



Human rights training manual for police in the East African Community

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TRAINER'S MANUAL



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The East African Community (EAC)

Vision

To attain a prosperous, competitive, secure and politically united East Africa

Mission

To widen and deepen economic, political, social and cultural integration in order to improve the quality of life of the people of East Africa through increased competitiveness, value added production, enhanced trade and investment.

The EAC brand

One People, One Destiny

Fundamental principles of EAC

These are stipulated and encapsulated in Article 6 of the Treaty and are outlined as follows:

- (a) Mutual trust, political will and sovereign equality
- (b) Peaceful co-existence and good neighborliness
- (c) Peaceful settlement of disputes
- (d) Good governance including adherence to the principles of democracy, the rule of law, accountability, Transparency, Social justice, equal opportunities, gender equality as well as the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and people's Rights
- (e) Equitable distribution of benefits and
- (f) Cooperation for mutual benefit

East Africa Police Chiefs Cooperation Organization (EAPCCO)

EAPCCO was established in 1998 with the Regional Bureau of Eastern Africa Nairobi as its permanent Secretariat. The chairmanship rotates yearly among member countries. There are 13 countries, which form EAPCCO; Burundi, Eritrea, Rwanda, South Sudan, Uganda, Comoros, Ethiopia, Seychelles, Sudan, Djibouti, Kenya, Somalia and Tanzania.

The objectives of EAPCCO are:

- ≡ To promote, strengthen and foster co-operation and foster joint strategies for the management of all forms of cross-border and related crimes with regional implications;
- ≡ To prepare and disseminate relevant information on criminal activities as may be necessary to benefit members to contain crime in the region;
- ≡ To ensure efficient operation and management of criminal records and efficient joint monitoring of cross-border crime taking full advantage of the relevant facilities available through INTERPOL;
- ≡ To make relevant recommendations to governments of member countries in relation to matters affecting policing in the Eastern Africa region;
- ≡ To formulate systematic regional training policies and strategies taking into account the need and performance requirements of the regional police service/force;
- ≡ To carry out any such relevant and appropriate acts and strategies for purposes of promoting regional police co-operation and collaborations as regional circumstances dictate.

Foreword

The East African Community (EAC) welcomes the conclusion and ultimate integration of the first of a series of training manuals targeting harmonisation of segments of Standing Operating Procedures as they are developed. The 1st Meeting of the EAC Police Chiefs held on 3rd August 2011 in Arusha, directed that measures be undertaken to harmonise Policing Practices in the EAC Region, in consonance with other integration areas. A number of areas were identified for harmonisation, among them areas covered by this training manual. Indeed this manual responds well to the provisions of Article 6(d) of the Treaty for the Establishment of the EAC which focuses on Good Governance, the rule of law, accountability, social justice and promotion of human rights.

Stop and Search, Arrest, Detention and Legal Use of Force are at the centre of the image and perception of the Community of interest on the responsiveness of policing to democracy and accountability. It has more often been used as the yardstick to measure the performance of the Police, yet there are many more critical yet not visible policing issues. At a time when Community Based Policing is the catch phrase, the issues of accountability and respect for rights of those that are in contact or in conflict with the law need not be overemphasised.

It is expected that integration of this training manual into regular police training curricular will be fast tracked as its outcomes will have direct impact on the implementation of rights and freedoms granted by the Common Market Protocol. East Africans will continue looking forward to proximate treatment by the police as they move across the Partner States in their quest to realise the benefits of the integration process. The standards promoted by the manual are an acknowledgement of the commitment of the regional states towards implementing the various Regional and International Instruments to which they are Parties and whose imperatives have been taken on board.

I would finally wish to reiterate the commitment of the EAC towards promoting democratic, human rights based and accountable policing; and on the same vein pay tribute to the INTERPOL Regional Bureau for Eastern Africa for the leadership it has continued to offer, members of the Training Committee from EAC and African Policing Civilian Oversight Forum (APCOF) for technical support and our development partners at the Open Society Initiative for East Africa for their financial support. Together, working consistently, we can change our Policing approach for the better.



Charles Njoroge, EBS
Deputy Secretary General
Political Federation
EAST AFRICAN COMMUNITY

A handwritten signature in black ink, appearing to be 'C. Njoroge', written over a light blue horizontal line.

Course agenda with time allocations

DAY 1

08.30 – 09.00	Registration
09.00 – 09.30	Welcome, background and introduction to the course
09.30 – 10.30	Module 1: Policing in a democratic society
10.30 – 11.00	Tea break
11.00 – 12.00	Module 2: Stop and search principles
12.00 – 13.00	Module 2: Stop and search procedures
13.00 – 14.00	Lunch break
14.00 – 15.30	Module 3: Arrest
15.30 – 16.00	Tea break
16.00 – 17.00	Module 3: Arrest

DAY 2

09.00 – 09.30	Recap
09.30 – 10.30	Module 3: Arrest
10.30 – 11.00	Tea break
11.30 – 13.00	Module 4: Detention
13.00 – 14.00	Lunch break
14.00 – 15.30	Module 4: Detention
15.00 – 15.30	Tea break
15.30 – 17.00	Module 4: Detention

DAY 3

09.00 – 09.30	Recap
09.30 – 10.30	Module 5: Use of force
10.30 – 11.00	Tea break
11.00 – 13.00	Module 5: Use of force
13.00 – 14.00	Lunch break
14.00 – 15.00	Module 6: Public order
15.00 – 15.30	Tea break
15.30 – 17.00	Module 6: Public order

DAY 4

09.00 – 09.30	Recap
09.30 – 10.30	Module 6: Public order
10.30 – 11.00	Tea break
11.30 – 13.00	Module 7: Management
13.00 – 14.00	Lunch
14.00 – 15.00	Evaluation and close

Introduction and approach to this training

Approach of this manual

This course will follow the various **stages in the process of policing**, that provide for the most direct contact between police and civilian, starting with stopping and searching, then moving on to arresting a suspect, and then to detentions. We will examine the use of force along the force continuum through these operations. We'll also look at public order policing. Finally, we'll look at ethics.

In each of the **modules**, we will start with the human rights principles underlying each aspect, and then examine the legality of each action as it relates to the human rights principle – in other words, the requirements for something to be lawful.

What is the standard?

What is the human right?

What are the underlying principles?

What makes the action lawful?

What are the actual operating procedures?

Using the East African Community Common Standards

The **EAC Common Standards** and supporting operating procedure are used throughout as a main reference. The EAC Common Standards are the result of cooperation between the countries of the East African Community to establish **a common ground for policing**. They are developed from standards that have already been set in the international and regional arenas, for human rights, policing and security. The EAC Common Standards draw on the instruments of the United Nations and the African Union.

An important aside here: The **standards do not always reflect the law as it stands** in each country. That is a challenge that has to be met by the legislators. But they do reflect the **aspirations** to policing in the five countries.

MODULE 1

Role of the police in a democratic society

Learning outcomes

Participants will be able to:

- Understand the development of human rights as it relates to policing;
- Become familiar with the origin of international, African and regional human rights instruments; and
- Understand the benefits to communities and police of policing through a human rights framework, having discussed some of the challenges involved.

What are human rights?

What are human rights? And where did this idea of human rights come from? Do human rights apply to all people, even criminals? What about police officials?

Trainer: Activity

Ask participants to brainstorm any ideas or concepts that come up when they think about human rights. Prompt them if necessary. They may come up with ideas and concepts like:

- | | |
|---------------------|---|
| • Freedom | • Rule of law |
| • Fairness | • International law |
| • Justice | • The constitution |
| • Laws | • Dignity, liberty, freedom of expression, movement, safety, protection of property |
| • Access to justice | |
| • Morality | |

Discussion

Acknowledge all of these ideas and concepts. Tell them that as they can see from the number of ideas and concepts they came up with, the concept of human rights is very broad and interconnected. For example, you cannot have justice without rule of law (the idea that the law applies to everyone, no matter who you are).

The general concept of human rights refers to rights and values that are universal, inalienable (meaning they cannot be taken away) and inherent, solely because we are human.

It is not connected to religious belief, although many religions espouse many human rights. The difference between religious beliefs and human rights is that human rights exist in all people as a fundamental starting point. They are the basis of our humanity.

International human rights law gives legal expression to the concept of human rights and makes it more concrete. Treaties and conventions articulate these rights and, when ratified, place a legal requirement on states to respect and protect the specific rights in a convention or treaty and ensure that they are implemented.

History of human rights

Documents asserting individual rights, such as the Magna Carta (1215), the Petition of Right (1628), the US Constitution (1787), the French Declaration of the Rights of Man and of the Citizen (1789), and the US Bill of Rights (1791) are the written precursors to many of today's human rights documents.

International treaties and conventions

The main sources of international human rights law are the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together, these instruments form the International Bill of Rights. They have inspired over 80 international treaties and declarations, both globally and regionally, and they constitute a comprehensive and legally binding system for the promotion and protection of human rights.

The Universal Declaration of Human Rights (1948)



The Universal Declaration of Human Rights has inspired a number of other human rights laws and treaties throughout the world.

By 1948, the United Nations' new Human Rights Commission had captured the world's attention. The Commission set out to draft the document that became the Universal Declaration of Human Rights. It was adopted by the United Nations on 10 December 1948.

In its preamble and in Article 1, the Declaration unequivocally proclaims the inherent rights of all human beings: 'Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people ... All human beings are born free and equal in dignity and rights.' 'The Member States of the United Nations pledged to work together to promote the thirty Articles of human rights that, for the first time in history, had been assembled and codified into a single document. In consequence, many of these rights, in various forms, are today part of the constitutional laws of democratic nations.

Human rights law regulates the conduct of the state in relation to the people in that state's territory or subject to that state's jurisdiction. The 'rights' provided by international human rights law impose obligations on the state to act, or to refrain from acting, in a certain way, to the benefit of communities and individuals.

In the context of policing, human rights law places limitations on the actions of the state and the police as an institution of the state (such as prohibiting the use of torture or other ill-treatment) and sets minimum standards of treatment for people deprived of their liberty (such as requiring a detainee to have access to lawyer).

International human rights law then requires states to enact legislation, policy and administrative frameworks to implement international human rights law for all its institutions. Individual police officials are expected to know and adhere to the human rights framework, and should be subject to training and accountability mechanisms to promote and monitor compliance.

The effective implementation of international human rights norms is premised on adherence to the rule of law, i.e. that no person is above the law, and that the law of the state applies to every person equally, without discrimination, whether a person is a private citizen or a public official. Accordingly, police organisations and individual officials have an obligation to act within the bounds of the law, and the state has an obligation to ensure clear laws and adequate training and to promote compliance with the law.

African treaties and conventions

Africa has embraced this rights agenda through the adoption of an African Charter on Human and Peoples' Rights and its subsequent guidelines and conventions.

Sub-regional initiatives, including East Africa

In East Africa, five members of the East African Community – Burundi, Kenya, Tanzania, Rwanda and Uganda – have adopted a common standard for policing in the region.

Discuss

What are some of the benefits of police compliance with a human rights framework, and what are the challenges?

Trainer: Activity

Ask participants if they think there are really any benefits to policing through a human rights framework. Make a list of any they come up with. These could include:

- Promotes stability;
- Promotes democracy;
- Greater reliance on legal action;
- Less vigilantism;
- Enhances people's democratic, economic and social development/respect for the law enhances the authority of the law;
- People become less hostile to police;
- Police can really service the community;
- Community trusts police;
- Community knows they will get equal treatment;
- Pride in the country's police services;
- Increases safety of police if there is less hostility towards police; and
- Greater cooperation with police.

Discussion

Make a list of the challenges.

Have a discussion about whether the benefits and the challenges can be reconciled.

East African Community Common Standards

The contents of the East African Community Common Standards

There are four sections:

1. Role of the police
2. Policing in accordance with the rule of law
3. Police actions
4. Police organisations

Considerations for Policing in the East African Community

1. Role of the police

The police will:

- a. Protect the life, liberty and security of the person.
- b. Maintain public safety and social peace.
- c. Adhere to the rule of law as an essential element to human security, peace and the promotion of fundamental rights and freedoms.

2. Policing in accordance with the rule of law

The police will fulfil their functions in accordance with the rule of law. The police will:

- a. Not arbitrarily arrest or detain and will only deprive persons of their liberty in accordance with the law.
- b. Promptly inform accused persons of the reason for their arrest and any charges brought against them – this must be communicated to the accused persons in a way and manner they understand.
- c. Act in a manner that upholds the presumption of an accused person's innocence until proven guilty in accordance with the law.
- d. Ensure that arrested persons are brought promptly before an authorised and competent judicial authority.
- e. Ensure that, upon arrest, detention and charge, there is a presumptive right to bail or bond.
- f. Ensure the right of a detained person to challenge the lawfulness of their detention and recognise the enforceable right to compensation if an arrest or detention is deemed unlawful by the courts.
- g. Ensure that arrested and detained persons have access to interpreters and legal assistance, as required.
- h. Ensure that arrested and detained persons are treated humanely and kept under humane conditions.

3. Police actions

The police will act in a manner that:

- a. Ensures they discharge the duties assigned to them by law equitably, diligently and with a high degree of professional responsibility and will, at all times, strive to maintain a community service focus.
- b. Upholds the right to life, liberty and security of the person by only using force and firearms when strictly necessary and only to the extent required for the fulfilment of their lawful duty.
- c. Ensures all citizens enjoy their fundamental rights and freedoms without discrimination.

- d. Upholds the absolute prohibition on the use of torture and other cruel, inhuman or degrading treatment or punishment. The police will not inflict, instigate or tolerate any act of torture, cruel, inhuman or degrading treatment or punishment. No circumstances will override this prohibition, including threats of war, political instability or periods of emergency.
- e. Ensures that all persons deprived of their liberty are treated with humanity and respect for their inherent dignity. Police will:
 - i. Consider and treat all persons deprived of their liberty as innocent until proven guilty by a competent judicial authority.
 - ii. Keep persons awaiting trial separate from convicted persons.
 - iii. Provide all persons deprived of their liberty with adequate food and clothing, unless the detained person elects to provide their own.
 - iv. Facilitate assistance from medical practitioners.
 - v. Inform family and friends of the detention and allow detained persons to maintain contact with those persons to the extent that such contact is consistent with the administration of justice, security and the good order of the place of detention.
 - vi. Allow all persons deprived of their liberty to access legal assistance and receive visits from their legal advisors that are within the sight, but not hearing, of officers.
- f. Adheres to the absolute prohibition on extra-judicial executions and the government will legislate to ensure that such actions are investigated and prosecuted as a matter of priority and as punishable criminal offences under law. Police will not derogate from this principle on account of war, armed conflict or other national emergencies.
- g. Ensures victims are treated with compassion and dignity, which includes access to prompt, fair and inclusive mechanisms of redress that respect the privacy of victims. They will make known and provide victims with assistance, including psychological, medical and social services. The police organisation will ensure that officers receive training to sensitise them to the diverse needs of victims.
- h. Does not discriminate against women, juveniles and minority communities. Police who are in frequent contact with suspects, offenders, victims and witnesses from these groups should receive sensitisation training.
- i. Recognises the right of all persons to peaceful assembly without restriction insofar as this right is consistent with the rule of law, democracy, public peace and security, and the rights of others. Regarding unlawful but peaceful assemblies, police will avoid the use of force and, if force is necessary, only use force to the minimum extent. In violent assemblies, police will use less dangerous means of crowd control but if force becomes necessary, only use the minimum force necessary.

4. *Police organisations*

- a. The police will account for violations by officers against persons' human rights.
- b. The police will implement basic standards for the recruitment of officers, including selection of candidates by proper screening processes to ensure that they exhibit appropriate moral, psychological and physical qualities for the role. Recruitment will ensure that the police organisations are representative of the community as a whole, with ethnic, gender, language and religious compositions reflective of the population they serve.
- c. The police will ensure members receive comprehensive and ongoing training on their rights and obligations.
- d. Police personnel will not only refrain from engaging in acts of corruption and abuse of power, but will rigorously oppose and combat all such actions. States are required to implement measures to facilitate the investigation of corruption and abuse of power and to take preventative measures, including police anti-corruption training and enacting domestic legislation, that criminalises such actions.
- e. In fulfilling their mandate, the police will cooperate with role-players within and outside the criminal justice system, including citizens and civil society organisations.
- f. States must promote bilateral, regional, multilateral and global law enforcement and crime prevention cooperation and assistance. To further this aim, states should take measures to prevent crime at a domestic level, strengthen information sharing and facilitate technical assistance, including exchange programmes and training.

MODULE 2

Stop and search



Learning outcomes

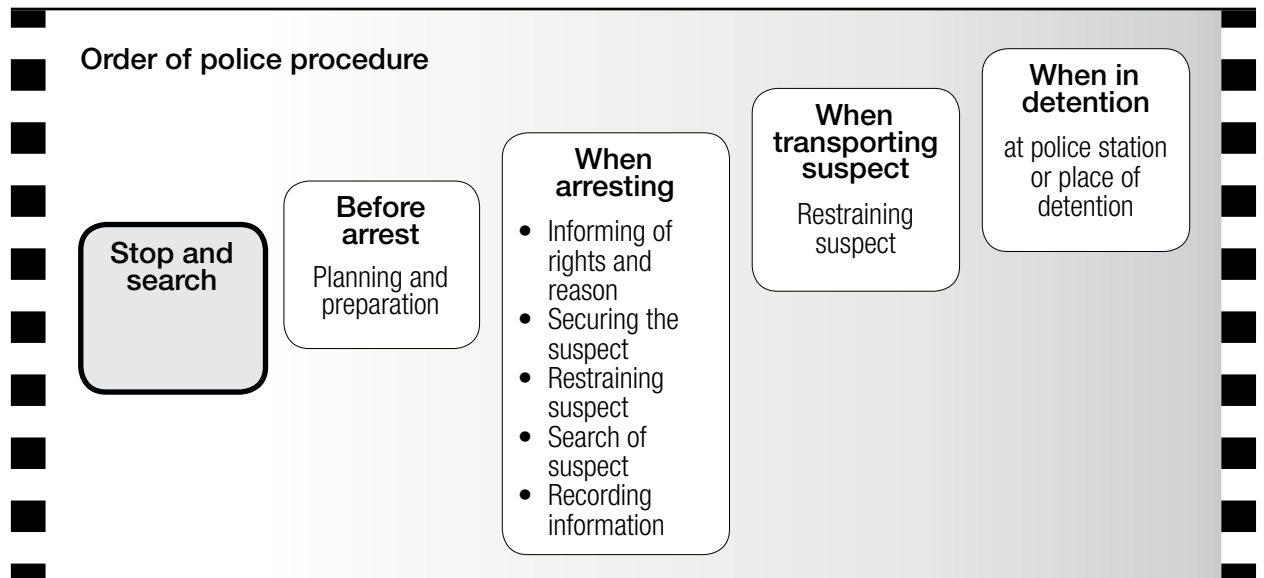
Participants will be able to:

- Understand the key human rights principles relating to stop and search: rule of law, non-discrimination, privacy and dignity;
- Articulate the requirements for a rights-based approach to stop and search; and
- Apply principles in different scenarios in which police might stop and search.

Introduction

Trainer

Tell participants that this module is on stop and search. Throughout the course, our modules will follow the usual sequence of policing procedures, that is: first stop and search, then arrest, then detain. Show participants where we are in the sequence using PP2 below.



Trainer

Participants work alone. The exercise below is not a test. It is a way of getting participants thinking about how they, as police officials, would react in different stop and search scenarios. Don't discuss the answers with the participants at this point – we will come back to each of these questions and participants will have a chance to revise or confirm their opinions.

Multiple choice

Read through the following scenarios and write down your answers in note form.

1. You see some men talking a language you don't understand. You realise they are non-nationals. They don't look like holidaymakers. You suspect they are in the country 'illegally'. Can you stop and search them?
2. You are called to the scene of a housebreaking in a village. Someone stole a bicycle from inside a dwelling. The owner says she did not see the person, but her neighbour said it is 'John'. Can you go to 'John', stop him and search him on the basis of this information?
3. A woman at a taxi rank screams that she has been pickpocketed. You arrive just at that moment. You tell everyone to stand still. You see a young man. He is acting strangely.
 - a) Can you search him?
 - b) Can you question him?
 - c) Can you question him at the same time as you do the search?
4. You question the young man. He seems not to be connected to the pickpocketing incident. He answers questions easily. He does not seem defensive. Can you then search him anyway?

Trainer

Tell participants that we will come back to the answers later.

PART 1: Understanding stop and search and human rights principles and instruments

Purpose of stop and search

Trainer: Plenary discussion

Tell participants we will be dealing first with the definition of, and human rights principles involved in, stopping and searching, and then with the practical application based on actual procedure.

Police are authorised – and, in fact, have a duty – to stop and search people or vehicles, or to execute a search warrant, in certain situations. Why do you have the power to stop and search? What is its purpose? Is stop and search a form of arrest or detention? Or a different action? Are the requirements for stop and search the same? Is this a one-stage process, or are there two distinct stages?

- What you want to get out of this discussion is that when a police officer stops or searches someone, he or she must have a purpose. It can't be a random act targeting random people. There has to be an existing prior suspicion. The suspicion has to be reasonable. Reasonable means the average person in your situation (i.e. a police officer) would also find it suspicious.
- The opposite of reasonable is arbitrary. The aim of stop and search is to confirm or to alleviate a suspicion. 'Alleviate' means put the suspicion to rest. This emphasises the idea that the suspicion must be based on something reasonable.
- Stop and search is a form of detention, even if brief. By restricting someone's movement you are depriving them of freedom of movement or of their liberty.
- There are two stages to stopping and searching. A 'search' does not always follow a 'stop'. After someone has been stopped, if there is no further suspicion, you may not search them.

Trainer

After the discussion, put up the **PP3** and go through it with participants. Compare whether the key points that were raised in your discussion are contained in these procedures, or if there is anything new.

STOP AND SEARCH

- = are *police powers*:
which must be used fairly, in addressing crime for the purpose of *alleviating or confirming reasonable suspicions* about individuals *without exercising power of arrest*;
(EAC Standard Operating Procedures Stop and Search, 3.1)
- = involve *detention* of a person, even for a temporary period of time
(EAC Standard Operating Procedures Stop and Search, 3.3)

Fundamental human rights that may be infringed when stopping and searching

So, now that we know what the purpose of stop and search is, let's look at which human rights may be infringed when stopping and searching someone.

Trainer

Ask participants whether they know of any human rights that might apply in the stop and search situation. These are all correct:

- ≡ The deprivation of liberty, taking away of their freedom (because even if it is a short time for which the person is being stopped, their liberty is lost for that time. You are detaining them. So, all the standards applying to detention apply here are well.)
- ≡ Under the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the definition of detention is very wide: "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence.'
- ≡ The infringement of the right to privacy.
- ≡ The infringement of the right to equality before the law. No discrimination.
- ≡ The infringement of a person's dignity.

Three requirements for a lawful stop and search according to the Common Standards

Therefore, to stop and search someone without infringing their human rights, it has to be done lawfully. There are three requirements for a lawful stop and search. They are:

1. Rule of law (legality), which includes equal protection/prohibition of discrimination;
2. The manner in which the stop and search is conducted – privacy and dignity; and
3. Procedural requirements – rules to be followed.

We'll discuss each of these.

Note that these requirements are the requirements of the Common Standards, and not necessarily the legislation in your country. They are based on international best practice. There may be cases where your domestic law conflicts or does not align with these standards. It is up to the legislators to change the laws in cases where they conflict.

Throughout this module, think about what the provisions are in your domestic law permitting stop and search.

Requirement 1: Rule of law – principle of legality – founded in law

There are three elements to the rule of law:

1. The stop and search must be authorised in law. In other words, the person must have the authority conferred on them by some **law**.

Although police have this authority, it is not a blanket authority. It has to be done **according to the law**, i.e. **lawfully**. Stopping and searching someone is, as we have said, is what police officials are empowered to do by law. But because you are depriving someone of their freedom, or invading their right to privacy, or dignity, there are limitations on when and how you can stop and search someone. You can only do it in a particular way, in a particular set of circumstances.

2. The stop and search must be **procedurally correct** to be lawful.
3. There must be a **legal ground** to stop someone, and to then search someone. It **cannot be arbitrary** because it is a deprivation of freedom – it must be based on reasonable grounds.

These excerpts from the Common Standards and the Standard Operating Procedures explain the three elements of rule of law:

The police will not arbitrarily arrest or detain and will only deprive persons of their liberty in accordance with the law.

(EAC Common Standards – Policing in Accordance with the Rule of Law, 2(a)(i))

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his [sic] freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

(EAC Standard Operating Procedures Stop and Search, 2.2)

No person shall be subjected to unlawful search of the person, home or other property of that person; or unlawful entry by other of the premises of that person.

(EAC Standard Operating Procedures Stop and Search, 2.7)

So, when can you stop and search? What are the requirements?

Trainer: Plenary discussion

The aim of this discussion is to get participants to unpack what reasonable suspicion means in the context of stop and search. Answers such as seeing a person commit a crime, or about to commit a crime, a specific behaviour, being in possession of something stolen, reliable information, are what we are looking for. Personal factors, such as youth, colour or clothing, are not sufficient in themselves.

Understanding reasonable suspicion

We said earlier there must be a reasonable suspicion. In order for a stop to be legal it must be based on reasonable grounds or a reasonable suspicion. What is a reasonable suspicion? Is it hard evidence, e.g. a wallet in the person's hand? A pointing out? Information received from another source?

What if the person is just acting strangely? Is that enough? What should the criterion be?

Can you provide your suspicion *after* the search? For example, you see a woman who you assume is a sex worker. She is not doing anything. You stop her, search her, and indeed you find drugs on her. Is it lawful to provide the reason *after* the search?

Reasonable suspicion must be supported by intelligence or information about, or some specific behaviour by, the person concerned and not personal factors.

(EAC Standard Operating Procedures Stop and Search: Rules Regarding Stop and Search, 5.2)

There is no power to stop or detain a person in order to find grounds for a search.

(EAC Standard Operating Procedures Stop and Search: Rules Regarding Stop and Search, 5.4)

Reasonable grounds for suspicion must be held at the time at which the person is stopped and/or searched. It cannot be provided retrospectively when questioning.

(EAC Standard Operating Procedures Stop and Search: Rules Regarding Stop and Search, 5.5)

Police should only stop, detain or search a person in proportion to a reasonable suspicion, bearing in mind the rights of persons including the right to freedom of movement and freedom from arbitrary detention.

(EAC Standard Operating Procedures Stop and Search, 3.3)

Power to stop for purpose of search

Police officers may stop any person *for the purpose* of carrying out search if they have reasonable grounds for suspicion on reasonable grounds:

- = Has or is about to commit a criminal offence;
- = Has in his possession an stolen or unlawfully obtained item;
- = Has in his possession a weapon that is likely to be used in the commission of a criminal offence;

(EAC Standard Operating Procedures Stop and Search: Rules Regarding Stop and Search, 5.1)

- = Is in detention

(EAC Standard Operating Procedures Stop and Search: Rules Regarding Stop and Search, 5.5)

Police officers may search the clothing or property in immediate control of the person (in a manner to reduce embarrassment and preserve dignity).

(EAC Standard Operating Procedures Stop and Search: Rules Regarding Stop and Search, 5.7)

After a person is *stopped*, but *before* they are *searched*, the police officer may ask questions about *the person's behaviour or the matter that gave rise to the suspicion*. If the reasonable suspicion is eliminated because of the response of the person, the police officer cannot carry out a search.

(EAC Standard Operating Procedures Stop and Search: Rules Regarding Stop and Search, 5.3)

The search must not be conducted while the person is being questioned.

(EAC Standard Operating Procedures Stop and Search, 9.5)

Trainer

At this point, ask participants to go back to their multiple-choice questions 1,2 and 3. Having looked at Requirement 1: RULE OF LAW – PRINCIPLE OF LEGALITY – FOUNDED IN LAW, are their answers the same as what they said originally?

1. You see some men talking a language you don't understand. You realise they are non-nationals. They don't look like holidaymakers. You suspect they are in the country 'illegally'. Can you stop and search them?

Trainer

Answer: It would be inconsistent with the Common Standards to stop or search someone based solely on them speaking a foreign language. This would constitute bias or discrimination. There must be a reasonable suspicion of an offence. The fact that the men are speaking a foreign language is not a reasonable suspicion. There must be a specific behaviour or something else to justify a stop or a search.

2. You are called to the scene of a housebreaking in a village. Someone stole a bicycle from inside the dwelling. The owner says she did not see the person, but her neighbour said it is John. Can you go to John, stop him and search him on the strength of this?

Trainer

Answer: You could probably stop John and ask him questions because you have a witness who has provided you with his identity. Depending on his answers, it could possibly be lawful to search him. However, if you question him, and there is no reasonable suspicion that he has done something wrong (because he has an explanation for why he was at the dwelling or the witness did not actually see him in possession of the bicycle), you may not search him.

3. A woman at a taxi rank screams that she has been pickpocketed. You arrive just at that moment. You tell everyone to stand still. You see a young man. He is acting strangely. Can you stop him?

Trainer

Answer: Yes. But what is 'strange'? Is this not subjective? Perhaps he has an illness that makes him act strangely – clarify.

- 3a. Can you question him?

Trainer

Answer: Yes.

- 3b. Can you search him?

Trainer

Answer: You would need a reasonable suspicion, for example the witness can identify him or he can't explain what he's doing there. If the witness can't identify him or he has a reasonable explanation for why he is at the taxi rank, you can't search him.

- 3c. Can you question him at the same time as you do the search?

Trainer

Answer: No. The Standard Operating Procedures state that you may not do it at the same time. (*EAC Standard Operating Procedures Stop and Search*, 9.5)

Trainer

Ask participants if their answers would be different if they saw the young man throwing something in a bin. Could they search the bin?

Requirement 2: Prohibition on discrimination – equality before the law

Trainer: Plenary discussion

Tell participants we're going to move away from police work for a moment and talk about dating. Yes, dating! Specifically, who you choose to date. Although this may seem like it has nothing to do with policing, by the end of this exercise, we hope you will be able to see the connection with human rights and professional policing.

Ask participants to imagine themselves single and looking on a dating site.

Show them the photos on the slide and ask the men which woman they would date? Ask the women which man they would date. Ask them to give reasons.

The point you want to make with the discussion that follows is that as police officials, we have to apply the law equally, no matter what our private prejudices/views are. It is not professional to apply the law selectively, or according to our personal views, even if our personal view coincides with our society's view. We have to conduct ourselves objectively and apply the law without favour or prejudice in all our procedures.

- What you want to get out of this discussion is that when a police officer stops or searches someone, he or she must have a purpose. It can't be a random act targeting random people. There has to be an existing prior suspicion. The suspicion has to be reasonable. Reasonable means the average person in your situation (i.e. a police officer) would also find it suspicious.
- The opposite of reasonable is arbitrary. The aim of stop and search is to confirm or to alleviate a suspicion. 'Alleviate' means put the suspicion to rest. This emphasises the idea that the suspicion must be based on something reasonable.
- Stop and search is a form of detention, even if brief. By restricting someone's movement you are depriving them of freedom of movement or of their liberty.
- There are two stages to stopping and searching. A 'search' does not always follow a 'stop'. After someone has been stopped, if there is no further suspicion, you may not search them.

Who would you date?



Trainer: Plenary discussion

The questions below help to tease out the issue of prejudice, preconceptions and discrimination. While we may exercise our personal preferences in our private lives, in policing these prejudices are an infringement of other people's human rights. Ask the questions below to get the discussion going.

- Who did you choose? Why? Do you have a preconceived notion of one person or another? Why did you choose one over the other? Are you stereotyping?
- Take a moment to think about the kinds of biases or prejudices there are in your country. Which groups, in your experience, are the subject of discrimination in your country? Why do you think they are discriminated against? Is it profiling? Or stereotyping? For example, what is the profile of a refugee in your country? Which other groups are negatively stereotyped? Which groups are positively stereotyped?
- Would you stop and search a politician in the same way as you would a homeless person?
- What about a woman with a baby?
- In which ways do your beliefs and prejudices affect the way in which police in your country operate? What about you personally?
- What is the impact of discriminating against people in your society?
- Are there any times when the police must discriminate when you stop and search? When? (Yes, if you search a woman, you must have someone of the same gender search her. If you search a child, you may be required to have his/her guardian or social worker present. If the person is deaf, you may have to have a facilitator present, etc.)

When we talk about prohibition of discrimination, we are actually talking about **equality before the law**. In some cases, we have to do positive things to bring vulnerable people **UP to** the level of others.

This is what the Standard Operating Procedures say:

All persons are *equal before the law* and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall *prohibit any discrimination* and guarantee to all persons equal and effective protection against discrimination on any ground such as *race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*.
(EAC Standard Operating Procedures Stop and Search, 2.3)

Duty of officer in charge

The officer in charge must monitor stop and search powers, in particular monitoring for discriminatory use of stop and search.

We'll discuss discrimination in other contexts of lawful procedure at each stage.

Requirement 3: The right to privacy and human dignity

The next slide may elicit some discussion around same-sex or opposite-sex searching. Participants may say that it is fine (in their country) for a female official to search a male. The Common Standards do not allow this.

The right to privacy

Every person has the right to privacy, which includes the right not to have:

- = Their person, home or property searched;
- = Their possessions seized;
- = Information relating to their family or private affairs unnecessarily required or revealed; or
- = The privacy of their communications infringed.

(EAC Standard Operating Procedures Stop and Search, 2.4)

Searches must be conducted with utmost respect for decency.
(EAC Standard Operating Procedures Stop and Search, 9)

Searches must be conducted by officer as same sex as person searched.
(EAC Standard Operating Procedures Stop and Search, 9.4)

Searches must be conducted as quickly and least invasively as reasonable practical given circumstances.
(EAC Standard Operating Procedures Stop and Search, 9.2)

The right to dignity

The state authority shall lay down legal procedures regarding the circumstances, manner and extent to which the right of privacy, security of his person, his property and residence may be encroached upon.

(EAC Standard Operating Procedures Stop and Search, 2.5)

An officer must not search a person, even with his or her consent, where no power to search is applicable.

(EAC Standard Operating Procedures Stop and Search: Rules Regarding Stop and Search, 5.6)

Powers must be used responsibly as they are intrusive and must be performed in a way that minimises the embarrassment that the person stopped or searched may experience .

(EAC Standard Operating Procedures Stop and Search: Rules Regarding Stop and Search, 3.2)

The third legal requirement is procedural, which is discussed on the following pages.

PART 2: Procedure

Trainer Activity

The aim of these role plays is to get participants to apply their learning about rights and what makes a stop and search lawful according to the Common Standards and the Standard Operating Procedures, and to flesh out some of the detail in the Common Standards about procedure.

You need four groups, as described on the following pages.

Each group has 10 minutes to read through their storyline and must then act it out in front of the rest of the participants.

Tell the rest of the participants to make notes on each role play, as follows:

Was this stop and search lawful in terms of the Common Standards?

Was procedure, in their opinion, followed?

Let the participants report back after each role play.

Have a flip chart ready to record their notes. After each one, read through the relevant Common Standards and Standard Operating Procedures with the participants.

Group 1: IN THE STREET**Players:** Two police officers; two young men**Props:** Knife, gun

Story: You are two police officers. You hear a loud bang in the road. It could be a gun going off. You see two young men running. You shout, 'Stop.' You do not introduce yourself by name or show your badge. You do tell them you are policemen. You do not ask questions. You turn the suspects around and put their hands up against a wall. You pat them down. You find a knife and a gold watch. You put the knife and gold watch in your pocket. You let them go.

TRAINER

What the group did right	What they did wrong
<p>The police have authority to stop someone if there is a reasonable suspicion. Here there was a reasonable suspicion, as these young men were running. Therefore the stop is lawful.</p> <p>There was no discrimination.</p> <p>The stop was proportional.</p> <p>The search was proportional.</p> <p>They correctly took possession of the weapon.</p> <p>The search was conducted near the place they were stopped.</p>	<p>They did not show badge.</p> <p>They did not identify themselves.</p> <p>They did not ask questions before searching, which would have helped to make up mind about whether to go to next step of search.</p> <p>They did not give the purpose of the search or give reasons.</p> <p>They did not give a receipt for the property.</p> <p>They did not put the property in sealed bag for forensic purposes.</p> <p>They did not record the names of the suspects, or any other information.</p>

Rules when searching

Search must be conducted at or near the place where the person or vehicle was first stopped.

(EAC Standard Operating Procedures Stop and Search, 9.3)

Police officer carrying out the search shall:

- = Take possession of any weapon or items used in commission of an offence; and
- = Take and preserve items or suspected stolen property in connection to any offence.

(EAC Standard Operating Procedures Stop and Search, 9.6)

Recording police must record search at time of search (where not possible, as soon as practicable thereafter). Information should include:

- = Name of person searched or vehicle registration number;
- = Date, time and location;
- = Purpose of search;
- = Legal grounds for search;
- = Outcome of the search; and
- = Identity of officer making search.

(EAC Standard Operating Procedures Stop and Search, 11)

Searching a vehicle

Police may search a vehicle where there is reasonable cause to suspect a vehicle that is:

- = Connected to commission of an offence, including stolen goods; or
- = Associated with illegal weapons or articles prohibited under law (unless person has a legal excuse).

(EAC Standard Operating Procedures Stop and Search, 7.1)

Must detain vehicle only for time necessary and a maximum of six hours.

(EAC Standard Operating Procedures Stop and Search, 7.2)

May arrest a person and seize a vehicle if found with items that constitute a criminal offence (if lawful).

(EAC Standard Operating Procedures Stop and Search, 7.3)

Entry of vehicle is only necessary for purposes of search (not stop) or to drive vehicle back to police station.

(EAC Standard Operating Procedures Stop and Search, 7.4)

Group 2: STOPPING A VEHICLE

Players: A man and a woman in a car; two police officers; radio police reporter

Props: Steering wheel

Story: A policeman radios to all the police officers that there has been a hijacking at gunpoint. The hijacked car is a BMW convertible with two passengers.

Two police officers hear the radio report. They see a BMW speeding. They stop the car. They introduce themselves. They explain the purpose of the search. They ask for a licence and the driver shows them one. They ask other questions about registration and ownership issues about the car. They discuss and decide to search the people and the car. They pat down the woman and the man. They find nothing. They search the car. They don't find anything. They detain the car anyway as it fits the description. They tell the people they can come fetch their car 24 hours later.

TRAINER

What the group did right	What they did wrong
<p>Entitled to stop someone if there is a reasonable suspicion. Heard a radio report of a carjacking. Same make of car. Same colour. Speeding.</p> <p>Proportionate – yes. It is proportionate to stop the car. The more heinous the offence, the wider the ambit to infringe a right. Carjacking at gunpoint is a serious offence.</p> <p>They identify themselves.</p> <p>They explain the purpose of the search.</p> <p>They have reasonable suspicion to search the car as the answers do not seem satisfactory.</p>	<p>Unlawful to detain a vehicle or people if there are no grounds. You'd have to have at least some form of other identification of the vehicle that it was in fact hijacked.</p> <p>Unlawful to keep a vehicle for more than six hours.</p>

Group 3: FORECFUL ENTRY OF PREMISES

Players: Five police officers, Four people on premises: a woman breastfeeding, a child, a deaf person, a foreigner.

Props: Guns, doll

Story: Police have had numerous complaints from the community that a certain house is manufacturing drugs. Five policemen go to the premises. You knock on the door. You identify yourselves. No one comes to door. You knock again. No answer. You break down the door, and go in pointing guns.

Inside is a woman breastfeeding a baby; an old woman; a child of 10 and another person. You tell the woman to stop breastfeeding. She refuses. You tell her you will arrest her if she does not cooperate. You tell the old woman to tell you where the drugs are. She does not answer. You realise she is deaf. You question the child about the drugs. You question the other adult about the drugs. You realise he does not speak your language. You start ransacking the house, breaking things, and you take things. You do not record what is taken. You leave.

TRAINER

What the group did right

Lawful to search premises if: there is reasonable suspicion of offence being carried out, is proportionate. They are authorised by law; not discriminatory if there is a reasonable suspicion: in this case, they had numerous complaints about drugs being manufactured in the house. They did identify themselves.

What they did wrong

They didn't explain purpose of search.
They didn't identify themselves by police station.
They should have discriminated positively in each of these cases:
Gender issue: There was no reason to stop the woman breastfeeding. Abuse of power to tell her they'd arrest her.
They should have tried to get someone who could speak the language of the foreigner. They should not have questioned the child without the permission of a guardian. They should have got someone to help the deaf granny.

Prior to conducting a search

Provide *reasons* for purpose of search;
 Provide *name of police officer* conducting search and *police stations* he reports to;
 The *legal search power* exercised;
 The purpose and reasons for search including the article for which there is a power to search;
 Entitlement of person being searched – to be provided with a warrant.
 (EAC Standard Operating Procedures Stop and Search, 8)

Search of a property or premises

With a search warrant
 (EAC SOP Stop and Search, 6.1)

Searches without a search warrant
 Where a police officer has a reasonable suspicion that:
 There is something on the property needed for a criminal investigation and it would jeopardise the success of the investigation to wait until they obtained the warrant;
 A person (for whom a warrant has been issued) is suspected of being on the premises;
 Where property is being used for commission of a crime where a life or property is threatened and delay will result in harm being suffered to a person or property.
 (EAC Standard Operating Procedures Stop and Search, 6.2)

Police may use force to enter if necessary, but must:

- = Identify themselves prior to entry;
- = Request the opportunity to be allowed entry;
- = Record property taken from premises (certificate of seizure completed and signed by owner and officer) – failure of owner to sign should be recorded;
- = Record the incident;
- = Provide a full report to officer in charge.

(EAC Standard Operating Procedures Stop and Search, 6.3)

Be mindful of religious and cultural considerations to be observed on premises.
 (EAC Standard Operating Procedures Stop and Search, 6.6)

Be mindful of safety and take precautions.
 (EAC Standard Operating Procedures Stop and Search, 6.7)

Group 4: ON THE STREET

Players: Two police officers; two women who have been stopped on suspicion of drug dealing

Props: None

Story: Two women stopped in an alley. You are two male police officers who have information that the women have been dealing drugs and the alley is a place where drugs change hands. You stop the women. You tell them you are going to search them. One woman agrees to let a male policeman pat her down. The other woman says she has a right to a police officer of the same sex. You threaten her that if she doesn't let you search her, you'll arrest her.

TRAINER

What the group did right

It is lawful to stop someone if you have reasonable suspicion: here, the police have prior information that these women have been dealing drugs in this place. They are authorised by law; not discriminatory if there is a reasonable suspicion. They did identify themselves.

What they did wrong

They didn't explain purpose of search.
They didn't identify themselves by police station.
A male police officer cannot body search a woman, even if she gives consent.
A police officer cannot threaten someone with arrest for this.

Searches must be conducted with utmost *respect for decency*.
(EAC Standard Operating Procedures Stop and Search, 9)

Searches must be conducted by officer of the *same sex* as the person searched.
(EAC Standard Operating Procedures Stop and Search, 9.4)

Searches must be conducted as *quickly and least invasively* as reasonable practical given the circumstances.
(EAC Standard Operating Procedures Stop and Search, 9.2)

Actions requiring a driver's licence, permit or proof of ownership

A police officer *must produce his or her identification card* and may stop a person whom he:

- = Sees doing *any act or thing* for which a licence or permit is required under any written law;
- = Sees *in possession* of anything for which a licence or permit is required under written law; or
- = *Suspects of doing any act or thing or being in possession* of anything for which a licence or permit is required under written law.

Once the person has been stopped the police officer can request the person to produce the licence, permit or proof of ownership. If person fails to produce a licence or permit, a police officer can request the person to:

Appear at the nearest police station within reasonable time; or
If allowed under law, arrest the person.

A person must be stopped and detained for the *minimum period necessary* to allow the police officer to ask for permit and person to produce it – time of detention must not be longer than *one hour*.

Detention for periods longer than *one hour must be recorded and reasons given*.

(EAC Standard Operating Procedures Stop and Search: Rules Regarding Stop and Search, 4)

Using force when searching

In the module on Use of Force, we discuss this issue in greater detail.

Consequences of unlawful stop and search

Owner can seek redress for damages as a result of search.
(EAC Standard Operating Procedures Stop and Search, 6.4)

Officer can be held responsible for unlawful entry and acts carried out during search.

(EAC Standard Operating Procedures Stop and Search, 6.5)

MODULE 3

Arrest

Learning outcomes

Participants will be able to:

- Articulate key human rights principles relating to arrest: rule of law, non-discrimination, humane treatment;
- Articulate the EAC Common Standards and EAC Standard Operating Procedures relating to arrest; and
- Assess different scenarios in which police might conduct an arrest and apply the EAC Common Standards and EAC Standard Operating Procedures.

Introduction

Trainer

Tell participants that this module is about arrest. Show them the slide below, which shows where we are in the sequence of the manual and police procedure. Then explain that as with stop and search, we will be dealing first with the definition and human rights principles, and after that with the practical application of the EAC Common Standards and EAC Standard Operating Procedures.

Order of police procedure

Stop and search

Before arrest

Planning and preparation

When arresting

- Informing of rights and reason
- Securing the suspect
- Restraining suspect
- Search of suspect
- Recording information

When transporting suspect

Restraining suspect

When in detention

at police station or place of detention

Recap of stop and search

Before we continue, let's recap on when you can stop someone, and when you can search someone, which we dealt with in Module 2. What are the requirements for a lawful stop? And for a lawful search?

Trainer: Small group work

Let participants do this recap exercise in small groups of 4 to 8 people. They must brainstorm the human rights issues and legal requirements and procedure that we dealt with in the previous module. They should note if the requirements for Stop are the same for Search, and where the requirements differ. They can refer to the text of the Common Standards on pages 6 and 7 for this exercise. Afterwards, do a quick report back.

PART 1: Defining arrest and human rights principles and instruments

Arresting someone should always be a last resort. If the person will go to the police station without police having to make an arrest, that is first prize. Arrest should only be considered:

- = When the person is a flight risk;
- = When the person is likely to commit another offence;
- = Depending on the seriousness of the offence;
- = Where the person's safety or other people's safety is at risk;
- = If the person's may interfere with witnesses;
- = When there is a statutory law that mandates an arrest for the offence.

In this module, we will focus only on situations where the arrest is a last resort.

Fundamental human rights and the power to arrest

Trainer

Ask participants what the possible outcomes are after you have stopped someone, and after you have searched someone. What you are after here is that participants understand that there are three options available to the police:

1. Let the person go.
2. Ask the person to come to the station with you voluntarily.
3. Arrest the person.

The remainder of this module focuses on the fundamental rights involved in arrest and the procedure (or the HOW) of arrest.

As with stop and search, we start by looking at the human right or rights that may be infringed when arresting someone.

Trainer

Ask: What is the fundamental human right involved?

Answer: The deprivation of liberty, taking away of a person's freedom.

The question here is how to reconcile the possible infringement of the deprivation of liberty with your duty as police official. As police officials, you are empowered by law to perform an arrest. You have been specifically authorised by the state to perform this action. In some situations, it is even mandatory for you to arrest someone – for example, if someone committing an offence in your presence or if something is putting someone else's life in danger.

The way in which we reconcile this invasion of a person's right to freedom is by putting limitations on how you can arrest someone: police officers can only make arrests in a particular way, in particular circumstances.

If you don't do it this way, you may, in fact, be committing an offence. For example, there may be a requirement that if you arrest someone, you must tell him or her why you are arresting him or her. Officers may, however, be in a situation where you suspect someone of committing an offence, but cannot quite formulate the charge. So, to get around the requirement of telling the suspect what he or she are being arrested for, you may put the suspect in the police vehicle without telling them that you are arresting them, and drive them around for six hours before letting them go. Technically, this is not arrest because you have not applied the letter of the law. It may, in fact, constitute kidnapping.

Purpose and definition of arrest

Trainer

Ask participants to work with a partner to come up with a definition of arrest. While thinking of the purpose, they should consider:

Partner work

What is arrest? What is its purpose? Who can do it? In which situations can a person arrest?

Trainer

Let participants come up with some definitions, and write their ideas on a flip chart. Then compare them with the definition given in the Luanda Guidelines below.

The Luanda Guidelines give this definition of arrest. How does it compare with yours?

“... the act of apprehending a person for the alleged commission of an offence, or action of a competent authority to arrest and detain a person as otherwise authorised by law”

Part 1 Arrest. 1a

Trainer: Plenary discussion

Tell participants that this definition is not exactly plain language; it's quite difficult to understand. Discuss what the definition says. What you want to get out of your discussion is that:

- Arrest is an ACT of APPREHENSION;
- There must be REASONABLE GROUNDS: If an offence has been alleged; and
- There must be COMPETENT AUTHORITY to arrest (persons executing arrest must be empowered by law).

Forms of arrest: With and without a warrant

Just as a search may be conducted with a warrant or without one, so can an arrest be made with or without a warrant.

Arrest with a warrant

Before the police obtain a warrant to arrest someone, they will already have evaluated the evidence and thought it is sufficient to lay a charge against someone. The police lay the grounds for arrest before a judge or magistrate, or senior police official (this depends on the law of your country), who approves it by signing it. The police must then act in terms of the warrant.

The difference between arresting someone with a warrant or without a warrant is in the planning and preparation. With arrest with a warrant, the grounds for the arrest, the formulation of the charge and the planning for the arrest can be done prior to executing the arrest, and it is already authorised in law.

Don't spend time on arrests with a warrant. Tell participants that you are going to spend more time on arrest without a warrant as these are much more difficult and require the arresting police official to apply his or her discretion.

Arrests without a warrant

Without a warrant, arrests pose much more of a difficulty to the police, as the officer must make judgements and decisions on the spot to ensure that the arrest is lawful. This is the subject of this module.

Three requirements for a lawful arrest according to the Common Standards

There are three requirements for a lawful arrest:

- = Rule of law;
- = Equality – non-discrimination; and
- = Humane treatment.

Requirement 1: Rule of Law

The first requirement is the **rule of law**. This means that all people must comply with the law. The **principle of legality** is a core value and also a fundamental defence in criminal proceedings – to protect those accused of crimes from arbitrary deprivation of freedom. It requires police officials to act according to the same standards when executing their legal mandates.

The arrest must be:

- = Procedurally correct; and
- = Carried out by an authorised person.

Not arbitrary

This means that there must be a legal ground for the arrest. Arrest **cannot be arbitrary**. There must be a legal requirement or 'evidence' of some kind on which to base grounds for arrest.

Policing in Accordance with the Rule of Law

a. The police will fulfill their functions in accordance with the rule of law. The police will:

- i. not arbitrarily arrest or detain and will only deprive persons of their liberty in accordance with the law;

The police will adhere to the rule of law as an essential element to human security, peace and the promotion of fundamental rights and freedoms.

(EAC Common Standards 1. Role of the Police (iii))

Trainer

Remind participants that we are focusing on arrests without a warrant here, as these are trickier as there is usually no planning or preparation, so you are making judgements in situations which might be out of your control. When the police make an arrest with a warrant, the suspect is identified and the charge has already been formulated.

The word 'arbitrary' has several meanings, but in the context of the principle of legality, it means without a legal basis and without **evidence** of some kind to substantiate the reasons. In other words, *you may not arrest* someone:

- = based only on information from an anonymous source; or
 - = based on mere suspicion that does not amount to a reasonable belief.
- (EAC Standard Operating Procedures Arrest, Justification for Arrest, (3))

The opposite of arbitrary = legal/procedurally correct, reasonable (a reasonable person in that position) + evidence.

Reasonableness and evidence = probable cause

The opposite of arbitrary is lawful and **reasonable**.

Lawful is according to procedures set out in law.

To establish reasonableness, we ask: Would a reasonable police official who applies the facts and circumstances to this situation come to the same conclusion – that is, consider this enough **evidence** for an arrest?

In other words, are there **objective independent corroborating facts** that provide **probable cause**? For example, either the person is in the act of committing an offence, or there are reasonable grounds to suspect that he or she is about to commit an offence.

The EAC Standing Operating Procedure says arrest is permissible:

where facts and circumstances within a police officer's knowledge are sufficient to provide a reasonable person with grounds for believing that the suspect has committed, is committing, or is about to commit an offence.

Trainer discussion: Compare suspicion with probable cause

Ask participants to compare the Common Standard on arbitrariness for stop and search (procedural compliance, reasonable person in that situation + prior suspicion) with the standard for arrest (reasonable person in that situation + evidence or probable cause).

Then discuss which of these scenarios in the slide they think meet the requirement for probable cause for arrest.

Case study



You are manning a roadblock. The following vehicles approach. For which vehicles would you arrest the suspects? Provide reasons why.

1. An old vehicle with no licence plates. Occupants have all the necessary documentation: driver's licence and registration information regarding ownership, there are no outstanding fines on this vehicle.
2. A vehicle that meets the description of an armed robbery: registration number, colour and make. The passengers are an elderly people.
3. You have received intelligence information regarding a proposed terror attack in the area by a militant Islamic group. Which of these people would you arrest, or not, and why?
 - a. A vehicle with four males wearing traditional Muslim dress. They have all necessary documentation for the vehicle.
 - b. A vehicle with a woman and child. The vehicle is registered as stolen.

Trainer

After the discussion, you can compare their answers with the examples given in the EAC Standard Operating Procedures regarding what constitutes probable cause.

Probable cause for arrest

- ≡ Objectively determined facts, such as *finding a weapon* on the individual or *witnessing the offence*;
- ≡ Information or evidence obtained *during the STOP AND SEARCH* of a person reasonably suspected of having committed or being about to commit an offence; or during a consensual contact with the person;
- ≡ Information from *an identified person* who has brought a complaint against someone in a police station;
- ≡ Information provided by *an established reliable informant*; and
- ≡ Information from *other law enforcement sources*.

(EAC Standard Operating Procedures Arrest, Justification for Arrest, (3))

Trainer

Remind participants that we will deal with procedurally correct arrests in the second part of this module on arrest.

Requirement 2: Prohibition of discrimination – equal protection before the law

Trainer

Previously we talked about the prohibition against discrimination when stopping and searching someone. We continue this. Put up the slide and read through it. Point out that refugees are included as citizens.

The police will act in a manner that ensures all citizens enjoy their fundamental rights and freedoms without discrimination and specifically conduct themselves in a way that does not discriminate against women, juveniles and **minority communities** (including but not limited to the differently abled, migrants, internally displaced persons and refugees).

Police who are in frequent contact with suspects, offenders, victims and witnesses from these groups should receive sensitisation training.

(EAC Common Standards 3, Police Actions (iii))

Trainer: Case study



Small group discussion, followed by plenary report back. Give the participant these facts:

You get a report of cattle theft near your station. You arrive at the farm of the alleged theft. There you see that some people have set up shacks on the farm, and are busy roasting a carcass of an animal. You assume they are illegal occupiers (as the land is owned by the state) and are possibly refugees. As you arrive, three young men get up and start running away. Following on our discussion around stereotyping and profiling of yesterday:

1. Identify the groups or stereotypes in this scenario. (Youth, refugees, illegal occupiers)
2. Applying what you know so far about the Common Standards, would you arrest:
The youth?
The people roasting the carcass?
Anyone else?
3. On what grounds? What are the objective facts you can articulate to substantiate an arrest?

Requirement 3: Humane treatment

The last requirement for arrest is that arrest must be done **humanely**. This principle derives from the fundamental human right that **no one should be subjected to torture, cruel and inhumane treatment or punishment**.

The police will act in a manner that:

- = upholds the absolute prohibition on the use of torture and other cruel, inhuman or degrading treatment or punishment. The police will not inflict, instigate or tolerate any act of torture, cruel, inhuman or degrading treatment or punishment. No circumstances will override this prohibition, including threats of war, political instability or periods of emergency.
 - = ensures all persons deprived of their liberty are treated humanely and with respect for their inherent dignity.
- (EAC Common Standards Police Actions 3(iv) and (v))

No torture or cruel, inhuman or degrading treatment

Humane treatment is defined as being the opposite of inhumane treatment, and **torture and other cruel, inhuman or degrading treatment are forms of inhumane treatment**. In fact, in some countries, torture is a specified statutory offence.

Trainer discussion: Plenary discussion

Discuss with the participants what torture means, drawing out their ideas.

In the legal sense, what constitutes torture? What is cruel, inhuman, degrading treatment?

Is torture by definition physical? What about verbal or mental torture? Can you think of examples where inflicting mental pain might be considered torture?

Can torture be a one-off event? Or must it be repeated and consistent over time?

Is it torture if it is inflicted unintentionally? Or must it be intentional?

Must there be a purpose to the torture? For example, to get information?

If your father beats you, is it torture? Or must it be done by or with the knowledge of an official?

Is it torture if an official takes clothes away from a woman in detention as a way of humiliating her, and promises to give her clothes back if she gives information?

Put up and discuss the following definition of torture in PP23 taken from the Convention against torture and other cruel, inhuman or degrading treatment or punishment.

Definition of torture:

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

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 1

Vulnerable groups

To look at the requirement of humane treatment, positively it means that police officials have a **duty to accommodate vulnerable groups**. Not doing that would be cruel, inhumane or degrading.

Special attention to the vulnerable – children, juveniles, elderly, sick or injured, in particular the interests of children or juveniles – must be considered when they are arrested or detained.
EAC Standard Operating Procedures, 2.2.

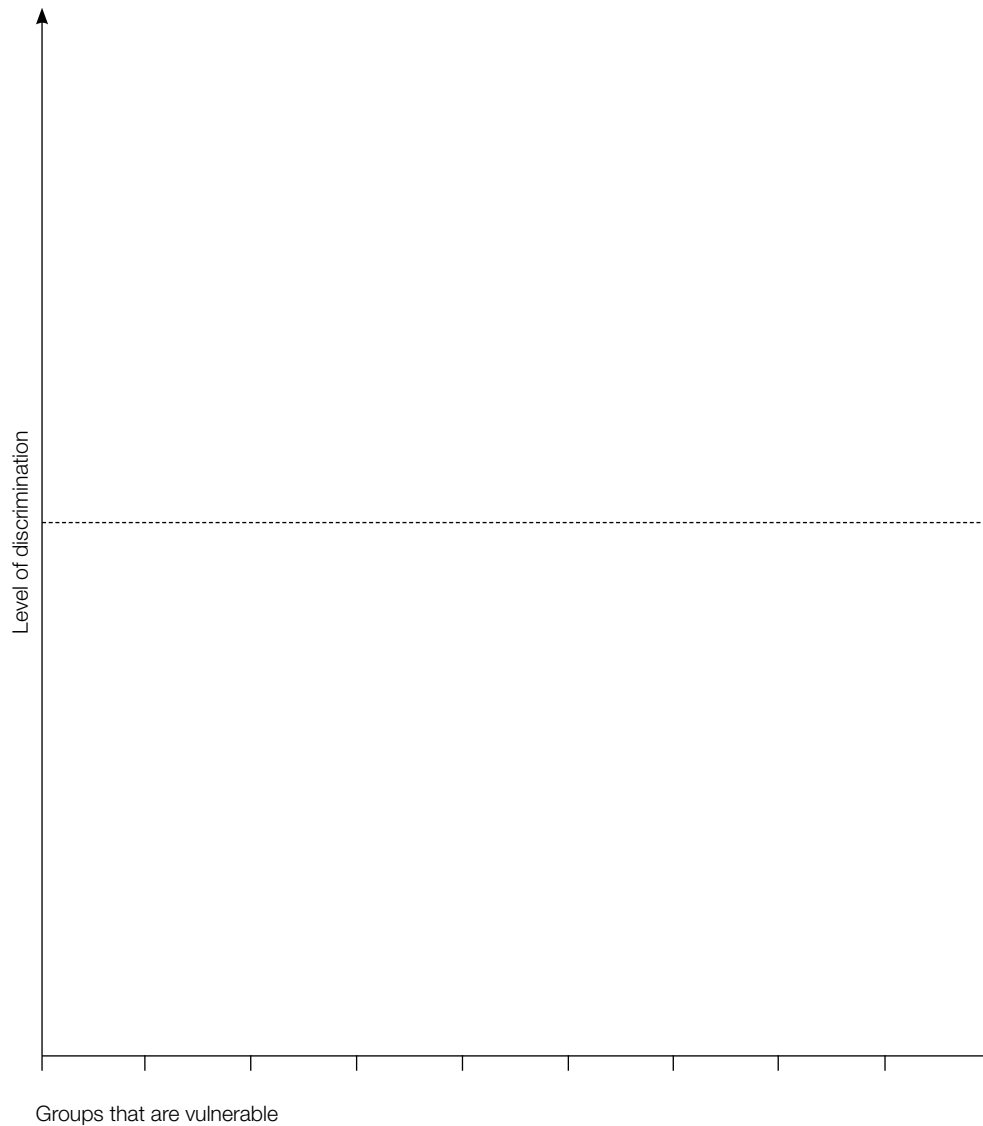
Trainer discussion**Small group work**

In their group, participants must brainstorm which groups are vulnerable in their society.

What you want to bring out is that vulnerable groups is an open-ended concept. There is no closed number. Any group can be considered vulnerable if they are vulnerable to abuse or exploitation. A group that is vulnerable in one context may not be vulnerable in another. The key word is vulnerability to physical, societal or financial abuse or exploitation.

Then point the participants to the graph in their manual. Explain that in the graph, the dotted line shows a group that is not vulnerable. Ask participants to decide which group they think this might be. Then ask them to place the groups they identified as being vulnerable on the graph, below the line at the level of vulnerability they think they are.

Then ask them to say what they would do to accommodate them (i.e. bring them up to the same level as the norm) during arrest. For example, police should get a person who can use sign language if they have arrested a deaf person. Do a report-back at the end.



Trainer: Vulnerable groups

Readings on vulnerable groups

Allow participants time to read through the excerpts below from relevant international instruments on vulnerable groups. Ask for questions or comments.

Injured and sick

The police will act in a manner that:

- viii) facilitates assistance from medical practitioners
(*EAC Common Standards Police Actions, 3*)

Detainees requiring urgent medical attention should not be taken to a police station. If staff are in doubt about a detainee's medical condition an ambulance should be called. Consideration should be given to the need to take a person directly to hospital, having regard for the potential impact of waiting for an ambulance to arrive and the potential risks associated with moving the person. Clinical direction should be sought whenever required.

(EAC Standard Operating Procedures, 4.3)

Women

Defining discrimination against women:

... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field.

(Convention on the Elimination of Discrimination Against Women (CEDAW), Article 1)

Disabled

Definition:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

(Convention on the Rights of Persons with Disabilities, Article 1)

Discrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation ...

(Article 2)

Obligation to make reasonable accommodation:

Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms ...

Aged and disabled

The aged and the disabled shall also have the right to special measure of protection in keeping with their physical or moral needs.

(ACHPR, Article 18 (4)).

Trainer: Round-up and quick test

Tell participants we have covered the three requirements for a lawful arrest in terms of the Common Standards. Do this quick test with them before stopping for a break. Go over the answers after the break.

1. What is the fundamental right that is infringed when making an arrest?
2. What are the three key principles for a lawful arrest?
3. Which of the principles for arrest are the same as those for a lawful stop?
4. If the negative principle is non-discrimination, what is the positive one?
5. True or false? There is a finite number of vulnerable groups.
6. True or False? Religious ministers can never be part of a vulnerable group.
7. True or false? You may torture a person for information during times of civil war/unrest.

PART 2: Procedures when making an arrest

Learning outcome

Participants will be able to:

- Participants must be able to articulate the different phases of making an arrest, and the legal and operational requirements for each phase.

Procedure on arrest



Trainer: Video clip of man arrested on suspicion of counterfeit CDs

You are going to show participants real footage of a man being arrested in the United States. Give them this context before you show it: Police had received a tip-off about a man who was distributing counterfeit CDs. They stop him in the street.

Show it twice. Have a plenary discussion on the clip. Some of the points you want to raise are:

- Was there any infringement of the man's rights to freedom, dignity or privacy?
- Were the police authorised in law to stop the man?
- Was this a stop and arrest with or without a warrant?
- Which of the principles for a lawful stop in terms of the Common Standards were met?
- Was the man stopped procedurally correctly? (For example, was he told the reason for being stopped? Did the officer give his name?)
- Was the stop proportional to the alleged offence? Could the police have gone to his home rather than stopping him on the street?
- Was he questioned correctly? Searched?
- Was there evidence that warranted the arrest? Or any other factors? For example, was he in the act of committing a crime? Was he hostile? Armed?
- He was a large person. The police put him in a choke position and laid him on the ground. Was this lawful in terms of the Common Standards? Was the life of a police officer in danger? Was the life of anyone else in danger? Was it necessary to arrest him? Could the police have asked him to come to the station voluntarily instead?
- Did the police tell him he had a right to be silent?
- Was the arrest likely to be successful?
- Were bystanders in any danger?
- Were the police officers in any danger?
- Was there adequate planning for this arrest?

1. Preparation/planning of an arrest

Trainer

Tell learners that one of the biggest problems with the situation in this clip was that there was no planning. The lack of planning led to a chaotic situation that resulted in a tragic and unnecessary death.

Arrests shall be **planned in advance** wherever possible in consultation with an **officer in charge** or more experienced officer. Where not possible arrests should be made in accordance with training in arrest procedures.

Whenever possible arrests shall be made **at a time and place** and in a **manner** that will **maximise successful arrest** probability and **minimise danger to police and bystanders**.
(EAC Standard Operating Procedures, 4 (4.1))

How could they have approached this differently if they could have planned it?
What benefit would such planning have had? For the police? The community?

2. Informing arrestee of reason for arrest

A second aspect of the procedure is to:

Promptly inform accused persons of the *reasons for their arrest* and any charges brought against them – to be communicated in a *way and manner* they understand.

Ensure arrested and detained persons have *access to interpreters and legal assistance*, as required.
(EAC Common Standards, 2(a) (ii) and (vii))

The key principles here are:

When: Promptly = at time of arrest.

Trainer

Ask participants: What if a person is injured by a bullet? Losing consciousness? What if the person speaks a foreign language?

Give reasons: What is the purpose of having to give reasons?

≡ To prevent arbitrariness.

- ≡ To give person a sense of the seriousness, so they can make an informed decision about legal representation.
- ≡ Must be a charge that exists in law. Cannot be vague.

How: Communicate reasons in a manner that the other person can understand

- ≡ What is required of the police when dealing with a foreign language?
- ≡ A deaf person?
- ≡ A mentally impaired person?
- ≡ A person under 18? Would you arrest a person under 18?

3. Informing arrested person of his or her rights

The EAC Standard Operating Procedures detail the rights of arrested people.

- ≡ The right to *remain silent*;
- ≡ That anything that they say may be *used in evidence against* them;
- ≡ The right to be *assisted by a lawyer* or any other legal assistance of his or her choice and be provided with *reasonable facilities* for exercising this right;
- ≡ Provide the arrested person with the *means to notify relatives* (or another person of the arrested person's choice) of the arrest and the place where he or she is kept in custody. This should be *at the time of arrest, detention, imprisonment and transfer*;
- ≡ Information should be provided in a *language, sign language and format* that is understood by the arrested person;
- ≡ For **non-citizens**, the consular authorities of the state of origin of a detained foreigner should be **notified without delay**; and
- ≡ For **refugees or stateless persons**, the authorities responsible should be **notified without delay**.

(EAC Standard Operating Procedures, 5.15, 5.16, 5.17)

4. Securing the suspect – use of restraints during arrest

Trainer

Tell participants that we will do a separate module on the Use of Force, so we are not going to deal with it here.

What is important to know at this stage is that the police have a duty not to adversely affect life, liberty of security. Put positively, the police must uphold the right to life, liberty and security.

The EAC Common Standards say:

The police will protect life, liberty and security of the person ... in the exercise of their functions, police *must not themselves adversely affect life, liberty or security* without legal justification. Permissible derogation includes lawful arrest or the legitimate and proportional use of force.

(EAC Common Standards, 1 (a))

The police must ... act in accordance with the rule of law (for example, abide by restrictions on the use of force and deprivation of liberty).

(EAC Common Standards, 3 (a))

Trainer

Tell participants that we will deal with the use of force extensively in a later module.

The police will act in a manner that *upholds the right to life, liberty and security of the person by only using force and firearms when strictly necessary* and only to the extent required for the fulfillment of their lawful duty;

(EAC Common Standards, 3. Police Actions (ii))

6.1 When **non-violent means are ineffective** or **without any promise** of achieving the intended result, use of force would only be used in the following situations, and in accordance with the provisions below:

c) To lawfully arrest someone suspected of committing an offence, if that person is resisting arrest;

(EAC Standard Operating Procedures Use of Force, 6)

Force cannot be used when questioning a person or when arresting a person, unless the person is actively resisting being handcuffed or transported

(EAC Standard Operating Procedures, 9. Arrest and Detention. 9.1)

What provisions exist in your country governing **types** of restraints? Which are permissible?

In which circumstances would you use a restraint? What kind of restraint? Would you use restraints on children? Women?

This is what the Common Standards say:

The Police will act in a manner that:

- iv. upholds the *absolute prohibition on the use of torture and other cruel, inhuman or degrading treatment or punishment*. The police will not inflict, instigate or tolerate any act of torture, cruel, inhuman or degrading treatment or punishment. *No circumstances will override this prohibition, including threats of war, political instability or periods of emergency.*
 - v. ensures all persons deprived of their liberty are *treated humanely and with respect for their inherent dignity*;
- (EAC Common Standards, 3. Police Actions)

In the video clip we saw before, the choke position was used to restrain the person. Why do you think the officer chose that? Would you have used that position? Why is the choke position dangerous? What other bodily restraints are there?

Trainer

Ask participants to demonstrate some, and discuss the merits and demerits of each. With people? Large person? Older person? Armed person? Drunk person? Homeless person? Prostitute? Rich man?

Go through the text below with the participants.

5.7 People who are restrained by *handcuffs or other means* are an additional risk of *dying from asphyxia* (lack of oxygen) if they experience difficulty breathing and cannot change their position.

5.8 Factors that increase the risk of asphyxia include:

- a) If the arrested person is *prone* (lying down) whilst also handcuffed.
- b) *Pressure placed on the neck, chest or any other part of the upper body* by the person who is applying the restraints.

5.9 The *prone position should be avoided* for people who are restrained especially *during transport*. If it is unavoidable the arrested person must be constantly monitored to ensure that they can breathe.

Body weight should not be used on the upper body to hold down the arrested person unless this is unavoidable. If it is unavoidable it should only be for a short duration.

(EAC Standard Operating Procedures, Arrest and Detention, 5. Handcuffs and Restraints)

Trainer

Ask participants about the use of handcuffs.

When would they use them? When not? What are the risks? What are the benefits of handcuffs? Would they handcuff two people together? What if someone is injured?

Compare what the EAC Standard Operating Procedures say about handcuffs and your practices. Do they agree?

This is what the EAC Standard Operating Procedures say about handcuffs:

- 5.1 Arrested people, should be restrained by means of handcuffs *if they pose a danger to the police, others, themselves or pose a risk of escape*. It is the duty of the police officer to assess potential harm to the suspects if two persons are handcuffed together.
- 5.2 In assessing whether the person poses a danger of is likely to escape factors that should be considered include:
 - a) The *seriousness of the offence* for which arrested;
 - b) Any *violent actions or threats prior to the arrest* (even if the person is not arrested for an offence of violence);
 - c) Factors such as *age and gender, physical condition, size and apparent strength and fitness*.
- 5.3 Additional restraints may be used if necessary if this complies with the law.
- 5.4 If the person has an *injury or condition* that would be aggravated by handcuffing and physical restraint is necessary alternative options should be applied if possible.
- 5.5 If the arrested person *does not pose a danger to the police or others and does not pose a risk of escape, handcuffs and other restraints should not be applied*.
- 5.11 Whether or not they are restrained by handcuffs or by other means, arrested persons should be kept under constant observation until they are placed in a police vehicle or custody facilities.
(EAC Standard Operating Procedures, Arrest and Detention, 5. Handcuffs and Restraints)

Trainer

Ask participants whether the material that a restraint is made of matters.

- 5.5 *Metal or fabric restraints should be considered over plastic restraints*. However, if plastic restrains are used, they should be replaced with metal or fabric alternatives at the earliest possible opportunity. When plastic (or indeed any restraints) are worn, the subject should be checked regularly for indications that they may be experiencing injury or negative effects and any necessary remedial action immediately taken. This is particularly important in mass

arrest situations, where it may be easy to overlook the situations of particular individuals.

(EAC Standard Operating Procedures, Arrest and Detention, 5. Handcuffs and Restraints)

5. Searching arrested people

We dealt with searching in the previous module where police search prior to arrest. When a person has been arrested but not yet searched, the Standard Operating Procedures say:

Officers shall conduct a thorough search of the person arrested.
(EAC Standard Operating Procedures, 5 (5.12) Handcuffs and restraints)

Discuss

- Do the same rules relating to search apply after arrest? For example, should women only be searched by women? Do arrested people lose their right to privacy and dignity?

6. Transporting arrested people

This section deals with how arrested people should be transported. Go through the PP slide, pointing out which categories of people should be separated for two reasons:

- = the duty of care towards vulnerable people
- = to prevent the risk of injury.

6. Transport of arrested persons

- = Vehicles should be *searched prior to and following* the transportation of any arrested person.
- = Detainees, who are or have been, *violent* and who continue to present a risk to others, other those suffering from *mental health* problems, must not be transported with other detainees.
- = *Female* arrestees shall be transported separately from male arrestees and accompanied by female police officers.
- = When placing a detainee in a vehicle, *care should be taken with individuals*; especially those with physical disabilities or who are restrained with handcuffs or leg restraints, as this can increase risk of injury.
- = Arrested *children* should not be transported with adults.
(EAC Standard Operating Procedures, 6.)

Case study

A group of nationals attack some refugees' homes, torching and burning their property. The refugees retaliate. Your unit arrives and identifies five nationals (one woman and four men) and one refugee who you observe being violent. You search and arrest them. You only have one vehicle available to transport the six suspects. The situation is very volatile and you cannot wait for another vehicle to separate the nationals and refugee suspects who are still displaying aggression towards each other. Only two police officers can accompany the suspects in a lock-up vehicle.

- ≡ Which police officers would travel with the suspects?
- ≡ What measures, including restraints, would you use?
- ≡ What factors have you considered in deciding on this approach?
- ≡ Which regional instruments did you use to come to your decision?
- ≡ Which of these measures would be impossible or difficult to implement in your domestic policing situation?

7. Recording information

Discuss

- What is the purpose of recording information?
- Should you wait until you get to the station to record information, or should it be done at the scene? Or both?
- Who is responsible for recording information at the station?
- How are occurrence books numbered?
- Are they checked or secured daily or weekly?
- How is integrity of information secured?
- Which information would you include?

Information about each arrest MUST be recorded:

- ≡ On the scene in the police officer's note book; and
- ≡ On arrival at the station in the occurrence book (with numbered pages and updated).

(EAC Standard Operating Procedures, Arrest and Detention, 7. Recording of Information)

Information must include:

- ≡ Identity;
- ≡ Date,
- ≡ Time and place of arrest;
- ≡ Place of custody and time taken to place of custody;
- ≡ Reason for arrest;
- ≡ Compliance issues/resistance;
- ≡ Confirmation arrested person informed of rights;
- ≡ Allegations or complaints of assault/torture, identity of officers involved, including the arresting officers;
- ≡ Date and time of release/transfer to another place of custody.

(EAC Standard Operating Procedures, Arrest and Detention, 7. Recording of Information)

PART 3: Arresting a child suspect

Learning outcome

Participants will be able to:

- Understand and be able to articulate the special provisions applying to children and reasons for the different treatment of children.

Matching exercise

Work on your own

Children are a vulnerable group, and as such have to be treated differently in various ways. Society should always act in the best interest of the child. There are numerous instruments that deal with the rights of the child who has been arrested. We include some extracts here. Other instruments are at the end of the manual. (We will discuss the rights of the child in detention in that module).

In the left hand column are extracts from some of instruments that you must match to the heading in the right hand column. As you are doing this, think about the challenges of arresting children in your domestic policing environment.

The correct corresponding number is in under the heading columns. For example, DEFINITION OF A CHILD matches with 12.

	Rights of an arrested child	Heading or description
1	Article 1: For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. (Convention on the Rights of the Child (CRC))	DUTY OF CARE AND ACCOMMODATION 1
2	Article 37: States Parties shall ensure that: No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age. (Convention on the Rights of the Child (CRC))	LAST RESORT 2
3	Assisting him or her in accessing counselling or other support. (EAC SOP 8. Arrest and detention of Children in conflict with the law)	LESS HARMFUL MEASURES PREFERRED TO DETENTION 3
4	Children shall be guaranteed the right to the presence of a parent or guardian or any other official with legal responsibility for the child, during any investigative interview or other proceedings. (EAC SOP 8. Arrest and detention of Children in conflict with the law)	INFORM PARENTS RIGHT AWAY 4
5	Children shall be transported and detained separately from adults. (EAC SOP 8. Arrest and detention of Children in conflict with the law)	CONFIDENTIALITY 5
6	Contact between law enforcement agencies and child offenders shall be managed in such a way as to respect the legal status of the child, promote his or her wellbeing and avoid harm to him or her with due regard to the circumstance of the case. (EAC SOP 8. Arrest and detention of Children in conflict with the law)	AVOID IMPRISONMENT BY FINDING ALTERNATIVE MEASURES 6

	Rights of an arrested child	Heading or description
7	Detention of children pending trial shall only be used as a measure of last resort and for the shortest possible period of time and in accordance with existing international instruments. (EAC SOP 8. Arrest and detention of Children in conflict with the law)	COUNSELLING AND SUPPORT 7
8	No information that may lead to the identification of a child shall be published. (EAC SOP 8. Arrest and detention of Children in conflict with the law)	KEPT APART FROM ADULTS 8
9	Respecting the child's right to have his or her identify protected from disclosure to the public. (EAC SOP 8. Arrest and detention of Children in conflict with the law)	PROHIBITION ON PUBLISHING INFORMATION LEADING TO CHILD'S NAME 9
10	Special attention to vulnerable – children, juveniles, elderly, sick or injured in particular the interests of children or juveniles must be considered when they are arrested or detained. (EAC SOP 2.2.)	PROHIBITION OF TORTURE, CAPITAL PUNISHMENT 10
11	States Parties shall ensure that: ... c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. (Article 37 Convention on the Rights of the Child (CRC))	SEPARATION FROM ADULTS 11
12	Upon apprehension of a child her or his parents or guardian or other official legally responsible for the child shall be immediately notified of such apprehension. Where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter. (EAC SOP 8. Arrest and detention of Children in conflict with the law)	DEFINITION OF A CHILD 12
13	Whenever possible detention pending trial shall be replaced by alternative measures if such alternative will be less harmful. (EAC SOP 8. Arrest and detention of Children in conflict with the law)	RESPECT LEGAL STATUS, PROMOTE WELLBEING AND AVOID HARM 13
14	Wherever possible and appropriate seeking to make use of measures intended to divert the young person from the criminal justice system including cautions or warnings or restorative justice measures. (EAC SOP 8. Arrest and detention of Children in conflict with the law)	RIGHT TO GUARDIAN OR PARENT IN INTERVIEWS 14

Homework: More about arrest

Work in small groups

Case study

You arrive at a scene where a female child suspect has been accused of murdering of an adult male. The child is female and aged 12. She alleges she was raped and acted in self-defence.

Make notes on the process you would follow in applying the abovementioned principles from the moment you arrive on the scene and the provisions in the EAC Common Standards or other instruments that you are guided by. Consider any possible alternatives to arrest that might be appropriate.

Case study

Think back to an arrest in your country without a warrant that was controversial. Make notes.

- ≡ Describe the arrest. What was the situation? Who was arrested? Was there any planning?
- ≡ Which law in your country governed the arrest?
- ≡ Did the arrest meet the Common Standards for lawfulness – rule of law (legality and grounds), non-arbitrary; procedurally correct; authorised person; non-discriminatory; humane? Describe how or how not.
- ≡ Did the arrest meet other international instruments for arrest, such as the Luanda Guidelines? Describe how/how not.
- ≡ What restraints were used?
- ≡ How were the suspects transported?
- ≡ Were any of the following rights respected? Or infringed?
 - » The right to be presumed innocent until proven guilty;
 - » The right not to be subjected to arbitrary arrest and detention;
 - » The right to equal protection before the law;
 - » The right of respect of the inherent dignity of a human being and recognition of his legal status; and
 - » The right to be informed of reasons for arrest at time of arrest.
- ≡ Thinking back on it today and knowing what you know about the Common Standards, could the situation have been dealt with differently?

Case study

Does the law in your country align with the Common Standards?

Think about what the law of your country says about arrest, in terms of:

- ≡ How, for what reasons and to what extent you can physically touch the person being arrested
- ≡ Informing of the reason for the arrest
- ≡ Use of restraints
- ≡ Use of force
- ≡ Rights of arrested person
- ≡ Classes of people who may be arrested (vagabonds, habitual criminals by reputation)
- ≡ Different use of force for different types of arrests (e.g. escaped prisoners, dangerous people, children)

MODULE 4

Detention

Learning outcomes

Participants will be able to:

- Understand the key human rights principles and their application to detention. These include requirements for a lawful detention (procedural and substantive requirements) and the duty to accommodate vulnerable groups such as women and children with regard to the decision to detain, transportation and cell allocation;
- Understand what constitutes 'detention', including all forms of police custody prior to incarceration and pre-trial detention;
- Understand the rights of detainees and how procedural guarantees contribute substantively to protect the human rights of detainees;
- Apply these principles in practice by assessing different scenarios in which police might detain someone in relation to the Common Standards and Standard Operating Procedures.

Trainer

Tell participants that this module is about detention. Throughout the course, our modules will follow the most common sequence of policing procedures, that is: first stop and search, then arrest, then detain. Show participants where we are in the sequence using the following slide.

Order of police procedure

Stop and search

Before arrest
Planning and preparation

When arresting

- Informing of rights and reason
- Securing the suspect
- Restraining suspect
- Search of suspect
- Recording information

When transporting suspect
Restraining suspect

When in detention
at police station or place of detention

Trainer: Pre-assessment exercise

Participants work alone.

This exercise aims to assess what participants know as well as their views on detention before and after the module. It is a good way for you to assess whether any attitudes have changed and what the participants have learnt by doing this module.

Give participants a few minutes to write down the answers to these questions. DO NOT go over them now.

We will return to them at the end of the module, when participants can test their prior knowledge of detention against what they have learnt in this module.

Answer True or False

1. If you arrest someone, you must also detain them.
2. Detention should be the exception, not the rule.
3. A person who has been lawfully arrested (in other words, the arrest was based on reasonable evidence, non-discrimination and was procedurally correct) loses their fundamental right to freedom.
4. A detainee may not consult with their legal representative in private and out of earshot. An officer must be present.
5. A mother and her male child of 12 years may be kept in the same cell.
6. Convicted criminals and people in detention can share cells if their offence is the same.
7. The officer in charge of a station is responsible for everything that goes on in the cells.

PART 1: Defining detention

Defining detention and types of detentions

Trainer: Discussion

Start by asking participants what kinds of detention there are. What is the essence of detention? Is a person who has been convicted of a crime and sent to prison in detention? What you want to get out of this discussion is that in its wide sense, detention is any form of deprivation of liberty by an official. The moment a person's movement is confined by an authority, it constitutes detention.

Detention is the limitation of the human right to liberty and freedom.

'Detained person' means any person deprived of personal liberty except as a result of conviction for an offence.

Detention means the condition of detained persons as defined above.

(Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment)

So, there are various forms of detention; we have already covered some.

1. The person who has been stopped by police, is detained (even though briefly).
2. The process of arresting someone is a form of detention as that person's movement is restricted.
3. The person who is in police custody after arrest, is detained.
4. The person who has been ordered by a judicial authority to detention while awaiting a trial, or during the course of a trial, is in detention.

Fundamental human rights that may be infringed when detaining someone

We've said that within a human rights framework:

Detention is the limitation of the human right to liberty and freedom.

However, even while in detention, people retain certain rights. These include:

- = The right to be presumed innocent;
- = The right to equal protection before the law – prohibition of discrimination and right to due process;
- = The right to human dignity – to be treated humanely, not to be tortured or ill-treated;
- = The right to legal assistance; and
- = The right of access to court.

We will discuss these in detail later.

Three requirements for a lawful detention according to the Common Standards

Therefore, to justify detaining someone without infringing their human rights, it has to be done lawfully and in compliance with key principles. The Common Standards have three requirements for a lawful detention. They are:

- ≡ It must be done according to the rule of law (by a lawful authority and procedurally correctly);
- ≡ It must have a legitimate objective; and
- ≡ There is a duty to accommodate vulnerable groups.

We'll discuss each of these.

Note that these requirements are the requirements of the Common Standards. Additional procedural requirements may exist in legislation for different jurisdictions. They are based on international best practice.

Throughout this module, think about and discuss what the provisions are in your domestic law relating to detention.

Requirement 1: Rule of law – principle of legality – founded in law

Having been through the requirements for stop and search and for arrest, we know by now that every police action must be founded in law. What does this mean?

Ask participants what that means in relation to detention.

Trainer

Answer:

- That it can never be arbitrary;
- That the motivation for detention must have a legitimate basis – in other words, it must fit the purpose of detention and it cannot be motivated by discrimination;
- That it must be done according to the law (procedurally correctly);
- That there must be established grounds (a charge that has already been laid); and
- That it must be in a place that is officially a place of detention.

The police will ... not arbitrarily arrest or detain and will only deprive persons of their liberty **in accordance with the law**.

(EAC Common Standard Policing in Accordance with the Rule of Law 2. Policing in Accordance with the Rule of Law a (i))

Detention must be ordered on grounds that are clearly **established in law** and must not be motivated by discrimination of any kind (including, but not limited to, race, gender, nationality or political views).

Where detention is the only option, detention must be carried out **in strict accordance with the law**, in an **officially Gazetted Detention Facility** and where possible reasonably near the suspects place of residence.

(EAC Standard Operating Procedures, B. Detention, 9. General (9.1–9.2))

Summary of legality

- ≡ Lawful/non-arbitrary – motivation for detention must have legitimate basis, i.e. purpose of detention;
- ≡ Period of detention – legal requirements, last resort;
- ≡ Place of detention – gazetted/official detention facility.

Requirement 2: Legitimate use of detention

Although the purpose of detention in police custody is to keep the person until he or she can appear before a court, it is not always legitimate to do so.

These are the circumstances in which it is legitimate to detain someone:

Unnecessary detention should be avoided. Efforts should be made to limit the use of pre-trial detention to circumstances where:

- ≡ There is a legitimate fear that the defendant poses a violent threat to other people; or
- ≡ There is reason to believe that the defendant will intimidate witnesses or interfere with the lawful collection of evidence; or
- ≡ There is reason to believe that the defendant will flee from justice and release on bail is not likely to be sufficient in preventing this.

(EAC Standard Operating Procedures, B. Detention, 9. General 9.3(a), (b), (c))

Activity Scenarios

Work with a partner

Based on the above, which of these scenarios describe legitimate use of detention?

1. At a roadblock, you arrest a woman for drunk driving. You take her to the detention facility. Can you legitimately keep her there until she appears before the court 48 hours later?

Trainer

Possibly. You could detain her until she sobers up on the basis that she could harm herself or others, for example, by driving drunk, but you could probably not detain her for as long as 48 hours.

2. A man in a shopping centre is brandishing a gun and threatening people. You arrest him and take him to the detention facility. Can you legitimately detain him?

Trainer

Yes. All four criteria for legitimacy apply.

3. Residents of a certain area have been looting shops in the area. Many photographers have taken photos of the people looting. You arrive on the scene. You arrest 20 people and take them to the station. Would you detain them?

Trainer

Possibly. If you know where they live and they are not likely to flee, it would be unnecessary. On the other hand, they may intimidate witnesses. You'd have to weigh up whether the infringement of their right to liberty is justified in this case.

Detention must always be an exceptional measure of last resort.

(Luanda Guidelines, 6. a. General Provisions)

Detention should be an exception rather than a rule and for as short a time period as possible.

(EAC Standard Operating Procedures, B. Detention, 9. General (9.1–9.2))

Summary of legitimate purpose:

- ≡ Last resort;
- ≡ Criteria justifying detention: flight, threat to life of others, intimidation of witnesses.

Requirement 3: Obligation to accommodate vulnerable groups and to consider alternatives to detention

In the module on arrest, we discussed how it should always be a last resort. This is especially so with children, and especially if children commit minor crimes, such as a first offence of shoplifting.

The same applies to detention. It should only be used in cases that are serious and where there is no alternative. A person who steals a bag of potatoes should not be held in police custody. People with disabilities and other vulnerable groups should also not be held in conditions of custody that cannot accommodate their needs and if you can make alternative arrangements.

Where appropriate, particularly for minor crimes, efforts should be made to **divert cases away from the criminal justice system** and utilise recognised and effective **alternatives** that respect applicable international law and standards. Alternatives to arrest and **detention** should be promoted under a framework that includes reasonable accommodation for persons with **disabilities**, and a framework that promotes the best interests of children in conflict with the law.

(Luanda Guidelines, Arrest, 1. c. General Provisions)

Special attention should be given to alternatives to detention for parents who are the principal care givers for young children.

(EAC Standard Operating Procedures, B. Detention, 9. General 9.4)

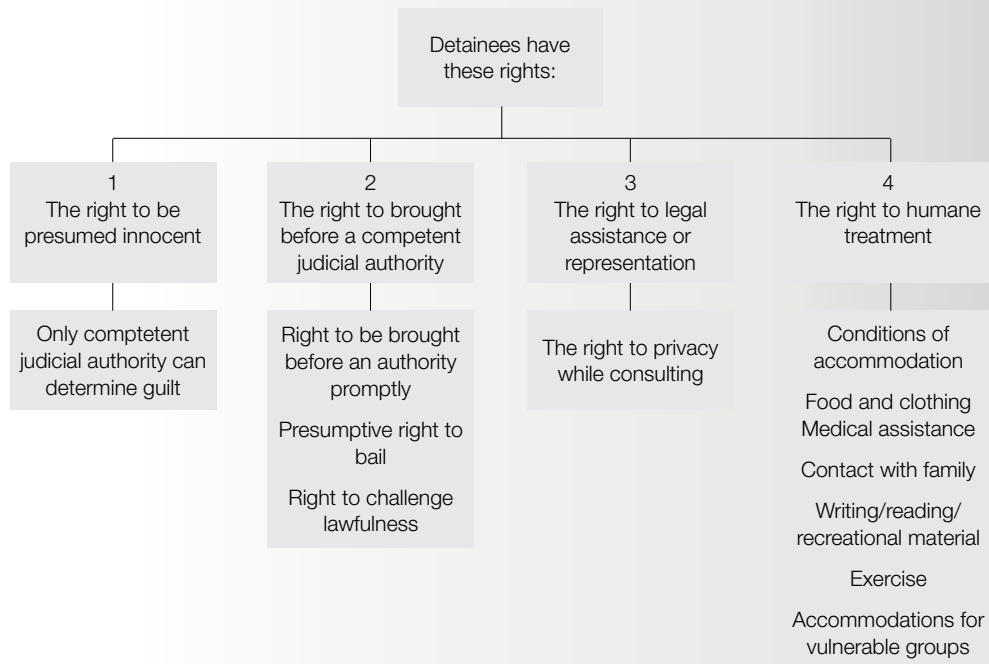
Summary:

Duty to accommodate needs of vulnerable groups in decision to detain and consider alternatives and detention conditions.

PART 2: Rights of detainees

Detainees in police custody do temporarily lose the right to freedom and liberty, at least until they are released or come before a court.

They do, however, retain other rights:



We'll discuss each of these. As we do so, reflect on the practices in your country.

1. Right to be presumed innocent

Police will act in a manner that: considers and treats all persons deprived of their liberty as innocent until proven guilty by a competent judicial authority

(EAC Common Standards, 3. Police Actions vi)

Discuss

Why can only an authorised judicial authority make a decision to deprive someone of his or her liberty? Shouldn't a commanding/senior police officer be able to make that decision? Or would that be open to abuse?

2. Right to be brought before a competent judicial authority within the prescribed period

Ask what some of the challenges for prompt access to courts are in your situation. What is the maximum time allowed in your law for a detainee? Different countries have different maximum time limits for which a person can be kept in detention.

What does 'promptly' mean?

Police will –

- ≡ Ensure that arrested persons are brought **promptly** before an authorised and competent judicial authority;
- ≡ Ensure that, upon arrest, detention and charge, there is a **presumptive right to bail or bond**; and
- ≡ Ensure the right of a detained person to **challenge the lawfulness** of their detention.

(EAC Common Standards, 2. Policing in Accordance with the Rule of Law iv-vi)

The right of persons detained on criminal charges to be brought promptly and within **24 hours** for first appearance before a judge or magistrate.

The arrested person should be **informed** by the arresting officer if they are accused of a **bailable offence**, and be assisted to make a bail application and assisted in making contact with people who must stand as surety if they cannot afford bail.

(EAC Standard Operating Procedures, B. Detention, 9. General, 9.3 (a, b))

3. Right to legal assistance and representation

Which challenges are there in getting detainees access to interpreters? Do the police even try? Do they have a list of interpreters on hand whom they can easily call? Do detainees in their situation get access to legal assistance?

Police will –

- vii) ensure that arrested and detained persons have access to interpreters and legal assistance, as required

(EAC Common Standards, 2. Policing in accordance with the Rule of Law)

- x) allow all persons deprived of their liberty to access legal assistance and receive visits from their legal advisors which are within the sight, but not in the hearing of officers

(EAC Common Standards, 2. Police Actions)

If a legal practitioner arrives at the police station he or she must be allowed to consult in private with the person in custody. The consultation may be observed but should not be listened to. The fact that the consultation had taken place must be recorded.

(EAC Standard Operating Procedures, 15. Basic conditions of detention, 15.3(a))

4. Right to humane treatment

Trainer

Go through each of these rights to humane treatment, discussing the principle and whether it applies in their domestic situation and how it could be made to apply. Are detainees treated with dignity?

Defining Humane Conditions and Treatment

viii) ensure that arrested and detained persons are treated humanely and kept under humane conditions.

(EAC Common Standards, 2. (viii) Policing in Accordance with the Rule of Law)

In all circumstances detainees must be spoken to and treated in a manner consistent with their dignity.

(EAC Standard Operating Procedures, 15. Basic Conditions of Detention)

Adequate food and clothing

vii) provides all persons deprived of their liberty with **adequate food and clothing**, unless the detained person elects to provide their own

(EAC Standard Operating Procedures, 2. Police Actions)

Drinking water and adequate nutritious food.

(EAC Standard Operating Procedures, 15. Basic conditions of detention)

Medical assistance

viii) facilitates assistance from medical practitioners

(EAC Common Standards, 2. Police Actions)

Contact with family

ix) informs family and friends of the detention and allows detained persons to **maintain contact** with those persons to the extent that such contact is consistent with the administration of justice, security and the good order of the place of detention

(EAC Common Standards, 2. Police Actions)

Reasonable provision for **visits by family members or other acquaintances** should also be maintained. Information pertaining to the hours or other conditions pertaining to such visits should be provided to all detainees.

(EAC Standard Operating Procedures, 15. Basic conditions of detention, 15.3 (b))

Exercise

Wherever possible detainees should be afforded the following minimum conditions:

Access by detainees to an **external exercise yard**, open to the environment without compromise to the security of the custody facility.

(EAC Standard Operating Procedures, 15. Basic conditions of detention)

Cell conditions

Wherever possible detainees should be afforded the following minimum conditions:

Reasonable means of rest, such as a chair or bench. A detainee, who is kept in custody overnight, must be provided with a cell mat or mattress, and blankets of a reasonable standard. The Officer in Charge must ensure that the cell mats or mattresses, and blankets are in good order when issued and changed often enough to ensure its cleanliness. In cold weather consideration should be given to providing the detainees with blankets during daytime.

(EAC Standard Operating Procedures, 15. Basic conditions of detention)

All detention facilities should be equipped with **clean toilets**.

(EAC Standard Operating Procedures, 15. Basic conditions of detention)

The cells and their surroundings must be at all times clean and sanitary, and the doors and windows of cells that are unoccupied must be left wide open at all times, weather permitting.

(EAC Standard Operating Procedures, 15. Basic conditions of detention)

X

Access to reading material and stationery

Requests for **stationery** to make contact with their families or attend to personal affairs, including making arrangements for the care of children, should be acceded to.

(EAC Standard Operating Procedures, 15. Basic conditions of detention, 15.3 (d))

Reasonable requests for stationery to prepare defence or write letters to legal practitioner should where possible be complied with.

(EAC Standard Operating Procedures, 15. Basic conditions of detention, 15.3 (c))

Where possible, access to reading/recreational material.

(EAC Standard Operating Procedures, 15. Basic conditions of detention, 15.3 (g))

Vulnerable groups

Special attention to the vulnerable – children, juveniles, elderly, sick or injured. In particular, the interests of children or juveniles must be considered when they are arrested or detained.

(EAC Standard Operating Procedures Arrest and Detention, 2.2)

PART 3: Procedure on detention

This section focuses on the steps to follow from the moment a person arrives at the place of detention to the time at which he or she makes his or her first appearance in court.

Record-keeping is a vital part of this. There are a number of books or registers in which officers must record information.

Which registers or books do you fill in in your domestic policing situation?

The Standard Operating Procedures call for:

1. A register filled in when the detainee arrives;
2. A custody record of items seized; and
3. A cell detention register: while the detainee is in custody.

Sequence and actions to follow from arrest to cell custody

Match the sequences with the actions

From the moment a police officer arrives at the place of detention with a detainee, he or she should follow a set sequence. The sequence is shown in the arrows numbered 1–8 in the graphic that follows. Match each step below (a – x) under one of the headings for each sequence. For example, x. **Record removal of items in register** falls under the sequence heading **1. SEARCH DETAINEE AND SECURE ITEMS**.

1. Search detainee and secure items	
2. Give detainee access to family and legal representation	
3. Confirm or reject detention	
4. Allocate cell	
5. Assess detainee	
6. Interview detainee	
7. Call in appropriate service	
8. Actions while detainee is in cell	

- a. Allow detainee to retain types of medication, such as asthma inhalers or angina sprays.
- b. Assess if detainee is dangerous to himself or others.
- c. Call in appropriate medical attendant or guardian or interpreter etc. for vulnerable person.
- d. Check cells and holding rooms for damage and objects that could harm detainee.
- e. Allow detainee to consult with legal representative in private.
- f. Search detainee.
- g. Secure any items you have removed from detainee.
- h. Check that detainees under the influence of alcohol are visited at intervals dictated by their condition and risks. (They should be roused at least every 30 minutes or if possible more frequently when suspected of being intoxicated or having swallowed drugs or their level of consciousness is a concern). Detainees at risk of self-harm to be checked more frequently. Assess whether they can be woken and can answer questions or respond to commands (i.e. where they live or to move limbs).
- i. Remove personal effects and dangerous objects, such as ties, belts, shoelaces and cords that can be used to commit suicide.
- j. Check medication provided by detainee or friend or relative or police for concealment of other items.
- k. Assess if detainee is in a vulnerable group.
- l. Assess if detainee is injured or drunk or on drugs.
- m. Check that only approved restraint techniques and equipment have been used.
- n. Check records for any information about detainee.
- o. Communicate information about detainee's welfare risk to relevant staff and appropriate agencies.
- p. Decide on appropriate cell for detainee, depending on age, gender, degree of danger to himself or others, etc.
- q. Inform detainee of right to legal representation.
- r. Interview detainee regarding physical and mental health and state of intoxication or drugs.
- s. Make sure detainee signs register of items removed.
- t. Provide detainee with information on how to use his or her rights i.e. legal assistance, routines of facility i.e. meals, exercise and non-professional visits.
- u. Record grounds of detention.
- v. Check if detainee needs any medication or medical attention.
- w. Record refusal to detain.
- x. Record removal of items in register.

Record-keeping

Record-keeping is a crucial part of detention as police officers can use these records to prove that the police respected the detainee's human rights while he or she was in detention.

What is your current practice regarding record-keeping? Do you keep a register? Which information does it contain?

Homework: Fill in the detention register

Work in small groups or pairs.

The EAC Common Standards state that every detainee's detention must be recorded in a Detention Register. The Standard Operating Procedures and the Luanda Guidelines give very specific instructions on what information must be recorded. On the next few pages is an example of a cell register with some of the information missing. Use the Standard Operating Procedures below and the Luanda Guidelines to fill in the information that is missing from the example cell register.

EAC Standard Operating Procedures

Cell detention register must be maintained (in addition to above-mentioned record-keeping) which should include:

- = Details of identity including age, gender, disability etc.;
- = Contact information of spouse, parent or other;
- = Grounds of detention;
- = Search (level of search and persons present);
- = Items withheld from or kept by, the detainee;
- = Day and hour of admission and release;
- = Cell in which detainee held;
- = Identified risk – self-harm/harm to others/medical or other conditions;
- = Special instructions to custody staff regarding provision of medical and other treatment or care;
- = Use of restraints and justification for this;
- = Any complaints by detainees;
- = Date when regular reviews are due, information about whether the review took place, outcome of the review and reasons if the review did not happen or was delayed;
- = Other relevant information; and
- = Information to be updated as appropriate.

(EAC Standard Operating Procedures, 12. Cell/Detention Register)

Luanda Guidelines

16. Information to be recorded in arrest, custody and pre-trial detention registers

All registers shall contain the following information, as a minimum:

- a. The identity, age and address of the person, and the contact information of another person responsible for the care or custody of the person, if applicable.
- b. The date, time and place that:
 - i. the person was arrested or detained;
 - ii. the person was notified of the reasons for arrest or detention;
 - iii. a record of the arrest or detention was made in the register;
 and
 - iv. notification of the arrest or detention to a third person of the arrested person's choice took place.
- c. The identity of the officers involved in the arrest or detention.

- d. Observations on the state of the mental and physical health of the arrested or detained person (including any visible physical injuries), and whether they requested or required medical assistance or reasonable accommodation, with due respect for medical confidentiality.
 - e. An itemised account of any personal items belonging to the detained person taken by the arresting or detaining authority.
 - f. The date, time and place of any transfers, and the identity of the official(s) responsible for, and involved in, that transfer.
 - g. Any complaints raised by the arrested or detained person.
18. Additional information to be recorded in police cell custody registers
- In addition to the requirements set out in sections 15 and 16 of these Guidelines, official custody registers for police cells shall also set out:
- a. The time and date the detained person was granted or refused unconditional release or release on summons, and the reasons for the refusal.
 - b. The date and time that the detained person was notified of the charges brought against him or her, the right to seek release, the reason for the refusal to grant release, and the identity of the official who performed the notification.
19. Additional information to be recorded in pre-trial detention registers
- In addition to the requirements set out in sections 15 and 16 of these Guidelines, official pre-trial detention registers shall also set out:
- a. The name of the authority supervising the pre-trial detention.
 - b. The time and date of the pre-trial detention order, and the name of the judicial authority who ordered the initial, extended and continuing pre-trial detention.
 - c. The next date of review of the pre-trial detention orders by the relevant judicial authority.

(Luanda Guidelines IV Registers)

EXAMPLE OF A DETAINEE CUSTODY REGISTER

Individual detainee custody register

Intake

To be completed when detainee enters custody

Detainee Full Name: _____

Custody ID/Number: _____

Date: _____ Time: _____ Officer: _____

Custodial Site: _____

Detainee particulars

D.O.B: _____ Age: _____ Sex: ☐ Male ☐ Female

Address (last known): _____

Vulnerable group? ☐ Child under 18 ☐ Woman ☐ Disability ☐ Non-national

If child, name and address of parent/guardian: _____

Language(s) spoken: _____

Interpreter needed? ☐ Yes ☐ No

If 'yes', was interpreter used during intake? ☐ Yes ☐ No

If 'no', why not? _____

Detainee health

Can you see any injuries to the detainee? ☐ Yes [complete Injury Record] ☐ No

If 'yes', describe: _____

Is the detainee complaining of any physical pain or injury? ☐ Yes ☐ No

If 'yes', describe: _____

Does the detainee need immediate medical attention for untreated pain or injury?

☐ Yes ☐ No

If 'yes', ensure that medical personnel have been called and are on their way.

If 'yes', describe medical attention provided to detainee: _____

Does the detainee report any existing medical conditions? ☐ Yes ☐ No

Details: _____

Does the detainee take any regular medication? ☐ Yes ☐ No

Details: _____

Did the detainee bring that medication with them to the custodial site? ☐ Yes ☐ No

If 'no', can a friend, family member, or doctor be contacted to bring it? ☐ Yes ☐ No

Detainee mental health

Is the detainee trying to hurt him or herself, threatening to hurt him or herself, or showing behavior that indicates they might hurt themselves? ☐ Yes ☐ No

If 'yes', describe: _____

****If 'yes', ensure that the detainee is monitored closely and that protocols for at-risk detainees are followed.****

Does the detainee show symptoms that indicate they may be suffering from auditory or visual hallucinations? ☐ Yes ☐ No

If 'yes', describe: _____

Is the detainee behaving erratically or irrationally, talking very fast, extremely upset, or otherwise not able to sit and answer questions? ☐ Yes ☐ No

If 'yes', describe: _____

Is the detainee unresponsive? ☐ Yes ☐ No

If 'yes', describe: _____

****If 'yes' to any of these questions, ensure that further screening and risk assessment is conducted by a mental health professional.****

Vulnerable detainees

Is the detainee a member of a vulnerable group?

☐ Child under 18 ☐ Woman ☐ Disability ☐ Non-national

CHILDREN

Has a parent or adult guardian been notified the child is in custody? ☐ Yes ☐ No

If 'yes', who? _____

If 'no', why not? _____

Have you offered to allow the child to have their parent or guardian present during this intake process? ☐ Yes ☐ No

If 'yes', who? _____

If 'no', why not? _____

Is the child being held separately from adults in custody? ☐ Yes ☐ No

Is the child being held with other children of the same gender only? ☐ Yes ☐ No

WOMEN

Is a female officer conducting this intake? ☐ Yes ☐ No Name: _____

If 'no', why not? _____

Is the woman pregnant? ☐ Yes ☐ No

Is the woman breastfeeding? ☐ Yes ☐ No

Does the woman have any infant children with her? ☐ Yes ☐ No

****Ensure medical attention is provided where needed, and that the woman is given privacy and time to care and feed her baby/babies.****

Does the woman care for any children that are not with her? ☐ Yes ☐ No

Has the woman been allowed to contact someone else to care for those children while she is in custody? ☐ Yes ☐ No

(this section continued next page)

Vulnerable detainees

If 'yes', who? _____

If 'no', why not? _____

If the detainee has already been searched, was it by a female officer? ☐ Yes ☐ No

Name: _____

If 'no', why not? _____

If the detainee needs to be searched, will it be done by a female officer? ☐ Yes ☐ No

Name: _____

If 'no', why not? _____

PEOPLE WITH DISABILITIES

Does the detainee have a physical, mental, intellectual, or sensory disability or impairment? ☐ Yes ☐ No

If 'yes', detail: _____

If 'yes', what accommodations or resources are needed? _____

Have those accommodations or resources been provided to the detainee (e.g. mobility aids, support person, interpreter, etc.)? ☐ Yes ☐ No

If 'no', why not? _____

NON-CITIZENS

Is the detainee a Stateless person? ☐ Yes ☐ No

Is the detainee a refugee? ☐ Yes ☐ No

Is the detainee a citizen of another country? ☐ Yes ☐ No

Which country? _____

Has the detainee been given the opportunity to contact their embassy, consular official, or other relevant organization, to request assistance? ☐ Yes ☐ No

If 'yes', detail: _____

If 'no', why not? _____

Circumstances of arrest

This section to be completed if the detainee is entering the custodial site pursuant to an arrest.

Arresting officer/s [full names and ID numbers] : _____

Reason for arrest: ☐ Alleged offense: _____

☐ Breach of bail ☐ Breach of probation/sentence

☐ Other: _____

Arrest time: _____ **Date:** _____ **Place:** _____

Has the reason for arrest been explained to the detainee? ☐ Yes ☐ No

If 'no', why not? _____

If 'yes', in a language that the detainee understands? ☐ Yes ☐ No

If 'no', why not? _____

Was the arrest made pursuant to a warrant? ☐ Yes ☐ No

Circumstances of arrest

If 'yes', detail: _____

Was the detainee searched upon arrest? ☐ Yes ☐ No

If 'yes', was any property or evidence seized? ☐ Yes ☐ No

***** If 'yes', ensure arresting officer has completed appropriate property and/or evidence registers and records.*****

Was the detainee injured during the arrest? ☐ Yes ☐ No

If 'yes', detail: _____

Does the detainee claim that they were injured during the arrest? ☐ Yes ☐ No

If 'yes', detail: _____

***** If injury present or claimed, ensure it is recorded in 'Detainee Health' section.*****



Detainee rights

Has the detainee been read the Letter of Rights? ☐ Yes ☐ No

*****If 'no', you must read the Letter of Rights to the detainee as soon as possible.*****

Has the detainee been given the opportunity to call a lawyer, or get legal advice? ☐ Yes ☐ No

If 'yes', details: _____

If 'no', why not? _____

Has the detainee been given the opportunity to contact a family member to let them know they are in custody? ☐ Yes ☐ No

If 'yes', details: _____

If 'no', why not? _____

Has the detainee been advised of their rights as regards bail? ☐ Yes ☐ No

If 'yes', details: _____

If 'no', why not? _____



Place of detention

Is the detainee being held in a cell or holding area with other people? ☐ Yes ☐ No

If 'yes', how many? _____

How many people is the cell or holding area designed to hold? _____

Is the detainee being held with other people of the same gender only? ☐ Yes ☐ No

If 'no', why not? _____

Was the cell or holding area cleaned before the detainee entered? ☐ Yes ☐ No

Has the detainee been provided with clean bedding? ☐ Yes ☐ No

Has the detainee been provided with necessary care items/toiletries? ☐ Yes ☐ No

Was the detainee provided with clean clothes when he or she was entered into custody, or allowed to wear their own clothes? ☐ Yes ☐ No



Log

Record activity and movement of detainee during time in custody

Trainer

Participants work alone or in pairs.

Tell learners that there is a lot of detail regarding the allocation of cells in the EAC Standard Operating Procedures. We are going to approach it through a practical exercise. Go through the case study context with the participants. They must then read the notes that follow about the principles governing the allocation of cells, and answer the questions.

Case study: Allocating cells to different groups

You arrest a group of demonstrators who were involved in a violent protest outside a courthouse in which a man is standing trial for raping a child. During the protest a police officer was killed and three were wounded. The suspects have been arrested and are brought to the station for processing. The suspects consist of:

- A mother and her boy child of 10
- Three other women
- Seven men: one has a bullet wound in his leg and one has only one leg.

You are the officer in charge. You have to allocate cells. There are three cells at the police station. Each cell can accommodate 10 persons.

CELL 1 is occupied by a child, male, age 17, accused of raping a male toddler.



Who would you put in this cell?

CELL 2 is occupied by a group of hardened male criminals involved in crimes ranging from assault to robbery.



Who would you put in this cell?

CELL 3 is empty.



Who would you put in this cell?

Principles governing the allocation of cells

Dangerous detainees

Detainees posing risk to other detainees should be separated from less dangerous ones – indicators include:

- ≡ Offence for which they are arrested;
- ≡ Demeanour of detainees;
- ≡ Relationships/attitudes to other detainees or groups/ gang membership;
- ≡ Persons who have committed violent crimes;
- ≡ Persons in need of special protection – nature of offence, first time offenders, police officers.

(EAC Standard Operating Procedures, 14. Allocation of cells)

Detainees with medical considerations:

- ≡ Detainees requiring higher level of observation for medical reasons to be kept in cells where they are easier to observe;
- ≡ Mentally ill and disabled persons to be kept separate;
- ≡ Other considerations: detainees who disturb/are a nuisance.

(EAC Standard Operating Procedures, 14. Allocation of cells)

Convicted/sentenced and un-convicted persons to be kept separately.

(EAC Standard Operating Procedures, 26. Separation of detainees)

Protective measures for police officers

- ≡ Second staff member must be present when staff enter cells.
- ≡ In cases of violent offenders more than two police officers should accompany the officer unlocking the cell.
- ≡ Officer entering cell must be unarmed – officers outside cell must be armed.
- ≡ Custody staff must observe detainee prior to opening the cell door.

(EAC Standard Operating Procedures, 14. Allocation of cells)

Pre-trial and convicted prisoners:

The State shall ensure that detaining authorities hold pre-trial detainees separately from the convicted prison population. They shall also ensure that detaining authorities take the necessary measures to provide for the special needs of vulnerable groups/persons, in accordance with Part VII of these Guidelines.

(Luanda Guidelines, VI. 26.)

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

(Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, Principle 8)

Supervision of detainees

- ≡ Detainees out of cells must be supervised at all times to prevent them from obtaining items or doing anything to harm themselves or others; interfere with evidence; damage property; effect an escape.

- ≡ When removed for exercise/to court or other purpose – detainee must be searched before being readmitted to his detention facility.
- ≡ Any article (e.g. food or clothing) given in custody by a visitor must be searched.

(EAC Standard Operating Procedures, 14. Allocation of cells)

Vulnerable groups

Children

Child detainees must under all circumstances be kept separate from adult detainees.

- d. Safeguards for police custody and pre-trial detention
If police custody or pre-trial detention of a child is absolutely necessary:
 - i. Detention shall be for the shortest possible period of time.
 - ii. Children shall be detained separately from adults, unless it is in their best interest to be kept with family members also detained. Female children shall be held separately from male children unless it is in their best interest to be kept with family members also detained.
 - iii. Children shall be guaranteed the right to the presence of a parent or guardian at all stages of the proceedings, unless it is considered not to be in the best interests of the child.
 - iv. While in custody, children shall receive care, protection and the necessary social, educational, vocational, psychological, medical and physical assistance they may require.
- e. Right to be heard
In all judicial proceedings affecting a child, the child shall have an opportunity to be heard either directly or through a representative of his or her choice. The child's views shall be taken into account by the relevant authority.
- f. Alternatives to pre-trial detention
Where possible, pre-trial detention shall be replaced by alternative measures such as close supervision, intensive care or placement with a family, in an education setting or home, or other place of safety.
- g. Legal assistance
Children shall be guaranteed the right to the presence of lawyer, or other legal service provider, of their choice and, where required, access to free legal services, from the moment of arrest and at all subsequent stages of the criminal justice process. Legal assistance shall be accessible, age appropriate and responsive to the specific needs of the child.

Conduct of officials

Contact between law enforcement agencies and child suspects shall be managed in such a way as to respect the legal status of the child and promote his or her wellbeing, ensure the child's privacy, and avoid harm to him or her.

Specialised units

The State shall ensure that, where possible, specialised units be established in law enforcement agencies that frequently or exclusively deal with children who are in conflict with the law.

Access to third parties

The State shall ensure that children have reasonable access to parents, guardians or statutory authorities responsible for the care and protection of children.

(Luanda Guidelines, Children 31.)

Other instruments:

Convention on the Rights of the Child
UNCJIN – Rules for the Protection of Juveniles Deprived of Their Liberty, Rules for the Protection of Juveniles Deprived of Their Liberty, Adopted by the General Assembly as resolution 45/113 on the recommendation of the Eighth Congress.

Women

Female detainees must under all circumstances be kept separate from male detainees.

32. Women

a. General principles

States shall develop legislation, procedures, policies and practices that are designed to protect the rights and special status and distinct needs of women and girls who are subject to arrest, police custody or pre-trial detention.

b. Safeguards for arrest and detention

If arrest, custody and pre-trial detention is absolutely necessary, women and girls shall:

- i. Only be searched by female law enforcement officials, and in a manner that accords with women or girls' dignity.
- ii. Be held separately from male detainees.
- iii. If they have caretaking responsibilities for children, be permitted prior to or on admission to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interest of the children.
- iv. Be provided with the facilities necessary to contact their families, including children, their children's guardians and legal representatives.
- v. Be provided with the facilities and materials required to meet their specific hygiene needs, and offered gender-specific health screening and care which accords with the rights to dignity and privacy, and the right to be seen by a female medical practitioner.
- vi. Not be subject to close confinement or disciplinary segregation if pregnant, breastfeeding or accompanied by infants.
- vii. Have access to obstetric and pediatric care before, during and after birth, which should take place at hospitals or other appropriate facilities, and never be subject to physical restraints before, during and after childbirth.

c. Accompanying children

States shall establish laws and policies to provide for the needs and physical, emotional, social and psychological development of babies and children who are allowed to remain in the place of detention, in a manner consistent with the rights of the child, and the best interests of the child, and in accordance with the recommendations of the African Committee of Experts on the Rights and Welfare of the Child, General Comment No. 1 on Children Imprisoned with their Mothers.

(Luanda Guidelines, 32. Women)

Persons with disabilities

Detainees with special needs/disability/religious rituals

(EAC Standard Operating Procedures, 14. Allocation of cells, Luanda Guidelines)

33. Persons with disabilities

a. General principles

- i. For the purpose of these Guidelines, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.
- ii. The arrest or detention of a person with a physical, mental, intellectual or sensory disability shall be in conformity with the law and consistent with the right to humane treatment and the inherent dignity of the person. The existence of a disability can in no case justify a deprivation of liberty. No person with a disability shall be deprived of his or her liberty unlawfully or arbitrarily.
- iii. Every person with a physical, mental, intellectual or sensory disability deprived of his or her liberty shall be treated with humanity and respect, and in a manner that takes into account the needs of persons with physical, mental, intellectual or sensory disabilities, including by provision of reasonable accommodation. The State shall uphold the right of individuals to informed consent with regard to treatment.
- iv. States shall ensure the entitlement of persons with disabilities in custody or detention to be eligible for all programs and other services available to others, including voluntary engagement in activities and community release programs. Considerations of alternatives to detention should be given with a framework that includes reasonable accommodation.
- v. States shall ensure that disciplinary actions take account of a person's disability.

b. Legal capacity

Persons with disabilities shall enjoy full legal capacity, access to justice on an equal basis with others, equal treatment before the law, and recognition as a person before the law.

c. Access to justice

States shall ensure that persons with disabilities are informed about, and provided access to, promptly and as required, appropriate support to exercise their legal capacity, including through the provision of interpreters, information in accessible formats and/or independent third parties who are not employed by the law enforcement authority and who are appropriately qualified.

d. Accessibility and reasonable accommodation

States shall take measures to ensure that:

- i. Persons with disabilities can access, on an equal basis with other persons subject to police custody and pre-trial detention, the physical environment, information and communications, and other facilities provided by the detaining authority. Accessibility should also take into account the gender and age of persons with disability, and equal access should be provided regardless of the type of impairment, legal status, social condition, gender and age of the detainee.
- ii. The physical conditions of police custody and pre-trial detention are adapted to take into account the needs of persons with physical, mental, intellectual or sensory disabilities, and that the detention of persons with disability does not amount to inhuman or degrading treatment.
- iii. Communication with and by persons with disabilities in custody or detention on an equal basis with others.
- iv. The provision of reasonable accommodation, procedural and substantive due process.
- v. The right of persons to informed consent to treatment is upheld.
- vi. Persons with disabilities are permitted to keep in their possession any form of aid relevant to their disability. If a genuine security reason requires the removal of any form of aid, suitable alternatives shall be provided.

(Luanda Guidelines, 33. Persons with disabilities)

Duty of senior custody officer

It is the duty of the senior custody officer to determine the level of observation required for each detainee – for example, if the detainee is drunk, dangerous, or vulnerable.

This entails:

Ensuring clear written instruction of custody staff regarding provision of medication, safekeeping, correct medication and dosage and recording information on custody record.

(EAC Standard Operating Procedures, 13. Condition of the detainee, observation and care)

Trainer

Revisit pre-assessment exercise at the beginning of this module

Go back to the questions at the beginning of this module, and ask participants if they have changed their minds about any of the answers, before going over them. The answers are below.

True or False.

Revisit pre-assessment exercise on page 49

1. If you arrest someone, you must also detain them. FALSE
2. Detention should be the exception, not the rule. TRUE
3. A person who has been lawfully arrested (in other words, the arrest was based on reasonable evidence and non-discrimination and was procedurally correct) loses his or her fundamental right to freedom. True, as they are detained temporarily (until decided by a court of law).
4. A detainee may not consult with his or her legal representative in private and out of earshot. An officer must be present. FALSE. Consultation does not have to be separate, but must be out of earshot of official.
5. A mother and her male child of 12 may be kept in the same cell. TRUE. Parents should not be separated from their children.
6. Convicted criminals and people in detention can share cells if their offence is the same. FALSE. Awaiting-trial prisoners should be kept separate from convicted persons – right to presumption of innocence.
7. The officer in charge of a station is responsible for everything that goes on in the cells. TRUE

MODULE 5

Legal use of force

Learning outcomes

Participants will be able to:

- Understand that in performing their functions on behalf of the state they are equipped with certain powers, which include the legitimate use of force. This state power is subject to the rule of law and may only be used for legitimate and legal purposes: reasonable, necessary and proportional;
- Understand that their fundamental role is the protection of life and freedom from violence;
- Know the rules that apply the use of legal force in different aspects of police work;
- Know what constitutes force i.e. physical/non-physical effort;
- Know the key principles regarding minimum force and steps to be taken to minimise harm
- Know when force may be used justifiably;
- Know the requirements for the use of firearms and other equipment; and
- Know when force is prohibited.

Learners will apply these the use of force knowledge to real situations.

Trainer

Revisit homework from detention module

Go through the cell register activity that participants did for homework.

Introduction

This module discusses when police may use legitimate force in the performance of their duties. It sets out the Common Standards and guiding principles on how to balance policing roles when there is a conflict between the fundamental objectives of protecting life and preventing loss of life or serious injury.

Legal principles governing the use of force

Police officers are public officials. Police officers' primary responsibility in a democratic state is to uphold the rule of law and protect the rights of others, specifically the right to life, freedom and security.

To perform their duties, police officers are equipped with powers by the state to perform their functions on behalf of the state. These powers are subject to the rule of law and certain limits.

The Common Standards recognise three distinct but interrelated roles of the police:

1. To protect life, liberty and security;
2. To maintain public safety and social peace; and
3. To promote and uphold the rule of law and human rights.

The obligation of police to protect the life, liberty and security of the person has two applications.

First, police are mandated to take **all lawful and reasonable measures** to protect life, liberty and security and must not, through acquiescence or inaction, permit or tolerate any lawful derogation of a person's rights. It is from this mandate that the police derive their core responsibility to **prevent and detect crime, protect life and property, preserve the peace, and apprehend offenders.**

Second, in the exercise of their functions, **police must not themselves adversely affect life, liberty or security without legal justification.** Permissible derogation includes lawful arrest **or the legitimate and proportional use of force.**

(EAC Standard Operating Procedures, 1. The Role of the Police, Commentary)

PART 1: Legal principles governing the use of force

Policing according to the rule of law – the legitimate use of force

The police will act in a manner that upholds the right to life, liberty and security of the person by only using force and firearms when strictly necessary and **only to the extent** required for the fulfillment of their lawful duty.

(EAC Standard Operating Procedures, 3 (b)).

Police must not take life, liberty or security without legal justification – such as lawful arrest or the **legitimate and proportional** use of force.

(EAC Standard Operating Procedures Use of Force, 2 (2.1))

In summary, the use of force is only permissible when it:

- ≡ Is sanctioned by law;
- ≡ Is performed to achieve legitimate policing objectives; and
- ≡ Complies with principles of necessity, reasonableness and proportionality.

Tell learners we will deal especially with the requirements of legitimacy, which include necessity, reasonableness and proportionality.

Trainer

Requirements for legitimate use of force: Necessary, reasonable, proportional

Put up PP 37, which is drawn from some of the international instruments and case law on what constitutes legitimacy. Ask participants to identify the most important word or words in each point.

Answers

Necessary: unavoidable; restraint; minimise damage; respect; exceptional

Reasonable: not exceed reasonable; objectively reasonable, minimum reasonable force

Proportional: to extent required; in proportion to seriousness

Legitimate use of force

Necessary

Use force only when it is unavoidable; (UN Principles 5)

Exercise restraint in use of force; (UN Principles 5a)

Minimise damage and injury, and respect and preserve human life. (UN Principles 5b)

Use of force must be exceptional. (UN Code of Conduct Commentary to Article 3)

Reasonable

When force is used it must be reasonable and not exceed this. (UN Code of Conduct Commentary to Article 3)

Objectively reasonable – decision to use of force must be driven/informed by the subject's action and/or level of resistance/status (armed – type of weapon) *Graham v. Connor*, 490 US 386 - Supreme Court 1989

Minimum reasonable force necessary and reasonable in the circumstances of a particular incident. (Australian Federal Police Commissioners Order on Operational Safety)

Proportional

Force to be used to the extent required (Article 3 UN Code of Conduct)

Act in proportion to the seriousness of the offence and legitimate objective to be achieved

(UN Principles 5(a))

Rules regarding use of force

Read the Standard Operating Procedures sections 3 and 6 on the use of force.

General principles

The police shall use minimum amount of force necessary.

(EAC Standard Operating Procedures 3. Use of Force General Principles 3.2)

Police officers shall not use excessive force.

(EAC Standard Operating Procedures 3. Use of Force General Principles 3.3)

Police officers will only use lethal force when strictly necessary and to the extent necessary to protect themselves or other person from immediate threat of death or serious injury.

(EAC Standard Operating Procedures 3. Use of Force General Principles 3.4)

Identification and communication

Where reasonably possible a police official must identify him/herself and inform the suspect if he or she is armed;

- ≡ Police officers in uniform shall at all times wear an identifiable service number in a visible part of the uniform;
- ≡ Where appropriate, police officer should state who they want to communicate with (i.e. when approaching a group of persons);
- ≡ When use of lethal force is to be used, police must 'where reasonably possible' give a clear warning of intent to use lethal force.

(EAC Standard Operating Procedures A. Rule regarding use of force (5))

When force is permitted

If force is deemed strictly necessary in the best judgement of the Police Officer, then the minimum amount of force which is proportionate to the threat immediately posed, and the objective to be achieved, must be used.

This means that:

- a. A reasonable Police Officer in the same circumstance would judge it necessary to use force to contain the immediate situation; and
- b. The type of force used is judged to be reasonable given the threat posed by the immediate situation; and
- c. Any action complies with the Rules of these Standing Operating Procedures.

(EAC Standard Operating Procedures A. Rule regarding use of force (6) (2))

Use of force is judged in proportion to the threat posed at the time that the force was used. This means that, if a threat is withdrawn or reduced, the level of force used must also proportionately be scaled down.

(EAC Standard Operating Procedures A. Rule regarding use of force (6) (3))

Use of Force should not be applied to the head, and where possible, not the groin/delicate areas of the body.

(EAC Standard Operating Procedures A. Rule regarding use of force (6) (4))

When non-violent means are ineffective, use of force should only be used in the following situations:

- ≡ To disarm or subdue a person threatening to injure another person or property;
- ≡ To prevent an offence;
- ≡ To lawfully arrest someone suspected of committing an offence, if that person is resisting arrest;
- ≡ To prevent a person escaping lawful custody;
- ≡ In civil disorder situations where crowds are threatening to injure another person or property.

(EAC Standard Operating Procedures A. Rule regarding use of force (6) (1))

Trainer: Video clip of man on roof

Tell participants they are going to watch a YouTube clip about the use of force. As they watch, discuss the questions below.

Man on roof

The following context is for you the trainer. Don't give them the context.

Man on top of roof. Not aggressive. May self-harm. Police try to talk him down. Doesn't work. Taser him. He falls on staircase. About six police officers surround him. Subdue him with choke position and handcuffs. Drag him down stairs. Bumping head. Dies.

Was the use of force...?

Necessary	Reasonable	Proportional
<p>Was it unavoidable?</p> <p>Did police officers exercise restraint in their use of force?</p> <p>Was there an attempt to minimise damage?</p> <p>Was there respect for human life?</p> <p>Was the use of force exceptional?</p> <p>Did police need to protect themselves or any other person from immediate threat of death or serious injury?</p> <p>Did police need to disarm or subdue the person because the person was threatening to injure another person or property?</p> <p>Were the police trying to prevent an offence?</p> <p>Was the person suspected of committing an offence? If yes, was he resisting arrest?</p> <p>Were the police trying to prevent the person from escaping lawful custody?</p>	<p>Did it exceed what was reasonable?</p> <p>Was it objectively reasonable – In other words, would a reasonable police officer in the same situation have acted the same way?</p> <p>Was minimum reasonable force used?</p>	<p>Was the force used to the extent required?</p> <p>Was it in proportion to the seriousness of the offence/threat?</p> <p>Was it in proportion to the threat to lives of officers or others?</p> <p>Did the police proportionately scale down their use of force at any time?</p>

Trainer

What you want to get out of the discussion is that all the principles and rules for the legitimate use of force were flouted: the use of force in this case was neither necessary, reasonable nor proportional.

Could this incident have been handled using **non-violent strategies**? Which strategies would you use?

Trainer

You want to draw these non-violent strategies out: calming situation; negotiating, de-escalating, containing.

Non-violent strategies

Non-violent police strategies: policing strategies that can be used to defuse a situation that do not lead to death, including negotiation, mediation, de-escalation, containment, retreat.
(EAC Standard Operating Procedures Definitions)

When a Police Officer is in a situation where it is necessary and the duty is to intervene the police officer should where reasonably possible use non-violent means to defuse the situation by:

- ≡ Advising or warning with aim of calming situation (negotiation);
- ≡ Negotiation – negotiate using clear appropriate communication to calm the situation;
- ≡ De-escalation – act to reduce any violence or threat in the situation;
- ≡ Containment – act to prevent person posing threat of violence from getting access to other people or objects that may harm; separate person/object from the other; in order to reduce violence or threat of violence;
- ≡ Retreat – temporarily withdraw from the situation.

(EAC Standard Operating Procedures A, Rule regarding use of force (4))

Trainer

The next discussion drills down into what constitutes force. Some officers may believe that force necessarily implies the use of a weapon, especially a firearm. The point you want to make here is that force is a wide description that includes:

Defining the use of force

- Non-physical (verbal) actions;
- Physical actions, but using the body only (pushing, choke position, foot on someone's head or chest);
- physical actions with a weapon that is usually non-lethal (a chemical spray, a baton); or
- physical actions with a potentially lethal weapon (a gun).

Use of force: use of, but not limited to, a baton, incapacitant spray, firearm or used any other physical use of force except compliant handcuffing and escort position. Use includes pointing or aiming the force at another person and using the force.

(EAC Standard Operating Procedures Definitions)

Force: amount of effort required by police to compel compliance by an unwilling subject
(Definition by the International Association of Chiefs of Police <http://www.theiacp.org>.)

Lethal force: force that is intended to, or a reasonable person would deem is likely to, cause death or serious injury to a person, including, but not limited to, use of a firearm or severe physical force (excessive use of a baton/beatings).

(EAC Standard Operating Procedures Definitions)

Lethal weapons: weapons that cause death or serious injury to a person, including, but not limited to firearms.

Non-lethal weapons: as it cannot be guaranteed that any person will not cause death, this definition relates to weapons that, if used appropriately, and without excessive force, should not generally cause death or serious injury.

Types of force

The use of force continuum

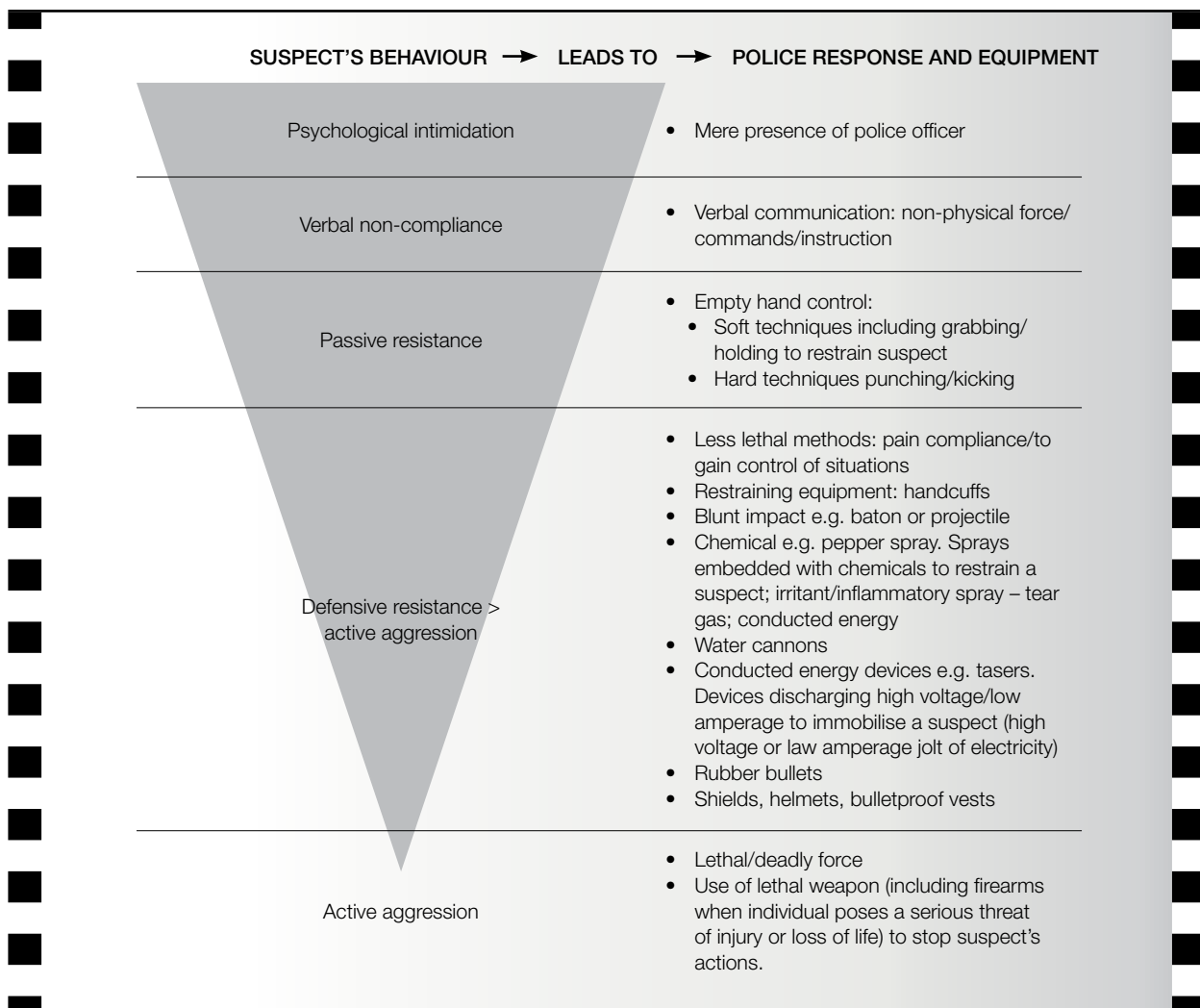
Force is a wide concept that comprises lethal and non-lethal actions, lethal and non-lethal equipment, and physical and non-physical contact. Sometimes, a non-lethal physical contact may be lethal, for example, the choke position. Sometimes, a non-lethal weapon may be lethal (for example, a baton blow to the head).

So, it is difficult to make hard and fast rules about what kind of weapons to use as each circumstance must be assessed on its own facts. Nevertheless, some police agencies find it useful to adopt a continuum of force with an escalating category of level of force based on the severity of situation. Here again, proportionality plays a role: the more threatening the situation, the higher the starting point for force.

The diagram below shows what we mean by the use of force continuum.

Put up the following slide:

Use of force continuum



Strategies and tactics

As we've seen on the continuum of force diagram, police officers use different equipment and different strategies and tactics at different levels on the continuum, in keeping with the dual objectives of protecting life and preventing loss of life and injury.

The Common Standards and all the international instruments stress that police should use:

Non-violent police strategies: policing strategies that can be used to diffuse a situation that do not lead to death, including negotiation, mediation, de-escalation, containment, retreat.

(EAC Standing Operating Procedures Definitions)

Other tactics and strategies include:

- ≡ Separating groups, by using barriers;
- ≡ Gathering information to inform situational analysis; and
- ≡ Doing a situational analysis to assess risk – this may be informed by intelligence or the use of video recording material to assist with identifying threats and suspects.

Trainer: Video clip of drunk man being arrested

YouTube clip and discussion

Drunk man

Show the participants the clip below and discuss them in light of what they have learned so far, always referring to the Common Standards, the Standard Operating procedures and the international instruments, and reminding them to apply the requirements for the legitimate use of force: namely, necessary, reasonable, proportional.

Context for trainer: Man drunk surrounded by six policemen. Not aggressive, but does not obey several commands to drop to knees. Very big man. Police taser him.

Discuss the strategies, tactics and equipment the police used.

Trainer: Role play

Allocate one of these scenarios to small groups to act out in the most professional way according to the Common Standards. Afterwards, get other participants to comment on their use of force, strategies and equipment.

Group 1: Suspect is passive aggressive, hostile, but unarmed.

Group 2: Suspect is armed with a knife.

Group 3: Suspect is armed with a gun.

Groups 4: Suspect is drunk and physically aggressive.

Group 5: Suspects are armed and holding hostages at a shopping mall. There are lots of bystanders.

Requirements for the legitimate use of firearms

The police will act in a manner that: ... upholds the right to life, liberty and security of the person by only using force and firearms when strictly necessary and only to the extent required for the fulfillment of their lawful duty.

(EAC Common Standards 3. Police Actions (ii))

The use of firearms is subject to same requirements of reasonableness, necessity and legality discussed above. In addition, their use is further subjected to the following requirements:

- = Last resort
- = Immediate threat to life or serious injury
- = Reasonable police officer in same situation test
- = To reduce risk of death
- = Warning before use

Firearms may only be used, as a last resort, to disable a person who is threatening to, and it is reasonable to believe in the best judgement of the Police Officer, that he or she will, in the immediate future:

- = Take the life of a person;
- = Cause a serious injury to a person;

Only if less extreme measures are insufficient to achieve the above objectives, and only where the lives of innocent persons will not be endangered if lethal force is used.

This means that:

- a) A reasonable Police Officer in the same circumstances would judge it necessary to use lethal force to contain the immediate situation;
- b) A reasonable Police Officer in the same circumstances would judge that the lives of innocent persons will not be endangered if lethal force is used; and
- c) Any action complies with the Rules of this Standard Operating Procedure.

(EAC Standard Operating Procedures Use of firearms (7)(7.1))

Where reasonably possible, firearms should be used in such a manner to reduce the chance of causing death.

(EAC Standard Operating Procedures Use of firearms (7)(7.2))

Warning

A police officer intending to use a firearm shall identify themselves and give clear warning of their intention to use lethal force, with sufficient time for the warning to be observed except where doing so would place the officer at risk of death or serious injury or it would be inappropriate in circumstances.

(EAC Standard Operating Procedures 7.4)

Prohibitions on use of firearms

Firearms must not be used in the following circumstances:

Unarmed person

- ≡ On unarmed persons *unless* they have ability to immediately carry out to threat to kill or seriously injure another person without a weapon;
- ≡ On persons only armed with non-lethal weapons and it is reasonable to believe they will not take the life a persons or cause a serious injury to a person;

On crowds

Discussed in the module on Public Order Policing.

To protect property

Solely to protect property interests;

To apprehend a fleeing suspect

To stop an individual on suspicion of a crime, simply because he/she runs away.

(EAC Standard Operating Procedures (7.3))

Moving vehicles

At a moving vehicle

Moving vehicles must not be shot at, due to risk of possible civilian fatality *except* when lethal force is being used or when moving vehicle itself is a threat to the life of another person.

Police officers should not place themselves in situations where a vehicle could be used against them i.e. approaching vehicle from front or back.

From a moving vehicle

Police officers shall not use lethal force from a moving vehicle (due to risk of civilian fatality) *except* when lethal force is used/threatened to be used immediately and the police officer has no option but to fire from the vehicle; or when another moving vehicle itself is a threat to the life of another person.

(EAC Standard Operating Procedures 8)

PART 2: Specific aspects of police work

In addition to the above general principles the following applies to specific areas of police work.

Arrest and detention and custody

Force cannot be used when questioning a person or when arresting a person, unless the person is actively resisting being handcuffed or transported.

(EAC Standard Operating Procedures, 9)

Body weight should not be used on the upper body to hold down the arrested person unless this is unavoidable. If it is unavoidable it should only be for a short duration.

(EAC Standard Operating Procedures, A. Arrest 5.9)

Children, pregnant women and persons with disabilities

No force must be used on children under the age of 18 years, pregnant women or persons with disabilities UNLESS in exceptional circumstances and where possible after all other non-violent strategies for containing the situation have been utilised.

(EAC Standard Operating Procedures, 10)

Use of force during stop and search operations

In every case the police officer must seek cooperation of person searched.

A forced search can only be conducted if the person is unwilling to cooperate and resist the search.

Reasonable force may be used as a last resort if necessary to conduct a search or detain a person or vehicle for the purpose of the search.

(EAC Standard Operating Procedures Stop and Search, 9. Use of Force)

Public order policing

Tell participants that we will be doing a whole module on public order policing, so this is just an introduction, covering the use of force specifically.

...recognises the right of all persons to peaceful assembly without restriction insofar as this right is consistent with the rule of law, democracy, public peace and security, and the rights of others. Regarding unlawful but peaceful assemblies, police will avoid the use of force and, if force is necessary, only use force to the minimum extent. In violent assemblies, police will use less dangerous means of crowd control but if force becomes necessary, only use the minimum force necessary.–

(EAC Common Standard 3(xiii))

Homework: Public order policing roleplay

Preparation reading on Public Order Policing for role plays

To prepare for our work tomorrow on public order policing, tonight you need to read all the Common Standards as well as the international standards relating to public order policing contained in the next module on **PUBLIC ORDER POLICING, PART 2**. While you read them, bear in mind the following scenario:

A group of hawkers has formed an association and applied to the correct authority to hold a mass demonstration to protest the city's refusal to give them proper stalls, and to provide toilets and security. They were refused permission. They decide to go ahead with a protest anyway. A group of 30 men assemble in the main market street one Saturday morning. They have placards and are colourfully dressed. The mood among the protesters is peaceful but a bit provocative.

Some traders who are not demonstrating are angry because they say the others are interfering in their right to economic activity, and that the demonstrators are putting off potential shoppers. A few of these traders start throwing cans, bottles and stones at the demonstrators. Some of the demonstrators start picking up the stones and throwing them back.

The police are at the demonstration.

By the end of the demonstration, stalls have been looted, 20 people have been arrested; two people have died and a police officer has been wounded.

The media posted pictures of the demonstration and it made world news.

Divide the participants into two groups.

- **Group 1** is part of the Police Unit. The group can appoint a Commander as spokesperson, or everyone can answer questions.
- **Group 2** is part of the Investigating Commission's Unit. The group can appoint a spokesperson, or everyone can answer questions.

Divide the participants into two groups.

Group 1

The Investigating Commissions Unit summons your police unit the day after the demonstration to answer questions on what happened in the demonstration and justify your actions based on the Common Standards and international instruments on public order policing.

The questions will be about:

- What type of demonstration this was;
- Your preparation in general for demonstrations;
- Your preplanning for this demonstration;
- What your objectives were. Which rights you were trying to protect on both sides; How you decided to deploy police at the demonstration;
- Your tactics;
- What equipment you used to disperse the crowd;

- Any force you used;
- Any arrests you made;
- How people were wounded or killed, with what equipment, and what you did with the wounded or dead;
- Responsibility for the policing;
- Consequences of police action;
- To reflect on anything you might have done differently or better or more in line with policing within a human right's framework.

Group 2

You are the Investigating Commission. You are going to question the police unit about the demonstration and assess the different aspects of the unit's involvement and whether the policing was in line with a human rights framework based on the Common Standards and international instruments on public order policing.

You need to prepare questions to ask the police unit about:

- What type of demonstration this was;
- The unit's preparation for demonstrations in general;
- The unit's preplanning for this particular demonstration, based on what you expected to happen;
- Any procedures for monitoring, recording and investigating the event afterwards;
- What the unit's objectives were. What rights was the unit's presence trying to protect?
- How and how many police were deployed at the demonstration;
- What equipment the police had at their disposal;
- The unit's tactics;
- The unit's attitude towards both the demonstrators and the crowd;
- Any agents provocateurs and how the unit dealt with them;
- Any contingency planning;
- Which command and control systems there were;
- Whether any non-violent means were used to contain or defuse the situation;
- At which point the unit decided to intervene;
- Which weapons were used by the crowd;
- Which equipment the unit used to disperse the crowd;
- Whether and which kind of warnings were given;
- The type of force the unit used: was there a continuum?
- Who was wounded and how (demonstrators or people in the crowd);
- How the police officer was wounded;
- How two people died;
- Why and how and who was arrested, what the purpose of the arrests were, whether they are legitimate within the context of the EAC Common Standards, whether any charges were brought;
- Which restraints were used;
- Whose command the unit acted on; and
- Consequences of police action.

After use of force

Duty of police officer

As soon as reasonable possible after use of force, the police officer must:

(EAC Standard Operating Procedures, Use of Force, S.11)

- ≡ Call for medical assistance;
- ≡ Inform officer in charge;
- ≡ If death, follow procedure;
(EAC Standard Operating Procedures, Use of Force, 14.3)
- ≡ Provide other aid and comfort to person against whom force is used;
- ≡ Contact person's preferred person;
- ≡ Complete use of force form (Section 17 if applicable) within 24 hours and provide it to officer in charge (where not possible for the officer to do it, the officer in charge must);
- ≡ Include all relevant info.
(EAC Standard Operating Procedures, Use of Force, S 14.4)

Duty of Officer in Charge

The officer in charge must:

- ≡ Prevent unlawful use of force and firearms when this does occur report immediately to police oversight authority or NHRI;
- ≡ Where death or serious injury of persons in police custody or under control of police or as a result of police action or inaction:
 - » Take all steps to secure evidence;
 - » Immediately report to independent oversight body or NHRI;
 - » Complete USE of FORCE form to independent oversight authority or NHRI within 24 hours including all relevant photographs and evidence;
 - » Supply independent oversight or NHRI with evidence and all facts.

(EAC Standard Operating Procedures, 12)

Duty of other police officers

Any other Police Officer who is aware of the use of force by another officer must inform their Officer in Charge. The Officer in Charge must then ensure that the Police Officer who used force complies with this Standing Operating Procedure.

(EAC Standard Operating Procedures, B. After Use of Force (13)

Failure of any Police Officer or Officer in charge to comply with 15.1 may result in disciplinary action.

Consequences of use of excessive force

Disciplinary/criminal consequences

Any force that does not comply with this rule will be deemed excessive use of force and may result in disciplinary or criminal action against the Police Officer.

(EAC Standard Operating Procedures, A. Rule regarding use of force (6) (2))

Giving an order that would lead to the unlawful use of force is a disciplinary offence and may amount to a criminal offence.

(EAC Standard Operating Procedures, B. After Use of Force 12.2)

Any use of force that is not necessary and proportionate to the threat may result in disciplinary measures, the payment of compensation or criminal prosecution.

(EAC Standard Operating Procedures, B. After Use of Force 17.1)

A police officer who does not comply with any part of this Standard Operating Procedure will be subject to disciplinary action and may be subject of criminal prosecution.

(EAC Standard Operating Procedures, B. After Use of Force 18.1)

Review

Use of force that does not comply with Standard Operating Procedures must be investigated by the internal police investigation unit.

- ≡ All use of force resulting in serious injury or death must be investigated by an external oversight body (or internal unit reporting in writing to the NHRI);
- ≡ Police to conduct non-punitive review where action was lawful but not in accordance with Standard Operating Procedures.

PART 3: Obligations of police organisations in respect of use of force

The EAC Common Standards set out all the obligations of police organisations.
(4. *Police Organisations*)

In addition, specific provisions relating to the use of force by police officers are set out in other instruments:

- = Training
 Police organisations must provide advanced training for police in use of certain types of weaponry
 (*EAC Standard Operating Procedures Public Order Policing, 9.2*)
- = Review of police management of demonstrations
 Police departments should establish procedures to review the policing of demonstrations. Particular attention to be given to demonstrations where police officers or members of the public were killed or injured. Lesson learned should inform training programmes for police.
 (*EAC Standard Operating Procedures Public Order Policing, s14*).
- = Adopt rules and regulations governing the use of force and firearms
- = Ensure rules and regulations on use of firearms include guidelines that:
- = Equip and capacitate police offices on use of force
- = Enforce criminal sanctions for abusive use of force
- = Provide proper screening and training of police officers
- = Provide specialised training/proficiency on use of force standards
- = Provide training on police ethics, human rights and alternatives to use of force and firearms
- = Ensure competency and authorisation for the use of firearms
- = Support police officers
- = Establish reporting and review procedures
- = Hold superior officers accountable
- = Prevent victimisation of police officers who refuse of obey unlawful orders

MODULE 6

Public order policing

Learning outcomes

Participants will be able to:

- Understand that the right to protest is a human right and protected by international law. It is a critical component of the democratic state and reinforces other rights such as freedom of expression and the right to participate in public and political life;
- Understand, when policing protests, that the role of the police is to protect this right and other human rights of participants and citizens;
- Understand that the right to protest may only be limited in certain circumstances;
- Apply the use of force guidelines (as discussed in Use of Force section of this module) in a public order context;
- Apply the principles of minimum force: proportionality and necessity;
- Appreciate that planning, preparation and equipping and training police officers in operational tactics and alternative techniques on how and whether to use of force is critical in crowd control;
- Appreciate that the police's role is to adhere to the principle of minimum force; and
- Apply the Common Standards on public order policing in different scenarios.

PART 1: Policing the right to protest

Introduction

This module will clarify the parameters of this limitation and provide guidelines to the police on how to conduct themselves in the context of peaceful, unlawful gatherings or gatherings that become violent.

Trainer

Ask participants which recent public protests have taken place in their country, what the reason for them was, and whether they were part of the policing. Ask about what happened: was it lawful or unlawful, planned or unplanned, peaceful or violent, were people arrested, was any one injured, what equipment did they use; how did they feel during the policing (scared, confident etc.). Ask them to express the challenges of public order policing in their situation.

Participating in a violent mass demonstration can be traumatic for police officers, so when the participants recount their experiences, don't pass judgement. When a few people have spoken, explain that public order policing is very tricky and daunting, and often begins with the best intentions, but things go wrong.

Nevertheless, the right to peaceful assembly is a fundamental human right, and is something the police must recognise as such. The right to lawful peaceful mass demonstrations is contained in all five East African countries' constitutions. Ask participants if they know what they are.

Domestic law protections

The following are examples of the right to assembly and association in some African countries.

Article 32: Burundi 2005 Article 32

Freedom of association

The freedom of assembly and of association is guaranteed, as well as the right to found associations or organisations in accordance with the law.

Article 37: Kenya 2010

37. Assembly, demonstration, picketing and petition

Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.

Article 36: Republic of Rwanda 2003 Article 36

Freedom of peaceful assembly without arms is guaranteed if it is not inconsistent with the law.

Prior authorisation shall only be necessary if the Law so requires and solely in the case of assembly in the open air, in a public place or on a public road, to the extent that such is necessary in the interests of public safety, public order or public health.

Article 20(1) Cap 2: Tanzania 1977

- (1) Every person has a freedom, to freely and peaceably assemble, freedom to associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organisations formed for purposes of preserving or furthering his beliefs or interests or any other interests.

Article 29 (1)(d): Uganda 1995

29. (1) Every person shall have the right to –
(d) freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition.

It can only be limited in certain instances, as the Common Standards show:

The police will act in a manner that ... recognises the right of all persons to peaceful assembly without restriction insofar as this right is consistent with the rule of law, democracy, public peace and security, and the rights of others. Regarding unlawful but peaceful assemblies, police will avoid the use of force and, if force is necessary, only use force to the minimum extent. In violent assemblies, police will use less dangerous means of crowd control but if force becomes necessary, only use the minimum force necessary.

(EAC Common Standards 3. Police Actions (xiii))

Discussion on protections in domestic law

To what extent is there consistency between the international and Common Standards and domestic protections on the one hand, and custom or other forms of discrimination in your domestic situation? What are some of the challenges in your country?

Definitions

Public order policing refers to:

the management of demonstrations, political rallies and large scale disturbances.

(EAC Standard Operating Procedures, Public Order Policing, 1 (1.2))

Demonstrations refer to:

events that are intended to express particular views (often of a political nature) or to oppose certain policies or measures. They include assemblies at a fixed locality as well as processions. In some cases they may evolve into disturbances involving the risk of harm to law enforcement officials, the public or damage to property.

(EAC Standard Operating Procedures Public Order Policing, 1 (1.3))

Exclusions from EAC Standard Operating Procedures:

Policing responsibilities at gatherings like sporting or music events
EXCEPT if, these types of events turn into demonstrations and or/
disturbances.

(EAC Standard Operating Procedures Public Order Policing, 1 (1.4))

Limitations on the right to assembly

the Common Standards permitted restrictions on the right to assemble
in interest of:

- ≡ National security or public safety;
- ≡ Public order;
- ≡ Protection of health or morals;
- ≡ Protection of the rights of others.

(EAC Standard Operating Procedures Public Order, 3 (3.1))

Trainer

Ask participants if they know of any demonstrations that were refused the right to assemble on the ground of the protection of health or morals. Possible examples of health (contagious diseases – ebola virus) or the risk of environmental disasters.

PART 2: Procedures when policing public protests

Most states have procedures governing processes to be followed for members of the public seeking to hold a demonstration.

International Law
General comment No. 34: ICCPR

Restrictions must not be overbroad. The Committee observed in general comment No. 27 that ‘restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected ... The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law (General comment No. 27, para. 14. See also Communications No. 1128/2002, *Marques v. Angola*; No. 1157/2003, *Coleman v. Australia*).

Role play: From Homework section in the Legal Use of Force module

Turn back to the Use of Force module, to the instructions for the role play between the police unit and the investigating commissioner’s unit around a demonstration by hawkers in which people (including a police official) were injured, some died and property was looted.

The rest of this module is based on those readings, and consists of a full class role play (with the class divided into two groups) and a report-back session afterwards.

To recap the **context of the role play**:

A group of hawkers has formed an association and applied to the correct authority to hold a mass demonstration to protest the city’s refusal to give them proper stalls and to provide toilets and security. They were refused permission. They decide to go ahead with a protest anyway. A group of 30 men assemble in the main market street one Saturday morning. They have placards and are colourfully dressed. The mood among the protesters is peaceful but a bit provocative. Some traders who are not demonstrating are angry because they say the others are interfering in their right to economic activity, and that the demonstrators are putting off potential shoppers. A few of these traders start throwing cans, bottles and stones at the demonstrators. Some of the demonstrators start picking up the stones and throwing them back.

The police are at the demonstration.

By the end of the demonstration, stalls have been looted; 20 people have been arrested; two people have died and a police officer has been wounded.

The media posted pictures of the demonstration and it made world news.

Set up the room like a commission, with central chair for the commissioner and a few chairs around for the aides.

Opposite, set up a ‘podium’ for the police official being questioned by the Commissioner and have chairs next to it, where other members of the unit can sit while waiting to be called up to answer questions.

Appoint a few people as journalists to make notes of the police’s answers.

After the role play, ask the investigating commission's team to comment on the police's public order procedures and the extent to which they respected the Common Standards and international instruments on public order policing.

Group 1: Police unit

The Investigating Commissions Unit summons your police unit the day after the demonstration to answer questions on what happened in the demonstration and justify your actions based on the Common Standards and international instruments on public order policing.

The questions will be about:

- What type of demonstration this was;
- Your preparation in general for demonstrations;
- Your preplanning for this demonstration;
- What your objectives were. Which rights you were trying to protect on both sides;
- How you decided to deploy police at the demonstration;
- Your tactics;
- What equipment you used to disperse the crowd;
- Any force you used;
- Any arrests you made;
- How people were wounded or killed, with what equipment, and what you did with the wounded or dead;
- Responsibility for the policing;
- Consequences of police action;
- To reflect on anything you might have done differently or better or more in line with policing within a human right's framework.

Group 2

You are the Investigating Commission. You are going to question the police unit about the demonstration and assess the different aspects of the unit's involvement and whether the policing was in line with a human rights framework based on the Common Standards and international instruments on public order policing.

1. You need to prepare questions about:
2. What type of demonstration this was;
3. The unit's preparation for demonstrations in general;
4. The unit's preplanning for this particular demonstration, based on what you expected to happen;
5. Any procedures for monitoring, recording and investigating the event afterwards;
6. What the unit's objectives were. What rights was the unit's presence trying to protect?
7. How and how many police were deployed at the demonstration;
8. What equipment the police had at their disposal;
9. The unit's tactics;
10. The unit's attitude towards both the demonstrators and the crowd;
11. Any agents provocateurs and how the unit dealt with them;
12. Any contingency planning;
13. Which command and control systems there were;
14. Whether any non-violent means were used to contain or defuse the situation;
15. At which point the unit decided to intervene;

16. Which weapons were used by the crowd;
17. Which equipment the unit used to disperse the crowd;
18. Whether and which kind of warnings were given;
19. The type of force the unit used: was there a continuum?
20. Who was wounded and how (demonstrators or people in the crowd);
21. How the police officer was wounded;
22. How two people died;
23. Why and how and who was arrested, what the purpose of the arrests were, whether they are legitimate within the context of the EAC Common Standards, whether any charges were brought;
24. Which restraints were used;
25. Whose command the unit acted on; and
26. Consequences of police action.

Key principles

East African Common Standards

Factors to consider when applying principles:

- = **Avoid use of force** to disperse crowds during non-violent assemblies (even if assembly is unlawful);
- = If force unavoidable, it should be the **minimum** necessary; In violent assemblies, police to use **less dangerous means of crowd control** but if force becomes necessary, only use the minimum force necessary.

(EAC Common Standards, 3, Police Actions (xiii))

In as far as possible police should prioritise their role in supporting the public in exercising their rights.

(EAC Standard Operating Procedures, 3 (3.2.1))

Police presence can have undesired effects and may be considered as intimidation and increase tension and hostility – in general deployment in immediate vicinity of large contingents of police wearing/carrying riot control equipment should be avoided unless necessary.

(EAC Standard Operating Procedures, 3(3.2.2))

Police should aim to protect the right to peaceful assembly but need to weigh interests of members of the public i.e. police should negotiate with organisers to change plans to be less disruptive.

(EAC Standard Operating Procedures, 3(3.3))

Police should aim to resolve problems by dialogue.

(EAC Standard Operating Procedures, 3(3.4))

Police where possible should focus on containing and deescalating situations with potential harm to persons or damage to property.

(EAC Standard Operating Procedures, 3(3.3.5))

International law

- = Use of force is a last resort to protect life;

- ≡ Should only be directed at specific individual/s who turn violent, not the crowd;
 - ≡ Use of non-violent means to disperse crowds if necessary i.e. splitting/isolating/blocking access, safe channels for exit and non-lethal equipment; training of law enforcement personnel in other techniques.
- (Discussed in detail in Use of Force module)*

Preparation

- ≡ Police should gather advanced information about the demonstration:
- ≡ make contact with leaders/organisers of requirements to encourage compliance;
- ≡ Procedures for informing police of planned demonstrations should be clearly outlined and accessible to organisers with a two-day notice period;
- ≡ Appropriate senior police personnel should be notified of intended demonstration.

(EAC Standard Operating Procedures Public Order Policing, 4)

General steps to be taken to minimise harm

Steps to be taken to minimise harm:

- ≡ Liaison and negotiation with organisers or leaders a prior to and during demonstrations;
- ≡ Detailed planning for the demonstrations;
- ≡ Prevent a demonstration likely to involve serious public disorder;
- ≡ Training of police officers;
- ≡ Effective command and control of police response to demonstration;
- ≡ Use of shields, helmets and other protective wear for police officers;
- ≡ Provision and use of non-lethal weaponry;
- ≡ Availability of communication equipment;
- ≡ Consideration of the likely risk to innocent persons by use of force and specific types of weapons or ammunition. The presence of children, elderly, persons with disabilities and other vulnerable groups '*should be a factor that motivates for additional caution in using force*'. Weapons or ammunition not regarded as lethal may be more likely to have lethal consequences if a young child or elderly person is hit, they may also be at greater risk of crowd stampede.

(EAC Standard Operating Procedures, 9.1)

Advance training for police in use of certain types of weaponry.

(EAC Standard Operating Procedures, 9.2)

- iii. Prior to any use of force an audible and clear verbal warnings should be given where reasonably possible.

(EAC Standard Operating Procedures, 9.3)

- iv. any force that is used should be minimum force necessary.

(EAC Standard Operating Procedures, 9.4)

Steps before policing unplanned demonstrations

Where no advance notice is given:

- ≡ Police should ensure appropriate resources are mobilised;

- ≡ Local commanders must ensure command and control systems are quickly established;
- ≡ Local commanders should develop contingency plans, in areas where protests are more frequent, to ensure a quick response;
- ≡ Absence of notification should not in itself be a reason for obstructing the holding of a demonstration;
- ≡ Grounds for intervening/ending a demonstration: nature or scale of demonstration is such that police will not reasonably be able to deal with potential problems.

(EAC Standard Operating Procedures Public Order Policing, 4 (4.7))

Policing planned demonstrations

- ≡ Secure cooperation from organisers – reduce agreement to writing including: standards of conduct;
- ≡ provision of marshals or stewards for demonstration;
- ≡ commencement and dispersal times;
- ≡ location or route.

Steps when policing demonstrations prohibited by court order

Non-violent and peaceful: police must apply framework in Standard Operating Procedures;

Violent: police should institute charges against organisers or convenor.

(EAC Standard Operating Procedures Public Order Policing, 5)

Types of demonstrations

Lawful and peaceful demonstrations

Role of police:

- ≡ Monitor gathering;
- ≡ Ensure safety of participants and public;
- ≡ Maintain public order; and
- ≡ Minimise injury from vehicle traffic; rival gatherings; deal with obstructions (diverting/stopping traffic) facilitating access to homes and workplaces; prevention of damage to property.

(EAC Standard Operating Procedures Public Order Policing, 6 (6.2))

Unlawful or unauthorised but peaceful demonstrations

Approach of police:

- ≡ If peaceful – to be dealt with as peaceful lawful assembly unless there are substantial reasons for bringing demonstration to an end (danger of harm to demonstrators or public; or serious damage to property);
- ≡ If compelling reasons for intervening – police must engage crowd leaders assess intentions and develop an acceptable plan to enable demonstration to continue in manner that minimises harm or risk of foreseeable harm; enable de-escalation and orderly dispersal

(EAC Standard Operating Procedures Public Order Policing, 6 (6.3))

When to intervene

When police officer in charge believes, on reasonable grounds, the likelihood of large-scale disturbance and serious public disorder involving threat of:

- ≡ Harm to demonstrators or members of the public;
- ≡ Serious damage to property; or
- ≡ Serious disruption of community life.

Violent demonstrations (whether lawful or not)

If the gathering is peaceful but a limited number of individuals are causing or likely to cause harm to others or damage to property, police should focus on individuals by:

- ≡ Requesting leaders to address the issue; and
- ≡ Targeting specific violent or disruptive individuals for arrest.

Where the gathering is generally more of a disorderly nature and there is current violence or the likelihood of violence to persons or damage to property, police priorities should be to:

- ≡ Protect persons, including participants and non-participants alike, and property at risk;
- ≡ Disperse disorderly or threatening crowds; and
- ≡ Effect the arrest of individual law violators and removal or isolation of the person inviting the violent behaviour.

(EAC Standard Operating Procedures Public Order Policing 6, (6.3.3))

Command and control requirements

A commander must be appointed as soon as possible for each demonstration or public order incident;

Police shall only make arrests or employ force when authorised by a commander (unless in circumstances requiring immediate action);

The commander must ensure:

- ≡ Provisions for communication with leaders/organisers prior to and during demonstration;
- ≡ Determination of personnel, equipment and provisions (i.e. food for police personnel) and necessary arrangements for reserve/reinforcements;
- ≡ Establishment of command post and procedures for coordinating police action;
- ≡ Determination of level of force and engagement tactics deemed reasonable to resolve unlawful actions;
- ≡ Authorisation for arrest as means of curtailing unlawful actions;
- ≡ Securing public buildings and national key points;
- ≡ Designation of *liaison officer* to coordinate emergency services or government agencies (as required);
- ≡ Designation of *public information officer* to engage public through media;
- ≡ Designation of *procedures for monitoring, recording and investigating events* including unlawful behaviour by demonstrators and use of force or misconduct by police.

(EAC Standard Operating Procedures Public Order Policing, 7)

Deployment of personnel guidelines

- ≡ Police to assemble at specified area when called to a disturbance;
- ≡ Police to wear visible identification on outside of uniforms at all times;
- ≡ Police to be positioned to minimise contact with the assembly;
- ≡ Police officers to be courteous and neutral in demeanour;
- ≡ Police should not engage in conversations related to subject demonstration with demonstrators or act in response to comments or other provocations;
- ≡ Reserve units to be located in a manner not visible to participants.

(EAC Standard Operating Procedures Public Order Policing, 8)

Dispersal

Before dispersing

Prior to issuing dispersal orders – medical and other emergency personnel should be on hand;

Vehicles and other logistical arrangements need to be in place prior to carrying out multiple arrests.

Warnings

Warnings to be issued prior to physical action being taken to disperse crowd (where time and circumstances permit);

Warnings must include motivation for the order and the order to disperse, and identify dispersal routes;

Warning to be given in a language understood by majority of participants;

Repeated warnings (second and third warning at reasonable intervals before action taken);

Warnings to be issued and loudly (use of a number of vantage points, with public address systems of moving patrols in a large crowd);

Where possible warnings shall be audio or video recorded and time and name of issuing officers recorded in incident commander's event log.

Tactics

Specific crowd dispersal tactics shall be ordered where crowd fails to heed warning including:

- ≡ Display of forceful presence to include police lines, motorcycles, police vehicles, mobile filed forces;
- ≡ Multiple simultaneous arrests;
- ≡ Pyrotechnics such as smoke grenades or thunderflashes;
- ≡ Police formations and batons or crowd control chemical agents where crowd actively resists dispersal and where lesser means have proved ineffective.

(EAC Standard Operating Procedures Public Order Policing, 10)

Use of force

Where there is imminent threat of injury to persons or damage to property it may be necessary to use force.

(EAC Standard Operating Procedures Public Order Policing, 9.5)

Handcuffs

No weapons other than, where necessary, handcuffs or approved physical restraints should be used against passively resistant individuals. Persons who resist arrest should be carried to transportation (by two or more police officers) if they refuse.

(EAC Standard Operating Procedures Public Order Policing, 9.6)

Force should not be used against individuals who are restrained or otherwise to control, unless they pose a risk of injury to themselves, police officers or others which cannot be contained using less extreme measures

(EAC Standard Operating Procedures Public Order Policing, 9.6)

Batons

Batons may be used where reasonably necessary against persons who pose a danger to other persons or property including persons resisting arrest by means of physical force.

(EAC Standard Operating Procedures Public Order Policing, 9.7)

Baton strikes should not be directed at the head, neck, spine, groin or centre of the chest (sternum) of an unarmed person unless immediately necessary to protect the police officer or another person against death or serious injury

(EAC Standard Operating Procedures Public Order Policing, 9.8)

Firearms

Permitted use: Imminent danger to life or danger of serious injury
Firearms, or other weapons likely to cause death (lethal force) should only be used:

- a) where no lesser means are available or likely to be effective;
- b) there is an imminent danger of death or serious bodily harm to one or more persons; and
- c) it is possible to target the persons who are source of this threat or danger without recklessly endangering the lives of other people.

(EAC Standard Operating Procedures Public Order Policing, 9.9)

Prohibitions

The police should not use firearms from moving vehicles or aircraft.

(EAC Standard Operating Procedures Public Order Policing, 9.10)

Direct-fired impact ammunitions such as plastic bullets or bean bag rounds may similarly only be used where no less harmful means are available:

- a) To prevent conduct that poses a threat of death, serious bodily harm or serious large-scale damage to property; and

- b) Where the individuals responsible can be properly targeted. Projectiles should be aimed to strike only the lower part of the body, below the waist. Firing higher than the waist should be prohibited unless there is an immediate threat to life or threat of serious injury which cannot be contained by less extreme options; and
- c) Where minimum safe firing distances (which will vary from one weapons system to another) can be observed. Firing at less than this range should be prohibited unless there is an immediate threat to life or threat of serious injury which cannot be contained by less extreme options.

(EAC Standard Operating Procedures Public Order Policing, 9.11)

Other devices

Projectiles

Devices designed for non-target-specific use (water canons or fire-hoses) may be used when other less harmful means are unlikely to be effective:

- a) In circumstances where there is a danger to life or threat of serious bodily harm to any persons, but
- b) It is not possible to direct the use of force exclusively against the persons posing the danger. Nevertheless the weapons should not be fired indiscriminately but should be targeted in such a manner as to bring an end to the identified danger.

(EAC Standard Operating Procedures Public Order Policing, 9.12)

However, given the risk of death, serious injury and danger to bystanders, skip-fired projectiles and multiple projectiles should not be used.

(EAC Standard Operating Procedures Public Order Policing, 9.14)

Shocking weapons

Contact electric-shock weapons, such as electric-shock batons or electric-shock shields, are not suitable for law enforcement purposes and should not be issued to police officers in any circumstances. As part of this use, their use in crowd control is particularly problematic and should not be authorised, given their short range, limited efficacy and risk of causing stampedes.

(EAC Standard Operating Procedures Public Order Policing, 9.15)

Chemicals

Chemical irritants shall only be used when other target-specific non-lethal weapons are not available or are unlikely to be effective as follows:

- a) They may be used by trained and authorised officers according to the instructions of a senior commander;
- b) To prevent serious injury or serious large-scale damage to property likely to cause serious injury; and
- c) Where avenues of escape are available to the crowd and, where possible, announced to the crowd in advance;

(EAC Standard Operating Procedures Public Order Policing, 9.16)

Chemical irritant grenades or canisters, which are fired from a launcher, must never be fired directly at an individual, hospital facilities or other closed facilities.

(EAC Standard Operating Procedures Public Order Policing, 9.17)

Hand-held chemical irritant sprays (such as PAVA or CS gas) issued to individual officers may be used against specific individuals engaged in unlawful acts or who are actively resisting arrest or as necessary for defensive purposes, if no lesser options are available. Where it is necessary to use hand-held sprays, officers should be trained to apply only a burst of one second long in order to allow them to bring the subject under control. Any additional dose should be avoided and applied only under the same standard as the first dose.

(EAC Standard Operating Procedures Public Order Policing, 9.18)

Flammable chemical irritants should not be used in situations where there is a fire risk.

(EAC Standard Operating Procedures Public Order Policing, 9.19)

CM, a harmful chemical which predates CS, shall not be used under any circumstances.

(EAC Standard Operating Procedures Public Order Policing, 9.20)

Police formations and batons or crowd control chemical agents may be used for forcing crowd movement where the crowd actively resists dispersal and where lesser means have proved ineffective.

(EAC Standard Operating Procedures Public Order Policing, 10 (10.8))

Arrests

Avoid the use of arrests during demonstrations unless **strictly necessary**.

Arrests should only be used:

- ≡ Against specific individuals engaged in acts of violence or damage to property;
- ≡ Where for reasons of compelling public interest it is lawful and necessary to bring an end to a demonstration and demonstrators refuse to disperse after being provided with a reasonable opportunity to do so; and Where appropriate due to specific violations of the law (leaders and or other participants may be arrested and charged subsequent to the demonstration).

(EAC Standard Operating Procedures Public Order Policing, 11)

Documenting and video recording of demonstrations

Video recording of all demonstrations by police is necessary even where lawful and non-violent.

Any police use of force should be documented as fully as possible by means of video recording.

(EAC Standard Operating Procedures Public Order Policing, 12)

Deaths during a demonstration

Procedure

Deaths caused by fatal injury to a demonstrator or member of the public must be prioritised:

- ≡ Check for vital signs and arrange first aid, medical support, hospitalisation;
- ≡ Identify all potential witnesses and secure the scene;
- ≡ Promptly notify relevant agencies so independent enquires into death can be undertaken;
- ≡ Inform family members 'promptly' of death and circumstances/cause/location of remains; and
- ≡ Receive account of officers and arrange debriefing counselling if required.

(EAC Standard Operating Procedures Public Order Policing, 13)

Review of police management of demonstrations

Police departments to establish procedures to review policing of demonstrations.

Lessons should inform training programmes.

(EAC Standard Operating Procedures Public Order Policing, 14)

MODULE 7

Management responsibilities

Learning outcomes

Participants will be able to:

- Understand the ethical, training, cooperation and other obligations of police as set out in the Common Standards.

Trainer: Discussion: The obligations of police organisations

The last part of the Common Standards sets out the obligations of police organisations. We will deal with them by discussing each obligation.

Read through each provision with the participants, and discuss their views on each one.

What does it mean to be a service as opposed to a force? What does it mean to uphold the law, rather than enforce it? What is your vision of your police service?

Police Organisations will:

- Be a service that upholds the law as opposed to a force that enforces the law;

Is it important for the police to be independent of the executive? Why? What is the reality in your country? What does democratic policing mean to you?

Police Organisations will:

- Strive to promote a police organisation that is operationally independent of the executive and upholds the principles of democratic policing;

How important is transparency and accountability?

Police Organisations will:

- Increase public confidence, promote and encourage greater transparency and accountability in all their activities;

Which mechanisms exist in your country for oversight of police officials' actions? Are they sufficient?

Police Organisations will:

- Account for violations by officers of citizens' human rights and ensure that inquiries are conducted in a fair and transparent manner;
- Ensure that internal oversight mechanisms are strengthened in accordance with expected standards;

Are there proper screening processes for recruitment in your country? Is the demographic of your country represented? Is training sufficient and of a good enough quality?

Police Organisations will:

- vi) Implement basic standards for the recruitment of officers, including selection of candidates by proper screening processes to ensure that they exhibit appropriate moral, psychological and physical qualities for their role;
- vii) Ensure that the police organisations are representative of the community as a whole, with ethnic, gender, language and religious compositions reflective of the population they serve;
- viii) Ensure their personnel receive comprehensive and continuous training in observance of human rights and policing; and
- ix) Ensure that the training curriculum is periodically reviewed and updated in accordance with changing policing needs.

Is there a culture of opposition to corruption within your police service?

Police Organisations will:

- x) Refrain from engaging in acts of corruption and abuse of power, and will rigorously oppose and combat all such actions;
- xi) Investigate corruption and abuse of power and take preventative measures, including policing anti-corruption tendencies;

What kind of relations does your police service have with other stakeholders, for example prosecutors, law clinics, NGOs, legal aid and civilian organisations?

Police Organisations will:

- xii) Cooperate with role-players within and outside the criminal justice system, including citizens and civil society organisations in fulfilling their mandates;

Do you consider this training course on the East African Common Standards to be a relevant way of achieving the point below?

Police Organisations will:

- xiii) Promote bilateral, regional, multilateral and global law enforcement and crime prevention cooperation and assistance. To further this aim, measures should be taken to prevent crime at a domestic level, strengthen information sharing and facilitate technical assistance, including exchange programmes and training.

(EAC Common Standards 4. Police Organisations)

Appendix I

Relevant International Instruments

Module 2: Stop and search

‘Detained person’ means any person deprived of personal liberty except as a result of conviction for an offence.

(UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment)

Right to be presumed innocent until proven guilty.

(UNDHR Article 11(1)/ACHPR Article 7(b))

Right not to be subjected to arbitrary arrest and detention.

(ICCPR Article 9(1))

Right to equal protection before the law.

(ACHPR Article 3)

Right of respect of the inherent dignity of a human being and recognition of his legal status.

(ACHPR Article 5)

Right to liberty and security of the person and not to be arbitrarily arrested or detained.

(ACHPR Article 6)

Right to be informed of reasons for arrest ‘at time of arrest’.

(UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 10))

Rule of law/legality

ICCPR

... Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or *detention*. No one shall be *deprived of his liberty* except on such grounds and in accordance with such procedures as are established in law.

(Article 9(1))

ACHPR

Every individual shall have the *right to liberty and to the security* of his person. No person may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

(Article 6)

Luanda Guidelines

2. Grounds for arrest

- a. Persons shall only be deprived of their liberty on grounds and procedures established by law. Such laws and their implementation must be clear, accessible and precise, consistent with international standards and respect the rights of the individual.

Prohibition of discrimination – equal protection of the law

UNDHR

All are equal before the law and are entitled without any discrimination to equal protection of the law ...

(Article 7)

ACHPR

1. Every individual shall be equal before the law.

2. Every individual shall be entitled to equal protection of the law.

(Article 3)

3. The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

4. The aged and the disabled shall also have the right to special measure of protection in keeping with their physical or moral needs.

(Article 18)

Vulnerable groups – duty of care/accommodation

Special attention to vulnerable – children, juveniles, elderly, sick or injured, in particular the interests of children or juveniles, must be considered when they are arrested or detained.

(EAC SOP 2.2.)

ACHPR

3. The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

4. The aged and the disabled shall also have the right to special measure of protection in keeping with their physical or moral needs.

(Article 18)

Luanda Guidelines

d. Searches must be carried out in accordance with the law, and in a manner consistent with the inherent dignity of the person and the right to privacy. Officials conducting a search shall:

For all types of searches, including pat-down searches, strip searches and internal body searches, police officer should be of the same gender as the suspect.

Inform suspects of the reason for the search prior to the conduct of the search.

Make a written record of the search, which is accessible by the person searched, his or her lawyer or other legal service provider, family members, and, if the person searched is in custody, any other authority or organisation with a mandate to visit places of detention or to provide oversight on the treatment of persons deprived of his or her liberty.

Provide a receipt for any items confiscated during the search.

Ensure that strip searches and internal body searches are only conducted in private.

Ensure that internal body searches are only conducted by a medical professional and only upon informed consent or by a court order.

e. Arresting authorities shall maintain, and provide access to, an official custody register in strict accordance with Part IV of these Guidelines.

(Luanda Guidelines, Arrest 3)

Module 3: Arrest

Rule of law/legality

ICCPR

... Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established in law.

(Article 9(1))

ACHPR

Every individual shall have the right to liberty and to the security of his person. No person may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

(Article 6)

Luanda Guidelines

2. Grounds for arrest
 - a. Persons shall only be deprived of their liberty on grounds and procedures established by law. Such laws and their implementation must be clear, accessible and precise, consistent with international standards and respect the rights of the individual.
3. Procedural guarantees for arrest
 - a. Arrests shall only be carried out by police or by other competent officials or authorities authorised by the state for this purpose, and shall only be carried out pursuant to a warrant or on reasonable grounds to suspect that a person has committed an offence or is about to commit an arrestable offence.

Prohibition of discrimination – equal protection of the law

UNDHR

All are equal before the law and are entitled without any discrimination to equal protection of the law ...

(Article 7)

ACHPR

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.
3. The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measure of protection in keeping with their physical or moral needs.

(Article 18)

Luanda Guidelines

2. Grounds for arrest

....

 - b. Arrests must not be carried out on the basis of discrimination of any kind such as on the basis of race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth, disability or any other status.

Humane treatment – prohibition of torture

UNDHR

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
(Article 5)

ICCPR

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
(Article 7)

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Definition of torture:

... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a persons for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or a the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
(Article 1)

Application:

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public enemy, may be invoked as a justification of torture.

An order from a superior officer or a public authority may no be invoked as a justification for torture.
(Article 2)

Vulnerable groups – duty of care/accommodation

ACHPR

3. The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measure of protection in keeping with their physical or moral needs .
(Article 18)

Injured/sick – right to medical assistance

Luanda Guidelines

4. Rights of an arrested person

The following rights shall be afforded to all persons under arrest:

- g. The right to urgent medical assistance, to request and receive a medical examination and to obtain access to existing medical facilities.

UN Code of Conduct for Law Enforcement Officials

2. Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary:

- (a) Medical attention, which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

- (b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.
- (c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

(Article 6)

Women

Convention on the Elimination of Discrimination Against Women (CEDAW)

Defining discrimination of women:

... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field.

(Article 1)

Disabled persons

Convention on the Rights of Persons with Disabilities

Definition:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

(Article 1)

Discrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

(Article 2)

Obligation to make reasonable accommodation:

Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

- 3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

(Article 5)

Equal recognition before the law:

- 1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
- 2. States Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
- 3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

(Article 12)

Access to justice for persons with disabilities:

States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in

order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

(Article 13)

Liberty and security of the person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

Enjoy the right to liberty and security of person;

Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

(Article 14)

ACHPR

The aged and the disabled shall also have the right to special measure of protection in keeping with their physical or moral needs.

(Article 18 (4))

Luanda Guidelines

1. Rights of an arrested person

The following rights shall be afforded to all persons under arrest:

- ≡ The right to be free from torture and other cruel, inhuman and degrading treatment and punishment.
- ≡ The right to be informed of the reasons for their arrest and any charges against them.
- ≡ The right to silence and freedom from self-incrimination.
- ≡ The right of access, without delay, to a lawyer of his or her choice, or if the person cannot afford a lawyer, to a lawyer or other legal service provider, provided by state or non-state institutions.
- ≡ The right to humane and hygienic conditions during the arrest period, including adequate water, food, sanitation, accommodation and rest, as appropriate considering the time spent in police custody.
- ≡ The right to contact and access a family member or another person of their choice, and if relevant consular authorities or embassy.
- ≡ The right to urgent medical assistance, to request and receive a medical examination and to obtain access to existing medical facilities.
- ≡ The right to information in accessible formats, and the right to an interpreter.
- ≡ The right to apply for release on bail or bond pending investigation or questioning by an investigating authority and/or appearance in court.
- ≡ The right to challenge promptly the lawfulness of their arrest before a competent judicial authority.
- ≡ The right to freely access complaints and oversight mechanism.
- ≡ The right to reasonable accommodation that ensures equal access to substantive and procedural rights for persons with disabilities.

2. Notification of rights

At the time of their arrest, all persons shall be informed of the rights set out in section 4, orally and in writing, and in a language and format that is accessible and is understood by the arrested person. Authorities shall provide the arrested person with the necessary facilities to exercise the rights set out in section 4, above.

These rights are reinforced in other instruments:

- ≡ Right to be presumed innocent until proven guilty;
(*UNDHR Article 11(1); ACHPR Article 7(b)*)
- ≡ Right not to be subjected to arbitrary arrest and detention;
(*ICCPR Article 9(1)*)
- ≡ Right to equal protection before the law;
(*ACHPR Article 3*)
- ≡ Right of respect of the inherent dignity of a human being and recognition of his legal status;
(*ACHPR Article 5*)
- ≡ Right to liberty and security of the person and not to be arbitrarily arrested or detained; and
(*ACHPR Article 6*)
- ≡ Right to be informed of reasons for arrest at time of arrest.
(*UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 10)*)

Use of force

Luanda Guidelines

c. The lawful use of force and firearms shall be a measure of last resort and limited to circumstances in which it is strictly necessary in order to carry out an arrest. If the use of force is absolutely necessary in the circumstances:

The level of force must be proportionate and always at the most minimal level necessary;

Additional restrictions on the use of firearms shall be prescribed by law and require that their use be strictly limited to the arrest of a person presenting an imminent threat of death or serious injury; or to prevent the perpetration of a serious crime involving grave threat to life, and only when less extreme measures are insufficient to make the arrest; and

The use of force shall be strictly regulated under national law and in conformity with international standards, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

(3. *Procedural guarantees for arrest LUANDA Guidelines*)

Recording information

3. General provisions

All arrests and detentions shall be recorded at the earliest possible time following arrest or detention in an official register with sequentially numbered pages.

Access to the register shall be provided to the arrested or detained person, his or her lawyer or other legal service provider, family members, and any other authority or organisation with a mandate to visit places of detention or to provide oversight on the treatment of persons deprived of their liberty.

Information to be recorded in arrest, custody and pre-trial detention registers:

All registers shall contain the following information, as a minimum:

- ≡ The identity, age and address of the person, and the contact information of another person responsible for the care or custody of the person, if applicable.
- ≡ The date, time and place that:

(*Luanda Guidelines*)

Further,

A record of every arrest must be made and shall include: the reason for the arrest; the time of the arrest; the time the arrested person is transferred to a place of custody; the time of appearance before a judicial authority; the identity of involved officers; precise information on the place of custody; and details of the interrogation.

The arrest record shall be communicated to the detainee, or to his or her legal counsel.

(*Human Rights Standards and Practice for the Police UNHCR*)

Children

Best interests of child paramount:

Article 3: 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

(Convention on the Rights of the Child (CRC))

3. The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

(ACHPR Article 18)

Article 17 2. States Parties to the present Charter shall in particular: (b) ensure that children are separated from adults in their place of detention or imprisonment. (African Charter on the Rights and Welfare of the Child)

Children in armed conflict:

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

(CRC Article 38)

Further,

1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.
2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.
3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

(African Charter on the Rights and Welfare of the Child Article 22)

Special considerations/accommodations/legal assistance:

1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

- b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - i) To be presumed innocent until proven guilty according to law;
 - ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - vii) To have his or her privacy fully respected at all stages of the proceedings.
- 3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular:
 - a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(CRC Article 40)

Further,

- d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

(CRC Article 37)

Further,

State Parties to consider the best interests of the child in the context of children's treatment in the criminal justice system.

(CRC Optional Protocol to Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography Article 8)

Further,

1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.
2. States Parties to the present Charter shall in particular:
 - (a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;
 - (b) ensure that children are separated from adults in their place of detention or imprisonment;
 - (c) ensure that every child accused in infringing the penal law:
 - (i) shall be presumed innocent until duly recognised guilty;
 - (ii) shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;
 - (iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;

- (iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;
- (d) prohibit the press and the public from trial.
- 3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.
- 4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

(Administration of Juvenile Justice, African Charter on the Rights and Welfare of the Child, Article 17)

Alternatives to imprisonment:

- 3. (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected ...
- 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

(CRC Article 40 (3))

Further,

Where appropriate, particularly for minor crimes, efforts should be made to divert cases away from the criminal justice system and utilise recognised and effective alternatives that respect applicable international law and standards. Alternatives to arrest and detention should be promoted under a framework that includes reasonable accommodation for persons with disabilities, and a framework that promotes the best interests of children in conflict with the law.

(Luanda Guidelines 1. c)

Measure of last resort:

- b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

(CRC Article 37)

The institutionalisation of children should always be considered a last resort.

(United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) UN General Assembly Resolution 45/112, Annex, paragraph 46)

Prohibition of capital punishment:

- a) No Child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age.

(CRC Article 37)

Module 4: Detention

Rule of law

No one shall be subjected to arbitrary arrest, detention or exile.

(Article 9, Universal Declaration of Human Rights)

International Covenant on Civil and Political Rights (ICCPR)

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

(Article 9)

African Charter on Human and Peoples' Rights (ACHPR)

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

(Article 6)

Luanda Guidelines

Everyone has the right to liberty and security of the person. Detention must always be an exceptional measure of last resort. No one shall be subjected to arbitrary or unlawful arrest or detention.

(Luanda Guidelines, 1. Arrest. General Provisions, 1a.)

Access to court**Universal Declaration of Human Rights**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

(Article 8, Universal Declaration of Human Rights)

International Covenant on Civil and Political Rights (ICCPR)

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. *(Article 9)*

Luanda Guidelines

- a. All persons detained in police custody shall have a presumptive right to police bail or bond. States shall ensure that competent authorities and officials within the state's criminal justice system authorised to grant police bail or bond make decisions based on the criteria set out in Part III of these Guidelines.

If detention in police custody is determined by the competent authority to be absolutely necessary:

- i. All persons arrested and detained have the right to prompt access to a judicial authority to review, renew and appeal decisions to deny police bail or bond.
- ii. The maximum duration of police custody, prior to the obligation to bring the arrested person before a judge, shall be set out in national law that prescribes time limits of no more than 48 hours extendable in certain circumstances by a competent judicial authority, consistent with international law and standards.

Persons in police custody shall have access to confidential and independent complaints mechanisms while in custody.

(Luanda Guidelines, 7. Safeguards for police custody)

Right to be presumed innocent**International Covenant on Civil and Political Rights (ICCPR)**

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

(Article 14)

African Charter on Human and Peoples' Rights (ACHPR)

The right to be presumed innocent until proved guilty by a competent court or tribunal.

(Article 7b)

Standard Minimum Rules for the Treatment of Prisoners

A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.

(Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 11)

Humane conditions

Standard Minimum Rules for the Treatment of Prisoners

Sets standards for accommodation; personal hygiene; clothing and bedding; food; exercise and sport; medical services for prisoners, which are applicable to detainees, and special provision for 'Persons under arrest or awaiting trial'.

(Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 11)

ACHPR

The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

(Article 18(4))

Luanda Guidelines

Conditions of detention in police custody and pre-trial detention shall conform with all applicable international law and standards. They shall guarantee the right of detainees in police custody and pre-trial detention to be treated with respect for their inherent dignity, and to be protected from torture and other cruel, inhumane or degrading treatment or punishment.

(Conditions of detention in police custody and pre trial detention VI 24 Physical conditions)

Obligation to secure medical treatment

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

(UN Code Of Conduct for Law Enforcement Officials Article 6)

The right to urgent medical assistance, to request and receive a medical examination and to obtain access to existing medical facilities.

(Luanda Guidelines, 4. G. Rights of Arrested Persons)

Prohibition of torture

Universal Declaration of Human Rights

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

(Universal Declaration of Human Rights, Article 5)

Other instruments: International Covenant on Civil and Political Rights, Article 7; African Charter on Human and Peoples' Rights, Article 5; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

* The term 'cruel, inhuman or degrading treatment or punishment' should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

(Principle 6)

Right to legal assistance

ICCPR

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

(Article 14)

African Charter on Human and Peoples Rights (ACHPR)

The right to defence, including the right to be defended by counsel of his choice.

(Article 7c)

Luanda Guidelines

- d. All persons detained in police custody enjoy the following rights in relation to legal assistance:
 - i. Access without delay to lawyers and other legal service providers, at the latest prior to and during any questioning by an authority, and thereafter throughout the criminal justice process.
 - ii. Confidentiality of communication, including meetings, correspondence, telephone calls and other forms of communications with lawyers and other legal service providers shall be respected. Such communications may take place within the sight of officials, providing that they are conducted out of the hearing of officials. If this confidentiality is broken any information obtained shall be inadmissible as evidence.
 - iii. Detainees shall be provided with the means to contact a lawyer or other legal service provider of their choice or one appointed by the state. State legal assistance should be provided if the detainee does not have sufficient means or if the interests of justice require, for example given the gravity, urgency or complexity of the case, the severity of the potential penalty, and/or the status of the detainee as vulnerable or otherwise protected under Part VII of these Guidelines.
 - iv. The right to access case files and have adequate time and facilities to prepare a defence.
 - v. Access to lawyers or other legal service providers should not be unlawfully or unreasonably restricted. If access to legal services is delayed or denied, or detained persons are not adequately informed of their right to access providers of legal services in a timely manner, then States shall ensure that a range of remedies are available, in accordance with the principles set out in Part VIII of these Guidelines.
 - vi. Legal service providers should possess the requisite skills and training as required under national law for the provision of legal assistance and services. Depending on the system in place this includes lawyers, and where appropriate also other legal advisors, legal assistants, paralegals and those running legal clinics.

(Luanda Guidelines, 8. Access to legal services)

Standard Minimum Rules for the Treatment of Prisoners

For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

(C. Prisoners under arrest or awaiting trial Principle 93)

Alternatives to detention

Detention in police custody shall be an exceptional measure. Legislation, policy, training and Standard Operating Procedures shall promote the use of alternatives to police custody, including court summons or police bail or bond.

(Luanda Guidelines, 1.a. General Provisions)

Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalise criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

(United Nations Minimum Standard Rules for Non-Custodial Measures 1.5)

Module 5: Legal use of force

Key instruments

Universal Declaration of Human Rights and International Covenant on Civil and Political Rights protect right to life and prohibit arbitrary deprivation of life.

African Charter on Human and Peoples' Rights prohibits arbitrary deprivation of life.

Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment prohibits torture and cruel, inhuman or degrading treatment or punishment (which could be applicable to certain cases of illegitimate use of force).

UN Code of Conduct for Law Enforcement Officials. Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

(Article 3)

UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

Luanda Guidelines

Limit the use of firearms for reasons of self-defence or the defence of others against the imminent threat of death or serious injury.

(S25 (c))

UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting

- such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.
10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.
 11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:
 - (a) Specify the circumstances under which law enforcement officials are authorised to carry firearms and prescribe the types of firearms and ammunition permitted;
 - (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
 - (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
 - (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
 - (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
 - (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Arrest and detention and custody

Luanda Guidelines

3. Procedural guarantees for arrest
 - c. The lawful use of force and firearms shall be a measure of last resort and limited to circumstances in which it is strictly necessary in order to carry out an arrest. If the use of force is absolutely necessary in the circumstances:

The level of force must be proportionate and always at the most minimal level necessary; Additional restrictions on the use of firearms shall be prescribed by law and require that their use be strictly limited to the arrest of a person presenting an imminent threat of death or serious injury; or to prevent the perpetration of a serious crime involving grave threat to life, and only when less extreme measures are insufficient to make the arrest; and

The use of force shall be strictly regulated under national law and in conformity with international standards, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

(Procedural Guarantees for Arrest (3))

Conditions of detention in police custody and pre-trial detention

25. Procedural and other safeguards

States should have in place, and make known, laws, policies and standard operating procedures, which accord with Member States' obligations under the African Charter on Human and Peoples' Rights and other international law and standards, to:

...

Limit the use of force against persons in police custody or pre-trial detention to circumstances in which force is strictly necessary for, and proportionate to, the need for maintenance of security and order within the detention facility, or when personal safety is threatened.

Limit the use of firearms for reasons of self-defence or the defence of others against the imminent threat of death or serious injury.

Limit the permissible use of restraints, and the type of restraints, to ensure consistency with the presumption of innocence, treatment of detained persons that accords with respect for the inherent dignity of the person.

Set out the use of disciplinary measures against persons in police custody or pre-trial detention in law, policy and standard operating procedures, consistent with the inherent dignity of the person, humane treatment, limitations on the use of force.

(Procedural Guarantees for Arrest (25))

UN basic principles on the use of force and firearms by law enforcement officials

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.
16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.
17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Standard minimum rule for the treatment of prisoners

54. (1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

Children, pregnant women and persons with disabilities

UN Code of Conduct for Law Enforcement Officers

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

- (c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardises the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

UNCJIN – rules for the protection of juveniles deprived of their liberty

Limitations of physical restraint and the use of force

Recourse to instruments of restraint and to force should be prohibited, except as set forth below. Instruments of restraint and force can be used only in exceptional cases, where all other control methods have failed, and only as authorised by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should consult medical and other relevant personnel at once and report to the higher administrative authority.

The carrying and use of weapons by personnel should be prohibited in any facilities where juveniles are detained.

Right to protest is protected in international instruments:

Universal Declaration of Human Rights (Article 20(1))

International Covenant on Civil and Political Rights (Article 21)

African Charter on Human and Peoples' Rights (Article 11)

Use of force during policing of public protests/gatherings:

Basic Principles on Use of Force and Firearms by Law Enforcement Officials:

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognise that force and firearms may be used only in accordance with principles 13 and 14.
13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.
14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Use of force during stop and search operations

Obligations of police officers

Basic Principles on Use of Force and Firearms by Law Enforcement Officials:

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result. UN Basic Principles on the use of force and firearms by law enforcement officials
5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
 - (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
 - (b) Minimise damage and injury, and respect and preserve human life;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
 - (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.
6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

Consequences of non-compliance

UN Principles

Principle 7

Principle 24

Obligations of police organisations in respect of use of force

Adopt rules and regulations governing the use of force and firearms

Set out the use of disciplinary measures against person in police custody or pre-trial detention in law, policy and standard operating procedures, consistent with the inherent dignity of the person, humane treatment, limitations on the use of force.

(Luanda Guidelines 25. (e))

General provisions

Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

(UN Principles)

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:
 - (a) Specify the circumstances under which law enforcement officials are authorised to carry firearms and prescribe the types of firearms and ammunition permitted;
 - (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
 - (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
 - (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
 - (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
 - (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Equip and capacitate police offices on use of force

General provisions

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bulletproof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.
3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimise the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

Enforce criminal sanctions for abusive use of force

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

Proper screening and training of police officers

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

Specialised training/proficiency on use of force standards

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorised to do so only upon completion of special training in their use.

Training on police ethics, human rights and alternatives to use of force and firearms

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

Competency and authorisation for use of firearms

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorised to do so only upon completion of special training in their use.

Support for police officers

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

Hold superior officers accountable

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

Prevent victimisation of police officers who refuse to obey unlawful orders

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and fire-arms, or who report such use by other officials.

Module 6: Public order policing

Right to peaceful assembly is recognised in international instruments and reinforced by right to freedom of expression and association, and right of inhabitants to participate in the conduct and affairs of their state.

Universal Declaration of Human Rights (UDHR)

Everyone has the right to freedom of peaceful assembly and association.
(Article 20. (1))

International Covenant on Civil and Political Rights (ICCPR)

The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.
(Article 21)

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

(Article 19)

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

(Article 22)

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

(Article 25)

African Charter on Human and Peoples' Rights (ACHPR)

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

(Article 11)

UN Principles

Policing unlawful assemblies

As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognise that force and firearms may be used only in accordance with principles 13 and 14.

(Principle 12)

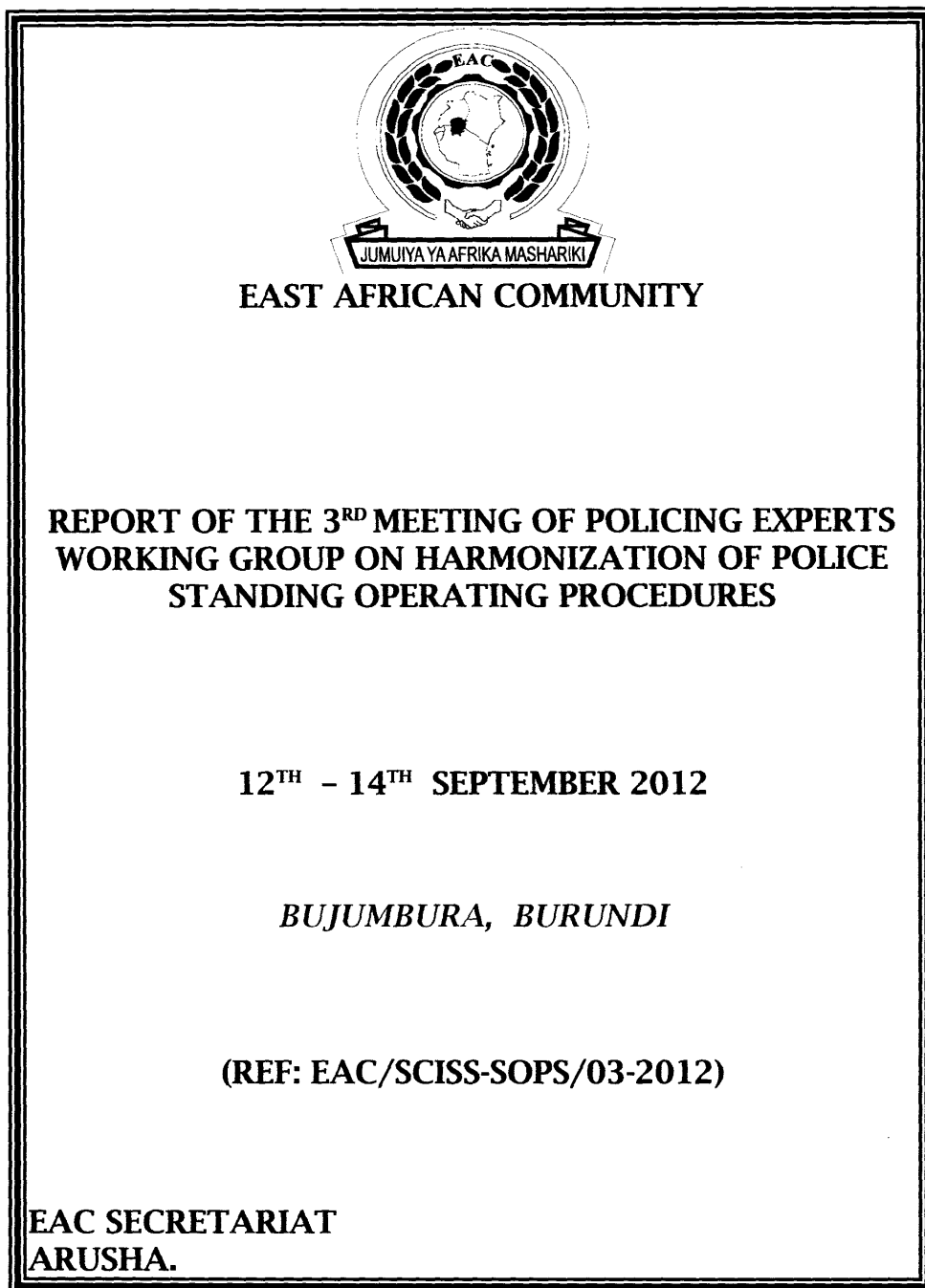
UN Code of Conduct for Law Enforcement Officials

In performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

(Article 2)

Appendix II

East African Community Standard Operating Procedures



USE OF FORCE

1. PERSONS BOUND BY THIS STANDING OPERATING PROCEDURE

All police officers, members of special police forces and units, staff of the police service and those assisting the police in a law enforcement capacity are bound by this operating procedure.

2. INTERNATIONAL LAW, CONTINENTAL LAW AND REGIONAL LAW RELATING TO USE OF FORCE

2.1. The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) protect the right to life, liberty and security of the person under the law and prohibit the arbitrary deprivation of life.

This means that:

- police are mandated to take all lawful and reasonable measures to protect life, liberty and security and must act to protect these rights – including through detecting and preventing crime, protecting life and property, preserving the peace, and apprehending offenders; and
- police must not take life, liberty or security without legal justification – such as lawful arrest or the legitimate and proportional use of force.

2.2. These two instruments, as well as the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment, also instruct that no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

2.3. Any lethal use of force, that is not legal, would violate the fundamental international principle of right to life, liberty and security of the person. It is possible that any use of force on another person, which is not legal, may be classified as cruel, inhuman or degrading treatment or punishment.

2.4. The UDHR and the ICCPR (along with the International Covenant on Economic, Social and Cultural Rights) constitute the International Bill of Rights.

2.5. When a country signs on to the International Bill of Rights, it is required to make amendments to domestic laws and procedures to ensure consistency between domestic practice and international law. All 5 countries of the EAC have signed on to the International Bill of Rights.

2.6. The rights articulated in the International Bill of Rights have been refined and restated in legally binding treaties that place specific legal obligations on the police – including

the UN Code of Conduct for Law Enforcement Officials (**UN Code of Conduct**) and the United Nations *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (**Basic Principles**).

2.7. Among other things, the UN Code of Conduct states that law enforcement officials shall respect and protect human rights and dignity (Article 2) and only use force when strictly necessary and required for the performance of their duty (Article 3). In relation to firearms, they should only be allowed when all of the following points are met:

- ‘a suspect offers armed resistance or otherwise jeopardizes the lives of others and
- *less extreme measures are not sufficient to restrain or apprehend the suspected offender.*’⁴

2.8. The Basic Principles are referred to in the body of the Standing Operating Procedure.

2.9. All EAC member nations have ratified the *African Charter on Human and Peoples Rights*. The Charter states that the life of every person should be respected and prohibits the arbitrary deprivation of a life.ⁱⁱ

2.10. The EAC states are required to make changes to their laws and policies to give effect to the provisions of the Charter.

2.11. Similar to the African Union framework, the EAC Treaty requires member states to protect and promote the rule of law, good governance, accountability, transparency, social justice, equal opportunity, gender equality and the rights contained in the African Charter. EAC states must implement these principles at both a policy and institutional level.

2.12. The EA Legislative Assembly has passed the East African Bill of Rights. The Bill reflects those in the International Bill of Rights and African Charter, including rights to life, personal liberty, assembly, and freedom from torture and the rights of the child.

2.13. The EAC Secretariat is also in the process of developing a Protocol for Good Governance for the EAC. The current framework includes a chapter on the rule of law and specifically calls for:

- the harmonisation of strategies, policies and programmes to promote respect for the rule of law;
- specific protections in the criminal justice system to safeguard and promote the rights of women, children and marginalised communities;

A. Rules regarding Use of Force

4. USE OF NON VIOLENT STRATEGIES WHERE POSSIBLE

4.1 When a Police Officer is in a situation where it is necessary and the duty of a Police Officer to intervene, the Police Officer should, where reasonably possible, use non-violent means to diffuse a situation including:

- a) **Advise or Warning:** advise or warn the person of their options, with the aim of calming the situation (similar to Negotiation)
- b) **Negotiation:** negotiate with the person, using clear and appropriate communication that will assist in calming the situation
- c) **De-escalation:** act to reduce any violence or threat in the situation
- d) **Containment:** act to prevent a person posing a threat of violence from getting access to other people or object that they may harm separate a person/object from another person/object in order to reduce violence or the threat of violence
- e) **Retreat:** temporarily withdraw from the situation in appropriate situations.

5. IDENTIFICATION AND COMMUNICATION

- 5.1. Where reasonably possible, in every situation, a Police Officer must identify himself/herself as a Police Officer and, if he/she is armed, inform the person that they are armed.
- 5.2. A Police Officer in uniform shall, at all times, wear a nametag or identifiable Service number in a clearly visible part of the uniform.
- 5.3. Where appropriate, the Police Officer must also clearly state who they want to communicate with. For example, this may be appropriate when a Police Officer is approaching a situation where there is a group of people.
- 5.4. In the case where lethal force is to be used, police must also, where reasonably possible, give a clear warning (see 10.4 below) of their intent to use lethal force.

- the development of a common standard for policing in the EAC;
 - the enactment of laws that establish internal and external oversight mechanisms for law enforcement agencies, prison services and the judiciary to ensure impartial application of the rule of law and human rights, and to build capacity for such ; and
 - development and implementation strategies to promote access to justice.
- 2.14. There are other common institutions that support the development of a rights-based approach to policing. For instance, the Constitution of the East African Police Chiefs Cooperation Organisation requires that the implementation of regional cooperation be in a manner that is consistent with human rights.
- 2.15. The Common African Defence and Security Policy (CADSP) refers to the provisions of the African Charter and the UDHR and reaffirms the African Union's common vision of a united and strong Africa based on respect for human rights. Promotion and protection of human rights are key elements of CADSP, which recognises that the absence of human rights is a factor in conflicts and tensions that may destabilise Africa.

3. GENERAL PRINCIPLES

- 3.1. The purpose of this Standing Operating Procedure is to help in preventing and reducing harm to both members of the public and police and other law enforcement officers.
- 3.2. If Police Officers and other officers assisting the Police use force this shall be the minimum amount of force necessary.
- 3.3. Police Officers, and other officers assisting the police, shall not use excessive force.
- 3.4. If Police and other law enforcement officers with police powers will only use lethal force when strictly necessary and to the extent necessary to protect themselves or another person from immediate threat of death or serious injury.

6. USE OF FORCE

6.1 When non-violent means are ineffective or without any promise of achieving the intended result, use of force should only be used in the following situations, and in accordance with the provisions below:

- a) To disarm or subdue a person that is threatening to injure another person or property;
- b) To prevent an offence;
- c) To lawfully arrest someone suspected of committing an offence, if that person is resisting arrest;
- d) To prevent a person escaping lawful custody;
- e) In civil disorder situations where members of the crowd are threatening to injure another person or property.

6.2 If force is deemed strictly necessary in the best judgement of the Police Officer, then the minimum amount of force, which is proportionate to the threat immediately posed, and the objective to be achieved, must be used.

This means that:

- a) A reasonable Police Officer in the same circumstances would judge it necessary to use force to contain the immediate situation; and
- b) The type of force used is judged to be reasonable given the threat posed by the immediate situation; and
- c) Any action complies with the Rules of these Standing Operating Procedures.

Any force that does not comply with this rule will be deemed excessive use of force, and may result in disciplinary or criminal action against the Police Officer.

6.3 Use of force is judged in proportion to the threat posed at the time that the force was used. This means that, if a threat is withdrawn or reduced, the level of force used must also proportionately be scaled down.

6.4 Force should not be applied to the head, and where possible, not to the groin/delicate areas of the body.

7. USE OF FIREARMS

7.1 Firearms may only be used, as a last resort, to disable a person who is threatening to, and it is reasonable to believe in the best judgment of the Police Officer, that he/she will, in the immediate future:

- Take the life of a person
- Cause a serious injury to a person

only if less extreme measures are insufficient to achieve the above objectives, and only where the lives of innocent persons will not be endangered if lethal force is used.

This means that:

- a) A reasonable Police Officer in the same circumstances would judge it necessary to use lethal force to contain the immediate situation;
- b) A reasonable Police Officer in the same circumstances would judge that the lives of innocent persons will not be endangered if lethal force is used; and
- c) Any action complies with the Rules of this Standing Operating Procedure.

Any force that does not comply with this rule will be deemed excessive use of force, and may result in disciplinary or criminal action against the Police Officer.

7.2 Where reasonably possible, firearms should be used in such a manner to reduce the chance of causing death.

7.3 Firearms must not be used:

- a) On persons that are unarmed, unless they have the ability to immediately carry out a threat to kill or seriously injure another person without a weapon;
- b) On persons only armed with non-lethal weapons and it is reasonable to believe that they will not take the life of a person or cause a serious injury to a person;
- c) On a crowd;
- d) Solely to protect property interests;
- e) To stop an individual on suspicion of a crime, simply because the individual runs away

7.4 A Police Officer intending to use firearms shall identify themselves and give clear warning of their intention to use lethal force, with sufficient time for the warning to be observed, except –

- (a) where doing so would place the officer or other person at risk of death or serious harm; or
- (b) if it would be clearly inappropriate or pointless in the circumstances.

8. VEHICLES

8.1 Moving vehicles must not be shot at, due to the increased possibility of civilian fatality, except in the following circumstances:

- a) When lethal force is being used, or threatened to be used, from the moving vehicle; or
- b) When the moving vehicle itself is a threat to the life of another person.

8.2 Police Officers, and other officers assisting the police should avoid placing themselves in situations where a vehicle could be used against them such as by approaching the vehicle directly from the front or back.

8.3 Police Officers, and other officers assisting the police shall not use lethal force (fire a lethal weapon) from a moving vehicle, due to the increased possibility of civilian fatality, except in the following circumstances:

- a) When lethal force is being used, or threatened to be used, immediately and the Police Officer has no option but to fire from the vehicle; or
- b) When another moving vehicle itself is a threat to the life of another person.

9. ARREST AND DETENTION

9.1 Force cannot be used when questioning a person or when arresting a person, unless the person is actively resisting being handcuffed or transported.

10. CHILDREN, PREGNANT WOMEN AND PERSONS WITH DISABILITIES

10.1 No force must be used on children under the age of 18, pregnant women or persons with disabilities, other than in exceptional circumstances, and, where possible, after all other non-violent strategies for containing the situation have been utilised.

B. After the Use of Force

11. AFTER THE USE OF FORCE (Lethal and non-lethal)

11.1 The following steps must be done as soon as reasonably possible after the use of force against any person (including against Police Officers):

- a) Call for medical assistance for any seriously injured persons. Where injuries are not of a serious nature the need for further medical attention should be clarified on arrival at the police station if the injured person is taken into custody – this medical attention can be provided by the Police Officers if possible (bandages, cleaning etc).
- b) Inform officer's Officer in Charge
- c) If the use of force resulted in serious injury or death, the Officer in Charge must follow the procedure in 14.3 below
- d) Provision of other aid and comfort to the person against whom force was used
- e) The police must contact the person's preferred contact person, or if this cannot be ascertained, the person's family member or friend.
- f) For Use of Firearms or use of force resulted in serious injury or death, complete of a Use of Force Form in accordance with Section 17 below.

12. DUTY OF THE OFFICER IN CHARGE

12.1 The Officer in Charge must do everything in their power to prevent unlawful use of force or firearms, and when such unlawful use of force or firearms does occur, they should

report this immediately to the Inspector-General of Police and any police oversight authority or national human rights institution.

12.2 Giving an order that would lead to the unlawful use of force is a disciplinary offence and may amount to a criminal offence.

12.3 For all deaths or serious injuries of a person who at the time of his death or injury, was in police custody or under the control of the Police, OR where the death or serious injury was the result of police action or inaction which includes anyone who may have been injured or killed as a bystander during a police operation, the Officer in Charge shall:

- a) take all steps to secure evidence which may be relevant to that death;
- b) immediately report the case to the relevant independent police oversight authority if there is one, and if there is not one, the national human rights institution (NHRI), using the means of communication that guarantees there will be the least delay;
- c) unless not reasonably possible, provide a complete, signed Use of Force form to the independent police oversight authority or NHRI within 24 hours after the incident including all relevant photographs and evidence;
- d) supply the independent police oversight authority or NHRI with evidence of and all other facts relevant to the matter, including, if available, the names and contact details of all persons who may be able to assist the body should it decide to conduct an investigation; and
- e) non-compliance with the above shall be an offence.

13. DUTY OF OTHER POLICE OFFICERS

13.1 Any other Police Officer who is aware of the use of force by another officer must inform their Officer in Charge. The Officer in Charge must then ensure that the Police Officer who used force complies with this Standing Operating Procedure.

13.2 Failure of any Police Officer or Officer in Charge to comply with 15.1 may result in disciplinary action

14. SUPPORT FOR POLICE OFFICERS

14.1 Provision of emotional support for Police Officers, by Police Organisations or other service providers, such as counselling and psychologists, should be provided to Police Officers who require it after the use of force.

14.2 Provision of additional training in dealing with threatening situations should be provided to Police Officers who require it.

15. USE OF FORCE FORM

15.1 A Use of Force Form must be completed and signed by the Police Officer that used force as soon as reasonably possible after the use of force, and preferably within 24 hours of the use of force.

15.2 The Use of Force Form must be provided to the Officer in Charge, who will then take appropriate action.

15.3 Where the Police officer that used force is not reasonably able to complete a Use of Force Form due to injury, then the Officer in Charge must fill out the form, after obtaining information from any other officers present when the use of force occurred/was applied.

15.4 A Use of Force Form must require the following fields to be filled out:

- a) What force was used: type of force, type of weapon
- b) Details of death or injury of any person present at the scene of the incident: type and location and if injury sustained by each person?
- c) If firearms were fired, how many rounds were discharged?
- d) Why use of force was used
- e) Steps used by Police Officer before the use of force to de-escalate the problem
- f) Details of any witnesses
- g) Steps undertaken by Police Officer after the use of force
- h) Was the Standing Operating Procedure followed?

STOP AND SEARCH

1. PERSONS BOUND BY THIS OPERATING PROCEDURE

All Police Officers, members of special police forces and units, and staff of the police service are bound by this operating procedure.

2. RELEVANT INTERNATIONAL, CONTINENTAL AND REGIONAL HUMAN RIGHTS LAW

2.1 Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2.2 Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

2.3 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.4 Every person has the right to privacy, which includes the right not to have:

- a) Their person, home or property searched;
- b) Their possessions seized;
- c) Information relating to their family or private affairs unnecessarily required or revealed; or
- d) The privacy of their communications infringed.ⁱⁱⁱ

2.5 Every person is entitled to respect and protection of his person, the privacy of his own person, his family and of his matrimonial life, and respect and protection of his residence and private communications.

15.5 A completed Use of Force form must be kept and filed by the Superior Officer in the Superior Officer's relevant police station.

16 REVIEW

16.1 Use of force that does not comply with this Standing Operating Procedure must be investigated by the internal police investigation unit.

16.2 All use of force that results in serious injury or death must be investigated by the external police oversight body if it exists or the internal police investigations unit and reported in writing to the National Human Rights Institution.

16.3 Police to conduct a non-punitive review in circumstances where the action was lawful, but not in accordance with this Standing Operating Procedure or where a better practice could have been employed. This could relate to risk assessment, deployment, state of equipment (old etc) or any other stage of the operation.

16.4 Monitoring and oversight by the external police oversight body or the National Human Rights Institution.

17 CONSEQUENCES FOR USE OF FORCE

17.1 Any use of force that is not necessary and proportionate to the threat may result in disciplinary measures, the payment of compensation or criminal prosecution.

18 NON-COMPLIANCE

18.1 A Police Officer who does not comply with any part of this Standing Operating Procedure will be subject to disciplinary action and may be subject to criminal prosecution.

A. Rules Regarding Stop and Search

4 POWER TO STOP A PERSON: Actions which require a drivers licence, permit or proof of ownership

- 4.1 Any Police Officer in uniform, and any Police Officer not in uniform, who, on being required to do so, produces his/her police identification card, may stop any person whom he/she:
- (a) sees doing any act or thing for which a licence or permit is required under any written law;
 - (b) sees in possession of anything for which a licence or permit is required under any written law; or
 - (c) suspects of doing any act or thing or of being in possession of anything for which a licence or permit is required under any written law.

4.2 Once the person is stopped, a Police Officer can request that the person to produce the licence, permit or proof of ownership.

4.3 If the person fails to produce the licence or permit, the Police Officer can request that the person to attend the nearest police station within a reasonable time with the required licence or permit, or if allowed under the law, arrest the person.

4.4 The person must be stopped and detained for the minimum amount of time necessary, to allow the Police Officer to ask for the licence or permit and allow the person to produce it. The time of detention must not be longer than 1 hour. Detention for longer than one hour must be recorded and reasons given.

5. POWER TO STOP AND SEARCH A PERSON

5.1 A Police Officer may stop a person, for the purpose of carrying out a search, if they have reasonable grounds for suspicion that the person:

- a) Has committed a criminal offence, or is about to commit a criminal offence.
- b) Has in his/her possession or stolen or unlawfully obtained item.

2.6 The state authority shall lay down legal procedures regarding the circumstances, manner and extent to which the right to privacy, security of his person, his property and residence may be encroached upon^{iv}.

2.7 No person shall be subjected to:

- a) Unlawful search of the person, home or other property of that person; or
- b) Unlawful entry by others of the premises of that person.

2.8 No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.^v

3. GENERAL PRINCIPLES

3.1 Stop and search powers are an important way to assist police in addressing crime, and to alleviate or confirm reasonable suspicions about individuals without exercising their power of arrest. Using these powers fairly will enhance their effectiveness. Any misuse of these powers is likely to lead to mistrust in the police from the community, which will be harmful to overall policing.

3.2 Stop and search powers are an intrusive form of surveillance, and as such Police must use their powers to stop and search in a responsible manner, with respect given to the person being searched, and in a way which minimises the embarrassment that the person being stopped and/or searched may experience.

3.3 It is recognised that stop and search powers necessarily involve the detention of a person, even for a temporary period of time. Police should only stop, detain and search someone in proportion to a reasonable suspicion, bearing in mind the inherent rights of the person, including to freedom of movement and freedom from arbitrary detention.

3.4 Police Officers must inform all people stopped and/or searched of the reason and purpose of the stop and/or search. This is important in preserving the dignity and human rights of the person being stopped and/or searched.

- c) Has in his/her possession a weapon that is likely to be used in the commission of a criminal offence.
 - 5.2 Reasonable suspicion can never be supported on the basis of personal factors. It must rely on intelligence or information about, or some specific behaviour by, the person concerned.
 - 5.3 After a person is stopped, but before they are searched, the Police Officer may ask questions about the person's behaviour or other matter which gave rise to the reasonable grounds for suspicion. If the reasonable suspicion is eliminated because of the response of the person, the Police Officer cannot carry out a search.
 - 5.4 There is no power to stop or detain a person in order to find grounds for a search.
 - 5.5 Reasonable grounds for suspicion must be held at the time the person was stopped and/or searched. It cannot be provided retrospectively when questioning a person whilst in detention. If the reasonable grounds for suspicion are eliminated before the person is searched, due to circumstances or other factors, the person cannot be searched, and the Police Officer must inform them that they are free to go.
 - 5.6 An officer must not search a person, even with his or her consent, where no power to search is applicable.
 - 5.7 A Police Officer may search the clothing worn by the person or the property in immediate control of the person, remembering that the Police Officer must carry out the search in a way to reduce embarrassment and preserve dignity.
- 6. SEARCH OF A PREMISES**
- 6.1 The search of premises should only be conducted on the basis of a search warrant.
 - 6.2 A search without a warrant is possible where a police officer has reasonable suspicion as described above that the premises is
- a) There is something in the property that is needed for a criminal investigation and it would jeopardize the success of the investigation to wait until they obtained a warrant
 - b) A person who has a warrant out against them – and is suspected of committing a serious offence – is in the premises
 - c) Being used for the commission of a crime where a life or property is being threatened and delay will result in harm being suffered to a person or property
- 6.3 If necessary, the police can forcefully enter the property, but they must:
- a) Identify themselves before entering the property
 - b) Allow opportunity to be allowed entry
 - c) Record any property taken from the premises and have a certificate of seizure completed and signed by the owner and officer. Failure by the owner to sign should be recorded as such
 - d) Record the incident
 - e) Give a full report to the Officer in Charge
- 6.4 If the owner of premises experiences damage as a result of the search they can seek redress.
- 6.5 An officer can be held responsible for unlawful entry and acts carried out in the course of the search
- 6.6 Officers must be mindful of any religious cultural considerations that need to be observed on entry of premises
- 6.7 Officer should ensure he / she is mindful of his her safety in the premises and take necessary precautions to ensure safety

7 POWER TO STOP AND SEARCH VEHICLES

7.1 A Police Officer may stop and search any vehicle (as defined) in or upon which there is reasonable cause to suspect are:

- a) Items connected to the commission of an offence, including stolen goods.
- b) Any illegal weapons, or article prohibited under any law, unless the person has a legal excuse.

7.2 To conduct the above search, the Police Officer may detain the vehicle for only the time necessary to conduct the search, and for a maximum period of 6 hours⁴⁰.

7.3 If any items are found that constitute a criminal offence, then the Police Officer can arrest the person in accordance with the law, and seize the vehicle if lawful.

7.4 It is only necessary for the Police Officer to enter a vehicle if a search is being effected, or to be driven to the police station. No entry is necessary for stop purposes.

8 STEPS TO BE TAKEN PRIOR TO A SEARCH

8.1 A Police Officer must take reasonable steps, prior to conducting a search of a person or vehicle, to ensure the person receives the following information:

- a) That they are being detained for the purposes of a search.
- b) The name of the Police Officer conducting the search, and the police station to which the officer reports to.
- c) If the officer is not in uniform they must show their identification.
- d) The legal search power being exercised.
- e) The purpose and reason of the search including the article or articles for which there is a power to search.
- f) The entitlement of the person being searched to a copy of the record of the search.

9 CONDUCT OF SEARCHES

9.1 Searches must be conducted with the utmost respect for decency.

9.2 Searches must be conducted as quickly and least invasively as reasonably practical given the circumstances.

9.3 The search must be conducted at or near the place where the person or vehicle were first stopped.

9.4 The search must be conducted by an officer of the same sex as the person being searched^{40d}

9.5 The search must not be conducted while the person is being questioned.

9.6 The Police Officer carrying out the search shall:

- a) Take possession of any weapon or items that may be used in the commission of an offense;
- b) Take and preserve any items or suspected stolen property which may have a connection with any offence.

10 USE OF FORCE IN CONDUCTING A SEARCH

10.1 In every case, the Police Officer must seek the cooperation of the person being searched.

10.2 A forcible search can only be conducted if it is established that the person is unwilling to cooperate or resists the search.

10.3 Reasonable force may be used as a last resort if necessary to conduct a search or to detain a person or vehicle for the purposes of the search.

11. RECORDING REQUIREMENTS

11.1 The Police Officer conducting the search must make a record of it at the time. If exceptional circumstances make this impracticable (e.g. situations involving serious public disorder) the officer must make the record of it as soon as practicable.

ARREST AND DETENTION

1. PERSONS BOUND BY THIS OPERATING PROCEDURE

- 1.1 All Police Officers, members of special police forces and units, and staff of the police service are bound by this operating procedure.
- 1.2 The purpose of this standing operating procedure (SOP) is to provide a general standard for police in the East African Community in relation to the carrying out of arrests and management of those who are held in custody or detention.
- 1.3 The application of this SOP is subject to any domestic laws that regulate arrest and detention. In the event that there are inconsistencies between legislation and the SOP EAC Partner States commit to harmonise their national laws to accord with this SOP.

2. International and Regional Human Rights Law

2.1 Provisions of international human rights law that are relevant to this SOP include but are not limited to:

- The Universal Declaration of Human Rights, 1948.
- The International Covenant on Civil and Political Rights, 1966.
- The Standard Minimum Rules for the Treatment of Prisoners, 1977.
- The Code of Conduct for Law Enforcement Officials, 1979.
- The Convention Against Torture, 1984.
- The Standard Minimum Rules for the Administration of Juvenile Justice, 1985.
- The Body of Principles for the protection of all persons under any form of detention or imprisonment, 1988.
- The Basic Principles on the use of force and firearms by law enforcement officials, 1990.

11.2 The record must include:

- a) the name of the person being searched;
- b) the registration number of the vehicle, if a vehicle is being searched;
- c) the date, time and location of the search;
- d) the purpose of the search;
- e) the legal grounds for making the search;
- f) the outcome of the search, including items seized (e.g. arrest or no further action)
- g) the identity of the officer making the search

12. DUTY OF OFFICERS IN CHARGE

12.1 The Officer in Charge must monitor the use of stop and search powers. Particular notice should be given to monitoring for discriminatory use of stop and search powers.

2.2 In combination the above international treaties and declarations provide a number of basic principles governing the conduct of arrest and detention. These include but are not limited to the principles that:

- All are equal before the law and are entitled without any discrimination to equal protection of the law (Universal Declaration of Human Rights, Article 7);
- Everyone suspected, arrested or charged with an offence has the right to be presumed innocent until proved guilty according to law in a public trial (Universal Declaration, Article 11 (1));
- No one shall be subjected to arbitrary arrest or detention (International Covenant on Civil and Political Rights, Article 9(1));
- Force should not be used other than when strictly necessary and to the minimum extent required under the circumstances (The Code of Conduct for Law Enforcement Officials, Article 3; Basic Principles on the Use of Force and Firearms By Law Enforcement Officials);
- People in custody are to be protected against torture and cruel, inhuman or degrading treatment or punishment (Universal Declaration, Article 5(1); International Covenant, Article 7);
- Instructions of a superior to carry out acts of torture or other acts of cruel, inhuman or degrading treatment should be regarded as unlawful and cannot be used as justification for acts of this kind (Convention Against Torture, Article 2(3); Code of Conduct, Article 5);
- Special attention must be paid to protect those who are especially vulnerable such as children or juveniles, the elderly, the sick or injured. In particular the interests of children or juveniles must be considered when they are arrested or detained.

2.3 More detailed provisions relating to the above matters and other aspects of the conduct of arrests and the treatment of those in detention are provided in some of the above mentioned, and other, international conventions and declarations.

2.4 Many of the above principles are also provided for [or implied] by the African Charter on Human and People's Rights adopted in Banjul in 1981. Amongst the provisions of the charter are that:

- 'Every individual shall be equal before the law' and 'Every individual shall be entitled to equal protection of the law' (Article 3)

- Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited. (Article 5)
 - Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained. (Article 6)
 - Every individual shall have the right to have his cause heard including 'the right to be presumed innocent until proved guilty by a competent court or tribunal'. (Article 7)
- 2.5 Safeguards for arrested and detained persons are also provided in the Constitutions and legislation of countries that are part of the East African Community.^{xiii}
- 2.6 The approach followed to the process of arrest and detention in these SOPs is therefore motivated by a number of considerations including:
- The concern to ensure adherence to the principles identified in international and Africa charters, conventions and declarations.
 - The concern to ensure that powers of arrest and detention are used appropriately and that unjustified arrests are avoided.
 - The concern to respond effectively to crime and violence through building community confidence and working with arrested people in an effective manner.
 - The need to protect police against threats to their safety.
 - The concern to ensure that those who are arrested and detained are not mistreated and receive appropriate care.

A. Arrest

3. Justification for arrest

3.1 Arrests are only to be carried out on the basis of a warrant of arrest except where the facts and circumstances within a police officer's knowledge are sufficient to provide a reasonable person with grounds for believing that the suspect has committed, is committing, or is about to commit an offense. This may be established among others by one of the following:

- Observations of the officer;

- b) Information or evidence obtained during the stop and search of a person reasonably suspected of having committed or being about to commit an offence or during a consensual contact with the person;
- c) An identified person's specific complaint;
- d) Information provided by a police informant of established reliability;
- e) Information provided by other law enforcement sources.
- 3.2 Police should not make arrest based solely upon the following:
- Information received from an anonymous source;
 - Mere suspicion that does not amount to a reasonable belief.
- 3.3 When making arrests on the basis of a warrant the terms of the warrant must be complied with.
- 4. Arrest procedure including use of handcuffs or other restraints**
- 4.1 Wherever possible, arrests shall be planned in advance in consultation with a officer in charge or other experienced police officers. Where advance planning and consultation are not possible, the arrest shall be made in accordance with training in arrest procedures. Whenever possible arrests shall be made at a time and place and in a manner that will maximize the probability of a successful arrest and minimize the danger to police and innocent bystanders.
- 4.2 In the event that it is necessary to use some level of force this should be subject to the conditions specified in the relevant SOP. If force is used this should only be necessary and if so the minimum amount of reasonable force required under the circumstances should be used.
- 4.3 Detainees requiring urgent medical attention should not be taken to a police station. If staff are in doubt about a detainee's medical condition an ambulance should be called. Consideration should be given to the need to take a person directly to hospital, having regard to the potential impact of waiting for an ambulance to arrive and the potential risks associated with moving the person. Clinical direction should be sought whenever required.
- 5. Handcuffs and restraints**
- 5.1 Arrested people should be restrained by means of handcuffs if they pose a danger to the police, others, themselves or pose a risk of escape. It is the duty of the police officer to assess potential harm to the suspects if two persons are handcuffed together.
- 5.2 In assessing whether the person poses a danger or is likely to escape factors that should be considered include:
- The seriousness of the offence for which arrested;
 - Any violent actions or threats prior to arrest (even if the person is not arrested for an offence of violence);
 - Factors such as age and gender, physical condition, size and apparent strength and fitness;
- 5.3 Additional restraints may be used if necessary if this complies with the law.
- 5.4 If the person has an injury or condition that would be aggravated by handcuffing and physical restraint is necessary alternative options should be applied if possible.
- 5.5 Metal or fabric restraints should be considered over plastic restraints. However, if plastic restraints are used, they should be replaced with metal or fabric alternatives at the earliest possible opportunity. When plastic (or indeed any restraints are worn), the subject should be checked regularly for indications that they may be experiencing injury or negative effects and any necessary remedial action immediately taken. This is particularly important in mass arrest situations, where it may be easy to overlook the situations of particular individuals.
- 5.6 If the arrested person does not pose a danger to the police or others and does not pose a risk of escape handcuffs and other restraints should not be applied.
- 5.7 People who are restrained by handcuffs or other means are at additional risk of dying from asphyxia (a lack of oxygen) if they experience difficulty breathing and cannot change their position.
- 5.8 Factors that increase the risk of asphyxia include:
- If the arrested person is prone (lying down) whilst also handcuffed.

- b. Pressure placed on the neck, chest or any other part of the upper body by the person who is applying the restraints
- 5.9 The prone position should be avoided for people who are restrained especially during transport. If it is unavoidable the arrested person must be constantly monitored to ensure that they can breathe.
- 5.10 Body weight should not be used on the upper body to hold down the arrested person unless this is unavoidable. If it is unavoidable it should only be for a short duration.
- 5.11 Whether or not they are restrained by handcuffs or other means, arrested persons should be kept under constant observation until they are placed in a police vehicle or custody facilities.
- 5.12 Officers shall conduct a thorough search of the person arrested.
- 5.13 Any item that may be used to harm the police officer or any other person and any article that may be used as evidence shall be seized and preserved.
- 5.14 The search should include not only the person of the arrestee, but also areas within the reach and control of the arrestee.
- 5.15 When making arrests police must:
 - a) Clearly identify themselves and the unit to which they belong. This must include showing an official identity card which displays their name and identity number;
 - b) Vehicles that are used should be clearly identifiable and carry visible number plates;
 - c) Inform arrested persons, at the time of arrest, of the reasons for their arrest and their rights. This should include:
 - The right to remain silent;
 - That anything that they say may be used in evidence against them;
 - d) The right to be assisted by a lawyer or any other legal assistance of his or her choice and be provided with reasonable facilities for exercising this right.
 - Provide the arrested person with the means to notify relatives (or another person of the arrested person's choice) of the arrest and the place where he or she is kept in custody. This should be at the time of arrest, detention, imprisonment and transfer; and
 - Information should be provided in a language, sign language and format that is understood by the arrested person;
- 5.16 For non-citizens, the consular authorities of the state of origin of a detained foreigner, should be notified without delay.
- 5.17 For refugees or stateless persons, the authorities responsible should be notified without delay.
- 6. Transport of arrested persons
 - 6.1 Vehicles should be searched prior to and following the transportation of any arrested person.
 - 6.2 Detainees who are, or have been, violent and who continue to present a risk to others, and those suffering from mental health problems, must not be transported with other detainees.
 - 6.3 Female arrestees shall be transported separately from male arrestees and accompanied by female officers.
 - 6.4 When placing a detainee in a vehicle, care should be taken with individuals, especially those with physical disabilities or who are restrained with handcuffs or leg restraints, as this can increase the risk of injury.
 - 6.5 Arrested children should not be transported with adults

7. Recording of information

7.1 Information about each arrest must be recorded on the scene in the police officers note book and on arrival at the station in the occurrence book (with numbered pages and updated as appropriate). Regarding the latter the information must include:

- The identity of the arrested person;
- The date, time and place where the person was arrested;
- Precise information about the place of custody and the time the arrested person was taken into custody;
- The reason for the arrest;
- Any compliance or resistance to arrest;
- Confirmation that the arrested person was provided with information about their rights, including the right to legal assistance;
- The time and date of the arrested person's first appearance before a judicial officer or other authority;
- The time and date the arrested persons was granted or refused bail, including reason for refusal;
- The general state of the arrested person's health including details of any injuries and how the injuries were incurred;
- Any allegations or complaints including allegations or complaints of assault or torture.
- The identity of the officers involved, including the arresting officers;
- The date and time of release or transfer to another place of custody and the authority responsible for the transfer.

8. Arrest and detention of Children in conflict with the law

8.1 With regard to children the police shall adhere to all provisions of this SOP as well as the following special provisions:

8.2 Detention of children pending trial shall only be used as a measure of last resort and for the shortest possible period of time and in accordance with existing international instruments:

8.3 Whenever possible detention pending trial shall be replaced by alternative measures if such alternative will be less harmful.

8.4 Upon apprehension of a child her or his parents or guardian or other official legally responsible for the child shall be immediately notified of such apprehension. Where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

8.5 Contact between law enforcement agencies and child offenders shall be managed in such a way as to respect the legal status of the child, promote his or her well being, and avoid harm to him or her with due regard to the circumstances of the case. This includes:

8.6 Respecting the Child's right to have his or her identity protected from disclosure to the public.

8.7 Wherever possible and appropriate seeking to make use of measures intended to divert the young person from the criminal justice system including cautions or warnings or restorative justice measures.

8.8 Assisting him or her in accessing counselling or other support.

8.9 Children shall be transported and detained separately from adults.

8.10 No information that may lead to the identification of a child shall be published.

8.11 Children shall be guaranteed the right to the presence of a parent or guardian or any other official with legal responsibility for the child, during any investigative interview or other proceedings.

B. DETENTION

9. General

9.1 Detention must only be ordered on grounds that are clearly established in law and must not be motivated by discrimination of any kind (including, but not limited to, race, gender, nationality or political views). Detention should be an exception rather than a rule and for as short a time period as possible.

9.2 Where detention is the only option, detention must be carried out in strict accordance with the law, in an officially Gazetted Detention Facility and where possible reasonably near the suspects usual place of residence;

9.3 The police and the other officials of the criminal justice system should adhere to basic procedural safeguards, including:

- a) The right of persons detained on criminal charges to be brought promptly and within 24 hours for first appearance before a judge or magistrate;
- b) The arrested person should be informed by the arresting officer if they are accused of a bailable offence, be assisted to make a bail application and assisted in making contact with people who might stand as surety if they cannot afford bail;
- c) Unnecessary detention should be avoided. Efforts should be made to limit the use of pre-trial detention to circumstances where:
 - There is a legitimate fear that the defendant poses a violent threat to other people; or
 - There is reason to believe that the defendant will intimidate witnesses or interfere with the lawful collection of evidence; or
 - There is a reason to believe that the defendant will flee from justice and release on bail is not likely to be sufficient in preventing this.

9.4 Special attention should be given to alternatives to detention for parents who are the principal care givers for young children.

10. Responsibilities of officer in charge

10.1 At all police stations or other police detention facilities the officer in charge will be vested with the responsibility for the safe custody and care of person in detention whose responsibilities will include:

- Supervision of staff responsible for persons in custody;
- Ensuring the safety of staff and persons in custody;
- Ensuring that proper records are kept of persons in custody including details of any illnesses, injuries or complaints;
- Ensuring that illnesses or other vulnerabilities of detainees are identified and that measures are in place to manage any vulnerabilities identified;
- Ensure detainees are brought before court in 24 hours
- Ensure Detainees are protected from Torture and Cruel Inhumane or Degrading Treatment.
- Ensuring no one is detained illegally
- Visiting, or supervising the visiting of detainees in cells;
- Checks on the physical condition of the detention facilities and ensure the basic conditions of humane detention are met.

11. Arrival at the Police Station

11.1 On arrival at the police station or other custody facility the following must be carried out for each detainee:

- a) The Officer in Charge to consider and record the grounds for detention or issuing of bond or bail and authorise or refuse detention.
- b) Search for, remove, store and record details of items that may be used by the detained person to harm themselves or others or for purposes of an escape, that are evidence of an offence, or that requires safekeeping.
- c) The detainee should be given the opportunity to check and sign the custody record to confirm that the record of items of personal property seized is correct.
- d) Adequate storage and security should be provided for a detainee's property.

11.2 Detained persons should be provided with information about how to make use of their rights such as the right to legal assistance as well as the routines at the detention facility such as times for provision of meals, exercise or non-professional visits.

12. Cell / Detention Register

12.1 In addition to the information provided for above (Section 3.4) a cell/ Detention Register with numbered pages must be maintained. The following information must be recorded in the custody register for every person who is detained:

- Details of his/her identity including age, gender, disability etc
- Contact information for a spouse, parent or other acquaintance.
- The grounds for detention
- Search (level of search and persons present);
- Items withheld from, or kept by, the detainee;
- The day and hour of admission and release;
- The cell in which he or she is held;
- Any identified risks including risks of self-harm or harm to others and medical or other conditions and measures to manage the risks;
- Specific instructions for custody staff regarding the provision of medication or other treatment or care;
- Use of any restraints and the justification for this;
- Any complaints by detainees.
- The date when regular reviews are due, information about whether the review took place, the outcome of the review and reasons if the review did not happen or was delayed;
- Other relevant information.
- Information must be updated as appropriate.

13. Condition of the detainee, observation and care

13.1 Gazetted Detention Facilities should have formalised arrangements with appropriate medical practitioners who can be called on at short notice to examine detainees whose medical condition needs to be assessed or who need medical treatment.

e) Check any available records about the person and that anyone who has had contact with the detainee has passed any relevant information about the detainee to the custody staff. This includes but is not restricted to information that may indicate whether they are likely to pose a danger to themselves or others or about injuries, illnesses or complaints. This should include asking the arrested person if they:

- Have any illness or injury and whether they have seen a doctor or are taking any medication for this;
- Are suffering from any mental health problems or depression; and
- Have ever tried to harm themselves.

f) Assess the detainee's general health and any injuries in order to assess if the person is fit to be detained and fit to be interviewed. Where appropriate arrange for the arrested person to receive medical attention.

g) The Officer should ascertain if the detainee has any disability.

h) Arrange for the assistance of an appropriate adult for children or, where relevant, other vulnerable detainees (such as detainees with mental disabilities).

i) Record and act on behaviour or information that may suggest a detainee is likely to harm themselves. Officers should be aware that items such as ties, belts, shoelaces and cords can be used to commit suicide and should be removed if there is any indication that they may be used for this purpose.

j) Cells or holding rooms should be checked for damage and objects that could be used to cause harm prior to placing a detainee in them, and also when they are removed.

k) Ensure that information about a detainee's welfare and risk is communicated to relevant staff and, where appropriate, other agencies.

l) Check that only approved restraint techniques and equipment have been used.

m) Ensure that detainees who are under the influence of alcohol are checked at intervals dictated by their condition and the risk assessment.

n) Check that the vehicle used to transport the detainee has been searched. The vehicle should be searched by the staff transporting the detainee, preferably in the presence of the detainee.

13.2 Staff should be aware of factors, including physical, mental and medical conditions, which heighten the risks associated with a suspect or detainee. These may include but are not limited to:

- Physical injuries
- Depression or mental illness
- Intoxication or drug overdoses - Alcohol-related offending accounts for a large proportion of all arrests. The health of intoxicated detainees is likely to deteriorate more quickly than non-intoxicated detainees. It also tends to take longer to identify a health problem where detainees are suffering from the effects of alcohol. Drug users may appear to be drunk when they have overdosed.
- Arrested people who are highly agitated and violent may be suffering from a condition called excited delirium. People who have been using drugs such as cocaine and methamphetamine are more prone to this condition. It is also characterised by aggression, violence, increased strength and insensitivity to pain. People who are suffering from this disorder require medical attention. Physical control measures, including the use of restraints, may increase the risk that the condition will lead to death as a result of cardiac or respiratory arrest.
- Illnesses or underlying medical conditions - The presence of a health condition and its severity will affect decisions about how and where that person should be treated.
- Diabetics may require assistance in obtaining insulin if they are insulin dependent. Insulin should preferably be injected after they have had some food.
- Remember to take into account the possibility of other illnesses, injury, or mental condition. A person who is drowsy and smells of intoxicants may be suffering from the following: Diabetes; Epilepsy; Head injury; Drug intoxication or overdose; Stroke among other.
- Where a detainee is suspected of being intoxicated through drink or drugs or having swallowed drugs, or whose level of consciousness causes concern they should be visited and roused at least every 30 minutes if it possible more frequently. Detainees who are believed to be at risk of self-harm should be visited more frequently than this for purposes of keeping them under observation.

13.3 There is substantial room for misunderstanding and error in identifying the risks to which a detainee may be vulnerable:

- a) Deaths occur in custody where the effects of alcohol or drugs mask another condition.
- b) Head injury victims or persons with diabetes may appear to be drunk.
- c) Detainees who are intoxicated, are dependent on drugs, or who are withdrawing from alcohol, are at an elevated risk of suicide or self-harm.
- d) If a person will not communicate with staff it may be because they have a mental health and/or medical condition that prevents them from doing so. Custody personnel should be careful not to assume that the absence of communication is because they are being uncooperative.

13.4 The level of observation required by a detainee should be specified by the senior custody officer;

13.5 Rousing should involve checking that they can be woken and can give answers to questions (such as where they live) or respond to commands (such as lifting an arm). If necessary they should be shaken gently to wake them.

13.6 Where it is known that a detainee requires medication, the senior custody officer is responsible for:

- Ensuring that clear written instructions are provided for custody staff.
- Ensuring the safekeeping of medication which should be held in a locked receptacle to prevent unauthorised access.
- Providing the detainee with the opportunity to take the medication at the prescribed intervals.
- Ensuring that the correct medication is given and at the right dosage.
- Recording information in the custody record.

13.7 It may be appropriate to allow the detainee to retain certain types of medication such as asthma inhalers or angina sprays. Any other type of medication can only be administered by custody staff or supervised with the authorisation of an appropriate healthcare professional.

- 13.8 Where medication has been brought in by a detainee, friend, relative or by the police when detaining the person it may not be what the detainee, friends or family say it is, or what is recorded on the packaging, and it can be used to conceal other items. Care should be taken in administering medication and if possible it should be checked prior to being administered by an appropriate healthcare professional.
- 14. Allocation of detainees to cells**
- 14.1 In considering the allocation of detainees to cells the following standards should be adhered to:
- Child detainees must under all circumstances be kept separate from adult detainees.
 - Female detainees must under all circumstances be kept separate from male detainees;
- 14.2 Effort should be made to minimize any potential risks.
- Detainees who are likely to pose a danger to other detainees should be separated from less dangerous ones. Account should be taken of indicators that the detainee may pose a risk to others including: the offence for which they have been arrested, the demeanour of the detainee, known hostile relationships with or attitudes to other detainees or groups of persons, gang membership. Persons in custody who are alleged to have committed violent crimes should where possible be detained separately from other persons in custody.
 - Persons in need of special protection because of their vulnerability, which may be due to their offence; because they are first time offenders; or because of who they are (e.g. arrested police officers) may require segregation from other detainees.
- 14.3 Detainees who require a higher level of observation for medical reasons, because of their use of intoxicants or drugs, or because of the risk of self-harm should where possible be kept in cells that are easier to observe.
- 14.4 Where possible detainees who have special needs as a result of disability or religious rituals should be kept separately from other detainees.
- 14.5 Mentally ill or mentally disabled persons' are to be separated from other persons to ensure the safety of that person and other persons in custody.
- 14.6 Detainees who disturb or are a nuisance to other detainees should where possible be kept separate from others.
- 14.7 Convicted (sentenced prisoners) and unconvicted persons in custody must be confined separately.
- 14.8 If circumstances permit, persons on remand should be held separately to persons newly arrested.
- 14.9 Necessary steps should be taken to ensure that detainees are not deprived of access to facilities such as toilets or showers (where they exist) or, for detainees on remand, opportunities for exercise, as a result of being allocated to specific cells.
- 14.10 As soon as it is understood that a person has a mental disability or illness he or she should be transferred to an appropriate facility.
- 14.11 Additional safety considerations**
- a) Under no circumstances, except in extreme cases, may a member of staff unlock the door of a cell or area in which people are detained or enter that specific cell or area, unless a second staff member is present. The Officer in Charge must ensure that the member who makes the visits is accompanied by another member to avoid the danger of escape or violence. With arrested persons who are known to be violent two or more police officers should accompany the officer who will be unlocking the cell. The police officer who enters the specific cell or area must be unarmed, but other members keeping guard outside, must be armed with suitable weapons. Custody staff must always observe the detainee prior to opening the cell door.
- b) Whenever a detainee is allowed out of a cell, they must be adequately supervised at all times to prevent them from obtaining an item or doing anything that could:
- Harm themselves or others;
 - Interfere with evidence;
 - Damage property;
 - Effect an escape.

14.12 Whenever a person in custody is taken out of a detention facility for exercise, to attend court or for any other purpose, he or she must be carefully searched before being re-admitted to his or her detention facility.

14.13 Any article, for example food or clothing, given to a person in custody by a visitor, must be searched.

15. Basic conditions of detention

15.1 In all circumstances detainees must be spoken to and treated in a manner consistent with their dignity.

15.2 Wherever possible detainees should be afforded the following minimum conditions:

- Drinking water and adequate nutritious food.
- Reasonable means of rest such as a chair or bench. A detainee, who is kept in custody overnight, must be provided with a cell mat or mattress, and blankets of a reasonable standard. The Officer in Charge must ensure that the cell mats or mattresses, and blankets are in good order when issued and changed often enough to ensure its cleanliness. In cold weather consideration should also be given to providing detainees with blankets during day-time.
- All detention facilities should be equipped with clean toilets.
- The cells and their surroundings must at all times be kept clean and sanitary, and the doors and windows of cells that are unoccupied must be left wide open at all times, weather permitting.
- Access by detainees to an external exercise yard, open to the environment without compromise to the security of the custody facility

15.3 The following conditions must be met:

- a) If a legal practitioner arrives at the police station, he or she must be allowed to consult in private with the person in custody. The consultation may be observed but should not be listened to. The fact that the consultation had taken place must be recorded.
- b) Reasonable provision for visits by family members or other acquaintances should also be made. Information pertaining to the hours or other conditions pertaining to such visits should be provided to all detainees.

- c) A reasonable request of a person in custody to be supplied with stationery in order to prepare his or her defence or to write letters to his or her legal practitioner in connection with his or her defence, should where possible be complied with.
- d) Requests for stationery to make contact with their families or attend to personal affairs, including making arrangements for the care of children, should be acceded to.
- e) Access to medical care and medication should be provided.
- f) Where reasonably possible religious observance should be accommodated.
- g) Where possible access should be provided to reading material or other recreational material.

16. Prohibition against torture

16.1 Detainees should not be subjected to torture and cruel, inhumane or degrading treatment or punishment.

16.2 To enable them to avoid or minimise the occurrence of inhumane treatment or any use of force against persons in custody police should emphasise:

- a) No person should be detained without the right or means of being able to communicate with others;
- b) The Officer in Charge shall take steps to ensure a detainee is not subjected to torture from another detainee or police officer. If this occurs, it will be treated as a criminal act.
- c) The use of safety procedures, including the appropriate use of handcuffs or shackles for persons who are arrested, and
- d) Searches of persons, vehicles, custody facilities and items that are brought into the police station to be given to detainees.

16.3 Uses of force may only be justified if they are necessary and proportionate in order to protect police officers, detainees, or other people or to maintain reasonable order in the custody facility. In some circumstances it may be necessary to restrain people in custody who pose a threat to themselves or others but this should be done in a humane manner.

- 17.2 Family members must be informed promptly of the death, the circumstances of its occurrence, and whereabouts of the remains.
- 17.3 After the officers involved have provided their initial account and the needs of the investigation have been met affected personnel should be debriefed and counselled as the need may be.
- 17.4 Police officers that are found culpable of causing a death in custody, or who have not acted to stop a death in custody, will be subject to criminal action.

16.4 When a detained person is being interrogated, the following information must be recorded in the custody register:

- The duration of any interrogation;
- The intervals between interrogations;
- The identity of any officials who conducted the interrogations and other persons present;
- Confirmation that the detainee was able to seek legal assistance prior to interrogation.

16.5 Any allegations of mistreatment, assault or torture are to be recorded in the custody register.

16.6 Provision should be made for an independent body to investigate such allegations. In the event that this is not possible investigations should be carried out by police officers who are not connected to the station or any unit alleged to be involved in the assault or torture.

16.6.1 Police shall facilitate access by registered independent custody visitors to custody facilities.

17. Deaths in custody

17.1 In the case of a suspected death in custody the following must be done:

- Check for vital signs to confirm death.
- Notify Officer in Charge immediately.
- No officer shall interfere with the scene. The Officer in Charge will secure the scene.
- The Officer in Charge will notify the Police pathologist.
- The Officer in Charge must identify all potential witnesses and secure other evidence.
- Promptly notify relevant agencies so that an independent inquiry into the circumstances and cause of death can be undertaken.

PUBLIC ORDER POLICING

1. PERSONS BOUND BY THIS OPERATING PROCEDURE

- 1.1 All Police Officers, members of special police forces and units, and staff of the police service are bound by this operating procedure.
- 1.2 The purpose of these standing operating procedures (SOPs) is to provide a general standard for police in the East African Community in relation to the management of demonstrations, political rallies and large scale disturbances.
- 1.3 Demonstrations are events that are intended to express particular views (often of a political nature) or to oppose certain policies or measures. They include assemblies at a fixed locality as well as processions. In some cases they may evolve into disturbances involving the risk of harm to law enforcement officials, the public or damage to property.
- 1.4 These SOPs is not intended to address policing responsibilities at gatherings like sporting events or large music festivals except when these types of events turn into demonstrations and/or disturbances.

2. INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW

- 2.1 Provisions of international human rights laws and international human rights instruments that are relevant to these SOPs include but are not limited to:
 - 2.1.1 The Universal Declaration of Human Rights, 1948, provides that 'everyone has the right to freedom of peaceful assembly and association.' (Article 20(1))
 - 2.1.2 The International Covenant on Civil and Political Rights, 1966, provides that 'The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.' (Article 21)
 - 2.1.3 The Code of Conduct for Law Enforcement Officials, 1979 provides that 'In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.' (Article 2)

- 2.1.4 The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990 provides that:
 - 2.1.4.1 Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind (Article 2);
 - 2.1.4.2 When lawful use of force is unavoidable law enforcement officials shall 'Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved' (Article 5a) and 'Minimize damage and injury, and respect and preserve human life' (Article 5b) and 'Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment' (Article 5c);
 - 2.1.4.3 In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary. (Article 13);
 - 2.1.4.4 Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Article 9);
 - 2.1.4.5 In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9 (Article 14).
- 2.2 The above principles are also endorsed by the African Charter on Human and People's Rights adopted in Banjul in 1981. Article 11 of the Charter provides that:
 - 2.2.1 Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular

those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

2.3 The right to freedom of peaceful assemblies is also recognised in the Constitutions of the Partner States.^{ix}

3. General

3.1 In combination the above international treaties and declarations provide a number of basic principles governing the conduct of police in dealing with protests, demonstrations and large scale disturbances. These include but are not limited to the principles that:

- Everyone has the right to peaceful assembly though restrictions may be placed on the exercise of this right if necessary in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.^x
- Where assemblies are unlawful but non-violent police should avoid the use of force if it is necessary to disperse the assembly. If force is unavoidable it should be restricted to the minimum necessary.
- Firearms should only be used to protect life.

3.2 Additional factors that need to be considered by police in applying these principles are:

3.2.1 Police have a role to support members of the public in exercising their right to assemble or protest in a peaceful manner. Due to the fact that police are employees of the state and that demonstrations are often targeted at the state police are sometimes put under pressure to obstruct gatherings from taking place. However in so far as possible police should prioritize their role in supporting the public in exercising their rights.

3.2.2 Police should be aware that their presence at demonstrations sometimes can have undesired effects. For instance the sudden arrival of large numbers of police in the proximity of a demonstration can be understood as an attempt to intimidate participants in the gathering, and may increase tension and hostility from the crowd. This does not mean that police should not attend gatherings but that they should be conscious about how they present themselves to the crowd. It may in general be advisable to avoid deployment of large contingents of police or police wearing or carrying riot equipment in the immediate vicinity of a demonstration unless there is information indicating that such units need to be deployed.

3.3 Whilst police should seek to uphold the right to assembly there will often be other public interests at stake. Police should aim to protect the right to peaceful assembly but need to weigh the interest of members of the public in exercising this right against other public interests. For instance a demonstration may prove to be highly disruptive to many people particularly if it is located in or passes through an area where there are schools or places of worship, a residential area or area where there is a high level of commercial activity. In situations where there is advance information received about a demonstration and it is possible to discuss their plans with the organisers it may be appropriate to motivate to them that they change their plans so as to be less disruptive to these other public interests.

3.4 In all situations where problems relating to public order situations need to be resolved police should aim, where reasonably possible, to resolve these by dialogue. When advance information about a forthcoming demonstration is received this dialogue should be initiated at the earliest possible stage with event organisers and other relevant parties. Where appropriate third parties who may assist in addressing issues to do with the organisation of the demonstration, or resolving issues which are the subject of contention, should be involved. Links with event organisers and other relevant parties should be established and maintained in order to build trust and confidence. Police should aim to be approachable and accessible and communicate as clearly as possible.

3.5 Police should where possible focus on containing and deescalating situations where there is the potential for harm to persons or damage to property:

- Violent actions against persons or property are not protected under the right to peaceful assembly. In situations where demonstrators or members of the public are at risk of harm, or there is a danger of damage to property, police should aim to minimise the risk of such harm taking place. This may involve the use of force subject to the principle that the force used will be the minimum force necessary, and will minimise the risks of harming people who are not violent or causing damage including other participants in the demonstration.
- However where there is no an imminent danger to persons or property caution should be exercised in using law enforcement actions such as arrests even if participants in a demonstration are technically in violation of the law. In highly volatile situations such interventions may escalate tensions and increase the potential for violence.

3.6 The need for specialised public order policing units needs to be evaluated in each Partner State on an ongoing basis. Irrespective of specialised capacity Police must be trained and equipped to manage public order situations

A. PUBLIC ORDER POLICING

4. Advance information about demonstrations

4.1 Where police receive advance information that a demonstration is due to take place they should gather as much information as possible about the intended event in order to plan for an appropriate police response. This should include making contact with leaders or organisers of the demonstration.

4.2 Procedures for informing police of planned demonstrations should be clearly outlined and accessible to enable the organisers of demonstrations to inform police about planned demonstrations.

4.3 Police personnel who receive information about an intended demonstration should ensure that the appropriate senior police personnel are notified about this.

4.4 A notice period of 2 days is required

4.5 Where police receive advance information of a demonstration from someone other than the organisers or leaders of the demonstration they should inform the organisers or leaders of any requirement for notification by persons organising demonstrations with a view to encouraging future compliance with such requirements.

4.6 In so far as no advance information is received this may mean that police find out about the demonstration when it is already underway.

- a) Such a demonstration may be a relatively spontaneous, peaceful and small one in which case there may be little difficulty in mobilising the appropriate police response.
- b) Where police have not had prior notification of protest activity, local commanders must ensure that command and control systems are quickly established for the police response. In areas where spontaneous protests are more frequent, local commanders should develop contingency plans so that a quick response can be mounted to situations of this kind.

4.7 Where police have not received advance information about a demonstration it is more likely that police will face difficulty in mobilising an appropriate response. Police may not be able to deal appropriately with potential problems arising from the demonstration, particularly if it is a large demonstration or there is a danger of harm to persons or damage to property.

- a) As a result it is appropriate for national laws or regulations to require that people who intend to hold demonstrations provide advance notification to the police or other authorities.
- b) The absence of such notification should not in itself be used as reason to obstruct the holding of a demonstration.
- c) However where the nature or scale of a demonstration is such that police will not reasonably be able to deal with potential problems arising from it this may be seen as grounds for intervening and seeking to bring an end to the demonstration.

5. Planned demonstrations

5.1 This section applies in circumstances where police received advance information about a demonstration that is due to take place and the officer in charge responsible for that jurisdiction believes on reasonable grounds that there is a likelihood of large scale disturbance and serious public disorder involving the threat of:

- (a) Harm to demonstrators or other members of the public;
- (b) Serious damage to property; or
- (c) Serious disruption to community life.

5.2 In the circumstances outlined in paragraph 5.1 police should take steps to secure the cooperation of the organisers of the demonstration and other relevant parties in ensuring that the demonstration is able to proceed in a peaceful manner. Any agreement between the police and organisers or other parties should be reduced to writing. This may include arrangements relating to:

- a) Information to be provided to potential participants regarding standards of conduct to be observed at the demonstration. This may include details of the manner of dissemination of such information;
- b) The provision of marshals or stewards for the demonstration. Where possible, and specifically in the circumstances referred to in paragraph 5.1, the organisers of a gathering should be requested to appoint a suitable number of marshals to guide and control the participants in the gathering, ensure that the gathering proceeds peacefully and that the provisions of

demonstrators may also face hostility and potential harm from members of the public not involved in this or another demonstration (bystanders).

6.2.3 Deal with obstructions to the demonstration, or to vehicular or pedestrian traffic, especially during traffic rush hours. This may include stopping or diverting traffic in order to enable a march to continue along the intended route. It may also involve efforts to minimize obstructions to pedestrian or vehicular traffic for instance by containing a procession to one side of the road or by establishing alternative routes for the traffic or procession.

6.2.4 Facilitating access to homes and workplaces – People who reside, are employed, or have business of an emergency nature in the area of the demonstration shall not normally be barred from entering the demonstration area unless circumstances suggest that their safety would be jeopardized or their entry would interfere with the demonstration.

6.2.5 The prevention of damage to property.

6.3 **Unlawful or unauthorised but peaceful demonstrations** - these are gatherings or marches that have not been organised in terms of any procedures provided for in laws or regulations intended to regulate the holding of demonstrations but are nevertheless peaceful. They may be spontaneous demonstrations in which case the police may not have advance notice or any information about the demonstration.

6.3.1 In order to uphold the right to peaceful assembly police should deal with these situations as they would deal with lawful and peaceful assemblies or marches unless there are substantial reasons for bringing the demonstration to an end, particularly in the form of a danger of harm to demonstrators or members of the public or of serious damage to property.

6.3.2 Where there is a compelling public interest for intervention, police should establish contact with crowd leaders to assess their intentions and motivations and develop a mutually acceptable plan to:

- a) Enable the demonstration to continue in such a manner as to minimise the risk of any foreseeable harm; or
- b) Enable de-escalation and orderly dispersal of the demonstration.

6.3.3 **Violent demonstrations (whether initially lawful or not)**

any agreement entered into is complied with. Where possible marshals should be clearly distinguishable. The names of the appointed marshals must be provided to the police before the event. The organisers must provide marshals with information necessary for them to perform their responsibilities including plans for the demonstration and details of the agreement.

- c) The commencement and dispersal times, location or route of the demonstration;
- d) Other matters as appropriate.

5.3 In the circumstances outlined in paragraph 5.1, where police are unable to secure the cooperation of the organisers in the manner outlined or for other reasons, they may approach a court for an order prohibiting the demonstration.

5.4 In some circumstances a demonstration may proceed despite being prohibited by a court order. In the event that such a demonstration is likely to proceed in a non violent and peaceful way police must apply the framework outlined in these SOPs.

5.5 In the event that a demonstration proceeds despite a court order prohibiting it this may provide a basis for instituting charges against the organisers or convenors of the demonstration subsequent to the demonstration.

6. Types of public order situations

6.1 In applying these principles there are in broad terms three types of situations that police officers may face:

6.2 **Lawful and peaceful demonstration** These are gatherings or marches that have been organised in conformity to any laws or regulations intended to regulate the holding of demonstrations. Police presence at such gatherings may be necessary to:

6.2.1 Monitor the gathering particularly with a view to ensuring the safety of participants and other members of the public and the maintenance of public order.

6.2.2 Minimise the potential for injury or harm to members of the public including participants in the demonstration.

- a) The risk of harm may arise partly from vehicle traffic (see 6.1.1.3).
- b) In the event of rival gatherings this will involve ensuring that an appropriate distance is maintained between the gatherings. In certain instances

6.3.3.1 Where a gathering is largely peaceful but a limited number of individuals are conducting themselves in a manner likely to cause harm to other people or damage to property police should if possible focus on the individuals in question. This may include:

- a) Requesting leaders of the demonstration to address the issue by speaking to the individuals directly or addressing the gathering as a whole and demanding that the individuals conduct themselves in an orderly manner or immediately leave the demonstration; and/or
- b) Targeting specific violent or disruptive individuals for arrest

6.3.3.2 Where the gathering is more generally of a disorderly nature and is currently violence or likely to result in harm to persons or damage to property the priorities of the police should be to:

- a) Protect persons, including nonparticipants and participants alike, and property at risk.
- b) Disperse disorderly or threatening crowds in order to eliminate the immediate risks of continued escalation and further violence
- c) Effect the arrest of individual law violators and the removal or isolation of persons inciting violent behavior.

7. Command and control

7.1 For each demonstration or public order incident a commander (the event commander) must be appointed to have overall command and control of the police response to the event. The commander must be appointed as soon as possible after information about a demonstration, whether forthcoming or impending, is received. Where the demonstration or incident is dispersed or very large in scale assistant commanders may need to be appointed with specific geographic or other areas of responsibility.

7.2. Unity of action and command and control are necessary for effective handling of demonstrations and large scale disturbances. Thus, unless circumstances require immediate action, police shall not independently make arrests or employ force without authorization by a commander. In urgent circumstances, supervisors may independently authorize the use of force, arrest or other tactics in accordance with this SOP and other relevant policies.

7.3. The event commander must ensure that issues related to crowd management and civil disturbances are addressed. These may include but are not limited to:

- a) Provisions for communication with leaders or organisers of the demonstration prior to and if possible during the demonstration.
- b) Determination of the personnel, equipment and other provisions (including food for police personnel) needed and the possible duration of their need. This may include any necessary arrangements for reserve or reinforcements in the event that these may be necessary.
- c) Establishment of a command post and procedures for coordinating police action.
- d) Determination of the level of force and engagement tactics deemed reasonable to resolve unlawful actions.
- e) Authorization for arrest as a means of curtailing unlawful actions.
- f) Secure public buildings and national key points
- g) Designation of a liaison officer to coordinate with emergency services or other government agencies as may be appropriate.
- h) Designation of a public information officer (PIO) to manage information flow to the public through the news media. Liaison with the media is a key instrument for outlining the overall approach of the police to dealing with demonstrations and for maintaining public confidence in the ability of the police to respond to demonstrations and disturbances in an appropriate way. Media access to the sight of the demonstration can also help to dispel exaggerated or false information about a demonstration or disturbance. Liaison with the media should therefore have sufficiently high priority in operational planning. Media liaison can also be used as a channel for informing members of the public about routes that may be blocked or other likely disruptions.
- i) Designation of a procedures for monitoring, recording, and investigate events at the demonstration including any unlawful behaviour by demonstrators and uses of force or misconduct by police.

8. Deployment of personnel

8.1 Police who are called up in response to a demonstration or civil disturbance should be directed to assemble in a specified area. They should be provided with all necessary equipment and briefed on the type of incident that may be anticipated or that is underway, the types of force that may be needed, and the need for unity of action and centralised control of uses of force.

8.2. Police should wear visible identification on the outside of their uniforms at all times.

- 9.2. Advance training is necessary for police in order for them to be able to use certain types of weaponry.
- 9.3. Prior to any use of force an audible and clear verbal warning should be given where reasonably possible.
- 9.4. Any force that is used should be the minimum force that is necessary.
- 9.5. In situations where there is an imminent threat of injury to persons or damage to property it may be necessary to use force.

Handcuffs and Batons

- 9.6. No weapons other than, where necessary, handcuffs or other approved physical restraints should be used against passively resistant individuals. People who passively resist arrest should be carried to transportation vehicles by two or more police officers if they refuse to walk. Force should not be used against individuals who are restrained, or otherwise controlled, unless they pose a risk of injury to themselves Police Officers or others which cannot be contained using less extreme measures.
- 9.7. Batons may be used where reasonably necessary against people who pose a danger of harm to persons or property including people resisting arrest by means of physical force (actively resistant individuals).
- 9.8. Baton strikes should not be directed at the head, neck, spine, groin or centre of the chest (sternum) of an unarmed person unless immediately necessary to protect the police officer or another person against death or serious injury.

Firearms

- 9.9 Firearms, or other weapons that are likely to cause death (lethal force), should only be used
 - a) where no lesser means are available or likely to be effective and
 - b) there is an imminent danger of death or serious bodily harm to one or more persons, and
 - c) It is possible to target the persons who are source of this threat or danger without recklessly endangering the lives of other people.
- 9.10 The police should not use firearms from moving vehicles or aircraft
- 9.11 Direct-fired impact ammunition such as plastic bullets or beanbag rounds may similarly only be used where no less harmful means are available

- 8.3. Police should be positioned in such a manner as to minimize contact with the assembly.
- 8.4. Police officers should keep a courteous and neutral demeanour.
- 8.5. Police should not engage in conversations related to the subject demonstration with or be prompted to act in response to comments or other provocations from demonstrators.
- 8.6. Any reserve units should be located in such a manner so as not to be visible to participants.

9. Use of force

Minimizing Harm

9.1 The planning for and control of police deployment at a demonstration should aim to minimise, to the greatest extent possible, the potential for harm including in particular serious injury and the potential need for recourse to the use of lethal force. Steps that are taken with a view to minimising such harm may include though they are not limited to:

- a) Liaison and negotiation with organisers or leaders of a demonstration prior to and during a demonstration. The emphasis should be on outlining police intentions to minimise harm and on securing cooperation of the demonstrators in achieving this objective;
- b) Detailed planning for the demonstration;
- c) Efforts to prevent a demonstration, that is likely to involve serious public disorder, from going ahead;
- d) Training of police officers;
- e) Effective command and control of police response to the demonstration;
- f) Use of shields, helmets and other protective equipment by police officers;
- g) Provision and use of non-lethal weaponry;
- h) Availability of communication equipment appropriate to the anticipated size of the crowd.
- i) Consideration of the likely risk to innocent persons by uses of force and specific types of weapons or ammunition. The presence of children, elderly people, persons with disabilities and other vulnerable groups should be a factor that motivates for additional caution in using force. Weapons or ammunition that are not regarded as lethal may be more likely to have lethal consequences if they hit a young child or elderly person. They may also be at greater risk in the event of a crowd stampede.

Chemicals

9.16 Chemical irritants shall only be used when other target specific non-lethal weapons are not available or are unlikely to be effective as follows:

- a. They may be used by trained and authorised officers according to the instructions of a senior commander;
- b. To prevent serious injury or serious large-scale damage to property likely to cause serious injury; and
- c. Where avenues of escape are available to the crowd, and, where possible announced to the crowd in advance;

9.17 Chemical irritant grenades or canisters which are fired from a launcher must never be fired directly at an individual, hospital facilities or other closed facilities.

9.18 Hand-held chemical irritant sprays (such as PAVA or CS gas) issued to individual officers may be used against specific individuals engaged in unlawful acts or who are actively resisting arrest or as necessary for defensive purposes, if no lesser options are available. Where it is necessary to use hand-held sprays, officers should be trained to apply only a burst of one second long in order to allow them to bring the subject under control. Any additional dose should generally be avoided and applied only under the same standard as the first dose

9.19 Flammable chemical irritants should not be used in situations where there is a fire risk.

9.20 CN a harmful chemical which predates CS gas shall not be used under any circumstances.

10 Dispersal

10.1 Prior to issuing dispersal orders steps should where possible be taken to ensure that medical personnel or other emergency personnel are on hand in case their assistance is required. Where there is a possibility of acts of arson by members of a dispersing crowd emergency personnel should include fire services.

10.2 Where it may be necessary to carry out multiple arrests, vehicles and other logistical arrangements will need to be in place.

a. To prevent conduct that poses a threat of death, serious bodily harm or serious large-scale damage to property; and

b. Where the individuals responsible can be properly targeted. Projectiles should be aimed to strike only the lower part of the body, below the waist. Firing higher than the waist should be prohibited unless there is an immediate threat to life or threat of serious injury which cannot be contained by less extreme options.

c. Where minimum safe firing distances (which will vary from one weapons system to another) can be observed. Firing at less than this range should be prohibited unless there is an immediate threat to life or threat of serious injury which cannot be contained by less extreme options.

Other devices

9.12 Devices designed for non target-specific use (such as water cannons or fire-hoses) may be used where other less harmful means are unlikely to be effective:

- a) In circumstances where there is a danger to life or threat of serious bodily harm to any person, but
- b) It is not possible to direct the use of force exclusively against the persons posing the danger. Nevertheless the weapons should not be fired indiscriminately but should be targeted in such a manner as to bring an end to the identified danger.

9.13 Officers should be trained to be aware of the issues associated with using such impact munitions, including concerns around their inaccuracy. These may have implications for the safety of both the target and people who are in close proximity to him or her.

9.14 However given the risk of death, serious injury, and danger to bystanders, skip-fired projectiles and multiple projectiles should not be used.

9.15 Contact electric-shock weapons, such as electric-shock batons or electric-shock shields, are not suitable for law enforcement purposes and should not be issued to police officers in any circumstances. As part of this, their use in crowd control is particularly problematic and should not be authorised, given their short range, limited efficacy and risk of causing stampedes.

- 10.3 Where time and circumstances permit warnings will be issued prior to taking physical actions to disperse the crowd. The warning will include the motivation for the order, the order to disperse, and identify dispersal routes.
- 10.4 The warning should be given in a language that is likely to be understood by the majority of participants in the crowd.
- 10.5 Warnings are to be issued frequently enough and loudly enough. Where necessary in order for the warnings to be heard by all participants they should be issued from a number of vantage points or with the use of public address systems of moving patrol vehicles.
- 10.6 A second and a third warning shall be issued at reasonable time intervals before action is taken to disperse the crowd.
- 10.7 Where possible, the warnings shall be audio- or video-recorded at a point to the rear of the crowd and the time and the names of the issuing officers recorded in the incident commander's event log.
- 10.8 Specific crowd dispersal tactics shall be ordered as necessary where the crowd does not heed warnings. These include any one or any combination of the following:
- Display of forceful presence to include police lines, combined with motorcycles, police vehicles and mobile field forces
 - Multiple simultaneous arrests
 - Pyrotechnics such as smoke grenades or thunder flashes.
 - Police formations and batons or crowd control chemical agents may be used for forcing crowd movement where the crowd actively resists dispersal and where lesser means have proved ineffective.
- 10.9 Where a crowd is dispersing this must be closely monitored particularly in relation to the possibility that some demonstrators will regroup or resort to violent actions in which case follow-up action may be required.
- 11 Arrests**
- 11.1 The use of arrests should be avoided during demonstrations unless strictly necessary.
- 11.2 Arrests of individuals during the course of a demonstration or disturbance should only in general be used:
- Against specific individuals engaged in acts of violence or damage to property; or
 - Where for reasons of compelling public interest it is lawful and necessary to bring an end to a demonstration and demonstrators refuse to disperse after being provided with a reasonable opportunity to do so.
- 11.3 Where appropriate due to specific violations of the law, leaders or other participants in a demonstration may be arrested and charged subsequent to the demonstration.
- 12 Documenting and Video recording of demonstrations**
- 12.1 Video recording of all demonstrations by police is necessary even where demonstrations are entirely lawful and non violent.
- 12.2 Any police use of force should be documented as fully as possible by means of video recording.
- 13 Deaths during a demonstration**
- 13.1 In the case of a death or potentially fatal injury to a demonstrator or other member of the public during a demonstration or other public disturbance the following must be prioritized:
- Check for vital signs and arrange first aid, medical support or immediate hospitalization if appropriate.
 - Identify all potential witnesses and secure the scene as appropriate.
 - Promptly notify relevant agencies so that an independent inquiry into death can be undertaken.
- 13.2 Family members must be informed promptly of the death and the circumstances and cause and whereabouts of the remains.

DEFINITIONS

Lethal force: force that is intended to, or a reasonable person would deem is likely to, cause death or serious injury to a person, including, but not limited to, use of a firearm or severe physical force (excessive use of a baton/beatings)

Lethal weapons: weapons that can cause death or serious injury to a person, including, but not limited to firearms

Non-lethal weapons: as it cannot be guaranteed that any weapon will not cause death, this definition relates to weapons that, if used appropriately, and without excessive force, should not generally cause death or serious injury.

Nonviolent policing strategies: policing strategies that can be used to diffuse a situation that do not lead to death, including negotiation, mediation, de-escalation, containment, retreat

Police Officer: includes all persons employed as Police Officers and other officers that may be assisting the Police, acting in a Police role and using Police powers.

Serious injury: any injury/incident that: is defined as grievous bodily harm in national law, is a physical injury that creates a substantial risk of death, serious disfigurement, disability or protracted loss or the impairment of the functioning of any body part or organ. Remove the reference. Can look at the documents developed under EAPCCO as well – as they have done quite a lot of work.

Use of Force: use of, but not limited to, a baton, incapacitant spray, firearm or used any other physical use of force except compliant handcuffing and escort position. Use includes pointing or aiming the force at another person and using the force

Detain: for this SOP, detain means to temporarily hold a person or Vehicle, for the purpose of carrying out a lawful search.

Police Officer: includes all persons employed as Police Officers and other officers that may be assisting the Police, acting in a Police role and using Police powers.

- 13.3 After the officers involved have provided their initial account and the needs of the investigation have been met affected personnel should be debriefed and counselled as the need may be.

14 Review of police management of demonstrations

- 14.1 Police departments should establish procedures to review the policing of demonstrations. Particularly attention should be given to demonstrations that took place in the circumstances outlined in 5.1 or where members of the public or police officers were killed or injured. The review of demonstrations may focus on lessons to be learned in terms of (i) examples of good practice in police management of the demonstration, and (ii) improving the police response to demonstrations. Lessons learned should inform training programmes for police officers.

Stop: the act by which a law enforcement official requires a person, in a public space, to account for himself/herself.

Search: the act that may follow a stop, by which a law enforcement official or any person authorized by the law, inspects a person and the area immediately within that person's control, including clothes, any objects being carried or a vehicle.

Vehicle: includes a vehicle, motorcycle, boat, vessel, caravan or aircraft, including everything contained in, being on or attached to a vehicle, motorcycle, boat, vessel, caravan or aircraft, as the case may be, which, in the opinion of the court, forms part of the equipment of the vehicle, boat, vessel, caravan or aircraft.

The Human Rights Training Manual for Police in the East African Community (EAC) is the third product in the efforts by the EAC and the Interpol Sub Regional Bureau for East Africa to promote the harmonisation of policing in the EAC. In 2010 a Common Standard for Policing in the EAC was adopted. The 1st Meeting of the EAC Police Chiefs held on 3rd August 2011 in Arusha directed that measures be undertaken to harmonise policing practices in the EAC Region, in consonance with other integration areas and through the development of Standard Operating Procedures (SOPS). A number of areas were identified for harmonisation, among them Stop and Search, Arrest and Detention, Use of Force and Public Order Policing, covered by this training manual. This training manual was developed through the Sub Regional Bureaus' training sub committee over a two year period and comprises a detailed trainer manual and a participant manual. It is intended both as a tool to disseminate and popularise the SOPS but also to provide a contemporary and police-focused approach to policing and human rights in key function areas where the police are most likely to be in contact with civilians.

