on <http://www.ombudsman.org.ls>.

recruits had never been provided with uniforms. He recommended that officers be regularly provided with new uniforms and that uniforms should be specific to the climate in which an official is working. Officials working in the cold mountain areas should be supplied with adequate warm clothing.

- Furnishings: He noted that all except three police stations visited were inadequately furnished and maintained, and that there was a lack of stoves and heating equipment.
- Communication and transport: There were complaints about inadequate communication and transport. In areas where horses are used, they were not regularly fitted with shoes, or were too old to be of much use. He recommended that police stations be equipped with adequate communication equipment, computers, typewriters and photocopiers. The horses should be well maintained, and shod and fitted with blankets in the winter.
- Accommodation: He noted that there was inadequate accommodation for officials all over the country and that many officials had to share accommodation. Where accommodation had been supplied it was old and poorly maintained. He noted that ‘an officer living in a dilapidated house and [who] works from a shameful office can never think right. Staff quarters have as much impact on an officer as does the office from which he/she works’.<sup>77</sup>

Some respondents felt that police officials were worse off when compared with other public servants. In particular, respondents raised the following complaints:

- Police have poorer housing.<sup>78</sup>
- Police training is abusive: ‘The methods of training of new recruits violate human rights because often new recruits are assaulted, humiliated, called derogatory names and subjected to emotional and physical abuse’.<sup>79</sup>
- Police complained that they are not consulted when they are transferred to posts away from their homes.
- Other complaints include poor working conditions; lack of adequate supervision of junior police officers; lack of adequate uniforms, especially a winter uniform; lack of vehicles to attend to complaints; and lack of basic resources to perform basic police duties.

The LMPS 2010–2013 Strategic Plan notes that the LMPS has been operating with poor infrastructure for office and residential accommodation: ‘This state of affairs impedes quality of service in terms of infrastructure and observance of human rights for both suspects and victims of crime’.<sup>80</sup>

There were also media reports about abusive treatment by other officials.<sup>81</sup> In one case 19 police officials were charged with fraud, alternatively theft of vehicles. The officials were placed on suspension for 13 years until the finalisation of their case where they were all acquitted. Some of them died in the interim and others are due for retirement. It is not clear whether they were suspended on pay.<sup>82</sup> This is an example of a case where the right to a speedy trial and resolution of a case was violated, directly affecting the career and employment prospects of 19 men in the employ of the LMPS.

77 Ibid., p. 14.

78 Interview with a male senior officer on 26 November, 2010.

79 Ibid.

80 Lesotho Mounted Police Service. (2010). *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Document produced by Lesotho Institute of Public Administration and Management (LIPAM) for the LMPS. April, 6 2010. Maseru, p. 7.

81 Lentsoe La Basotho, 20–26 January 2010. This report deals with a senior police officer (Superintendent) who was accused of raping a junior police woman in January 2010.

82 Ntsukunyane, L. (16 August 2010). ‘19 cops acquitted of fraud’, *Public Eye Online*. Available on <http://www.publiceyenews.com/2010/08/16/19-cops-acquitted-of-fraud/>, accessed 10 December 2010.

## 2

**ARTICLE 2: Non-discrimination**

*Police officials shall treat all persons fairly and equally and avoid any form of discrimination.*

Lesotho is a homogenous country in which 99 per cent of the population are Basotho. Sesotho is the main language, with English, Zulu and Xhosa being spoken by minority groups. Of the population, 49 per cent are male and 51 per cent are female. Women have a higher literacy rate than men, due to the fact that boys are often required to take care of livestock during their schooling years. But, despite these educational differences, discriminatory practices towards women are entrenched in culture and daily practice. There is limited participation of women in decision-making. Women constitute 23 per cent of parliamentarians and 37 per cent of government ministers. Men also still predominate in senior positions in the government and business sectors.<sup>83</sup> This study looked at whether there was awareness around the rights of minority groups in the LMPS and whether there was discrimination against any groups.

**Indicator: The laws are enforced equitably**

Section 19 of the Constitution provides that every person is entitled to equality before the law and to equal protection of the law. Among respondents there was a perception of discrimination against or in favour of certain groups.

Members of the Gay and Lesbian Coalition complained of human rights abuses by police officers on gay and lesbian people. They said that police do not take complaints by gay and lesbians seriously, alleging prejudiced abuse of them by members of the public, or of complaints of serious crimes such as rape. Police officers were described as insensitive and it was said that they make rude remarks when gay and lesbians report cases at police stations. There were also allegations of discrimination towards Chinese nationals and other foreigners, and of foreigners being targeted for bribes. Some respondents also felt that they were targeted by the police if they were perceived to be critical of the police or the state.<sup>84</sup>

**Indicator: Discrimination is reported and addressed**

There are a number of independent oversight bodies in Lesotho that have been established to receive and investigate complaints against the police, including the Public Complaints Authority (PCA) and the Office of the Ombudsman.

None of the statutory independent oversight bodies interviewed reported on cases or statistics related to complaints against the police.

The Ombudsman annual reports do not provide statistics on the total number of complaints received against the police. The analysis of the reports available only reveals inspection of police cells and a few cases against public institutions. There were no statistics indicating the disciplinary, criminal or civil claims and complaints against the police or the outcome of any investigations in this regard.

**Indicator: Police are properly trained to deal with diversity**

The analysis of the training prospectus which outlines the training course content provided to new recruits indicates that new recruits do not receive specialised diversity training. There

83 United Nations Development Program (UNDP) (2007). *Human Development Report 2007/2008*, p. 239, available at: <http://hdrstats.undp.org/indicators/23.html>, accessed 11 February 2009.

84 An interview with a female, senior radio broadcaster and journalist on 23 November, 2010

is no course dealing specifically with how to police and attend to the specific needs of diverse communities, children in conflict with the law, race groups, gender, nationals and non-nationals and different ethnic groups, though some of these elements are contained in the basic human rights training.

The LMPS provides training on domestic violence and on gender issues.<sup>85</sup> However, an interview with a senior police officer in the Gender and Child Protection Unit indicates that not all police officers in the unit have received training on gender and domestic violence. A senior member of this unit thought that there was very little emphasis on training on gender issues because the trainers themselves are not qualified. Consequently, the police often call on civil society practitioners in the gender-based violence sector, such as WILSA, to provide training on domestic violence and the Sexual Offences Act. She noted that this problem of lack of training applies not only to ordinary police officers, but also to those working in the Gender and Child Protection Unit where not all members have received specialised training.<sup>86</sup>

### **Indicator: Police recognise the importance of providing specific capacity to meet the needs of special groups**

There are few specialised units in the LMPS which are tasked with the responsibility of providing specific capacity to meet the needs of special groups. One such unit is the Child and Gender Protection Unit. This Unit is tasked with the receiving and investigating complaints related to gender-based violence and sexual violence, abuse of children and human trafficking. There are approximately 87 members in the unit, and they have members stationed all over the country.

The Aliens Unit is tasked with the responsibility of investigating cases of illegal non-nationals in Lesotho.

### **Indicator: Police resources are distributed equitably**

In 2010, the LMPS reported having a total number of 201 motor vehicles, 25 motor bikes and 296 police horses.<sup>87</sup> The LMPS Strategic Plan 2010–2013 acknowledges that ‘the distribution of resources in the LMPS needs to be looked at very seriously because there is uneven distribution of motor vehicles by districts; some districts have more motor vehicles than others.’<sup>88</sup> The report further notes that there are 16 police posts and eight police units without a single police vehicle. This lack of equitable distribution has the potential to negatively impact on policing in certain areas, especially since the small population of Lesotho is spread over a wide and not always easily accessible geographic area.

Police resource distribution in Lesotho is addressed by looking at the Police Monthly Returns. This looks at the distribution of police in different districts depending on crime level and population size of an area. This is meant to help police to determine the number and type of resources needed in an area, whether this refers to human resources, cars, guns, or infrastructure needed, though it is not clear whether the allocation of resources is in fact made according to this analysis.

Most specialised services are centralised in Maseru or at the police headquarters and their resources are concentrated there. For example, the Counselling Unit, a unit which offers HIV/Aids counselling support to police officers who are HIV positive and who have lost their loved ones, is located at the LMPS headquarters. Members stationed at more remote districts are unable to access these services.

85 LMPS 2003/2004 Police Training College Prospectus. Police Training College. Maseru.

86 Interview with a female, senior officer in the Gender and Child Protection Unit on 24 November, 2010.

87 Lesotho Mounted Police Service (2010). *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Document produced by Lesotho Institute of Public Administration and Management (LIPAM) for the LMPS. 6 April 2010. Maseru.

88 *Ibid.*, p. 7.

### Indicator: Police members are not discriminated against on the basis of ethnic, racial, language and gender diversity

The LMPS has in place guidelines and procedures for selecting and recruiting new recruits into the Police Training College. Criteria require that an applicant must be a citizen of Lesotho; must be between the ages of 18 and 30 years; and must be in possession of a General Certificate of Education (GCE) with passes in at least four subjects. One of the subjects must be the English language. Applicants must not have any criminal record. Successful applications are vetted by the intelligence body, the National Security Services. All applicants are required to be physically, mentally and medically fit. The recruitment guidelines provide that all applicants are considered irrespective of religion, race, colour, sex or any other form of discrimination (identity).<sup>89</sup> But, after the medical examination, doctors are 'expected by the LMPS not to recommend any applicant found to be HIV positive as fit to undergo recruit training without necessarily disclosing his/her HIV status'.<sup>90</sup> In other words, it would appear that no recruits who are HIV positive will be accepted into the LMPS. A new draft policy on HIV in the LMPS currently under consideration by cabinet will make this discriminatory practice unlawful.

There is no racial or language diversity in the LMPS. All Basotho in the LMPS speak the two official languages for Lesotho, that is, Sesotho and English. The disciplinary proceedings take place in both Sesotho and English.

Of the LMPS staff, the majority (83 per cent) are male, while only 17 per cent are female. There is greater representation of women in the senior ranks, including the only female police commissioner, but it is at the lower ranks that the greater differences are apparent. Only 19 per cent of inspectors are women, 17 per cent of sergeants, and 16 per cent of constables. Of the 292 newly promoted constables, only 42 (or 14 per cent) are women.

It would appear that there is an attempt to increase gender representivity at the senior ranks.

**Table 1: LMPS staff breakdown by gender, April 2010**

	Commissioner of Police	Deputy Commissioner	Assistant Deputy Commissioner	Senior Superintendent	Superintendent	Senior Inspector	Inspector	Sergeant	Constable	Total	%
Females	1	0	1	6	6	20	40	36	434	544	17
Males	0	2	5	5	12	39	168	170	2 252	2 653	83
<b>Total</b>	<b>1</b>	<b>2</b>	<b>6</b>	<b>11</b>	<b>18</b>	<b>59</b>	<b>208</b>	<b>206</b>	<b>2 686</b>	<b>3 197</b>	<b>100</b>

## 3

### ARTICLE 3: Use of Force

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

### Indicator: Legislation, policy and practice support the principles of proportionate minimum use of force

Section 5 of the Constitution enshrines the right to life, but provides that the death of a person may not constitute a violation of that right in certain circumstances. This includes the use of force to such as extent as is necessary in the circumstances in the case of:

<sup>89</sup> LMPS Recruitment Guidelines and Procedures. <http://www.lmps.org.ls/joinLMPS.html>.

<sup>90</sup> Ibid.



- The defence of any person from violence or for the defence of property;
- Effecting a lawful arrest or to prevent the escape of a person lawfully detained;
- Suppressing a riot, insurrection or mutiny; or
- Preventing the commission by that person of a criminal offence.

The police service in any country is usually permitted to use force in the execution of their functions, and is most likely to be the body responsible for most of the actions outlined above. These provisions are widely framed, and allow for the use of lethal force in respect of any 'violence', defence of property or the commission of a criminal offence, regardless of the seriousness of the criminal offence or violence perpetrated by the deceased person. On the other hand, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require the police to exercise restraint and use force 'only in proportion to the seriousness of the offence, and the legitimate object to be achieved'. The police must also minimise damage and injury, and must take steps to preserve life.<sup>91</sup> The LMPS has also adopted the United Nations Code of Conduct for Law Enforcement.<sup>92</sup> Article 3 stipulates that 'law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duties'.<sup>93</sup>

The Criminal Procedure and Evidence Act, no. 9 of 1981 regulates the use of force, and makes provision for its use in the case of a person suspected of committing a serious crime. Section 42(1) outlines circumstances under which use of lethal force can be used during arrests. The Act provides that:

When any peace officer or private person authorised or required under this Act to arrest or assist in arresting any person who has committed or is on reasonable grounds suspected of having committed any of the offences mentioned in Part II of the First Schedule, attempt to make the arrest, and the person whose arrest is so attempted flees or resists and cannot be apprehended and prevented from escaping by other means than the peace officer or private person killing the person so fleeing or resisting, such killing shall be deemed justifiable homicide.

This provision is very widely framed by authorising the killing of a suspect who attempts to flee, rather than allowing the use of 'lethal force' which although it is potentially lethal, does not necessarily result in the death of the suspect. The offences referred to in Schedule I include the more serious offences, but also non-violent offences such as fraud, theft, forgery and any punishment where the period of imprisonment exceeds six months. This grants the police, and any private person, very wide discretion to use, and potentially abuse, their power.

Section 40(2)(b) provides that 'an officer or any authorised private person proposing to make arrest may forcibly enter and search the premises'. He/she may even break open the doors and windows.<sup>94</sup>

Statistics were not available on the number of police officers charged, prosecuted or sued for excessive use of force, and no statistics were available on the number of people shot, killed or wounded by the police. However, interviews with disciplinary officers revealed that many police officers charged with criminal conduct are charged in relation to cases involving police brutality, assaults and excessive use of force.

The media is replete with stories of excessive use of force. In one case a footballer sued the Police Commissioner after he was assaulted by several police using the butts of their guns, and then shot in the leg when he tried to run away.<sup>95</sup> On the same day, the media covered a story

91 Adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, Havana, 27 August – 7 September 1990: Article 5.

92 The UN General Assembly adopted the Code of Conduct on the 17/12/1979 under resolution 34/169.

93 *ibid.*

94 See also the case of *R v Nkomo and Others* 1963 (SA) 166.

95 Tefo, T. (13 February 2010). 'Footballer Sues Police', *Sunday Express* available on <http://sundayexpress.co.ls/?p=1773>.

where the court acquitted one police officer of murder. The police officer shot a man four times in the chest killing him after he attacked the police officer with an axe.<sup>96</sup>

### **Indicator: Police are trained in the principles of minimum use of force**

The review of the LMPS in 2004 noted concern about the absence of a consistent policy regarding the carrying of firearms. The reviewers were alarmed that members carried their own side-arms, and that no training was provided on the handling or use of firearms.<sup>97</sup> At the time of our study, respondents indicated that police recruits still did not receive training on the use of weapons as part of their basic training, and the training prospectus does not refer to weapons training. Police officers who require a firearm are required to apply, and their supervisors must motivate why an applicant requires a firearm. The LMPS has stringent procedures with regards to issuing of firearms. As a result the majority of police officers who have firearms buy their own firearms, and apply for a licence privately. Statistics were not available on the number of police officials issued with firearms or carrying their own.

With regard to the training of non-lethal force and weapons, some respondents were of the view that recruits are trained in martial arts and on how to use their hands as weapons and as a means of restraint. Another respondent said that 'police recruits are not given training on non-lethal weapons such as pepper sprays, rubber bullets or tear gas but that such training was provided to members of the Public Order Unit'.<sup>98</sup>

### **Indicator: Non-lethal weapons are available**

The LMPS does not have a policy on the use of non-lethal weapons. Police officers are generally not issued with any weapon, either lethal or non-lethal. A former police member indicated as follows: 'I have never been issued with a non-lethal weapon in my 15 years of service in the LMPS.'<sup>99</sup> Researchers in the field for this study observed that police officers most often do not even carry handcuffs, a basic tool necessary for carrying out arrests. During the field study it was observed that police officers did not carry batons or sticks, nor were they armed with a firearm. As new recruits, police are provided martial arts training which emphasises the use of body and hands to effect arrests. But even so, such training requires constant practice before a person can remember and use martial arts applications when needed. If they are only taught this in basic training, these skills are likely to be forgotten over time.

### **Indicator: Strict control is exercised over the use, storage and distribution of firearms**

According to respondents the LMPS exercises strict control over access to firearms. Police officers are required to apply in order to be issued with a firearm. Though the full criteria for being granted a firearm was not available to researchers, it was stated that police supervisors are also expected to motivate why a police official should be issued with a firearm. The 2010–2013 LMPS Strategic Plan envisages developing a firearms control strategy by 2012.<sup>100</sup>

There is no provision of automatic review or investigation of a police officer's fitness to carry a firearm following an incident of the use of force resulting in death or serious injury. Cases are investigated on the basis of complaints brought against the police. However, the Commissioner of Police has discretion to either forward the complaint to the Police Complaints Authority or use the internal Complaints and Discipline unit. The statistics from the Complaints and

96 Molomo, N. (13 February 2010). 'Police Officer Cleared of Murder'. *Sunday Express*, available on <http://sundayexpress.co.ls/?p=1762>.

97 Government of Lesotho, Ministry of Home Affairs and Public Safety. (2004). *Review of the Lesotho Mounted Police Service and Restructuring Programme, Final Report*.

98 An interview with a male, police officer on 25 November 2010.

99 An interview with a male, former police officer. The interview was conducted on 25 November 2010.

100 Lesotho Mounted Police Service. (2010). *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Document produced by Lesotho Institute of Public Administration and Management (LIPAM) for the LMPS. 6 April 2010. Maseru.

Discipline unit do not indicate the nature of offences committed by the police.

There were no statistics available to researchers related to death or injury of police officers but police officers do not appear to be particularly at risk from the use of lethal force by criminals as a result of the police's use of lethal force. Interviews revealed that there are very few cases, if any, related to murder of police officers in the LMPS, although a media search found one case where a policeman had been killed after he tried to intervene in a fight between villagers and a cattle thief.<sup>101</sup>

### **Indicator: Public order policing complies with principles of minimum use of force**

The policing of lawful assemblies is governed by the Public Meetings and Processions Act, no. 2 of 1993. Interviews with opposition political parties indicated that police generally comply with legislation when it comes to policing of political rallies.

Media reports indicate that police officers often use excessive use of force in dealing with strikes, for example, on 22 November 2010 when students engaged in protest action at Limkokwing University in Maseru.<sup>102</sup>

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## **ARTICLE 4: Torture and other Cruel, Inhuman and Degrading Treatment or Punishment**

# 4

*No police official shall, under any circumstances, inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment of any person.*

### **Indicator: Legislation and police policy prohibit torture and cruel, inhuman and degrading treatment or punishment**

The International Bill of Rights and the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), of which Lesotho is party, prohibits torture and cruel, inhuman and degrading treatment or punishment, as does the African Charter. Article 2 of CAT provides that no exceptional circumstances may be involved as a justification for torture, whether this is a state of war, threat of war, internal political instability or any other public emergency. Article 8 of the Lesotho Constitution also prohibits torture or inhuman or degrading punishment or other treatment, but adds that 'nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Lesotho immediately before the coming into operation of this Constitution.' It is not clear what is intended by this section, though it could possibly refer to the infliction of customary punishments. This clause limits the internationally inviolable right not to be tortured and leaves open the potential to inflict inhumane punishments. The Constitution also guarantees freedom from slavery and forced labour, and prohibits arbitrary search or entry.

CAT imposes certain obligations on State parties, including taking legislative, administrative, judicial and other measures to prevent acts of torture, and ensuring that acts of torture are criminal offences under its criminal law (Article 2). Offences of torture should also be punishable by appropriate penalties (Article 4). The State party must also ensure that education and information regarding the prohibition of torture and other cruel, inhuman and degrading treatment

<sup>101</sup> Morake, S. (5 December 2009). 'Angry villagers kill policeman.' *Sunday Express*, available on <http://sundayexpress.co.ls/?p=1356>.

<sup>102</sup> Motsoeli, N. and Molomo, N. (25 November 2010). 'Rioting Students Shot'. *Lesotho Times*. Available online on <http://www.lestimes.com/?p=4989>, accessed 17 December 2010.

or punishment are included in the training of law enforcement personnel. Prohibitions should also be included in the rules and instructions issued in regard to the duties to be performed by such personnel. CAT also requires that all allegations of torture are promptly and impartially investigated. Article 15 requires that any statement made as a result of torture shall not be used as evidence in any proceedings, except against the person accused of torture. The state party must also take measures to prevent acts of other ill-treatment.

In terms of the Lesotho legal system, international law must be specifically enacted to ensure it is part of domestic law. Torture is not a criminal offence in terms of Lesotho criminal law and the courts have not defined the term in their jurisprudence.<sup>103</sup> However, individual officials, and the Commissioner of Police, can be held liable under civil law and be obliged to pay compensation for damages. Individual officers perpetrating acts of torture or other ill-treatment can be convicted in terms of common law and statutory offences in the criminal law.<sup>104</sup>

Section 228 of the Criminal Procedure and Evidence Act (no. 9 of 1981) provides that a ‘...confession shall be admissible in evidence against such a person provided the confession is proved to have been freely and voluntarily made by such a person in his sound and sober senses and without having been unduly influenced thereto’. The burden of proof rests with the person alleging torture to prove that he/she was tortured. Section 230 further provides that ‘prosecutors who come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect’s human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment or other abuses of human rights, shall refuse to use such evidence against anyone other than those who used such methods, or inform the court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.’

The police regulations and guidelines are informed by Chapter II of the Constitution of Lesotho which provides for the protection of fundamental human rights and freedoms, and the prohibition of torture and ill-treatment.

Section 10(e) of the LMPS Service Charter stipulates that ‘the law enforcement officials shall not inflict, instigate or tolerate any act of torture or other cruel, or degrading treatment or punishment in any circumstances and shall refuse to obey any order to do so.’<sup>105</sup> Section 10(h) further states that ‘the law enforcement officer shall respect the law and this code and vigorously oppose any violation of it.’<sup>106</sup>

### **Indicator: The police provide training on the prohibition and prevention of torture**

According to a report submitted by Lesotho to the United Nations Human Rights Council as part of its Universal Periodic Review, all law enforcement agencies involved in the custody, interrogation or treatment of individuals subjected to any form of arrest, detention or imprisonment, such as the police, military and correctional officials, receive human rights education.<sup>107</sup> However, as was described in the discussion of Article One above, the human rights training of the police is very brief and superficial.

<sup>103</sup> United Nations General Assembly (2010). *Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance with paragraphs 15(c) of the annex to Human Rights Council resolution 5/1: Lesotho*. 8 February 2010. A/HRC/WG.6/8/LSO/3, p 4.

<sup>104</sup> African Charter on Human and People’s Rights. A report on the Promotional Mission to the Kingdom of Lesotho. Report, April 2006.

<sup>105</sup> LMPS Service Charter. Police Headquarters. Maseru.

<sup>106</sup> Ibid.

<sup>107</sup> United Nations General Assembly (2010). *National Report submitted in accordance with paragraph 15(a) of the annex to the Human Rights Council Resolution 5/1\*: Lesotho*. 22 February 2010, A/HRC/WG.6/8/LSO/1, p. 10.

### **Indicator: Police action and processes are designed to minimise the potential for torture**

Despite ratifying these international and national instruments the reports by the Office of the Ombudsman have indicated serious violations of basic human rights, particularly related to the detention of suspected criminals.<sup>108</sup> These have pointed to serious shortcomings with regards to detention facilities, which deprive those in detention of their basic human rights. The report also showed that many police stations do not have detention facilities with the result that suspected criminals were detained using unconventional methods, for example, cuffing them against motor vehicles, electricity poles and burglar gates. The report raises concerns and recommends that the government should not comply with laws governing prisons which were outdated and do not comply with regional or United Nations instruments regarding promotion and protection of human rights.<sup>109</sup> Civil society organisations have also reported that the use of physical assaults against detainees by the police appear to be common in order to extract confessions,<sup>110</sup> and a number of the media reports and court cases cited above seem to illustrate this point.<sup>111</sup>

Article 8 of the Police Code states that law enforcement officials should respect the law and the present code, and that they shall, to the best of their capability, prevent and rigorously oppose any violation. If officials have reason to believe that violation of the present code has occurred, they must report the matter to their superior authority. Because this provision is in the Code of Conduct, rather than in legislation, it does not have the force of law. Respondents indicate that police seldom, if ever, complain about the misconduct of their colleagues even when such misconduct has come to their attention. They are more likely to advise the complainant to lodge an official complaint or a charge against the responsible officer.

### **Indicator: Allegations of torture are thoroughly investigated**

According to the LMPS Office of Complaints and Discipline, complaints made against police are usually investigated by the police, and the Investigation Unit Office is involved in such matters as torture allegations. However, investigations are made depending on the severity of the alleged torture due to a concern that many suspects allege torture in order to delay their trial or prevent their confessions from being used against them.

The Office of the Ombudsman receives and investigates complaints of infringements of fundamental rights from aggrieved persons against government agencies, including the police and its officials. It may investigate complaints after they have been submitted in writing, but a complainant must exhaust all internal remedies first.<sup>112</sup> The Ombudsman only has the capacity to make recommendations, and has no enforcement powers.

The Police Complaints Authority (PCA) has authority to investigate and report to the Police Authority (the Minister) or the Commissioner in respect of any complaint from a member of the public about the conduct of a member of the Police Service in respect of corruption and human rights. A complainant may submit complaints to police officers in the districts, after which it may be forwarded to the PCA for investigation.<sup>113</sup> Statistics were not available on the number and types of cases investigated by the PCA, but the US Department of State reported that during 2009 the PCA received six complaints of murder and three of death in detention at

<sup>108</sup> Ombudsman Report on the Inspection of Government Prisons and Hospitals in Lesotho, 2004.

<sup>109</sup> *Ibid.*

<sup>110</sup> United Nations General Assembly (2010). *Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance with paragraphs 15(c) of the annex to Human Rights Council resolution 5/1: Lesotho*. 8 February 2010. A/HRC/WG.6/8/LSO/3, p. 4.

<sup>111</sup> See for instance *Masupha v Commissioner of Police and Another* (CIV/T/149/2005) [2010] LSHC 3 (15 February 2010), <http://www.saflii.org/ls/cases/LSHC/2010/3.html>; *Solane v Commissioner of Police and Another* (CIV/T/16/06) [2008] LSHC 77 (1 October 2008); *Machepha v Commissioner of Police and Another* (CIV/T/223/2005) [2007] LSHC 35 (2 April 2007); and *Raposholi v Commissioner of Police and Another* (CIV/T/302/2004) [2007] LSHC 67 (30 May 2007).

<sup>112</sup> Section 8 of the Ombudsman Act no. 9 of 1996. <http://www.ombudsman.org.ls/Complaints.html>.

<sup>113</sup> United Nations General Assembly (2010). *National Report submitted in accordance with paragraph 15(a) of the annex to the Human Rights Council Resolution 5/1: Lesotho*. 22 February 2010, A/HRC/WG.6/8/LSO/1, p. 6.

the hands of the police. Some of the cases were submitted to the police, while others are under investigation. NGOs have complained that the PCA lacks the power of search and seizure or the authority to summons police officers. It is also limited by its inability to initiate cases based on public complaints. Complaints must be initiated by the Commissioner or the Minister of Home Affairs and Public Safety.<sup>114</sup>

Most often complaints of torture are dealt with through civil litigation. According to a report by the African Commission, the Commissioner of Police acknowledged that ‘the police force has in the past paid heavily from its meagre budget and as such, the police officers are constantly warned about the strain that cases of torture place on the police budget’.<sup>115</sup>

The media have also reported on cases where findings of abuse have been made and awards of damages made to the victim.<sup>116</sup> A few High Court judgements have been reported in the law reports against the police regarding unlawful arrest and torture;<sup>117</sup> and unlawful arrest, detention and severe assault leading to the death of a suspect.<sup>118</sup> In one striking case ‘M’amatsela Machepha alleged that she had been unlawfully arrested and detained by the police from Hlotse Police Station. During her detention, for the purposes of interrogation, she was handcuffed by the feet and hands and suffocated with a plastic bag and assaulted. She was thrown into a river while handcuffed and interrogated. On return to the police station she was again suffocated with a plastic bag and whipped with a hosepipe. Her clothes were then removed, and after inserting a stick between her thighs, she was hung from the roof of her cell. While in this position, one of the policemen pointed to various parts of her body insisting that Machepha call out their names. This was witnessed by a policewoman. The male policeman touched Machepha’s ‘private parts and genitals by hand until he was satisfied’. Machepha was later released from the roof and again beaten with a hose-pipe. Following her assaults, her hands and feet were swollen and she was unable to walk. After expiry of two days, she was further detained, although permission had not been obtained from a magistrate for her further detention. Judge Mofolo awarded her M30 000 (approximately USD 4 000) damages for assault and unlawful arrest and detention, but no award was made for ‘harassment’ as the judge found that this bordered on ‘sentimental damages’.<sup>119</sup>

The courts’ approach towards the infliction of injury during the course of unlawful assault is concerning. In another case a woman had been arrested on suspicion of involvement in a robbery of which she herself was a victim. She was questioned and stripped to her underwear while three male and three female police officers watched and held her down while her hands were cuffed behind her back. She was made to wear gumboots and water was poured over her, her head was covered with plastic bags, her hair was pulled, she was pummelled with fists and sworn at. The court dismissed her claim for unlawful arrest and detention but upheld her claim for assault, awarding her damages in the amount of M8 000 (approximately USD 1 000). The court made this low damages award ‘by reason of the fact that although the assault was trifling, courts don’t take kindly to police assaulting detainees while in their custody mindful of the fact that the plaintiff was assaulted while the police were performing their statutory duty in course of interrogating plaintiff and in any event the duty did not depend on the exercise by the police of any personal discretion save acting as servants of the Crown’.<sup>120</sup>

The award of damages does not seem to deter the police, even when the court awards the

114 US Department of State (2010). *2009 Human Rights Report: Lesotho*, available on <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135960.htm>

115 African Charter on Human and People’s Rights (2006). *A report on the Promotional Mission to the Kingdom of Lesotho*. April 2006

116 Motopi, L. (29 October 2010). ‘Security Chiefs to compensate tortured soldier’, *Public Eye Online*, available on <http://www.publiceye-news.com/2010/10/29/security-chiefs-to-compensate-tortured-soldier/>, accessed 10 December 2010; and Sekoati, K. (1 November 2010). ‘Mda to demand R24m’, *Public Eye Online*, available online on <http://www.publiceyenews.com/2010/11/01/mda-to-demand-m24m/>, accessed on 10 December 2010, *Sunday Express*. (April 2010). ‘Investigate police brutality’. Available online on <http://sunday-express.co.ls/?p=2253>, accessed 17 December 2010.

117 See for instance *Masupha v Commissioner of Police and Another* (CIV/T/149/2005) [2010] LSHC 3 (15 February 2010), <http://www.saflii.org/ls/cases/LSHC/2010/3.html>

118 See for instance *Solane v Commissioner of Police and Another* (CIV/T/16/06) [2008] LSHC 77 (1 October 2008). In this case the application was brought by the brother of the deceased. The application was dismissed on a technicality without discussing the merits of the case. <http://www.saflii.org/ls/cases/LSHC/2008/77.html>

119 *Machepha v Commissioner of Police and Another* (CIV/T/223/2005) [2007] LSHC 35 (2 April 2007), <http://www.saflii.org/ls/cases/LSHC/2007/35.html>

120 *Raposhali v Commissioner of Police and Another* (CIV/T/302/2004) [2007] LSHC 67 (30 May 2007), <http://www.saflii.org/ls/cases/LSHC/2007/67.html>

damages to be paid by individual officers. It also appears that in some cases the damages awards are small, and this, together with the statements by the judges, indicates that they do not view the consequences of their actions very seriously. The Constitution or specific human rights were seldom referred to in these judgments, if at all.

The review of the LMPS in 2004 recommended that ‘the use of force in certain situations, such as interrogations, must be prohibited, and effective monitoring and sanctioning techniques must be instituted by police management. Police management must act speedily and visibly against members found to be using excessive brutality.’<sup>121</sup>

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## ARTICLE 5: Protection of Persons in Custody

*Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention when required.*

### **Indicator: Legislation, police code and operational policies specify under what circumstances a person can be detained, the period of detention, and a detainee’s basic rights in detention**

Section 6 of the Constitution deals with the right to liberty. It provides that any person who is arrested or detained shall be informed as soon as possible, and in a language that he understands, of the reasons for his arrest and detention (Section 6(2)). A person detained on reasonable suspicion of having committed, or being about to commit a criminal offence, shall be brought to court as soon as is reasonably practicable. The burden of proof in a case where a person has not been brought before the court within 48 hours of arrest ‘or from the commencement of the detention’ rests on the person alleging that the detained person has been brought before court as soon as is reasonably possible (Section 6(3)(b)). Only a court may order that person’s further detention (Section 6(4)). The Constitution also provides that a person has the right to be released, either unconditionally or on reasonable conditions, if the person is not tried within a reasonable time. A person is entitled to redress for any contravention of this section, and any person unlawfully arrested or detained is entitled to compensation (Section 6(6)). Section 7(2) provides that any restriction on a person’s freedom of movement that is involved in his lawful detention shall not held to be inconsistent with or in contravention of the right to freedom of movement. The section does not specify that such restriction should be limited *only* to the extent necessary to keep that person in lawful custody, which is a principle in the international guidelines regarding detention.<sup>122</sup>

Section 12 of the Constitutional deals with the right to a fair trial, and enshrines the presumption of innocence until proved or pleaded guilty.

### **Indicator: The police provide training in custody management**

Respondents indicated that the basic training of police includes information on procedures in dealing with people in custody. The manual that was provided to us contained a very brief two-page outline of the rights of detained people based on international principles and the SARPCCO Code of Conduct, which is not adequate in our view.<sup>123</sup>

121 Government of Lesotho. Ministry of Home Affairs and Public Safety. (2004). *Review of the Lesotho Mounted Police Service Reform and Restructuring Programme: Final Report*. Maseru, p. 31.

122 See for example Principle 5 of the Basic Principles for the Treatment of Prisoners, General Assembly Resolution 45/111 of 14 December 1990.

123 S/Insp Motsoahae (Undated). *Human Rights Course: 2009/2010*. Maseru: Police Training College.

### **Indicator: Detainees are held in conditions of humane detention**

In 2005, the Ombudsman conducted inspections of 51 police cells, including one military detention cell. He noted certain common concerns among the police stations:<sup>124</sup>

- Typically the cell consisted of bare concrete walls and floors, with no artificial lighting, limited natural light and ventilation. It was recommended that the floors be tiled for warmth, ventilation be improved, and that the cells be regularly maintained and cleaned.
- There are few cells specifically for women, so most often women are compelled to sit on benches in the charge office. If they are lucky they are released on warning.
- In all police stations except Pitseng, Police Headquarters, Mabote, Maseru Bridge and Letseng-la-Terae detainees used buckets and pit latrines. In many cases the latrines were in poor condition, lacking doors or with broken doors, often full, and were all shared by staff, detainees and members of the public. Toilet paper was not provided at all, nor were sanitary towels available for women. The Ombudsman recommended the abolition of the bucket system noting that ‘it is inhuman to keep buckets full of all waste material in a cell where people live and sleep. Some privacy is required when a person needs to use ablution facilities’.<sup>125</sup> He also recommended separate latrines for detainees, to be shared with members of the public, and another latrine for police.
- Generally no bedding or blankets were provided and people must sleep on the cold concrete floors. In addition to recommending that police supply mattresses and new blankets, he also indicated that all blankets should be washed regularly to ‘get rid of the stench’ and to avoid cross-transmission of diseases.
- Few washing facilities were provided. Cells were seldom cleaned with anything other than water, leading to a terrible ‘stench’. He recommended soap, washing basins and Vaseline for detainees, and disinfectant for cleaning the cells.
- Generally detainees were underfed with only two meals per day (breakfast and dinner, consisting of pap and soup). Some stations did not feed detainees at all. Most stations and posts did not provide detainees with eating utensils or serving dishes. Nutritional meals were recommended.<sup>126</sup>

According to the US Department of State pre-trial detention often lasts months, or even years, with an average period of 60 days. Most of these detainees are held in prisons, though due to lack of sufficient accommodation they are often held with convicted and sentenced prisoners, in violation of international norms on separation of different categories of prisoners.<sup>127</sup>

It was noted by NGOs that prison conditions were appalling and damaging to the physical and mental well-being of inmates. Conditions such as poor sanitation, lack of nutritious food and medicines fell short of United Nations standards for the treatment of prisoners, and the worst conditions amounted to ill-treatment or torture by police during interrogation.

In addition to reports of ill-treatment and torture in custody, there were reports on the deaths of detainees.

### **Indicator: Management of detention facilities is in accordance with legal provisions**

Information was not available on the management of detention facilities, or of any regulations governing detention.

<sup>124</sup> Office of the Ombudsman (2005). *Report on conditions in Police Cells*.

<sup>125</sup> *Ibid.*, p. 5.

<sup>126</sup> *Ibid.*

<sup>127</sup> US Department of State (2010). *2009 Human Rights Report: Lesotho*, available on <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135960.htm>



### **Indicator: Detainees receive prompt and adequate health care**

Information was not available on the nature of health care available to detainees. The lack of sufficient vehicles and manpower makes it difficult to ensure that all detainees receive adequate health care when required.

### **Indicator: There is ongoing independent oversight of police custody**

Lesotho is not a signatory, nor has it ratified the Optional Protocol to CAT (OPCAT). OPCAT requires the establishment of one or more mechanisms which would conduct regular oversight visits to places where people are deprived of their liberty, including police detention facilities. Regular visits to places of detention contribute to the improvement of conditions over time.

The Ombudsman is entitled to enter and inspect police, military or prison cells, government hospitals, asylums or other places where a person is detained.<sup>128</sup> It conducted a national survey of police cells in 2005. Inmates and former inmates may make complaints to the Ombudsman regarding their treatment. It is not clear how often the Ombudsman does visit places of detention, or whether follow-up visits are conducted – which are necessary to ensure the effectiveness of oversight mechanisms.

Lesotho is considering the establishment of a National Human Rights Commission. Model legislation has so far been drafted and members of government have participated in Human Rights Institutions trainings.<sup>129</sup> The establishment of a National Human Rights Commission could take on the task of conducting regular visits to all places of detention.

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## **ARTICLE 6: Victims of Crime**

*All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary.*

### **Indicator: Police are sensitised to the impact of crime on victims and on their particular needs**

Respondents in this study were unaware of any current victim empowerment programme. The LMPS Service Charter stipulates that victims of crime need to be supported. The Gender and Child Protection Unit (GCPU) aims to offer a victim friendly approach to working with victims. However, generally, respondents indicated that police did not receive training on how to deal with victims of crime. Although some of the members have received basic counselling training, this was not widespread. Another concern expressed by respondents was that the police do not have the attitude of supporting victims, and most believe that their role is to ‘investigate crime and bring perpetrators to book’.<sup>130</sup> Others believe that only social workers should have any dealings with victims.<sup>131</sup> The attitudes of these police officials indicate a lack of awareness of the rights of victims and the need to treat them sensitively. Interviews with current and former police officers revealed the serious lack of awareness amongst police officers around the need to offer victim support or empowerment. Victims are often left to look for help themselves as soon as they have given their statement or evidence.

<sup>128</sup> Section 10 of the Ombudsman Act no. 9 of 1996.

<sup>129</sup> United Nations General Assembly (2010). *National Report submitted in accordance with paragraph 15(a) of the annex to the Human Rights Council Resolution 5/1: Lesotho*. 22 February 2010, A/HRC/WG.6/8/LSO/1, p. 19.

<sup>130</sup> Interview with a female senior police officer on 24 November 2010.

<sup>131</sup> Interview with a male senior police officer on 26 November 2010.

There also tends to be an assumption that dealing with victims is the role of the GCPU, although this Unit is tasked with gender-based crime and crimes against children. Victims of other crimes may be equally traumatised and in need of counselling and support.

The LMPS Strategic Plan 2010–2013 identifies the need to establish a Victim Support Unit by 2012.<sup>132</sup>

### **Indicator: Victims are treated with dignity and respect**

The Gender and Child Protection Unit members receive specialised training on how to deal with children and women who have been sexually assaulted or victims of domestic violence. However, interviews revealed that ‘the majority of police officers in this unit have not received this training hence cannot offer adequate victim support.’<sup>133</sup> Ordinary police officers generally do not receive training on victim support or on the victim empowerment programme as part of the basic training or specialised training for police officers.

Shortages of resources also impact on the ability of the police to respond to victims of crime. For example, victims of gender-based violence who report to a rural police station are referred to another police station, often far away, where a GCPU member is able to assist them.<sup>134</sup> This may be at substantial cost to victims. ‘The availability of vehicles determines the speed of the response, which can take up to a day or two before the case is attended to.’<sup>135</sup> As a result of delays in reporting to the police, medical evidence of sexual assault may be compromised. The lack of adequate infrastructure at police stations, such as separate interviewing rooms or sufficient office space, also impacts on the ability to ensure privacy for victims providing statements. As a result, one official noted that ‘where possible police officers use motor vehicles to take statements from victims of sexual assault and violent crimes in order to provide privacy to victims’.<sup>136</sup>

The experience of being shunted from pillar to post may impact negatively on the victim’s experience of the criminal justice process and add to his or her experience of victimisation. Where a victim does not feel respected by the system, he or she is less likely to cooperate with police investigations which may adversely affect the quality of the investigation and prosecution.

Although the LMPS Service Charter stipulates that victims of crime must be supported in practice this is often difficult to achieve. The general units of the police seldom make referrals. Referrals to other organisations to provide services to victims are most often made by the GCPU. Interviews with senior managers in this unit indicated that this unit worked in partnership with NGOs which provide psycho-social services and trauma counselling to victims of sexual assault. Where possible victims are referred to NGOs offering free psycho-social support to victims of crimes and in rare cases assist victims with access to medical treatment. This is partly because of a lack of adequate resources in the LMPS and a lack of awareness by many police officers of their responsibility in this regard.

Follow-up with victims is also sometimes hampered due to the lack of vehicles, and communication is often difficult unless victims make an effort to follow up on their cases themselves. As was noted in the Ombudsman’s report, and confirmed by researchers during this study, many outlying police stations have no telephones or electricity, and thus no means of contacting a victim. Telephones were mainly concentrated in police districts and regional districts where senior police commanders are based. One respondent related her own experience with the police after a case involving house breaking. The victim alleged that ‘she had to buy airtime for police officers and provide them with her own car to investigate and arrest alleged perpetrators.’<sup>137</sup>

132 Lesotho Mounted Police Service (2010). *Lesotho Mounted Police Service Strategic Plan 2010-2013*. Document produced by Lesotho Institute of Public Administration and Management (LIPAM) for the LMPS. April 6 2010. Maseru.

133 Interview with a female senior police officer on 24 November, 2010.

134 Office of the Ombudsman (2005). *Report on conditions in Police Cells*.

135 An interview with a female, senior manager in an NGO organisation on 24 November 2010.

136 Interview with a female senior police officer on 24 November 2010.

137 An interview with a female, senior manager in an NGO organisation on 24 November 2010.

The LMPS does not have victim support or witness protection programmes to relocate witnesses and place them in safe houses during the course of a trial or afterwards. The safety of the witnesses often rests with the family concerned to ensure the protection of their loved ones.

### **Indicator: Restitution and compensation is available to victims**

Victims are not compensated for their victimisation through the criminal justice system. However, many people who are victims of abuse by the police institute civil actions against the police, which result in the payment of hundreds of thousands of Maloti each year.

Lesotho has a dualistic legal system, which consists of both customary and codified law. The customary system exists where chiefs deal with minor crimes, and perpetrators may be ordered to pay restitution or compensation to victims. The Ministry of Justice, through its probation unit, is piloting a restorative justice programme with chiefs and other community based structures. A matter may also be referred by the police to be handled by the chiefs. This system is used a lot in cases of domestic violence, and has been criticised by some NGOs.

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## **ARTICLE 7: Respect for the Rule of Law and Code of Conduct**

*Police Officials shall respect and uphold the rule of law and the present Code of Conduct.*

### **Indicator: Police adopt and promote the Code of Conduct**

The LMPS provides training on the UN Code of Conduct for Law Enforcement Officials to its new recruits and cadets as part of their basic training. The course on Ethics and the Police also deals with the Code of Conduct. Lesotho is party to the SARPCCO Code of Conduct.

Interviews conducted revealed that ‘the Code of Conduct is easily accessible to those who may require it from the Office of Complaints and Discipline’.<sup>138</sup> It was also stated that police recruits receive the copy of the UN Code of Conduct as part of the course material. The Code of Conduct is publicly available in public libraries, and at least one NGO has a copy of it. However, it is not posted on the Lesotho government website or on the LMPS website.

Interviews with senior police officers indicated that all police officers are required to sign the Code of Conduct as a requirement and condition of employment.

### **Indicator: Police adhere to the principles of the Rule of Law**

The rule of law means that no one is above the law, and that everyone is equal before the law. Respondents in this study had mixed opinions on whether police officers enforced the law irrespective of social and gender status or political influence of the suspect.

In ascertaining whether the police are aware of the principles of the law, and act in accordance with it, we looked at whether there are clear procedures guiding the actions of the police in certain circumstances. The Criminal Procedure and Evidence Act (no. 4 of 1981) outlines procedures which the police need to follow in stop and searches, arrests, detention, interrogation, surveillance and use of force. Part VI of the Criminal Procedure and Evidence Act deals with search with and without a warrant and detention of property.<sup>139</sup>

<sup>138</sup> Interview with a male, senior officer at police training on 22 November 2010.

<sup>139</sup> Criminal Procedure and Evidence Act no. 4 of 1981.

## ARTICLE 9: Corruption and Abuse of Power

*Police officials shall not commit or attempt to commit any act of corruption or abuse of power. They shall rigorously oppose and combat all such acts.*

*Police officials shall not accept any gifts, presents, subscriptions, favours, gratuities or promises that could be interpreted as seeking to cause the police official to refrain from performing official responsibilities honestly and within the law.*

An Afrobarometer survey conducted in Lesotho in 2008 indicated that people in Lesotho thought that the police were more corrupt than other government departments. 51 per cent of respondents said that ‘some’ of the police were corrupt, and 22 per cent said that ‘all’ of the police were corrupt.<sup>140</sup>

In the last few years there have been a number of criminal prosecutions against senior police officers, indicating that there may well be a problem of corruption or abuse of power. However, the prosecutions are a positive indication that these cases are taken seriously and that officers are not deemed to be above the law.<sup>141</sup>

### Indicator: Police officers with high levels of honesty, ethical standards and expertise are employed

The Constitution contains certain unenforceable principles. Section 30 outlines principles regarding favourable conditions of work. In respect of wages it provides that all workers shall at a minimum receive fair wages and equal remuneration for work of equal value without distinction of any kind; and should be able to provide a decent living for themselves and their families; work in safe and healthy working conditions; and that there should be equal opportunity for men and women to be promoted in their employment with no other requirement than that of seniority and competence.

Remuneration of officials should be sufficient to allow them to maintain an adequate standard of living for themselves and their families. Respondents indicated that salaries are very low. The entry range for a student constable or constable is M3 447 per month (approximately USD 462).<sup>142</sup> On average higher ranking police officers take home less than M120 000 (approximately USD 16 000) in salaries per year. Police officers and military officials are paid according to the same salary scale as civil servants. Respondents indicated that the salary was not sufficient to allow many junior officials to purchase houses, vehicles and medical insurance.

The low salary paid to police officers was identified as one of the factors leading to increased levels of corruption, theft and misconduct amongst police officers.<sup>143</sup>

### Indicator: There is clear policy on anti-corruption in the police organisation

Article 7 of the UN Code of Conduct for Law Enforcement Officials stipulates that ‘Law enforcement officials shall not commit any acts of corruption. They shall also rigorously oppose and combat all such acts.’

140 Afrobarometer (2008). *Summary of Results: Round 4 Afrobarometer survey in Lesotho*. Afrobarometer, p. 23.

141 See for instance, US Department of State (2004). *Country Reports on Human Rights Practices – 2003*. Washington, D.C: Bureau of Democracy, Human Rights; Labor. Tefo, T. (25 November 2010). ‘Ex-police boss escapes jail’. *Lesotho Times*. Available on <http://www.lestimes.com/?p=4975>, accessed 23 December 2010; US Department of State. (2010). *2009 Human Rights Report: Lesotho*. Available on <http://www.state.gov/drl/rls/hrrpt/2009/af/135960.htm>, and Morake, S. (24 September 2009). ‘Police boss off the hook’. *Lesotho Times*. Available on <http://www.lestimes.com/?p=2246>, accessed on 10 December 2010; Thali, C. (2 June 2011) ‘Top cops faces fraud charges’, *Lesotho Times*.

142 Salary Structure of the LMPS as at April 2010.

143 Lesotho Mounted Police Service (2010). *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Document produced by Lesotho Institute of Public Administration and Management (LIPAM) for the LMPS. 6 April 2010. Maseru.

Police officers in Lesotho receive training on the UN Code of Conduct as part of their basic training. The interviews established, however, that there is no in-service training to police officers that deals with ethics and code of conduct.

Module 4 of the SARPCOO training manual deals with corruption and abuse of police power.<sup>144</sup> Later SARPCCO training manuals refer to the SARPCCO Code of Conduct, but it is not clear to what extent the LMPS use these later manuals.

### **Indicator: Conflict of interest is recognised and addressed**

Section 28 of the Police Service Act deals with Private Employment. The Act states that ‘no police officer shall, without the consent of the Commissioner, engage in any employment or business whatsoever other than in accordance with his duties under this Act.’ Police regulations provide that it must be determined whether the business interests would be incompatible with police service. The Commissioner of Police may call upon any member of the Police Service to disclose his or her liabilities to show that they do not interfere with the performance of his or her duties, and a member may be instructed to pay his/her debts. The regulations also provide that members abstain from any activity which is likely to interfere with the impartial discharge of their duties, or which is likely to give that impression.<sup>145</sup>

The LMPS has no registry of declarations made by police officers. Many police officers do engage in private businesses such as owning taxis, providing private security and as retail shop owners. But as far as respondents were aware, no police officer has been charged for a violation of Section 28. It would appear that either the LMPS turns a blind eye to the issue of police being involved in other employment or private business interests, or else it does not have the resources to institute action against them.

### **Indicator: Appropriate action is taken following allegations of corruption and abuse of power**

Section 54 of the Police Service Act provides that even where a person commits an offence he may be charged under criminal law. Where he has been acquitted under criminal law, he may be charged in terms of disciplinary proceedings.

Interviews with senior police officers revealed that all complaints of corruption and abuse of power brought against police officers are investigated internally or sent to the Police Complaints Authority for further investigations.

The U.S Department of State reported that in 2009 corruption was confirmed by the LMPS as a problem. In addition to theft of exhibits and disappearance of evidence related to trial proceedings, private transport operators claimed that police solicited bribes from drivers of taxis and buses who violated traffic laws. ‘However, no formal charges of police corruption were made during the year’. From January to August 2009 the LMPS Complaints and Discipline Unit dealt with six complaints of abuse, one of unlawful arrest, one of unlawful search, one of theft of exhibits and three of failure to attend to public reports. The process of accountability was reported to be slow with some prosecutions. More serious offences such as murder were prosecuted at the High Court.<sup>146</sup> The Ombudsman Annual Report which is made public does not report on the complaints against the police.

There are no policy or guidelines with regard to the kind of sanction that should be handed down to police officials found guilty of corruption, and the sanction lies at the discretion of the disciplinary officer presiding over the case. Several police have been dismissed for engaging in corrupt activities.

144 SAHRIT (2003). *Code of Conduct: Human Rights and Policing: Towards Ethical Policing*. Training Manual. Sable Press. Harare.

145 Regulations 15 and 22 of *Lesotho Mounted Police Service (Administration) Regulations* Legal Notice 202 of 2003, made under the Police Service Act 1998, accessed from <http://www.unisa.ac.za/default.asp?Cmd=ViewContent&ContentID=17587>, on 23 December 2010.

146 US Department of State (2010). *2009 Human Rights Report: Lesotho*. Available on <http://www.state.gov/drl/rls/hrrpt/2009/af/135960.htm>.

There is no whistle blowing policy in the police to protect whistle blowers. This makes it difficult for police officers to report cases of corruption against their colleagues or superiors for fear of victimization.

No case law could be established which resulted in a police forfeiting his/her assets as a result of being convicted for a case of corruption. Respondents indicated that convicted police officers are either dismissed from the service or sentenced to prison without losing their assets from the proceeds of crime.

The Directorate on Corruption and Economic Offences (DCEO) is the primary anticorruption organ in the country and investigates corruption complaints against public sector officials including police officials. The Directorate however deals with complex crime involving money laundering and corruption.

One of the objectives of the 2010–2013 LMPS Strategic Plan is to reduce incidents of corruption in the LMPS by 83 per cent (from 300 to 50) by 2016. By 2013, the aim is to sensitise the police and public on corruption and its effects; train 12 police officials on corruption; disseminate the LMPS corruption strategy to the police; translate the strategy into Sesotho; and capacitate presiding officers and prosecutors for disciplinary cases.<sup>147</sup>

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## ARTICLES 8, 10 AND 11: Trustworthiness, Performance of Duties and Professional Conduct

*The public demands that the integrity of police officials be above reproach. Police officials shall therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undercut the public confidence in a police force/service.*

*Police officials shall at all times fulfil the duties imposed upon them by law in a manner consistent with the high degree of responsibility and integrity required by their profession.*

*Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.*

Since these are very similar to aspects of the Code of Conduct, in the set of indicators, and in our analysis, we have dealt with them together.

### Indicator: The police are honest and dependable in their actions

An Afrobarometer survey conducted in Lesotho in 2008 found that people had relatively low trust in the police. Whereas 53 per cent of respondents trusted traditional authorities a lot, and 52 per cent trusted the courts a lot, only 45 per cent of respondents trusted the police ‘a lot’. Twenty-one per cent did not trust the police at all, and 18 per cent trusted them a little.<sup>148</sup> This is an improvement from a similar study conducted in 2005 where only 41 per cent of respondents said that they trusted the police ‘a lot’, and 16 per cent did not trust the police at all.<sup>149</sup> There were slightly higher levels of trust expressed by people living in rural areas, and by men. Respondents reported lower levels of trust for elected officials.

147 Lesotho Mounted Police Service (2010). *Lesotho Mounted Police Service Strategic Plan 2010-2013*. Document produced by Lesotho Institute of Public Administration and Management (LIPAM) for the LMPS. April, 6 2010. Maseru, National Goal 2.

148 Afrobarometer (2008). *Summary of Results: Round 4 Afrobarometer survey in Lesotho*. Afrobarometer, Q49q, p 24.

149 Afrobarometer (2008). *Summary of Results: Round 3 Afrobarometer survey in Lesotho, 2005*. Afrobarometer, p 27.

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The majority of respondents in our study, including current and former police officials, felt that police officers were not trustworthy. One said, 'Police officers are not trustworthy because the levels of corruption and abuse of police authority are alarming and there is nothing in place at the moment to address the problem'.<sup>150</sup>

One former police official pointed out that 'in the main, police officers are susceptible to abuse of power because generally people fear the police. The reason I am saying this is because when for example police confiscate someone's property it gets lost because they do not have the storerooms to keep the property safe'.<sup>151</sup> There were several recent court reports dealing with unauthorised or illegal removal of people's property during searches or following confiscation by the police.<sup>152</sup> The problems of police corruption, especially traffic police, police abuse of power and poor investigation of criminal cases were the main concerns expressed during the interviews which made people feel that the police were not trustworthy.

However, as we have indicated previously in this report, there have been several successful prosecutions against the police. Some respondents felt that victims were more likely to trust the police where the crime had been successfully solved by the police.

### **Indicator: Police officials are recruited, appointed and promoted according to clear and professional criteria**

The recruitment criteria and procedure are listed on the LMPS website.<sup>153</sup> According to Police Procedure for Recruitment the following criteria are used to recruit new police:

- Nationality: An applicant must be a citizen of Lesotho.
- Age: Applicants must be 18 years and not more than 30 years of age.
- Education: All applicants must possess a minimum of a General Certificate of Education (GCE) with passes in at least four subjects. One of the four subjects has to be English Language.
- Criminal Records: Applicants must not have any criminal record.
- Fitness: All applicants must be physically, mentally and medically fit.
- Equal opportunities: Applicants are considered irrespective of religion, race, colour, sex and or any other form of discrimination.

There is a countrywide test that an applicant takes at the time when he/she fills out the application forms. It is marked and graded. To be eligible, one has to pass this test. The test is intended to determine whether the applicant has the ability to meet the demands of being a police officer. The minimum pass mark on this test is 50 per cent. This is a low mark with the result that if a police officer has only half of the required ability he qualifies for appointment.

After taking the pre-entry test, applicants who have passed are issued with a form to be completed by a government medical practitioner after examining them for mental and other medical fitness for Police Service. The completed medical forms are presented before the Interview Board on the day of the interview. The doctor is expected by LMPS not to recommend any applicant found to be HIV/Aids positive as fit to undergo recruit training without necessarily disclosing his/her HIV/Aids status.

The applicant must then be interviewed by an Interview Board. The interview questions are such as may be approved by the Commissioner on advice by the Commissioner's Advisory Board. A Selection Board is responsible for the final selection of successful candidates to join the recruit training. Applicants who satisfy the recruitment criteria and pass through the

150 Interview with a female, senior police officer on 25 November, 2010.

151 Interview with a male, former police officer on 25 November 2010.

152 See for instance: *Anglican Church of Southern Africa Diocese of Lesotho v Commissioner of Police and Others* (CIV/APN/284/09) [2010] LSHC 44 (27 August 2010); *Sekese v Commissioner of Police and Others* (CIV/APN/112/2010) [2010] LSHC 45 (27 August 2010); and *Komota v Officer Commanding, Butha-Buthe and Others* (CIV/T/ 338/03) [2008] LSHC 78 (20 October 2008).

153 <http://www.lmps.org.ls/JoinLMPS.html>, accessed 8 December 2010.

selection process are eligible to join the LMPS. All selected persons are subjected to vetting by the National Security Services.

The LMPS Recruitment Promotion guidelines state that promotion means an upward movement from one classification or rank to another carrying higher pay and more responsibility. A vacant position must exist and the following requirements fulfilled before an officer may be promoted:

- Vacancies in all ranks must be advertised and the applicant should meet specified requirements to qualify;
- All members of the organisation are free to apply provided that members fulfil prescribed requirements; and
- Information regarding the advertised position must be specific, stating clearly the kind of position available and requirements needed from perspective applicants.

The Police Promotion Policy has the following objectives:

- To select for promotion those persons who are best suited for increased responsibility;
- To provide assurance for all employees that sound selection procedures are being followed which are germane to the work objective and are free from irrelevant considerations such as nepotism, politics and personal bias; and
- To encourage excellent performance.

The aim of the police is to regulate the promotion process within the LMPS and enhance operational productivity and work performance. Section 8(3) of the Police Service Act provides that, 'The Commissioner shall, subject to regulations made under this Act, be responsible for the appointment and promotion of police officers, other than cadet officers, to any rank below that of senior officer.' The Promotion Policy states that promotion shall be based on performance and merit, and an appraisal system shall be instrumental in determining who shall and who shall not be considered for promotion. Every police officer shall, after completion of 10 years, 20 years and 30 years of service, be evaluated and considered for promotion.<sup>154</sup>

Oral interviews and written exams are some of the instruments used in the selection of candidates. Employees who may not be able to express themselves clearly, either orally or in writing, can be considered for a promotion if a minimum of two consecutive appraisal records show an exceptionally satisfactory performance. In this situation, the Commissioner, having consulted with the Promotion Board, may use his or her discretion to promote or not to promote.

The case of *Khoekhoe and Others v Commissioner of Police and Others* dealt with the case of Special Constables who complained that procedures had not been adhered to in their employment. They had been kept at the grade of Special Constable, essentially a temporary position without the benefits of full-time employees, sometimes for years. Some of them had been promoted and others allowed to attend career enhancing training courses, while others had been denied the opportunity. The judge found 'that selection was made arbitrarily without following any particular criteria'.<sup>155</sup> Despite constitutional principles dealing with employment and promotion, the court made no reference to them.

All police interviewed during this study indicated that they have a clear job description which is used to evaluate their performance.

154 LMPS. *Police Appointment and Promotion Policy*.

155 (CIV/APN/285/06) [2007] LSHC 150 (8 February 2007), available on <http://www.saflii.org/ls/cases/LSHC/2007/150.html>.



### **Indicator: Effective and accessible training is provided to police**

The earlier sections of this report deal with basic and specialised training. We were unable to obtain information indicating how many police officers have received in-service training or refresher courses on human rights and the rule of law. However, the recent Strategic Plan of the LMPS shows that between 2007 and 2010, 283 police officers attended 58 specialised training courses provided by FBI, SARPCCO and other local and international organisations.<sup>156</sup> It is not clear how many of the officials attended more than one training course, and how many did not attend any.

The LMPS does not require police officers to attend training as a pre-requisite for promotion into middle and senior management positions. Furthermore, the LMPS does not make it a requirement for police officers in management positions to receive management training, and we were unable to obtain information on the number of middle and senior level police officials who have received management training after being promoted.

The 2004 review of the LMPS was critical of the police training. It noted that the police training college was dilapidated and lacked modern training equipment and remarked on the lack of coordinated development strategy. The college did not issue certificates of competence to its graduates, nor were the courses accredited to the National University of Lesotho. The training of recruits was harsh, and some recruits made allegations of torture and being physically overworked. The reviewers found that there were no facilities for simulation training to demonstrate crime scene investigation, and the training prospectus was not professionally compiled and omitted certain strategic objectives.<sup>157</sup>

Taking on board some of this criticism, the 2010–2013 Strategic Plan has the objective to build competence and capacity for LMPS personnel. Various activities and targets are planned, which include:

- developing and implementing a human resource development strategy;
- training 33 officers a year on interviewing and interrogating suspects;
- training 100 officers a year on community policing;
- training 33 officers per year on public order policing;
- training 165 police officers on crime scene management and forensic personnel; and
- training 330 police officers on investigative techniques with an emphasis on interviewing skills and statements analysis.<sup>158</sup>

### **Indicator: The police have a clear set of values, and efforts are made to ensure these are upheld**

The LMPS has a mission statement and set of values which guide the performance of its duties. The mission of the LMPS is to provide safety and security to all. In partnership with the community and other stakeholders, its mission is to prevent and reduce crime, disorder, fear of crime and enhance the rule of law, whilst respecting and protecting the human rights of all as a fundamental to a professional police service. The values are:

- Social responsibility;
- Accountability, dedication, professionalism, discipline, integrity and loyalty;
- Customer-oriented (smile to every client), transparency and equity;
- Quality oriented, learning and innovation; and
- Cost efficiency and effectiveness.<sup>159</sup>

<sup>156</sup> Lesotho Mounted Police Service (2010). *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Document produced by Lesotho Institute of Public Administration and Management (LIPAM) for the LMPS. April, 6 2010. Maseru.

<sup>157</sup> Government of Lesotho. Ministry of Home Affairs and Public Safety. (2004). *Review of the Lesotho Mounted Police Service Reform and Restructuring Programme: Final Report*. Maseru, pp. 33–41.

<sup>158</sup> *Ibid.*, National Goal 1.

<sup>159</sup> Lesotho Mounted Police Service (2010). *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Document produced by Lesotho Institute of Public Administration and Management (LIPAM) for the LMPS. 6 April 2010. Maseru.

An Amendment to the Constitution requires that every member, on appointment, must make a declaration before the Commissioner of Police and must answer truly any questions put to him/her as to his/her previous service, career and employment.<sup>160</sup>

Interviews with former and current police officers reveal that managerial and operational practices often do not reflect adherence to values as prescribed by the LMPS. Examples provided included junior police officers not being performance-appraised as required by the Police Service Act. The disciplinary system was described by some as dysfunctional, unfair and lacking in transparency. The disciplinary system also took too long to conclude cases because the presiding officers often lacked the skills to conclude cases speedily.

### **Indicator: The police have a clear mandate**

Section 147 of the Constitution provides for the establishment of a Police Service for Lesotho which is responsible for maintenance of law and order and to carry out the functions as prescribed in legislation. The command of the Police Force vests in the Commissioner of Police. Section 4 of the Police Service Act defines the police mandate as being to uphold the law, preserve the peace, protect life and property, and detect and prevent crime, and to apprehend offenders and bring them to justice. Section 24 outlines the general duties of police officers, which are to 'serve the people of Lesotho [...] diligently, impartially and, with due regard to the Constitution to: preserve the peace and maintain law and order; prevent all offences against persons or property; and detect offences, apprehend offenders and bring them to justice'. Furthermore, the section provides that the police officer must 'to the best of his skills and knowledge, discharge all the duties of that office faithfully according to the law.'

The LMPS Customer Care manual and the Service Charter defines the legal obligation of the police with regards to assistance that should be provided to the public. Section 11 of the Service Charter restates the provisions of the Act outlining the primary responsibilities which are to prevent and detect crime, preserve peace and maintain law and order, protect life and property and apprehend offenders and bring them to justice.<sup>161</sup>

The motto of the LMPS is '*Lepolsea! Motbusi! Motaoalle*' (A police! A helper! A friend).<sup>162</sup>

### **Indicator: The police have a system of performance review and discipline**

The LMPS does not have a policy on performance review. However, the practice is that police officers should be appraised every three months by their supervisors. Interviews by current and former police officers revealed that performance appraisals were conducted on an ad hoc basis. Respondents attributed this to the critical shortage of supervisors and the lack of clear guidelines for the appraisal system. One of the difficulties is that junior officers supervise each other, making the chain of command difficult to adhere to. The Strategic Plan 2010–2013 notes that there has been little progress in the area of police discipline and that many cases against police are still pending. The plan proposes developing legislation for a new and simpler structure for the police.<sup>163</sup>

Part V of the Police Act deals with the discipline of police officers. Sections 43 to 55 outline procedures that need to be followed in a disciplinary inquiry. However interviewees said that the disciplinary system in the LMPS is dysfunctional, unfair and not transparent. They also said that the disciplinary system took too long to conclude cases because the presiding officers often lacked the skills to conclude cases speedily.

Part VI of the Police Act deals with offences by police officials. Section 56 lists mutiny, desertion or incitement to take part in mutiny as a serious offence, and carries a penalty of imprisonment

<sup>160</sup> Act no. 5 of 1998; Third Amendment of the Constitution, Section 10: Attestation.

<sup>161</sup> Service Charter et al.

<sup>162</sup> <http://www.lmps.org.ls>, accessed 10 December 2010.

<sup>163</sup> Lesotho Mounted Police Service. (2010). *Lesotho Mounted Police Service Strategic Plan 2010-2013*. Document produced by Lesotho Institute of Public Administration and Management (LIPAM) for the LMPS. 6 April 2010. Maseru, p. 15.

up to ten years.<sup>164</sup> Section 57 provides that any person who causes, attempts to cause, or does any act calculated to cause dissatisfaction is guilty of an offence and shall be liable to imprisonment for the term not exceeding five years or a fine of M5 000 (USD 670) or both. Section 58(a) to (i) lists general offences in relation to the police, and includes for example, false representation, obtaining or attempting to obtain admission to the police service; having been dismissed from the police service; and receiving or concealing having received any allowance or gratuity.<sup>165</sup>

Police officers are required to uphold the law and arrest any person regardless of status and position in society. By implication, police officers are required to arrest colleagues who are engaged in criminal offences.

### **Indicator: The police are free of partisan political interference**

One of the challenges for the LMPS during the process of democratisation was to become independent of political influence. An interview with politicians both in the opposition and in government indicated that police officers are no longer manipulated by political parties. The recruitment process has been changed to ensure that there is no political or any other interference with police processes.

An indication of freedom from influence is whether police officials are entitled to join political parties. Section 66 of the Police Service Act prohibits police officers from joining political parties and trade unions. Section 66(1) stipulates that ‘A police officer shall not be a member of, or affiliated to, any political party, or any organization, club, association or group of a political nature’.<sup>166</sup> Despite the ban against membership of organisations, the LMPS has granted permission for police officers to form a staff association, rather than a trade union. The staff association has limited bargaining power and cannot incite members to go on a strike.

Another indicator of freedom from political interference is the independence and size of the police budget. The police budget, referred to as a police grant, is provided for in Part IV of the Police Service Act. An interview with a senior police official indicates that the annual budget of the LMPS is about M130 million (about USD 16 million) of which about M55 million goes towards paying salaries. The budget is debated in parliament before the budget award is made.

Section 18 of the Police Act requires that the Commissioner of Police report to the Minister of Home Affairs and Public Safety and compile an annual report. Within 15 days of sending the report to the Minister, the report must be tabled in parliament.<sup>167</sup>

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## **ARTICLE 12: Confidentiality**

*Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of duty and needs of justice strictly require otherwise.*

### **Indicator: Police officials maintain confidentiality of information that is of a sensitive nature, particularly information in respect of victims of crime**

Section 27 of the Police Service Act deals with issues of confidentiality, providing that ‘Except as provided by the Police Service Act, or in the performance of his duties, the exercise of his functions, or when lawfully required to do so by a competent court, no police officer shall disclose to any person any information acquired by him in the course of his duties.’<sup>168</sup>

<sup>164</sup> Police Act, no. 7 of 1998.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid., p. 398.

<sup>167</sup> Section 18 (1) to (4) of the Police Act et al.

<sup>168</sup> Section 27 of the Police Act et al.

### Indicator: Important information in understanding and addressing crime is not withheld

The information related to crime statistics is collated by the Criminal Investigating Department (CID) from all 11 police districts. The crime statistics are included in the annual report and strategic plans. However, these documents are not easily accessible to members of the public because they are not published. Our researchers were advised that the annual report can be made available to the public on request, but we were unable to obtain one within the time frame of this study.

There is no policy with regards to access of crime statistics by independent researchers. The permission to access crime statistics is at the sole discretion of the Commissioner of Police who can grant or refuse such a request. It may also take some time for the police to generate the statistics.

The Strategic Plan for 2010–2013 details the crime statistics for the previous three years and sets targets for the reduction of crimes.

**Table 2: LMPS Crime Statistics for Serious Crimes 2006 to 2009\***

	2005/2006	2006/2007	2007/2008	2008/2009	Percentage difference over the years
Housebreaking	3 440	5 436	4 613	4 395	2%
Stock theft	2 638	4 592	3 732	3 287	2%
Armed robbery	339	655	567	419	8%
Robbery	818	906	994	1 007	43%
Assault GBH	1 600	1 579	1 699	1 595	-30%
Murder	493	872	766	611	11%
Attempted murder	260	429	355	291	4%
Sexual Offences	1 384	2 055	1 819	1 631	12%
Car Theft	340	550	439	401	43%
Fraud	324	227	278	291	53%
<b>Total</b>	<b>11 636</b>	<b>17 301</b>	<b>15 262</b>	<b>13 938</b>	<b>20%</b>

\* Lesotho Mounted Police Service (2010). *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Document produced by Lesotho Institute of Public Administration and Management (LIPAM) for the LMPS. 6 April, 2010. Maseru, p. 14.

The crime statistics show an overall increase in reported crime over the four year period. However, in the absence of a victimisation survey it is not possible to say how much of this increase is due to a real increase in crime, or to an increase in reporting of crime.

The police publish ‘monthly crime statistics’ on their official website. However, there are no regular updates of these crime statistics, and the website does not indicate which month or year the statistics reflect.<sup>169</sup> The statistics seem only to reflect crimes related to gender-based violence, including sexual offences, abduction, incest, assault, neglect-abundance (sic), child stealing and ‘GBV’ (gender-based violence).<sup>170</sup>

A website is an important avenue for disseminating information and for providing information for users about the organisation. The LMPS has its own website, which contains some basic information on the structure of the organisation, and information on different units. However, this information is limited. For instance, it only outlines selected sections of the Police Act, and provides no other documents related to the functions and duties of the police. The police have an internal newsletter, but this is not available on the website. The police

<sup>169</sup> Available on <http://www.lmps.org.ls/>, accessed 8 December 2010.

<sup>170</sup> Ibid.

website has updates and news headlines of individual cases under investigation. The updates identify the perpetrator, victims and types of offences committed.<sup>171</sup> The police make general comments regarding crime in the media, but no statistics are disclosed.<sup>172</sup>

In talking about the website, the LMPS public relations officer said that the website is part of their obligation to keep ‘our customers well-informed about trends in criminal activities and all other activities that involve the organisations’. It promised that crime reports would be posted and that members of the public would have the opportunity to seek clarification on certain issues. However, it notes that this should not prevent the public from visiting police stations for one-on-one communication. Customers are urged not to ‘abandon traditional ways of requesting feed-backs concerning their cases’.<sup>173</sup> In any event, the website is of limited use in a country where the majority of the population lives in rural areas where access to electricity and computers is scarce.<sup>174</sup>

Crime and prevention information is shared with a range of stakeholders which include communities, during community police meetings and in the Justice and Security cluster. Interviews revealed that information is also shared with Interpol and the South African Police Services to deal with cross-border crime. The LMPS is planning to hold annual National Crime Prevention Conferences which should facilitate the exchange of information and ideas among different stakeholders.<sup>175</sup>

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## ARTICLE 13: Property Rights

*In the performance of their duties police officers shall respect and protect all property rights. This includes the economical use of public resources.*

### Indicator: Use of state and police property is properly managed

Section 41(1)(a) of the Police Service Act stipulates the additional duties of the Police Finance Council (established in terms of S 34 of the Police Service Act) are to prepare an annual budget for the Police Service and to submit it to the Police Authority for approval. The budget may also be adjusted in response to a notification of the police grant for that year and any comments made by the Police Authority.

Of the national budget, 5.3 per cent is allocated to the Ministry of Home Affairs and Public Safety, compared with 5.1 per cent which is allocated to the Ministry of Defence and National Security.<sup>176</sup> According to respondents the annual budget of the LMPS is in the region of M130 million (about USD 16 million) of which about M55 million is allocated to salaries.<sup>177</sup> Our researchers were unable to obtain a copy of the police budget or to establish how the different line items were allocated, and whether this was in support of police policy or strategy. The LMPS Strategic Plan 2010–2013 proposes that a separate budget be developed for the Police Department, and that the Commissioner be given more freedom to manage the budget.<sup>178</sup>

171 LMPS website [www.lmps.org.ls](http://www.lmps.org.ls)

172 See for example: (16 November 2010). ‘The police will prevail: Masupha. Public Eye Online, available on <http://www.publiceyenews.com/2010/11/16/police-will-prevail-masupha-3/>, accessed 10 December 2010.

173 LMPS website: <http://www.lmps.org.ls/PRO.html>, accessed 8 December 2010.

174 An Afrobarometer Survey conducted in 2008 indicated that 93% of the population never use the internet. 87% of the urban population never use the internet. Afrobarometer (2008). *Summary of Results: Round 4 Afrobarometer survey in Lesotho*. Afrobarometer, p. 55.

175 Lesotho Mounted Police Service (2010). *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Document produced by Lesotho Institute of Public Administration and Management (LIPAM) for the LMPS. April 6 2010. Maseru, p. 26.

176 Hon T. Thahane, Minister of Finance and Development Planning (12 February 2010). Budget Speech to Parliament for the 2010–2011 Fiscal Year. Available [http://www.finance.gov.ls/documents/Budget\\_Speech\\_final%20\\_2010.pdf](http://www.finance.gov.ls/documents/Budget_Speech_final%20_2010.pdf), accessed on 17 December 2010.

177 The total budget for Lesotho for the 2010/2011 year was M10 476 million. Nedbank and Lesotho Revenue Authority (2010). Summary of Lesotho 2010–2011 Budget, available on [http://www.nedbank.co.ls/news/Summary\\_of\\_Budget\\_Speech\\_Analysis-FP.pdf](http://www.nedbank.co.ls/news/Summary_of_Budget_Speech_Analysis-FP.pdf), accessed 18 December 2010.

178 Lesotho Mounted Police Service. (2010). *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Document produced by Lesotho Institute of Public Administration and Management (LIPAM) for the LMPS. 6 April 2010. Maseru, p. 15.

Section IV of the Police Act deals with the management and accountability of the police grant. Section 38(4) stipulates that ‘Any monies drawn from the police fund is expended only for the purposes and in accordance with the provision of the Act’. Section 40 of the Act provides for the Auditor General to conduct audits of the accounts and records of the police funds. The Auditor General has the power to inspect the accounts, records, documents and papers of the Council, and may require any person to furnish information.

Respondents indicated that the LMPS adheres to strict procurement procedures. A tender system is used where service providers are invited to bid for the provision of goods and services. A senior police officer is under investigation for flouting procurement procedures, indicating that actions are taken against people abusing the system.<sup>179</sup>

The LMPS has no policy in place on the rules and procedures for the use of state resources. However, the common practice is that police officers are required to exercise care when using state property, and failure to take reasonable care results in disciplinary proceedings being brought against the offender.<sup>180</sup>

A senior police officer confirmed that the disciplinary code includes taking steps against police officers who have abused state resources, for example ‘driving a police vehicle without authorization and renting a police issued firearm to a non-police officer for gain’.<sup>181</sup>

All current and former senior police officers who were interviewed expressed a strong view that the LMPS did not budget for maintenance of its equipment.

### **Indicator: Private and non-state property is respected**

The Criminal Procedure and Evidence Act provides a framework for how the property of others can be used, handled or damaged during the course of policing duties. Section 40 stipulates when property may be damaged or broken in order to effect an arrest. Sections 51 to 58 deal with the confiscation of private property during the course of criminal investigations. If the article is perishable, it may be disposed of by a police official (Section 52). Where no criminal proceedings are instituted or where the article is not required as evidence, it may be returned to the person from whom it was taken (Section 53).

Interviews conducted with current and former police officers revealed that in many cases private property confiscated by police is not returned or is returned in a broken condition because many police stations do not have adequate infrastructure to keep exhibits safe.

Confiscated private property is meant to be registered in the Occurrence Book (OB). All the serial numbers, description of the goods confiscated and date of confiscation are recorded in the OB, which is signed off by the police officer who confiscated the property. However, respondents indicated that ‘police officers do not always record goods confiscated because many people do not know about this requirement’.<sup>182</sup>

Sections 53(2) and 54(2) of the Criminal Procedure and Evidence Act provide that property may be forfeited to the state if ‘no person may lawfully possess such an article or if the policeman concerned does not know of any person who may lawfully possess the article’.<sup>183</sup> A vehicle, container or other article may also be forfeited to the state following conviction in relation to the use of that article or if the article was used for the conveyance or removal of stolen property that was seized in terms of the Act (Section 57(1)(b)).

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<sup>179</sup> Interview with a male, senior police officer on 26 November 2010.

<sup>180</sup> *Ibid.*

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

<sup>183</sup> *Ibid.*

## Recommendations

The study highlights certain challenges in the implementation of the Code of Conduct, and make recommendations for improvements in respect of each article.

Article 1: Respect for Human Rights – *In the performance of their duties, police officials shall respect and protect human dignity, maintain and uphold the human rights of all persons.*

Lesotho has put in place a significant number of measures to ensure the respect and protection of human rights. This includes the legal and policy framework, human rights training for the police, and a number of oversight mechanisms. Invariably however, human rights violations will continue to take place. These could perhaps be minimized, and human rights be further strengthened, in the following ways:

- The human rights component of the training is very brief. This component should be lengthened and extended to a number of days. Human rights components should also be included in advanced training courses offered to police. Training should, as far as possible, utilise case studies as a basis for learning.
- The Police Complaints Authority has the most extensive oversight and investigative role over the police. However, it needs to be able to receive complaints directly from members of the public, rather than needing to be filtered through the Minister's office. This would encourage greater access to the oversight mechanism.
- The oversight mechanisms are restricted to investigating and making recommendations on a matter. These recommendations need to be monitored and the extent to which they have been complied with should be reported on. These reports should be made freely available to the public.
- It is very difficult to instil a culture of respect for human rights when the people who are expected to uphold these standards themselves feel disrespected and undermined, and work in difficult conditions. The basic living and working conditions of police need to be substantially improved.
- The LMPS is just one component of the State's obligation to uphold human rights principles. The Constitution provides for an independent judiciary which presides over cases of human rights violations. However, it is noteworthy that the decisions of High Court cases reviewed during this study decision were apparently not based on a consideration of human rights or constitutional principles. The sentences handed down to individual police were lenient, and the damages awards made were low, in comparison with the pain and suffering or loss experienced by the victim of these human rights violations, leading to the impression that human rights violations are not considered very seriously by the courts. It is recommended that the judiciary, magistrates and prosecutors receive high level human rights capacity building.
- Lesotho should establish a human rights commission. The Proposal which is contained in the Sixth Amendment to the Constitution Bill of 2010 should be implemented. This provides that the human rights commission will monitor and investigate human rights violations, will educate the public, monitor the human rights situation of detainees, probe rights violations, and institute proceedings against rights violators in the courts.

Article 2: Non-discrimination – *Police officials shall treat all persons fairly and equally and avoid any form of discrimination.*

- Because Lesotho is so ethnically and racially homogenous there has not been an emphasis placed on diversity. However, as discussed in this report, there are various minority groupings that report repeated incidences of discrimination by the police. It

is important that diversity training be included in the basic training curricula, as well as in training for managers.

- Disciplinary steps should be taken against police officials who discriminate against the public or other police members.
- It is important to recruit women at junior levels of the LMPS to increase the representation of women in the police service, and also to train them up to take on senior positions in the organisation.

Article 3: Use of Force – *Police officials may only use force when strictly necessary and to the extent required for the performance of their duties and adhering to national legislation and practice.*

- Clear guidelines need to be developed on the issuing of firearms to officials, use of firearms and storage. The practice of using private firearms should be reviewed.
- Firearm training should form part of the basic training curriculum and regular shooting practice needs to take place.
- A policy and practice need to be developed for the discharge of firearms, and an automatic review procedure adopted for incidents where people have been shot, injured or killed following the use of force.
- Police need to be trained on the use of non-lethal weapons and appropriate weapons should be issued to police officials.
- The legislation, particularly Section 42(1) of the Criminal Procedure and Evidence Act regarding the use of force, needs to be reviewed.
- The oversight bodies should include a review of police use of force in their annual reports and make it the focus of special investigations from time to time.

Article 4: Torture or other Cruel, Inhuman and Degrading Treatment or Punishment – *No police official shall, under any circumstances, inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment of any person.*

- The State must sign and ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT), and must take steps to put in place a National Preventive Mechanism to conduct oversight visits to places of detention.
- Legislation needs to be adopted to make torture a criminal offence and punishable with sufficiently harsh sentences.
- Section 8 of the Constitution needs to be amended to delete the limitation on the right to torture. The prohibition against torture is non-derogable and indivisible in international law.
- Clear procedures must be developed and adopted for the arrest, interrogation and interviewing of suspects and witnesses, and measures put in place to prevent torture and abuse of detainees and suspects.
- The prevention of torture must be included in the basic training of police officials. Officials must receive training on proper investigation and interviewing techniques which rely on the collection of evidence rather than on confessions. The LMPS Strategic Plan includes this as one of its objectives.
- All allegations of torture or other cruel, inhuman and degrading treatment or punishment should be speedily and effectively investigated by an impartial authority, and steps must be taken to sanction all police officials implicated in these acts.
- There needs to be greater awareness among the judiciary and magistrates of human rights principles and international instruments.



Article 5: Protection of Persons in Custody – *Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention when required.*

- The state must sign, ratify and implement the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT), and adhere to the Robben Island Guidelines on the Prevention of Torture in Africa.
- Conditions in police detention need to be improved.
- A system of regular independent visits to places of detention should be implemented, to monitor conditions and report on the treatment of detainees. Once OPCAT is ratified then Lesotho will be obliged to establish one or more National Preventive Mechanisms (NPMs) to conduct these visits.
- Laws and regulations applicable to detainees must be easily accessible to families and detainees so that they can exercise their rights.
- Training should be provided to police officials on custody management according to human rights principles.
- Measures must be taken to ensure that detainees receive and have access to adequate and prompt health care at state expense.
- Statistics on the number, age and gender of detainees and their length of detention should be collected and published.
- Any police official alleged to have infringed on the rights of detainees should be investigated, prosecuted or disciplined.

Article 6: Victims of Crime – *All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary.*

- A policy needs to be developed on dealing with victims. The development of a Victim's Charter should be considered according to international principles, such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).
- All police officials need to be trained on how to manage victims in a sensitive manner.
- Police station facilities need to be improved to provide adequate offices or spaces where victims can be made to feel comfortable while being interviewed by the police, or while they are waiting to be attended to.

Article 7: Respect for the Rule of Law and Code of Conduct – *Police Officials shall respect and uphold the rule of law and the present Code of Conduct.*

- The LMPS and oversight mechanisms need to ensure that the law is enforced equally against all levels of its police officials.
- Performance management and discipline of police officials should take into account police adherence to the Code of Conduct.

Article 9: Corruption and Abuse of Power – *Police officials shall not commit or attempt to commit any act of corruption or abuse of power. They shall rigorously oppose and combat all such acts.*

- The Strategic Plan refers to a Corruption Strategy that is already in place. This needs to be disseminated and all police officials need to be made aware of it as planned.
- The Strategic Plan indicates that 12 officials will be trained on corruption, possibly as investigators. The issue of managing corruption and encouraging integrity within the police force is something that requires the urgent attention of police managers who must performance-manage and oversee the work of their junior staff. It would be important to target senior officials for this training.

Article 8: Trustworthiness – *The public demands that the integrity of police officials be above reproach. Police officials shall therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undercut the public confidence in a police force/service.*

Article 10: Performance of Duties – *Police officials shall at all times fulfil the duties imposed upon them by law in a manner consistent with the high degree of responsibility and integrity required by their profession.*

Article 11: Professional Conduct – *Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.*

- It is important for the LMPS to gain the trust of the majority of the population. It needs to do this by demonstrating its commitment to cracking down on corruption and abuse of power, and by ensuring that the police perform their duties effectively. Steps have been taken to develop an anti-corruption strategy and to improve the skills and capacity of officials. This process needs to be monitored. The LMPS should report on its successes in charging officials with corruption.
- There is a need to improve basic training and to provide structured training for promotional purposes.
- The LMPS needs to introduce a clear performance appraisal system and ensure that it is implemented by all police managers.
- A clear disciplinary framework needs to be developed and made available to all police officials, managers and disciplinary officers. The Strategic Plan caters for capacity building of presiding officers and prosecutors in disciplinary cases, and this is needs to be implemented.

Article 12: Confidentiality - *Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of duty and needs of justice strictly require otherwise.*

- The website is an effective tool for cheap and easy dissemination of information. Information such as crime statistics, annual reports and strategic plans should be made available to the public on the website. These should be regularly updated. It should also continue to be used as a forum for disseminating good news stories about the police.
- Additional ways of disseminating information should be looked at through ongoing stories in the media, discussions in public forums, and meetings with the community at village and town level.
- The LMPS should also produce information pamphlets in simple language format that could be distributed at these forums.

Article 13: Property Rights - *In the performance of their duties police officers shall respect and protect all property rights. This includes the economical use of public resources.*

- It is important for the effective functioning of the Police Service that the LMPS has its own budget and is responsible for the planning and expenditure of line items. Heads of specialised units or districts should also be given a clear budget to manage.
- Facilities need to be available for the proper and secure storage of items constituting evidence or confiscated property, and clear procedures for the storage need to be developed and adhered to.

## Conclusion

Codes of conduct provide a normative standard of policing, setting a benchmark to which police agencies aspire. Yet codes of conduct are also notoriously difficult to implement. While most police officers have knowledge of the letter of the code and what is expected of them, violations continue to be common, seemingly overwritten by silent unwritten codes between colleagues and organisational cultures that often promote the very opposite. There are many reasons for this, ranging from political partisanship to perceptions that a respect for rights will result in being soft on crime or criminals. It is also clear, however, that disregard of rights invariably leads to an erosion of trust and confidence in the police by the very population they have been tasked to protect and serve.

Bayley argues that weakening rule of law guarantees an adoption of permissive attitudes toward police abuse in a perceived trade-off for improved effectiveness which does more harm than good.<sup>184</sup> He makes a number of arguments on the disadvantages of law-breaking by the police:

- There is marginal deterrent value. Crime is more often responsive to social conditions rather than to criminal justice responses, and questionable law enforcement practices can exacerbate social problems.
- It reduces law enforcement effectiveness by alienating the public. Community support is a key variable in police effectiveness, but when police act beyond the law they generate hostility and violent responses from the public.
- It weakens the authority of the law. This affects the perception people have of the legitimacy of the police.
- It scapegoats the police, placing more responsibility for crime onto the shoulders of the police instead of encouraging them to elicit community support which could help them to identify underlying causes.
- It affects police job satisfaction. Because the police need to hide their abuses, and because abuse invites corrective action, the police start to feel besieged. In an effort to be more accountable they become more rule-bound and relations between officers and subordinates become strained.
- It wastes community and state resources.
- It places police officers at risk.

The application of codes of conduct are not helped by the fact that the codes often do not provide much detail on how the substance of any particular article translates into the day to day business of policing. The absence of regular and constructive assessments further undermines the utility of having a clear agreed standard of working.

The year 2011 was the tenth anniversary year of the Code of Conduct and it is hoped that this assessment will encourage increasing progress towards meeting the aspirations of the Code. It is also hoped that similar assessments will be conducted in other SARPCCO member countries. This study and the accompanying monitoring indicators seek to support the application of the SARPCCO Code of Conduct by assisting those with an interest in policing to understand progress and the challenges posed in meeting defined objectives. Monitoring indicators developed for the Code of Conduct provide one way in which to disaggregate complex principles into component parts, allowing insight into where progress has been made and where more emphasis needs to be placed.

While it is natural that any police agency subject to an assessment of its performance would experience some trepidation, it is clear that the LMPS has come a long way in the 17 years since the introduction of democracy in the country and the 10 years of being party to the

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<sup>184</sup> Bayley, D.H. (2003). 'Law enforcement and the rule of law: Is there a tradeoff?' *Crime and Justice International*, 19(75), pp. 4–13.

SARPCCO Code of Conduct. This ability to take a nuanced view of the application of the Code of Conduct allows one to acknowledge the progress that has been made as the LMPS has moved away from a militarised and partisan police force towards a professional and civilian one which has put in place legislation and various mechanisms to strengthen its commitment to human rights principles and democratic policing. However, we also recognise that the LMPS continues to be constrained by resources, infrastructure and limited budget which hampers its ability to perform its duties effectively. There are also problems regarding the mismanagement of resources and weak control measures, leading to crimes and abuse of power by police officials. The extent and nature of torture and excessive use of force by the police is concerning.

While Lesotho is party to a range of international human rights conventions and declarations, and it has developed policies and vision statements which match the goals of these instruments, more work is needed to translate these standards into everyday practice. The objectives outlined in the latest LMPS Strategic plan indicate that the LMPS is moving in this direction. This process needs to be closely monitored.

One of the difficulties in undertaking this study was the general lack of documented information that was available to use. It would greatly assist the LMPS, as well as external organisations and statutory oversight bodies, if policies, strategies, reports and statistics were properly documented, updated and were made more freely available.

Finally, the authors believe that codes are not and should not be static but should rather be continuously updated and refined. As closer relationships are being forged between SARPCCO and the police chiefs' political heads in the Southern Africa Development Community (SADC), so opportunities present themselves to develop the Code. The Strategic Indicative Plan (SIPO) for the Organ on Politics Defence and Security Cooperation (OPDSC) for SADC is being updated to provide an 'enabling environment' for a regional security framework.<sup>185</sup> SIPO refers to a code of conduct for security forces and it is here that a considered assessment of the application of the SARPCCO Code of Conduct over the past decade can provide important insights into the formulation of any new code of conduct in the region.

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## Annexure A Indicators, measures and means of verification for articles of the SARPCCO Code of Conduct

### ARTICLE 1: Respect for Human Rights

*STANDARD: In the performance of their duties, police officials shall respect and protect human dignity, maintain and uphold the human rights of all persons.*

INDICATORS A1	Measure	Means of verification
Police actions are based on law and human rights.	<ul style="list-style-type: none"> <li>Police operational documents and standards reflect and promote human rights values; and give clear guidance to police officials about what dignity and rights mean.</li> <li>Number and nature of cases filed against the police.</li> <li>Number and nature of findings and judicial rulings or out of court settlements based on a finding of excessive use of force or other human rights violations by the police.</li> <li>Percentage of unauthorised use of arrest and searches cases brought against the police.</li> </ul>	<ul style="list-style-type: none"> <li>Constitution and legislation.</li> <li>Policy documents and other police policy and operational documents.</li> <li>Media reports, court records, administrative police documents.</li> <li>Police annual reports and answers to questions in parliament.</li> </ul>
Police are trained in human rights.	<ul style="list-style-type: none"> <li>Training on human rights is incorporated in the basic, in-service and management training.</li> <li>Training includes theoretical as well as practical skills training on human rights based on scenarios related to daily practice.</li> <li>Civil society and human rights experts are involved in human rights training.</li> <li>Percentage of police officials who receive fundamental human rights training in their basic training, and/or receive refresher training in the last two years, disaggregated according to race, gender, ethnic group and rank.</li> </ul>	<ul style="list-style-type: none"> <li>Reports of training colleges, training and academic curricula and materials and reports by civil society actors.</li> </ul>
Violations of human rights are identified and addressed.	<ul style="list-style-type: none"> <li>Number and type of reported complaints of human rights violations by police.</li> <li>Number and type of sanction imposed on police officials for abuses of human rights, both judicial and disciplinary: sanctions are disaggregated according to nature of complaint, type and severity of sanction, and rank of police official and number of years in service.</li> </ul>	<ul style="list-style-type: none"> <li>Police records and statistics, NGO/civil society reports, records of independent complaints monitoring mechanisms.</li> <li>Information established by: <ul style="list-style-type: none"> <li>Regional and international monitoring mechanisms;</li> <li>Media articles;</li> <li>Police human resource records;</li> <li>Police annual reports;</li> <li>Court records.</li> </ul> </li> </ul>
Human rights and dignity of police officials is respected.	<ul style="list-style-type: none"> <li>Police members enjoy the same rights as citizens.</li> </ul>	<ul style="list-style-type: none"> <li>Records of grievances by police officials.</li> <li>Media articles, surveys of police trade unions/professional associations.</li> </ul>



## ARTICLE 2: Non-discrimination

*STANDARD: Police officials shall treat all persons fairly and equally and avoid any form of discrimination.*

INDICATORS A2	Measure	Means of verification
The laws are enforced equitably.	<ul style="list-style-type: none"> <li>Vulnerable groups such as refugees and undocumented migrants are received and treated fairly and are not subject to discrimination, harassment or arbitrary arrest.</li> </ul>	<ul style="list-style-type: none"> <li>Media reports or independent studies regarding police treatment of vulnerable groups.</li> </ul>
Discrimination is reported and addressed.	<ul style="list-style-type: none"> <li>Internal and independent oversight mechanisms have the mandate to investigate or report on inequality or discrimination by the police.</li> <li>Percentage of complaints made about police regarding discriminatory, unfair or unequal treatment and the nature of complaints made.</li> <li>Disciplinary, criminal or civil claims outcomes of complaints of discriminatory treatment.</li> </ul>	<ul style="list-style-type: none"> <li>Legislation or police oversight mechanisms.</li> <li>Reports of oversight mechanisms.</li> <li>Special register to record discrimination complaints, occurrence books or other complaints registers.</li> <li>Media reports on unfair treatment.</li> <li>Reports/records of any independent complaints mechanism or human rights commission.</li> <li>Police administrative documents, court records, media reports, research reports and independent studies.</li> </ul>
Police are properly trained to deal with diversity.	<ul style="list-style-type: none"> <li>The police's basic and in-service training incorporates elements of sensitivity training, equality and managing diversity.</li> <li>Number, gender and age of police who attend specific training dealing with discrimination or the treatment of specific vulnerable groups.</li> </ul>	<ul style="list-style-type: none"> <li>Police training manuals and the training courses given to police.</li> <li>Police annual reports, reports from training academies and colleges.</li> </ul>
Police recognise the importance of providing specific capacity to meet the needs of special groups.	<ul style="list-style-type: none"> <li>The existence or establishment of specialised units to deal with crimes against vulnerable groups (such as victims of sexual offences, children, refugees or the disabled).</li> </ul>	<ul style="list-style-type: none"> <li>Annual reports of the police.</li> <li>Reports from civil society organisations on the nature and functioning of these units.</li> </ul>
Police resources are distributed equitably.	<ul style="list-style-type: none"> <li>Police resources are distributed fairly<sup>a</sup> according to physical area, population size and crime levels.</li> <li>Percentage of people who say they have access to the police (measured in travelling distance and difficulty in reaching the police) disaggregated by ethnicity, class, gender and region.<sup>b</sup></li> </ul>	<ul style="list-style-type: none"> <li>Police reports on the distribution of police stations, personnel, cars, firearms, etc., measured against geographic area, population size and population distribution.</li> <li>Population surveys.</li> </ul>
Police members are not discriminated against on the basis of ethnic, racial, language and gender diversity.	<ul style="list-style-type: none"> <li>Recruitment, selection and promotion practices of the police reflect the ethnic, racial, language and gender diversity of the national population and policing organisation.</li> <li>Disciplinary processes do not discriminate against minority groups.</li> </ul>	<ul style="list-style-type: none"> <li>Human resource reports of the police reflecting the composition of the police service across the different levels of seniority and in different sectors of the police.</li> <li>Reports/interviews with police unions or representative bodies.</li> </ul>

**Notes to the table:**

a Bruce & Neild (2005), Indicator 19.

b Vera Institute of Justice (2005), p. 5.

**ARTICLE 3: Use of Force**

*STANDARD: Police officials may only use force when strictly necessary and to the extent required for the performance of their duties and adhering to national legislation and practice.*

<b>INDICATORS A3</b>	<b>Measure</b>	<b>Means of verification</b>
Legislation, policy and practice support the principles of proportionate minimum use of force.	<ul style="list-style-type: none"> <li>• Legislation criminalises the arbitrary and abusive use of force.</li> <li>• Number of police officials effectively prosecuted under the domestic legislation or common law for excessive use of force.</li> <li>• Obedience to a superior officer's orders does not excuse arbitrary or abusive use of force.</li> </ul>	<ul style="list-style-type: none"> <li>• Domestic legislation and common law.</li> <li>• Regulations/standing orders regarding the use of weapons</li> <li>• Public statements of senior police officials regarding the use of force against suspects.</li> <li>• Media reports.</li> <li>• Police records, court records, media reports, independent studies.</li> <li>• Legislation, policy and police disciplinary records.</li> </ul>
Police are trained in the principles of minimum use of force.	<ul style="list-style-type: none"> <li>• Percentage of police officials who annually receive training and re-training on the principles of minimum use of force, on the use of weapons and firearms, and on the use of non-violent conflict resolution methods.</li> <li>• Number of police re-qualified in the use of weapons per year as a ratio of the number of police issued with a firearm.</li> </ul>	<ul style="list-style-type: none"> <li>• Training manuals.</li> <li>• Human resource or training academy records.</li> <li>• Media, police or civil society reports on the successful use of non-violent conflict resolution methods.</li> <li>• Police policy/regulations/standing orders.</li> <li>• Police administrative reports, training records, weapons re-qualification records.</li> </ul>
Non-lethal weapons are available.	<ul style="list-style-type: none"> <li>• Non-lethal weapons are available to the police and are used in accordance with policy.</li> </ul>	<ul style="list-style-type: none"> <li>• Weapons' registers.</li> </ul>
Strict control is exercised over the use, storage and distribution of firearms.	<ul style="list-style-type: none"> <li>• Weapons are only issued to personnel who are mentally, physically and morally fit to use them.</li> <li>• There is automatic review and investigation of incidents of the use of force resulting in death or serious injury, and the investigations are conducted impartially and with integrity.</li> <li>• Police records on the number of people injured or killed during the course of police action, as a ratio of statistics of serious crimes reported, overall number of reported crimes, number of police officers, and number of officers wounded or killed on duty.</li> </ul>	<ul style="list-style-type: none"> <li>• Weapons' registers.</li> <li>• Disciplinary records on the number of police charged with inappropriate use of lethal and non-lethal weapons, the types of incidents involved, and the outcome of disciplinary processes.</li> <li>• Investigation/review reports and the outcome of the investigation.</li> <li>• Complaints registered regarding allegations of inappropriate or excessive use of force.</li> <li>• Coroners' or forensic pathologists' reports on the cause of death.</li> <li>• Incident-based reports from NGO or civil society, or independent bodies.</li> </ul>
Public order policing complies with principles of minimum force.	<ul style="list-style-type: none"> <li>• Policing of lawful and unlawful assemblies complies with principles of minimum use of force.</li> <li>• Police are trained in and apply non-violent conflict resolution and dispersal methods in cases of unlawful gatherings.</li> </ul>	<ul style="list-style-type: none"> <li>• Police policy/regulations/standing orders.</li> <li>• Media reports on policing of assemblies.</li> <li>• Incident reports on policing of assemblies, and nature of assaults or injuries sustained during these incidents.</li> </ul>

## ARTICLE 4: Torture and Cruel, Inhuman and Degrading Treatment or Punishment

*STANDARD: No police official shall, under any circumstances, inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment of any person.*

INDICATORS A4	Measure	Means of verification
Legislation and police policy prohibit torture and cruel, inhuman and degrading treatment or punishment.	<ul style="list-style-type: none"> <li>• Police code defines torture and outlines detailed steps the police must take to prevent torture and ill-treatment and to respond to any allegations.</li> <li>• Domestic legislation prohibits torture, and the extent to which it adheres to the definitions and provisions set out in the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.</li> <li>• Obedience to a superior's order is not allowed as a defence to an act of torture or cruel, inhuman or degrading treatment or punishment.</li> <li>• Any statement made as a result of torture may not be used as evidence in any proceedings, except that in the case of a person accused of torture then evidence may be led that the statement was made as a result of torture.</li> </ul>	<ul style="list-style-type: none"> <li>• Police code/policy.</li> <li>• Domestic legislation.</li> <li>• Case law/percentage of suspects convicted on the basis of a confession made as a result of torture.</li> <li>• Media reports.</li> <li>• Law of evidence.</li> <li>• Complaints of suspects.</li> </ul>
The police provide training on the prohibition and prevention of torture.	<ul style="list-style-type: none"> <li>• The prohibition of torture and ill-treatment is included in the training of all law enforcement personnel. The training stresses the human rights principles establishing the origin of the prohibition at international, regional and domestic law (where this applies). The training provides practical examples of what constitutes torture and cruel, inhuman and degrading treatment, and provides information and skills on how to avoid torture through evidence-based investigation.</li> <li>• Percentage of police trained on recognising torture and torture prevention.</li> </ul>	<ul style="list-style-type: none"> <li>• Basic and advanced training manuals and course curricula of the police.</li> <li>• Outcome assessment of police officials.</li> <li>• Records of police training academies, police annual reports or human resource reports.</li> </ul>

INDICATORS A4	Measure	Means of verification
Police action and processes are designed to minimise potential for torture.	<ul style="list-style-type: none"> <li>• Procedural safeguards exist to prevent the use of violence, threats or intimidation during interrogation or interviewing of suspects and witnesses.</li> <li>• The number of visits conducted to places of detention by independent visitors or bodies, the nature of places visited and the findings and recommendations of such visits.</li> <li>• The extent to which tape and video recording equipment is available and is used during interviewing of suspects and witnesses.</li> <li>• Police development projects support building the capacity to investigate crime through the collection of evidence.</li> </ul>	<ul style="list-style-type: none"> <li>• Legislation, police and operating procedures.</li> <li>• Complaints by suspects.</li> <li>• Police dockets, witness/suspect statements or court records or cases.</li> <li>• Reports by independent oversight bodies, police annual reports.</li> <li>• Police dockets, police station site visits, interviews with suspects.</li> <li>• Reports on police capacity-building projects indicating activities related to medical and forensic analysis, ballistics testing, DNA testing and building a database.</li> <li>• Annual reports and independent studies evaluating the use of scientific evidence collection methods.</li> </ul>
Allegations of torture are thoroughly investigated.	<ul style="list-style-type: none"> <li>• The number and nature of complaints of torture and cruel, inhuman and degrading treatment, as submitted by individual complainants, and by NGOs or organisations external to the police.</li> <li>• The number and nature of complaints of torture made by police officials about their colleagues.</li> <li>• All complaints of torture or cruel, inhuman and degrading treatment made against the police are diligently and thoroughly investigated by an impartial body using the highest professional standards.</li> <li>• The number of officers disciplined or charged with torture or other ill-treatment, and convicted as a ratio of the number of complaints made, and the sanctions given.</li> </ul>	<ul style="list-style-type: none"> <li>• Reports of independent complaints bodies, NGO reports.</li> <li>• Reports of independent oversight or complaints mechanisms.</li> <li>• Civil society reports.</li> <li>• Police statistics.</li> <li>• Police human resource or disciplinary records.</li> <li>• Case records.</li> <li>• Media reports.</li> <li>• Police records, court records.</li> </ul>

## ARTICLE 5: Protection of Persons in Custody

*STANDARD: Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention when required.*

INDICATORS A5	Measure	Means of verification
Legislation, police code and operational policies specify under what circumstances a person can be detained, the period of detention, and their basic rights in detention.	<ul style="list-style-type: none"> <li>• Law and policy outline the basic human rights to which detainees and prisoners are entitled. These include: <ul style="list-style-type: none"> <li>– The right to be informed of the reason for their arrest and any charges brought against them;</li> <li>– The right to inform a third person of their arrest;</li> <li>– The right to have immediate access and consultation with a lawyer of their choice;</li> <li>– The right to have access to a medical doctor, including a doctor of their own choice if they so wish.</li> <li>– The right not to be held in detention indefinitely without trial;</li> <li>– Arrested persons are brought promptly before a judicial authority, and are released if their detention is unlawful.</li> <li>– Every detainee is tried within a reasonable period of time.</li> <li>– The right to be visited and correspond with members of his or her family.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Constitution, law, policy, and police guidelines or instructions.</li> <li>• Complaints by people in custody.</li> <li>• Survey of lawyers or legal aid agencies.</li> </ul>
The police provide training in custody management.	<ul style="list-style-type: none"> <li>• Percentage of police officials who have received training as a proportion of police officials, and as a proportion of the annual number of detained people.</li> <li>• Specialised training deals with caring for people in custody, particularly in respect of vulnerable groups, such as the elderly, the mentally and physically ill, disabled, children and females.</li> </ul>	<ul style="list-style-type: none"> <li>• Police training manuals, curricula or reports from training academies.</li> </ul>
Detainees are held in conditions of humane detention.	<ul style="list-style-type: none"> <li>• Detainees are held in official places of detention and for the statutorily limited period.</li> <li>• Detainees of different categories are held in separate accommodation: this includes separation of males from females; children from adults; and sentenced from unsentenced prisoners.</li> <li>• Basic standards of care are upheld regarding adequate accommodation, nutrition, hygiene, clothing, and exercise.</li> <li>• Measures are put in place to ensure the safety of detainees while held in custody, including regular monitoring visits by police to the places where they are accommodated.</li> <li>• The number and nature of civil judgments or out of court settlements as a result of infringement of a detainee's basic rights.</li> </ul>	<ul style="list-style-type: none"> <li>• Properly completed custody records.</li> <li>• Police reports on the official places of detention.</li> <li>• Number and nature of complaints from detainees and suspects.</li> <li>• Reports by independent oversight bodies.</li> <li>• Reports by independent observers or civil society on conditions and treatment in police custody.</li> <li>• Reports or complaints by detainees.</li> <li>• Reports by independent observers or civil society on conditions and treatment in police custody.</li> <li>• Police records, court records, media reports.</li> </ul>

INDICATORS A5	Measure	Means of verification
Management of detention facilities is in accordance with legal provisions.	<ul style="list-style-type: none"> <li>• A custody register exists to record the details of all detained people and the date and time of their admission and release, and of any time that they are removed from detention for the purposes of investigation or interrogation.</li> <li>• Records on the number of complaints made by detainees as a ratio of the number of detainees.</li> </ul>	<ul style="list-style-type: none"> <li>• Custody register and the extent to which it accurately records details of detainees.</li> <li>• NGO and civil society incident-based reports.</li> <li>• Police policy on admission of detainees.</li> <li>• Complaints and requests register and a register of how these were dealt with.</li> <li>• Police human resource or disciplinary records.</li> <li>• Annual reports of the police.</li> <li>• Media reports.</li> <li>• Reports by independent oversight bodies.</li> </ul>
Detainees receive prompt and adequate health care.	<ul style="list-style-type: none"> <li>• The percentage of detainees seeking medical attention, and the nature of medical treatment given.</li> <li>• The number of independent medical assessments and number of detainees receiving medical treatment from their own practitioners.</li> <li>• The number of detainees transferred to civil or specialised hospitals for treatment.</li> </ul>	<ul style="list-style-type: none"> <li>• Detainee medical records, custody records.</li> <li>• Registers or reports from state medical practitioners assigned to treat detainees.</li> <li>• Reports by academics, NGOs and medical experts.</li> <li>• Hospital records.</li> </ul>
There is ongoing independent oversight of police custody.	<ul style="list-style-type: none"> <li>• There are regular visits of detainees and places of detention by independent observers, organisations or individuals to monitor and report on conditions in detention and the treatment of detainees.</li> <li>• Any deaths occurring in police custody are reported and diligently, impartially and independently investigated. Investigators are given unimpeded access to detention places where deaths have occurred.</li> <li>• The percentage of investigations that result in sanction of the perpetrator or further action being taken by or against the police, and the nature of that action.</li> <li>• Number of applications for compensation as a result of unlawful detention as a percentage of people detained or arrested, and the percentage of these cases where compensation is ordered and paid.</li> </ul>	<ul style="list-style-type: none"> <li>• Reports by independent observers.</li> <li>• Reports of independent oversight bodies.</li> <li>• The number of investigations conducted as a proportion of deaths recorded.</li> <li>• Police records.</li> <li>• Records of independent investigation bodies.</li> <li>• Civil claims lodged – reports by attorneys or legal aid agencies.</li> <li>• Police annual reports, disciplinary records of the police.</li> <li>• Annual statistics on people arrested and detained by the police.</li> <li>• Police complaints registers.</li> <li>• Police records on payments made.</li> <li>• Media reports.</li> </ul>

## ARTICLE 6: Victims of Crime

*STANDARD: All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary.*

INDICATORS A6	Measure	Means of verification
Police are sensitised to the impact of crime on victims and on their particular needs.	<ul style="list-style-type: none"> <li>• Police receive training on the handling and obtaining of information from victims with special needs, such as children and the disabled, and those who have been sexually abused, and they apply the principles in practice.</li> </ul>	<ul style="list-style-type: none"> <li>• Police training outlines or manuals.</li> <li>• Policy documents.</li> <li>• Policy and operation statements by senior management.</li> <li>• Independent research on treatment of victims and witnesses.</li> </ul>
Victims are treated with dignity and respect.	<ul style="list-style-type: none"> <li>• Victims receive prompt and courteous assistance from the police, and give their statements in private in sensitive cases.</li> <li>• Victims are not discriminated against on the basis of gender, race, nationality, ethnic group, disability or sexual orientation.</li> <li>• The privacy of victims is respected.</li> <li>• Victims are given timely information regarding victim services and medical treatment.</li> <li>• Victims are given accurate and timely information:               <ul style="list-style-type: none"> <li>– about how they should interact with the criminal justice system, and what they can expect;</li> <li>– about the progress of any criminal investigation following their victimisation;</li> <li>– about the trial process;</li> <li>– about any pending release of the accused from police detention or prison, or if the accused escapes.</li> </ul> </li> <li>• Victims receive clear information about their role as witness and what they can expect.</li> <li>• Police support victims and witnesses to obtain witness protection where necessary and where available, and are protected from contact with the accused person.</li> <li>• Victims are informed and referred to service providers offering impartial, informal mechanisms of complaint resolution.</li> </ul>	<ul style="list-style-type: none"> <li>• Survey of victims who have come into contact with the police.</li> <li>• Incident reports from NGOs or civil society.</li> <li>• Police policy and procedure documents.</li> <li>• Case file notes.</li> <li>• Existence of service providers in the governmental and non-governmental sectors, as well as customary, indigenous or religious sectors. Number of victims assisted by these organisations.</li> <li>• Police documents listing organisations to which victims may be referred.</li> <li>• Reports and/or statements by victim assistance organisations.</li> <li>• Media statements and reports by civil society organisations.</li> </ul>
Restitution and compensation is available for victims.	<ul style="list-style-type: none"> <li>• Number of victims paid compensation as a percentage of number of reported crimes.</li> </ul>	<ul style="list-style-type: none"> <li>• Legislation enabling offender restitution or payment of compensation.</li> <li>• Police or state reports/records on civil claims paid, the amounts paid and reasons for payment.</li> <li>• Police dockets or court records on out of court settlements with perpetrators.</li> </ul>

## ARTICLE 7: Respect for the Rule of law and Code of Conduct

*STANDARD: Police Officials shall respect and uphold the rule of law and the present Code of Conduct.*

INDICATORS A7	Measure	Means of verification
Police adopt and promote the Code of Conduct.	<ul style="list-style-type: none"> <li>• Training for police officials includes training on the Code of Conduct.</li> <li>• Percentage of police who have access to visible posters and pamphlets reminding officials of the Code of Conduct.</li> <li>• Percentage of police who have signed the Code of Conduct.</li> <li>• The Code of Conduct is promoted and made available to the public.</li> <li>• Code of Conduct is available in libraries, law associations and offices, and on the internet.</li> </ul>	<ul style="list-style-type: none"> <li>• Police training manuals.</li> <li>• Records of police training academies.</li> <li>• Site visits to police stations.</li> <li>• Police website, media statements by police, distribution at public events.</li> </ul>
Police adhere to the principles of the rule of law.	<ul style="list-style-type: none"> <li>• Police enforce the law irrespective of social or gender status or the political influence of suspects.<sup>a</sup></li> <li>• Police enforce court orders.</li> <li>• Police have clarity about the legal parameters for operational practices, including stop and search, arrest, detention, interrogation, intrusive surveillance, and the use of force, and they adhere to these parameters.<sup>b</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Public perception survey.</li> <li>• Media review.</li> <li>• Analysis of case law.</li> <li>• Legislation, police regulations, police policy.</li> <li>• NGO reports and independent studies.</li> </ul>

**Notes to the table:**

a Bruce & Neild (2005), Measure 28.

b Ibid.



## ARTICLE 8: Trustworthiness

*STANDARD: The public demands that the integrity of police officials be above reproach. Police officials shall therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undercut the public confidence in a police force/service.*

## ARTICLE 10: Performance of duties

*STANDARD: Police officials shall at all times fulfil the duties imposed upon them by law in a manner consistent with the high degree of responsibility and integrity required by their profession.*

## ARTICLE 11: Professional conduct

*STANDARD: Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.*

INDICATORS As 8, 10, 11	Measure	Means of verification
Police officials are recruited, appointed and promoted according to clear and professional criteria.	<ul style="list-style-type: none"> <li>• Screening instruments exist to ensure the selection of candidates who exhibit appropriate moral, physical and psychological qualities, and these are applied.</li> <li>• Police promotions are based on competence and merit.</li> <li>• All police officials have clear job criteria.</li> </ul>	<ul style="list-style-type: none"> <li>• Police service recruitment policy.</li> <li>• Police reports on appointments and promotions.</li> <li>• Reports by police unions.</li> <li>• Media reports.</li> <li>• Police human resource policy.</li> <li>• Complaints by police officers or police representative bodies.</li> <li>• Job descriptions of police personnel.</li> </ul>
Effective and accessible training is provided to police.	<ul style="list-style-type: none"> <li>• Percentage of police who receive training and re-training according to professional standards on human rights and the rule of law, and on their professional responsibilities, and code of conduct, disaggregated according to seniority, gender, rank and function within the police service.</li> <li>• Percentage of middle and senior level police officials who receive leadership and management training on or before promotion.</li> </ul>	<ul style="list-style-type: none"> <li>• Training curricula of police training academies.</li> <li>• Records of training academies or human resource management.</li> </ul>
The police have a clear set of values, and efforts are made to ensure these are upheld.	<ul style="list-style-type: none"> <li>• Values are incorporated into the police service core documents, such as mission statements, code of conduct and disciplinary code.<sup>a</sup></li> <li>• Police officers take an oath to uphold these values, and they are reinforced through training and regular communication.</li> <li>• Managerial and operational practice supports and reflects adherence to these values through positive measures, performance appraisals, evaluations, warnings and discipline.<sup>b</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Police force/service policy documents.</li> <li>• Police internal communication documents and public addresses given by police management and leadership.</li> <li>• Surveys among police.</li> <li>• Customer satisfaction survey and independent research reports on police conduct.</li> </ul>

INDICATORS As 8, 10, 11	Measure	Means of verification
The police have a clear mandate.	<ul style="list-style-type: none"> <li>• There is a clear and effective chain of command, particularly in the first line of supervision of police officers.<sup>c</sup></li> <li>• Legislation clearly defines the police mandate in terms of its responsibilities to protect life, liberty and security of the person; to maintain public safety and social peace; and to adhere to the rule of law and uphold fundamental human rights.<sup>d</sup></li> <li>• Police are responsive to the needs of the public and provide assistance in terms of their legal requirements.</li> </ul>	<ul style="list-style-type: none"> <li>• Standing orders.</li> <li>• Human resource policy and performance management systems.</li> <li>• Legislation, constitution.</li> <li>• Customer satisfaction surveys.</li> <li>• Public perception surveys.</li> <li>• Reports of civil society or independent bodies.</li> <li>• Media articles.</li> </ul>
The police have a system of performance review and discipline.	<ul style="list-style-type: none"> <li>• Police are subject to regular performance monitoring and review in accordance with policy: percentage of police who are reviewed on an annual basis.</li> <li>• Performance appraisals form the basis of promotions and designation to particular units.</li> <li>• A clear disciplinary procedure exists in law and practice.</li> <li>• There exists a clear framework indicating what actions of police officials are considered as misconduct or offences. It is included in their training and they are aware of the consequences of violating the rules.</li> <li>• Police officials are encouraged to report acts of misconduct committed by their colleagues.</li> </ul>	<ul style="list-style-type: none"> <li>• Police human resource policy and records.</li> <li>• Legislation.</li> <li>• Data on disciplinary procedures brought against officials, and the outcomes of this action.</li> <li>• Police policy/human resource policy.</li> <li>• Training materials and curricula.</li> <li>• Periodic reports of independent oversight or complaints bodies.</li> <li>• Percentage of disciplinary proceedings initiated as a result of reports by police officials.</li> </ul>
The police are free of partisan political interference.	<ul style="list-style-type: none"> <li>• The police are not subject to political interference.</li> <li>• Police officers are prohibited from holding public office or positions within political parties, and from publicly associating themselves with political parties, objectives and activities.</li> <li>• The police service has a budget adequate to carry out its mandate: annual budget of the police service, as a proportion of the national budget and analysis of major items of expenditure.</li> <li>• The budget is spent according to approved budget expenditure items.</li> </ul>	<ul style="list-style-type: none"> <li>• Media reports.</li> <li>• Public survey.</li> <li>• Legislation.</li> <li>• Reports by rights-based NGOs.</li> <li>• Review of ministerial directives and speeches.</li> <li>• Oversight bodies or other structures of accountability.</li> <li>• Police policy and code of conduct.</li> <li>• Annual reports and audited statements of the police service.</li> </ul>

## Notes to the table:

a Bruce &amp; Neild (2005), Measure 29.

b Ibid., Measure 29.

c Ibid., Measure 17.

d African Policing Civilian Oversight Forum (APCOF) and Commonwealth Human Rights Initiative (CHRI) (2009), p. 9.

## ARTICLE 9: Corruption and abuse of power

*STANDARD: Police officials shall not commit or attempt to commit any act of corruption or abuse of power. They shall rigorously oppose and combat all such acts.*

INDICATORS A9	Measure	Means of verification
Police officers with high levels of integrity, honesty, ethical standards and expertise are employed.	<ul style="list-style-type: none"> <li>The recruitment, appointment, promotion and termination of police officers and other employees of the police are not arbitrary, but are based on standards of fairness, openness, ability and performance.</li> <li>Remuneration for police officials should be sufficient for them to maintain a reasonable standard of living for themselves and their families.</li> </ul>	<ul style="list-style-type: none"> <li>Human resource policy.</li> <li>Extent to which the human resource policy is implemented and justifiable reasons are provided for the recruitment, and promotion of personnel.</li> <li>Average salaries of police officials when compared with average salaries for civil servants in the region.</li> <li>Police budget and human resource statements on salary bands.</li> <li>Salary bands/surveys/reports on civil servant salaries in the region.</li> </ul>
There is a clear policy on anti-corruption in the police organisation.	<ul style="list-style-type: none"> <li>Police officials are made aware of and are bound by a code of conduct.</li> <li>Percentage of disciplinary cases that involve an infringement of the code of conduct.</li> <li>Number of police officers who receive training annually, as a percentage of the total number, on ethical standards and conduct applicable to the performance of their lawful duties. The basic and in-service training includes components dealing with ethics and the code of conduct.</li> </ul>	<ul style="list-style-type: none"> <li>Records indicating that officials have signed a code of conduct.</li> <li>Places where code of conduct is visibly on display.</li> <li>Site visits to police stations and administrative buildings.</li> <li>Media reports.</li> <li>Police disciplinary records.</li> <li>Records of training academies.</li> <li>Reports from police human resource departments.</li> <li>Training curriculum.</li> <li>Police annual reports.</li> </ul>
Conflict of interest is recognised and addressed.	<ul style="list-style-type: none"> <li>Police officials are required to declare their business, financial and commercial interests – percentage of police who make declarations; whether the register is regularly updated; whether it is accessible to the public.</li> </ul>	<ul style="list-style-type: none"> <li>Register of declarations.</li> </ul>

INDICATORS A9	Measure	Means of verification
Appropriate action is taken following allegations of corruption and abuse of power.	<ul style="list-style-type: none"> <li>• Corruption is listed as a serious disciplinary and criminal offence.</li> <li>• Clear policy exists relating to the sanctions to be handed to officials found to be corrupt, which reflects the gravity of the offence.</li> <li>• All allegations of corruption and abuse of power are investigated by an appropriate authority, either internal to the police, or an external body.</li> <li>• Number of cases of corruption reports, number investigated, and the percentage of these cases which result in further action being taken against the alleged perpetrator.</li> <li>• Percentage of police charged with corruption who are dismissed.</li> <li>• Number of people making use of police whistle blowing policy and evidence that these people are not discriminated against or victimised by others/the system.</li> <li>• Number of corruption cases where assets are forfeited and the number of police officials whose assets are forfeited assessed.</li> <li>• Clear information is available to the public on complaints received by the police, which are disaggregated by policing area, type and number of complaints, disposition and corrective action.</li> <li>• There is an independent and external oversight body that monitors and reports on police investigation of allegations of abuse of power and corruption; and to ensure that measures and strategies are put in place to prevent and combat police corruption.</li> </ul>	<ul style="list-style-type: none"> <li>• Legislation and regulations.</li> <li>• Police service human resource/ disciplinary policy.</li> <li>• Police reports on the numbers of disciplinary proceedings and their outcomes.</li> <li>• Legislation and regulations.</li> <li>• Police reports on corruption complaints, investigations and outcomes.</li> <li>• Police annual reports.</li> <li>• Independent research or reports on corruption.</li> <li>• Media reports.</li> <li>• Victimisation or public perception survey.</li> <li>• Police records.</li> <li>• Statutory framework.</li> <li>• Media.</li> <li>• Case law.</li> <li>• Civil society reports.</li> <li>• Independent oversight body.</li> <li>• National legislation.</li> <li>• Records of police discipline and human resource department.</li> <li>• Records of police asset management.</li> <li>• Police annual reports or other public statements or documents.</li> <li>• Reports of independent oversight bodies.</li> </ul>

## ARTICLE 12: Confidentiality

*STANDARD: Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of duty and needs of justice strictly require otherwise.*

INDICATORS A12	Measure	Means of verification
Police officials maintain confidentiality of information that is of a sensitive nature, particularly information in respect of victims of crime.	<ul style="list-style-type: none"> <li>• There is a clear framework for how police should treat information of a confidential nature.</li> <li>• Confidential information is only disclosed if: there is a legal requirement to do so; if it is in the interests of justice and in the performance of policing duties to police officials or other justice agencies; and then only to the minimum extent necessary.</li> </ul>	<ul style="list-style-type: none"> <li>• Police policy.</li> <li>• Complaints by victims, and the extent to which they are resolved and further action taken in the event of a breach of confidentiality.</li> <li>• NGO reports.</li> <li>• Police and interagency cooperation agreements regarding sharing information on crime and policing strategies.</li> <li>• Media reports.</li> </ul>
Information important in understanding and addressing crime is not withheld.	<ul style="list-style-type: none"> <li>• Information on crime trends, statistics and crime information is available to the public, the police and other criminal justice agencies to the extent that it does not disclose the details and particulars of individual crimes or crime victims.</li> <li>• Access to crime information may be permitted, after application, to researchers and institutions for the purpose of conducting studies on trends and patterns of crime or policing, but only after careful consideration on the ethics, motivation and qualifications of the applicants.</li> <li>• Care is taken to ensure that the personal details of crime victims are not published without the permission of the victims.</li> <li>• Crime and crime prevention information is shared amongst a range of stakeholders in order to assist with the development and implementation of crime prevention strategies.</li> </ul>	<ul style="list-style-type: none"> <li>• Police crime statistics.</li> <li>• Annual reports.</li> <li>• Media reports and reports by NGOs and academics.</li> <li>• Percentage of applications for permission to conduct research that is granted to researchers.</li> <li>• Published academic or research reports on crime and policing, and the range of topics covered.</li> <li>• Applications for research or information.</li> <li>• Reports from academics, civil society and oversight bodies.</li> <li>• Community policing forums.</li> <li>• Public stakeholder consultation workshops.</li> <li>• Public dissemination of crime information.</li> </ul>

## ARTICLE 13: Property Rights

*STANDARD: In the performance of their duties police officers shall respect and protect all property rights. This includes the economical use of public resources.*

INDICATORS A13	Measure	Means of verification
Use of state and police property is properly managed.	<ul style="list-style-type: none"> <li>• There is clear budget for police expenditure, and a policy rationale for how the budget supports policy and creates efficiencies approved of by the legislature.<sup>a</sup></li> <li>• Police adhere to integrity controls including on public bidding of major procurements, and conduct effective audits.<sup>b</sup></li> <li>• Clear rules and procedures exist for the use of police and state resources, and these are followed.</li> <li>• Officials only use equipment that they have been trained in and are licensed to use, including the use of firearms and weapons.</li> <li>• The disciplinary code and procedure includes taking steps against police officers who have abused state or police resources. Number of police who have been disciplined for abuse of police resources as a ratio of the total number of police in the police service.</li> <li>• The police service maintains its equipment in good working order, and faulty equipment is repaired in the shortest time possible.</li> </ul>	<ul style="list-style-type: none"> <li>• Annual police service budget.</li> <li>• Independent unit or station budgets and expenditure reports.</li> <li>• Audited financial statements.</li> <li>• Reports of, or complaints against, tender awards.</li> <li>• Police policy on the use of resources.</li> <li>• Registers recording how equipment and resources are signed out to police officers and collected after use.</li> <li>• Police financial audit reports on the use of public assets.</li> <li>• Disciplinary code.</li> <li>• Records of disciplinary processes – human resource records.</li> <li>• Police annual reports.</li> <li>• Media reports.</li> <li>• Assets register.</li> <li>• Maintenance records.</li> </ul>
Private and non-state property is respected.	<ul style="list-style-type: none"> <li>• There is a clear framework for how the property of others may be used, handled or damaged during the course of policing duties.</li> <li>• Property that has been confiscated by the police for the purpose of investigation or evidence, or because it constitutes illegal possession, is taken into safe custody of the police, and is released to its owners when it is no longer required, or by court order – percentage of items returned to their owners in the condition in which they were confiscated or otherwise.</li> <li>• Registers are maintained providing detailed descriptions of the items taken into custody, the alleged owners of the property, where it was found, date of confiscation, etc.</li> <li>• Confiscated assets are only forfeited to the State following the terms of the law and due process.</li> </ul>	<ul style="list-style-type: none"> <li>• Legislation, regulations or standards.</li> <li>• Contracts between lessors and the police.</li> <li>• Inventory of police assets and their use.</li> <li>• Police registers.</li> <li>• Survey of people whose assets have been confiscated.</li> <li>• Public perception surveys.</li> <li>• Percentage of assets deemed to be forfeited to the State from the number of applications for forfeiture.</li> <li>• Legislation.</li> <li>• Complaints by affected individuals.</li> <li>• Media reports.</li> <li>• Records of assets forfeited.</li> </ul>

**Notes to the table:**

a Bruce & Neild (2005), Measure 11.

b Ibid.