

# COMMON STANDARDS FOR POLICING IN EASTERN AFRICA: **SOUTH SUDAN**



Assessment of the South Sudan National  
Police Service's progress towards meeting the  
Common Standards for Policing in Eastern Africa



**RAOUL  
WALLENBERG  
INSTITUTE**  
OF HUMAN RIGHTS AND HUMANITARIAN LAW

 **Sweden  
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African Policing Civilian Oversight Forum (APCOF)  
Building 23B, Suite 16  
The Waverley Business Park  
Wyecroft Road  
Mowbray, 7925  
Cape Town, ZA

Tel: +27 21 447 2415  
Fax: +27 21 447 1691  
Email: [info@apcof.org.za](mailto:info@apcof.org.za)  
Web: [www.apcof.org.za](http://www.apcof.org.za)

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## ABBREVIATIONS AND ACRONYMS

<b>ACHPR</b>	African Charter on Human and Peoples' Rights
<b>APCOF</b>	African Policing Civilian Oversight Forum
<b>AU</b>	African Union
<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CHRI</b>	Commonwealth Human Rights Initiative
<b>CRPD</b>	Convention on the Rights of persons with Disabilities
<b>CSO</b>	Civil society organisation
<b>DIGP</b>	Deputy Inspector General of Police
<b>EAC</b>	East African Community
<b>EAPCCO</b>	East African Police Chiefs Cooperation Organisation
<b>HSBA</b>	Human Security Baseline Assessment
<b>IDP</b>	Internally displaced persons
<b>IGP</b>	Inspector General of Police
<b>MoU</b>	Memorandum of understanding
<b>NHRI</b>	National human rights organisation
<b>NSS</b>	National Security Service
<b>PoC</b>	Protection of Civilians
<b>RWI</b>	Raoul Wallenberg Institute for Human Rights
<b>SPLA</b>	South Peoples' Liberation Army
<b>SSNPS</b>	South Sudan National Police Service
<b>SOPs</b>	Standard Operating Procedures
<b>UNMISS</b>	United Nations Mission in South Sudan
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>UNPOL</b>	UN Police

# INTRODUCTION

Policing in South Sudan remains a complex exercise and needs to be viewed through the lens of transitional justice and post-conflict reform. Despite continued significant challenges, there are elements in the post-independence police reform project in South Sudan that show incremental progress towards establishing a capable and professional police service, and institutionalising rights-affirming policing practices. Encouragingly, the adoption of the Transitional Constitution of 2011, and the ratification of a number of core regional and international human rights instruments, reinforce and support these reform projects and initiatives.

As a member of the East African Community (EAC), the vision for policing in South Sudan is supported by a Common Standard of rights-compliant policing in the region.

The Common Standards for Policing in the East African Community (the Common Standards) were developed in 2010 through a collaborative process involving the EAC and the East African Police Chiefs Cooperation Organisation (EAPCCO), with technical support from partners at the African Policing Civilian Oversight Forum (APCOF) and the Commonwealth Human Rights Initiative (CHRI). The Common Standards establish an agreed framework for policing in the EAC, based on existing regional and international human rights commitments made by EAC member states, and aim to promote improved police effectiveness and respect for human rights across the region. They provide a *de facto* code of conduct for policing in EAC member states (Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda), and, through the active participation of EAPCCO, for police organisations more broadly across the region (Comoros, Djibouti, Eritrea, Ethiopia, Seychelles, Somalia and Sudan).

The Common Standards were initially developed to support the objective of improved policing, first mentioned in the EAC Development Strategy 2006–2010. This objective proposed that a memorandum of understanding (MoU) between EAC police organisations be finalised, and that their training and grades be harmonised. While these first steps towards a regional policing model were primarily concerned with the more effective policing of cross-border organised crime, the Common Standards went further by articulating a framework for policing that spoke to the broader implementation of the EAC's four foundational pillars of good governance: democracy and democratisation; anti-corruption and ethics; the rule of law and access to justice; and human rights and equal opportunities for all.

The final Framework for Good Governance in the EAC (the Framework) went on to explicitly adopt a broader rights-based policing focus as part of its five related objectives concerned with the rule of law. These

include the development of common standards and practices for the police in the EAC; the protection of rights of marginalised communities in the justice system; and the enactment of regionally shared oversight mechanisms pertaining to law enforcement agencies.

Accordingly, the Framework reflects the importance of this broader notion of rights-based policing as part of an effective criminal justice system in achieving good governance. Policing is a complex system concerned with far more than simple law enforcement, and is reflective of broader social, political and economic dynamics of the society in which it occurs. Policing that is democratic, rights-based and fair can only occur within a society which shares these same values, and, as such, it is paramount that the demand for good policing is reflective of the need for a shared set of values and normative understandings more broadly.

The adoption of the Common Standards represents a concrete regional commitment to developing an approach to policing that reflects these demands for good governance across the region. Their adoption by both the EAC and EAPCCO is indicative of the unique consensus achieved between the region's political executive and police leadership on what constitutes a legitimate and credible standard for policing within a rights-based framework. The implementation of the Common Standards in South Sudan is therefore an important opportunity to operationalise a progressive standard for rights-based policing, based on regional and international law. Their implementation will therefore become the measure against which that shared vision for policing is given support at the regional level, and promoted at national level.

To date, implementation of the Common Standards has enjoyed sustained commitment by the EAC and EAPCCO. In 2012, the Common Standards were translated into the language of technical operational policing through the adoption of model Standard Operating Procedures (SOPs) on stop and search, arrest and detention, use of force, and public order management and in 2019 on investigative interviewing. The EAC and EAPCCO have also developed a practice-oriented human rights training manual for police officers, based on the Common Standards and their corresponding SOPs, which has been used as the basis for regional and national training in Uganda, Tanzania and Ethiopia.

What was less clear is the extent to which the implementation efforts at regional level have translated into improved rights-based policing practices at the national level in EAC and EAPCCO member states. Prior to 2019, there had been no formal assessment of members' progress in meeting the Common Standards, in particular to identify progress, good practice and development needs.

To address this issue, the EAC and EAPCCO, together with their technical partners from APCOF and the Raoul Wallenberg Institute for Human Rights (RWI), embarked on a project to conduct evidence-based assessments of EAC member states' implementation of the Common Standards, and to identify areas where further support could be provided to member states in order to translate the Common Standards into quantifiable improvements to policing effectiveness, cooperation and rights compliance.

Working together with technical partners from APCOF and RWI, the EAC and EAPCCO developed an agreed set of indicators and measures for the Common Standards to allow nuanced regional and country-specific studies. The aim of conducting these studies is to promote compliance with the Common Standards, and provide a platform for engagement between the region's police organisations and their stakeholders to identify areas for support and development towards meeting not only the Common Standards, but also, through them, broader goals of good governance as well as rule-of-law and human rights compliance across the region. A study into the progress made by the Uganda Police Force in meeting the Common Standards was conducted in 2019 and represented a first example of measuring and analysing the implementation of the Common Standards in individual countries. This was followed in 2021 with a study into the progress achieved by the Kenyan National Police Service in meeting the Common Standards.

This study in the progress of the South Sudan National Police Service (SSNPS) towards meeting the Common Standards represents a significant milestone for the country and the police in setting out their ongoing progress towards achieving human rights compliance in policing as reflected in, among others, the African Charter on Human and Peoples' Rights (ACHPR) as well as their obligations as a member of both the EAC and EAPCCO.

The study is intended to further help support the efforts of the SSNPS and their partners in government and civil society to implement reform at the legislative, policy and operational levels. The study concludes with several observations highlighting where the police and partners in civil society might be able to collaborate to build a democratic and rights-compliant police service in South Sudan.

## METHODOLOGY

This study assesses the level of both procedural and substantial implementation, and related challenges, of the Common Standards in South Sudan by the SSNPS.

The value of this study is in its articulation of opportunities and challenges in the successful implementation of the Common Standards at the national level, and in identifying clear areas of development for support by the SSNPS and its stakeholders.

The assessment is based on a set of monitoring indicators for each article of the EAC Common Standards for Policing as developed by EAPCCO with the EAC, and regional partners from national human rights institutions (NHRIs), police agencies and civil society, and with the technical support of APCOF and RWI.

The methodological framework underpinning this study is derived directly from the Common Standards. In the first instance, the Common Standards were reviewed in detail and an initial set of indicators developed. These were then reviewed at a meeting held in Nairobi on 9 and 10 May 2018, attended by the EAC and EAPCCO, as well as representatives of member states, police organisations, police oversight institutions, NHRIs, civil society organisations (CSOs), academics and the donor community. The draft indicators were reviewed by the legal subcommittee of EAPCCO before being approved by the EAPCCO Police Chiefs in September 2019 along with an appeal to member countries to participate in the assessment. In 2020, South Sudan volunteered for the assessment.

In collecting the raw data, an agreement was reached with the SSNPS to conduct an assessment of compliance with the Common Standards in South Sudan. The research was carried out between September and November 2021.

In this report, the expression 'police officers' is used to refer to both commissioned and non-commissioned officers.



# PART 1

**COMMON STANDARDS  
FOR POLICING IN  
EASTERN AFRICA:  
ARTICULATING  
A UNIFIED, REGIONAL  
APPROACH TO POLICING**

**1**

## ARTICULATING A UNIFIED, REGIONAL APPROACH TO POLICING

The Common Standards set out below are a composite of the international and regional framework for human rights, policing and security, with a particular focus on the instruments of the United Nations (UN), African Union (AU) and EAC that are common to the member states of the EAC and EAPCCO. In this way, the Standards reflect the political and legal commitments to policing already made. The utility of this approach is in the articulation of the Standards in a single document for use by all stakeholders. The complete list of sources for the Standards is in Appendix A.

### COMMON STANDARD 1: Role of the police

- 1.1 The police will protect life, liberty and security of the person;
- 1.2 The police will maintain public safety and social peace; and
- 1.3 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.

### COMMON STANDARD 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:

- 2.1 not arbitrarily arrest or detain and will only deprive persons of their liberty in accordance with the law;
- 2.2 promptly inform accused persons of the reason for their arrest and any charges brought against them – this must be communicated to the accused person in a way and manner they understand;
- 2.3 act in a manner that upholds the presumption of an accused person's innocence until proven guilty in accordance with the law;
- 2.4 ensure that arrested persons are brought promptly before an authorised and competent judicial authority;

- 2.5 ensure that, upon arrest, detention and charge, there is a presumptive right to bail or bond;
- 2.6 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;
- 2.7 ensure that arrested and detained persons have access to interpreters and legal assistance, as required; and
- 2.8 ensure that arrested and detained persons are treated humanely and kept under humane conditions.

### COMMON STANDARD 3: Police actions

The police will act in a manner that:

- 3.1 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;
- 3.2 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;
- 3.3 ensures all citizens enjoy their fundamental rights and freedoms without discrimination;
- 3.4 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.
- 3.5 ensures all persons deprived of their liberty are treated with humanity and respect for their inherent dignity. They will:
  - 3.5.1 consider and treat all persons deprived of their liberty as innocent until proven guilty by a competent judicial authority;
  - 3.5.2 keep persons awaiting trial separate from convicted persons;
  - 3.5.3 provide all persons deprived of their liberty with adequate food and clothing, unless the detained person elects to provide their own;
  - 3.5.4 facilitate assistance from medical practitioners;
  - 3.5.5 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; and
  - 3.5.6 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 hearing, of officers;
- 3.6 adheres to the absolute prohibition on extrajudicial 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;
- 3.7 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;
- 3.8 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; and
- 3.9 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.

## COMMON STANDARD 4: Police organisations

- 4.1 The police will account for violations by officers of citizens' human rights.
- 4.2 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.
- 4.3 The police will ensure members receive comprehensive and ongoing training on their rights and obligations.
- 4.4 Police 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.
- 4.5 In fulfilling their mandate, the police will cooperate with role-players within and outside the criminal justice system, including citizens and civil society organisations.
- 4.6 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.

# PART 2

## **COMMON STANDARDS FOR POLICING IN EASTERN AFRICA:**

ASSESSMENT OF THE  
SOUTH SUDAN NATIONAL  
POLICE SERVICE'S  
PROGRESS TOWARDS  
MEETING THE COMMON  
STANDARDS FOR  
POLICING IN  
EASTERN AFRICA



# COMMON STANDARD 1: ROLE OF THE POLICE

## 1.1 The police will protect life, liberty and security of the person

*Compliance with the extent to which the SSNPS meets the requirement of its role to protect life, liberty and security of the person can be measured by whether: relevant laws, policy and operational documents include human rights values, and give clear guidance about what it means to protect and uphold fundamental human rights; there is a clear chain of command, particularly in the first line of supervision of police officers and, where applicable, other law enforcement officials, to ensure the mandate of the police is transmitted and implemented across the organisation; and the percentage of police and public surveyed who believe police and other law enforcement officials' actions are based on, and comply with, human rights principles, and police officers act in a manner that is consistent with human rights in the prevention and detection of crime.*

The Republic of South Sudan is a party to only six of the key regional and international human rights instruments, and constitutional, legal and policy frameworks that embody the norms and principles that promote rights-based policing, and offer guidance to police officers about what it means to protect and uphold fundamental human rights and freedoms.<sup>1</sup> In ratifying these human rights treaties, South Sudan has accepted the obligation and responsibility, under regional and international human rights systems, of respecting and protecting human rights standards. The implementation of these obligations is reflected in the development of measures and systems that ensure police actions and operations are consistent with the prescripts of regional and international human rights laws. To this extent, the Republic of South Sudan has, inter alia, sought to operationalise binding international human rights obligations by developing a specific legislative tool, supplemented by internal police policy instruments, that regulate the provision of policing

<sup>1</sup> This includes the ACHPR; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child and the Treaty for the Establishment of the East African Community.

services in the country and ensure it complies with regional and international standards. In addition, a dedicated legislative instrument governs the treatment of children in conflict with the law.

At the international level, the Republic of South Sudan's human rights obligations include those imposed by the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of the Child.<sup>2</sup>

At the continental level, the Republic of South Sudan's human rights commitments emanate from the ACHPR, together with its interpretive soft law instruments developed by the African continental human rights bodies and mechanisms to support the implementation of the Charter rights and obligations.<sup>3</sup> The soft law instruments particularly relevant to policing, and which have been adopted by the African Commission on Human and Peoples' Rights, include Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (Luanda Guidelines) and the Guidelines for the Policing of Assemblies by Law enforcement Officials in Africa.<sup>4</sup> An important regional normative instrument that South Sudan has signed but not ratified, and which is particularly relevant to policing and protection of women against violence, including sexual and gender-based violence, is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

At subcontinental level, the Republic of South Sudan is a member state to the Treaty for the Establishment of the East African Community, which formed the legal foundation of efforts towards the development of, and monitoring compliance with, the Common Standards. The adoption of the Common Standards by both the EAC and EAPCCO makes them relevant and applicable to the provision of policing services, and the conduct of individual police officers, in South Sudan.

At the national level, the 2011 Transitional Constitution of the Republic of South Sudan (the Transitional Constitution),<sup>5</sup> which is the supreme law of the Republic of South Sudan, offers the normative basis for the domestication of these international human rights instruments in the country, by underlining that all rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified or acceded to by the Republic of South Sudan form an integral part of the Bill of Rights.<sup>6</sup> The significance of this stipulation is evident in the fact that, in addition to South Sudan's constitutional framework, regional and international law further guide the development of national rules and standards and ensure their compatibility with key regional and international normative instruments.

Part 2 of the Transitional Constitution enshrines the Bill of Rights which is, inter alia, the cornerstone of social justice, equality and democracy, and a commitment to respect and promote human rights and fundamental freedoms enshrined in it. It establishes and safeguards human rights standards and values, which must be respected, upheld and promoted by all organs and agencies of government, including the SSNPS. The SSNPS is required to respect the will of the people, the rule of law and order, civilian authority, democracy, human rights, fundamental freedoms, and execute judicial orders. Relevant human rights standards embodied in the Bill of Rights include:

- The right to life and human dignity;
- The right to personal liberty;
- The right to equality before the law;
- Freedom from slavery, servitude and forced labour;
- Freedom from torture;
- The right to fair trial;

2 <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>; <https://www.ohchr.org/en/professionalinterest/pages/opcat.aspx>; <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx#:~:text=On%2018%20December%201979%2C%20the,the%20United%20Nations%20General%20Assembly.&text=Among%20the%20international%20human%20rights,focus%20of%20human%20rights%20concerns>; <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

3 <https://www.achpr.org/legalinstruments/detail?id=49>.

4 <https://www.achpr.org/presspublic/publication?id=6>; <https://www.achpr.org/legalinstruments/detail?id=65>.

5 [https://www.constituteproject.org/constitution/South\\_Sudan\\_2011.pdf](https://www.constituteproject.org/constitution/South_Sudan_2011.pdf).

6 Section 9(3) of the Transitional Constitution.

- The right to privacy;
- Freedom of assembly and association;
- Rights of women and children;
- Freedom of movement and residence;
- Right of access to information;
- Rights of persons with special needs and the elderly.<sup>7</sup>

The Transitional Constitution provides mechanisms to monitor the actual implementation of the Bill of Rights. It mandates the Supreme Court and all other competent courts in South Sudan to uphold the Bill of Rights, and enjoins the Human Rights Commission to monitor it.<sup>8</sup>

In addition to these constitutional guarantees and protections, relevant human rights values recognised in other regional and international human rights frameworks that are binding on the Republic of South Sudan provide additional protection of basic democratic rights and freedoms, to ensure the development and implementation of policy and legislative instruments that protect and respect human rights principles.

Legal and regulatory standards on policing underscore specific safeguards guaranteed to persons that interact with police officers, and establish rules that should guide the handling and management of individuals deprived of liberty. They also embody minimum requirements that should guide the recruitment and retention of law enforcement officials within the SSNPS, to promote professional and non-arbitrary provision of service to the public. In addition to the Constitution, the applicable legislative and regulatory systems include the Southern Sudan Police Service Act, 2009; the Code of Criminal procedure Act, 2008; the Penal Code Act, 2008; and the Child Act, 2008.<sup>9</sup>

Existing constitutional, legal and policy documents that regulate the provision of policing service are generally compatible with regional and international standards on policing and public security. They expressly articulate the powers, functions, duties and obligations of law enforcement officials, and subject their actions and operations to the Constitution and the law.

As regards whether the police and the public perceive the role of the police as protecting fundamental rights and freedoms, and whether the police act in a manner that is consistent with human rights in the prevention and detection of crime, available reports highlight increasing incidents of serious human rights violations and abuses by security actors, including police officers. For example, a report by the Commission on Human Rights in South Sudan, established by the UN Human Rights Council to, inter alia, monitor and report on the situation of human rights in South Sudan and make recommendations for its improvement, reported allegations of widespread human rights violations since December 2013, committed by security forces, including police officers. According to the Commission, this is consistent with its findings based on interviews with victims across the country.<sup>10</sup> In addition, in his report on the implementation of the mandate of the UN Mission in South Sudan (UNMISS), the Secretary General underscored that during the reporting period (between 1 February and 31 May 2021), the SSNPS perpetrated grave human rights abuses against 11 boys.<sup>11</sup> Furthermore, a 2021 data-led research report by Cordaid South Sudan illustrates that, while most respondents indicated that militias, armed groups and armed forces are the main sources of insecurity in the community, some respondents noted the police as a source of insecurity.<sup>12</sup>

Furthermore, the United States Department of State 2020 report on human rights practices in South Sudan indicates that police officers routinely arrest civilians based on little or no evidence before conducting investigations, and often hold them for weeks or months without charge or trial.<sup>13</sup>

7 See sections 11–34 of the Transitional Constitution.

8 Section 9(4) of the Transitional Constitution.

9 <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/98165/116701/F492083151/SSD98165.pdf>; <https://www.wipo.int/edocs/lexdocs/laws/en/ss/ss014en.pdf>; [http://www.africanchildforum.org/clr/Legislation%20Per%20Country/South%20Sudan/ssudan\\_cripro\\_2008\\_en.pdf](http://www.africanchildforum.org/clr/Legislation%20Per%20Country/South%20Sudan/ssudan_cripro_2008_en.pdf); <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83470/92194/F822057232/SDN83470.pdf>.

10 Report of the Commission on Human Rights in South Sudan, 2017, pp. 17, 18.

11 Report of the Secretary General: Situation in South Sudan, 2021, p. 12.

12 Cordaid South Sudan, Just Future Project South Sudan, Perception Survey, 2021, p. 12.

13 United States Department of State, South Sudan 2020 Human Rights Report, 2020, p. 7.



Reports also demonstrate that the public has little trust and confidence in the SSNPS as a service that respects and upholds human rights standards in the execution of their mandate. The report of the Commission on Human Rights in South Sudan, while urging the government to prioritise security sector reform, also emphasises that public trust in security forces, including the police, has been eroded because of the role they have played in the perpetration of serious crimes.<sup>14</sup> In addition, a 2019 report on sexual violence against women and girls in South Sudan, conducted by Refugees International, describes how women in a Malakal Protection of Civilians (PoC) site discussed that if they were to report an attack against them, they would report it to UN Police (UNPOL) because they do not trust the police outside the PoC.<sup>15</sup> Since 2020, only Malakal retains a designated PoC and all others have been handed over to the government of South Sudan to manage as camps for internally displaced persons (IDPs).

Another report emphasises that many people in South Sudan use violence as a tool to respond to aggravations and that fewer use policing services to resolve disputes.<sup>16</sup> These findings affirm those of earlier reports that also established the public's poor and negative perception of the police.

A pilot survey on justice and conflict in South Sudan, for instance, conducted in Juba in April 2015, established that while 78% of the respondents said they would contact the police in case of an armed robbery, only 50% did so when faced with an actual armed robbery.<sup>17</sup>

Furthermore, a 2013 public opinion poll conducted by the International Republican Institute reported that only 45% of respondents thought favourably of the police, 14% thought unfavourably and 6% very unfavourably.<sup>18</sup> Similarly, another survey found that 30% of the respondents believed the performance of police officers was good in terms of respect for human rights, rule of law and the provision of equitable services, while 25% maintained that their performance was poor.<sup>19</sup>

The challenges affecting the capacity of police officers to provide responsive and accountable policing services, and the conduct and performance of individual police officers that contribute to the existing distrust between the police and public, are heightened by the transitional nature of the country, structural political tensions and disputes and intermittent intercommunal tensions. Existing police development and capacity-building commitments need to be developed, implemented and evaluated in accordance with the norms and approaches that guide police reform processes in post-conflict and emerging democracies.

The most significant deficits that impede the effective and sustained provision of rights-compliant and equitable policing services by the SSNPS range from legislative gaps and shortcomings, to absence of effective implementation of existing legal and policy guidelines at the organisational and individual levels and inherent tensions between traditional justice structures and the laws of the Republic of South Sudan. For instance, currently legal matters relating to the family are regulated by customary systems of justice, which often overlook the needs of vulnerable groups such as women.<sup>20</sup> A 2020 report by the United Nations Development Programme (UNDP) underscores that women's rights to make key life decisions such as choosing spouses, seeking divorce or protecting themselves from domestic violence are some of the core aspects that are restricted by, and dependent on, customary justice.<sup>21</sup> Other reports highlight that most people in the country rely on customary courts to address legal issues and that 90% of disputes are tried in customary courts.<sup>22</sup> Specific and in-depth analysis of these concerns is conducted below in relation to the assessment of the extent to which the SSNPS has successfully implemented, both in its policy guidelines and operational procedures, protections offered by Common Standards 2 and 3.

To facilitate the effective execution of its mandate, the law sets out the structure of the SSNPS at national and state levels, with a clear chain of command comprising officers, non-commissioned officers, privates, and individuals whom the Minister of Internal Affairs, on the recommendation of the Inspector General of Police

14 Report of the Commission on Human Rights in South Sudan, 2017, p. 19.

15 Refugees International, *Still in Danger: Women and Girls Face Sexual Violence in South Sudan Despite Peace Deal*, 2019, p. 22. See also p. 4 for a brief description of PoCs.

16 K Smith, *Building a Constituency for Peace in South Sudan*, 2017, p. 14.

17 R Willems and D Deng, *Justice and Conflict in South Sudan: Observations from a Pilot Survey*, 2015, p. 10.

18 The International Republican Institute, *Survey of South Sudan Public Opinion*, 2013, p. 30.

19 AS Abatneh and SM Lubang, *Police Reform and State Formation in South Sudan*, 2011, p. 100.

20 UNDP, *Steering a Path to Family Law in South Sudan*, 2020, [https://www.ss.undp.org/content/south\\_sudan/en/home/presscenter/Blogs/family-law-south-sudan-access-to-justice.html](https://www.ss.undp.org/content/south_sudan/en/home/presscenter/Blogs/family-law-south-sudan-access-to-justice.html).

21 Ibid.

22 K Smith, *Building a Constituency for Peace in South Sudan*, 2017, p. 13.

(IGP), has authorised to exercise any of the duties, powers or competences of police officers on a temporary basis. The Southern Sudan Police Service Act of 2009 (the Police Act of 2009) establishes the president as the supreme commander of the police and empowers the Minister of Interior with a supervisory role over the exercise of policing functions and duties. Operationally, the SSNPS is headed by the IGP and the Deputy Inspector General (DIGP), both of whom are appointed by the president upon the recommendation of the Minister of Interior.

The IGP, who is accountable to the Minister of Interior for the performance and discharge of his functions and duties is responsible for the general performance of the police service and the implementation of security policies, plans and programmes; exercises control over the professional, financial, technical and administrative functions of the police; issues orders and instructions on the organisation of the police and its development; and sets systems and standards governing police activities at all levels. In addition, the command structure of the SSNPS includes Assistant Inspector Generals, who are appointed by the Minister of Internal Affairs upon the recommendation of the IGP.

The Police Act of 2009 also establishes the Police Service Council, which is headed by the IGP and includes the DIGP, Assistant Inspector General, police commissioners, heads of police corporations and any individual that the IGP may invite to attend a meeting on a professional or technical basis as an ex officio member.<sup>23</sup> The powers, functions and duties of the Police Service Council are regulated by rules and regulations in accordance with provisions of the Act.<sup>24</sup> Section 42 of the Act spells out some of the powers of the Council with respect to the assessment, determination, development and coordination of training programmes for police officers.<sup>25</sup>

The Police Act of 2009 also authorises the president, by issuing a decree at any time, to order the South Peoples' Liberation Army (SPLA) to assist the police in internal police operations.<sup>26</sup> The Act further provides that, in case of any threat to the country's security, the president may order the merger of the police service, or any of its constituent units, with the SPLA for such a period as the president deems appropriate.<sup>27</sup>

Moreover, the National Security Service (NSS), an organ charged with the internal and external security of the country and its people, plays a significant role in the provision of public safety and security in South Sudan. The NSS was established by the Constitution and operationalised by the National Security Service Act 2014. It consists of the National Security Council and two operational organs, the Internal Security Bureau and the General Intelligence Bureau, both of which are headed by a director-general. Its powers and functions include monitoring, investigating and searching suspects and places related to crimes or offences against the state; arresting and detaining suspects in crimes related to national security; summoning, investigating and taking particulars and depositions from any suspect and potential witness; seizing weapons, machines, tools, automobiles or any gadget suspected to be connected with an offence or crime against the state.<sup>28</sup>

At the operational level, available reports indicate that there are challenges and shortcomings in relation to inadequate command and control of police officers, and that the police lack a clear understanding of their mandate. A 2017 research report by the Human Security Baseline Assessment (HSBA),<sup>29</sup> conducted to review the status of South Sudan's police forces and the transformation challenges they face, established that conflicting mandates and areas of responsibility between the SPLA and the SSNPS – which has allowed the SPLA and the NSS to take over some policing roles and responsibilities – and the high number of militias integrated into the SSNPS after independence<sup>30</sup> have had a negative impact on overall command and control.<sup>31</sup>

The report also highlights that, in places like Juba, there is a heavy SPLA presence, in addition to that of the NSS and SSNPS, with one interview respondent, a former senior police officer, indicating that the harmonisation

23 Section 22(1) of the Police Act of 2009.

24 Ibid., section 22(2).

25 Ibid; section 42.

26 Ibid., section 14(1).

27 Ibid., section (14)(2).

28 Section 13 of the National Security Service Act of 2014.

29 The Human Security Baseline Assessment, Policing in South Sudan: Transformation, Challenges and Priorities, 2017.

30 During the recent conflicts there were significant population shifts. The police, as members of the indigenous population, moved with their families, frequently as IDPs/refugees. When the situation stabilised, newly appointed commanders, in the absence of a serving police, took on new recruits from among the new population but were often unable to train or pay them.

31 The Human Security Baseline Assessment, Policing in South Sudan: Transformation, Challenges and Priorities, 2017, pp. 1, 3.

of roles and responsibilities was among the most pressing needs facing the security services.<sup>32</sup> In addition, it found that police officers generally do not have a clear enough understanding of their mandate to distinguish themselves from the SPLA.<sup>33</sup>

The challenges inherent in the absence of clarity regarding the roles and responsibilities of the SSNPS, NSS and SPLA are many, including transparency and accountability concerns. In recognition of the challenge posed by the absence of clarity, and the need to conduct a review and needs assessment of different security actors and clearly define and delineate their roles and functions, the AU Policy Framework on Security Sector Reform calls on member states to provide conceptual clarity, help delineate relationships and hierarchy between security sector institutions and civil authorities and help to clarify the roles and responsibilities of various security sector agencies.<sup>34</sup> It further notes that it is important to review existing constitutional instruments and relevant security sector legislations to ensure that institutional gaps and challenges are addressed and that the basic responsibilities of each element of the security sector are well defined.<sup>35</sup>

The Transitional Constitution contains provisions that provide operational guidance to the SSNPS, to promote coordinated policing activities and operations. Section 155(7) requires the police at the national level, and their counterparts at the state level, to coordinate, cooperate and assist each other in the discharge of their functions and duties.<sup>36</sup>

## 1.2 The police will maintain public safety and social peace

*Compliance with the requirement to maintain public safety and social peace can be assessed by examining the extent to which: the law clearly defines the mandate of the police in terms of their responsibility to maintain public safety and social peace; the percentage of people surveyed who believe the police are (a) prompt and (b) responsive to threats and concerns about safety; and the police are accessible to the public.*

15

The Police Act of 2009 clearly defines the mandate of the SSNPS. Section 6(2) articulates the primary responsibility of the SSNPS, which includes ensuring the security of citizens, maintaining public order, implementing the law in full neutrality and honesty, and adherence to the law, national and international standards. Section 7 of the Act explains the functions and powers of police officers, which include preventing and detecting crime; protecting people's lives and properties; carrying out crime prevention awareness campaigns among the public to enhance their contribution to the maintenance of security; carrying out investigations; regulating traffic and issuing vehicle and driving licences; ensuring the safety of citizens, property and public establishments; combating terrorism, organised crime and human trafficking, illegal trafficking in drugs and narcotics; and combating smuggling and illegal trading in firearms.<sup>37</sup> The Act also spells out the competence of units of the police service at the state level, which includes carrying out the general powers, functions and duties of the police service; preventing and detecting crime; preserving security and public order; ensuring safety of public and private properties and investments; deploying police services throughout the state; and implementing relevant laws and regulations.<sup>38</sup>

Furthermore, the Act also embodies the duties and obligations of police officers, which include the responsibility, in their general conduct, to adhere to the values of honesty and trust and abide by the applicable regulations and orders.<sup>39</sup> It further enjoins them to respect the dignity of their position and that of citizens, and act in a way that reflects these values.<sup>40</sup> While the Act does not explicitly establish observance of domestic, regional and international human rights laws, which are conditional to entrenching rights-based

32 Ibid., p. 3.

33 Ibid., p. 1.

34 African Union Policy Framework on Security Sector Reform, p. 13.

35 Ibid., p. 16.

36 Section 155(7) of the Transitional Constitution.

37 Section 7 of the Police Service Act of 2009.

38 Ibid., section 11.

39 Ibid., section 9(2).

40 Ibid., section 9(3).

policing practices, in the exercise of policing functions as a specific obligation of the SSNPS, the Constitution requires police officers to respect the rule of law and order, democracy, human rights and fundamental freedoms and to execute judicial orders.<sup>41</sup>

In addition to specific duties and obligations of police officers, the Act further sets out other operational mandates of individual police officers, aimed at promoting the availability and proximity of police officers at the individual level. It provides that every police officer will be considered to be on call for 24 hours a day, and requires them to reside in the station of their designated posts, unless under certain circumstances agreed upon by the officer in charge.<sup>42</sup>

The establishment, organisation, function and powers of the police are further regulated by the Code of Criminal Procedure Act 2008 (the Code of Criminal Procedure). Section 30 of the Act articulates the functions and powers of police officers, which, in addition to specific powers with respect to the management of criminal cases, include preventing, combating and investigating crime, and maintaining law and public order. The Act also provides for the establishment of a Court Police Unit, under the crime police, whose duties are to serve in the courts.<sup>43</sup>

No data was available to the study to effectively establish the extent to which the police are prompt and respond to the public's concerns about safety, and whether they are accessible to the public. However, available information raises concerns regarding the capacity and ability of the SSNPS to respond to the public's safety and security concerns, and provide accessible policing services to all. Ten years since independence, sustained high levels of violent crime and general insecurity and lawlessness continue to threaten the safety of the public and the free exercise of their fundamental human rights. In March 2020, for instance, the chairperson of the UN Commission on Human Rights in South Sudan, while addressing the Human Rights Council, expressed concerns that South Sudan has become an environment in which human rights are regularly violated. She emphasised that killing, torture, rape, intimidation, displacement, enforced disappearance and corruption have become the norm.<sup>44</sup> In addition, in February 2021, the Commission reported insecurity and intensified attacks against the public by armed groups and militias, particularly in Central Equatoria, Warrap, Jonglei and Greater Pibor Administrative Area, as a recurring human rights issue.<sup>45</sup> Moreover, a 2021 perception survey underscored that most respondents believe that violent crimes such as physical assault, sexual assault and gender-based violence are some of the leading threats in communities.<sup>46</sup> The ability of SSNPS members to provide responsive policing solutions, particularly to rural communities, is also affected by limited resources and their inability to access vehicles and communication equipment.<sup>47</sup>

Furthermore, the capacity of the SSNPS to provide effective and sustainable policing solutions is further impeded by gaps in the allocation of funds and resources. Although the SSNPS have an established budgetary framework, reports indicate that the police do not have sufficient resources to effectively execute their mandate and guarantee the safety and security of the public. In rural areas in particular, issues such as lack of vehicles, poor or non-existent radio communication, and a lack of weapons and ammunition have been identified as logistical challenges to providing an effective policing system.<sup>48</sup>

Moreover, although this study did not find relevant data to support a comprehensive analysis of the distribution of police stations and personnel across the country, available resources reveal that police officers are largely concentrated in the capitals of the 10 states, with a limited number of officers present in rural and semi-urban areas, where the majority of the public reside.<sup>49</sup> In remote areas of the country, the policing needs of the public are largely unmet by the police. In one report, for instance, community members in a remote part of Unity State reported that there had been no police presence for weeks or months at a time.<sup>50</sup> This poor and unequal distribution of police stations is underscored in circumstances where large and defined

41 Section 155(6) of the Transitional Constitution.

42 Section 9(4) of the Police Act of 2009.

43 Section 28 of the Code of the Criminal Procedure Act of 2008.

44 <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25686&LangID=E>.

45 Ibid.

46 Cordaid South Sudan, Just Future Project South Sudan, 2021, Perception Survey, p. 11.

47 The Human Security Baseline Assessment, Policing in South Sudan: Transformation, Challenges and Priorities, 2017, p. 3.

48 Ibid.

49 Human Rights Watch, Prison Is Not for Me: Arbitrary Detention in South Sudan, 2012, p. 24.

50 The Human Security Baseline Assessment, Policing in South Sudan: Transformation, Challenges and Priorities, 2017, p. 3.

communities received their first police station in late 2020, almost a decade since the country transitioned to independence. For instance, Terekeka in Central Equatoria only obtained a police station in 2020 when UNMISS constructed the first one in the area.<sup>51</sup>

Reports also illustrate the existence of challenges in relation to limited workforce and service personnel. The SSNPS, for instance, relies on UNPOL to provide security in some parts of the country. Currently, UNPOL has 1,446 personnel deployed in 10 regions across the country, and its mandate includes protecting civilians from threats of physical violence. UNPOL personnel also support efforts to prevent sexual and gender-based violence and promote human rights by engaging directly with the communities they serve.<sup>52</sup> As at 24 April 2013, it was reported that the SSNPS had 46,427 personnel, but the number was expected to decline in view of a suspected 11,000 ghost workers.<sup>53</sup> According to a 2017 report by Reuters, in at least one part of Juba, residents pay towards extra police personnel that assist them in preventing and combating violent crimes such as robberies in their neighbourhood.<sup>54</sup> In other rural communities people often turn to informal security actors to protect them.

### 1.3 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

*The extent to which police adhere to the rule of law as an essential element of human security, peace and the promotion of fundamental human rights and freedoms can be assessed by examining whether: the law clearly defines the mandate of the police in terms of its responsibility to adhere to the rule of law and uphold fundamental human rights; police are responsive to the needs of the public and provide assistance in terms of their legal mandate; the relevant laws, regulations and operational procedures are consistent with international human rights law, the Constitution, and provide legal parameters for police operational practices (including stop and search, arrest, detention, interrogation, surveillance, and the use of force); police enforce court orders and decisions by oversight authorities; and police enforce the law equally and do not discriminate on the basis of social or gender status, or the political affiliation, of suspects, witnesses or victims.*

17

The concept of rule of law and its requirements has many elements and components, which include, inter alia, established and clearly defined accessible laws, and the existence of systems, mechanisms, institutions and legal standards that promote the equal and non-arbitrary provision of services. Within the UN system, the rule of law has been defined as:

*a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.<sup>55</sup>*

Constitutional and legal provisions that govern policing clearly define the mandate of the police in terms of their responsibility to adhere to the rule of law and uphold fundamental human rights. Section 155 of the Transitional Constitution obliges the police to respect the rule of law, human rights and fundamental freedoms in fulfilling their mandate. Section 159 specifies the principles that govern the provision of national security, and requires the police to be subordinate to civilian authority; respect the rule of law,

51 <https://reliefweb.int/report/south-sudan/small-project-major-impact-unmiss-constructs-first-ever-police-station-terekeka>.

52 <https://unmiss.unmissions.org/un-police>.

53 African Union Commission, Final Report of the African Union Commission of Inquiry on South Sudan, 2014, p. 70.

54 D Dumo, Facing Crime Wave, Residents in South Sudan Capital Pay Police for Protection, 22 September 2017, <https://www.reuters.com/article/uk-southsudan-crime-idUKKCN1BW28Z>.

55 <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>.

democracy, human rights and fundamental freedoms; reflect the diversity of the people of South Sudan in its recruitment; and be subject to the authority of the Constitution and the law.

The Constitution also expresses basic values and principles that regulate the delivery of civil service in general. It explicitly requires civil service to be provided to all persons impartially, fairly, equitably and without bias or discrimination on the basis of religion, ethnicity, gender, health status or physical disability; and to be transparent and accountable to the appropriate level of government.<sup>56</sup>

The Police Act of 2009 is less explicit in terms of subjecting the exercise of policing power and authority to the requirements of the rule of law. Section 6(2) of the Act provides for the establishment of the SSNPS and enunciates the basic responsibilities that are foundational to the effective discharge of its mandate. Without making express reference to the concept of the rule of law, it establishes and places an obligation on police officers to implement the law, in full neutrality, honesty and adherence to the law, and national and international standards.<sup>57</sup>

Compliance with the requirements of this standard can be ascertained by assessing the extent to which relevant laws, regulations and operational procedures are consistent with international human rights law and the Constitution, and the extent to which they provide legal parameters for police operational practices, including stop and search, arrest, detention, interrogation, surveillance and the use of force.

The Code of Criminal Procedure sets basic conditions within which the exercise of the power of arrest must comply, to ensure the arrest, handling and treatment of suspects complies with acceptable standards. While the Act empowers private persons to conduct an arrest without a warrant, it requires them to present the arrested person to the police without unnecessary delay, to ensure that arrest and detention procedures are safe and lawful.<sup>58</sup>

To prevent police abuse of power and arbitrary detention, the Act also obliges officers in charge of police stations to immediately report to the public prosecution attorney, the magistrate or the court, as the case may be, all cases of arrests made without a warrant within the jurisdictions of their stations.<sup>59</sup> In addition, the Act also articulates standards that should guide the treatment of arrested persons. It provides that arrested persons should not be subjected to any treatment that violates their dignity, or be physically or morally abused.<sup>60</sup> The Child Act 2008 (the Child Act) also contains safeguards against arbitrary arrest and detention of children in conflict with the law. The Act mandates police officers to consider a specific set of alternatives to arresting a child.<sup>61</sup> However, where a child has been arrested, the Act places an obligation on the arresting officer to provide an attorney or judge with a written report within 24 hours giving reasons why alternatives to arrest could not be utilised.<sup>62</sup>

Regulatory instruments also provide operational guidance and specify circumstances under which force may be used by law enforcement officials. The Police Act of 2009 instructs police officers, in performing their duties and responsibilities, where necessary to use force that is reasonable and consistent with the restrictions provided for in law.<sup>63</sup>

Furthermore, to ensure that the use of force against children in conflict with the law is necessary, reasonable and proportional, the Child Act establishes further standards that offer guidance to police officers in executing the arrest of children that violate the law. It affirms that police officers, in attempting to arrest a child, are prohibited from using deadly force that is intended or likely to cause death or serious bodily harm to the child.<sup>64</sup> It further sets forth certain basic conditions that police officers must prove whenever deadly force is used against a child, including such force that was immediately necessary to prevent imminent death or serious bodily harm.<sup>65</sup>

56 Section 139 of the Transitional Constitution.

57 Section 6(2) of the Police Act of 2009.

58 Section 91(1) of the Code of Criminal Procedure Act of 2008.

59 *Ibid.*, section 96(1).

60 *Ibid.*, section 93(1).

61 Section 141 of the Child Act of 2008.

62 *Ibid.*, section 144(3).

63 Section 8(2) of the Police Act of 2009.

64 Section 139(6) of the Child Act of 2008.

65 *Ibid.*, section 136(7)(a).

Existing legal frameworks on policing in the Republic of South Sudan are generally consistent with regional and international human rights laws and the Transitional Constitution, and provide legal parameters for police operational practices, including arrest, detention, search of arrested persons and the use of force. However, the Penal Code 2008 embodies petty offences which two regional human rights bodies and mechanisms, the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, have found to be incompatible with the African regional human rights standards.<sup>66</sup> This is because they either target or have disproportionate impact on vulnerable members of the public, and are formulated in broad and vague language which does not clearly and sufficiently set out all the elements of the offences and the reasons and circumstances under which arrest and detention are to be effected. This gives broad discretionary power to law enforcement officials, which results in arbitrary enforcement of the law. These attributes and the impact of petty offences are inconsistent with requirements of the rule of law. As underlined by the UN, the rule of law requires the promulgation of laws that are consistent with international human rights norms and standards; equality before the law; fairness in the application of the law; legal certainty; avoidance of arbitrariness; and procedural and legal transparency.

While applicable legal provisions are generally compatible with international standards, available information indicates the existence of challenges regarding their implementation by police officers. For instance, reports highlight police abuse of the power of arrest by arbitrarily arresting and detaining people before conducting investigations, often holding them beyond the time limit prescribed by the law.<sup>67</sup> Reports also demonstrate police use of arbitrary and excessive force in the execution of their duties, including in the management and facilitation of gatherings.<sup>68</sup> Sustained use of excessive force by law enforcement officials affects public trust and confidence in the police, which may undermine public security and the free exercise of fundamental rights and freedoms.

Despite the explicit criminalisation of partiality in the provision of services by the Police Act of 2009, reports further unveil the presence of gaps that impede the full and effective operationalisation of legal and constitutional guarantees of equality in the enforcement of laws, and access to equitable and non-discriminatory policing services. In August 2021, for instance, a media report revealed that the SSNPS deployed police officers on the streets of Juba to actively prevent and combat a planned public protest against the government, and warned the public against engaging in the protest.<sup>69</sup> Another report on police reforms in South Sudan points out that female survivors of domestic violence are reluctant to lodge complaints with the police because they expect to be rebuffed.<sup>70</sup> The failure by police officers to offer assistance and support to victims of domestic violence is a serious challenge which may weaken public confidence in policing, particularly in the light of increasing incidents of gender-based violence in the country. In 2020, the Commission on Human Rights in South Sudan reported that incidents of sexual and gender-based violence, including conflict-related sexual violence, continue to be widespread and pervasive, including in the context of localised conflicts.<sup>71</sup>

66 Sections 378–380 of the Penal Code 2008 criminalise being idle, a vagabond and an incorrigible vagabond.

67 United States Department of State, South Sudan 2019 Human Rights Report, p. 6.

68 <https://www.hrw.org/news/2020/06/09/south-sudan-soldiers-kill-civilians-land-dispute>.

69 VOA, South Sudan Police Warn against Anti-Government Protest, 29 August 2021, [https://www.voanews.com/a/africa\\_south-sudan-focus\\_south-sudan-police-warn-against-anti-government-protests/6210112.html](https://www.voanews.com/a/africa_south-sudan-focus_south-sudan-police-warn-against-anti-government-protests/6210112.html). See also <https://www.arabnews.com/node/1920091/world>.

70 The North-South Institute, Police Reform in an Independent South Sudan, 2012.

71 Report of the Commission on Human Rights in South Sudan, 2020, p. 18.

## COMMON STANDARD 2: POLICING IN ACCORDANCE WITH THE RULE OF LAW

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

*Compliance with the extent to which the NPS meet the standard of having their role and purpose to protect life, liberty and security of the person can be measured by the extent to which: relevant laws, policy and operational manuals include human rights values and give clear guidance about what it means to protect and uphold fundamental human rights; there is a clear chain of command, particularly in the first line of supervision of police officers, to ensure the mandate of the police is transmitted and implemented*

*The extent to which police will not arbitrarily arrest and detain and will only deprive persons of their liberty in accordance with the law can be assessed by examining whether: the law guarantees the right to liberty and security of the person; the law provides a definition of arrest that limits the deprivation of liberty to the execution of a warrant or where the arresting officer has reasonable grounds to suspect that a person has committed an offence or is about to commit an arrestable offence; the law provides alternatives to the use of arrest, particularly for minor crimes; alternatives to arrest, particularly for minor crimes, are utilised by the police and other law enforcement officials; the law and regulations require police stations, and other places of detention under the management of other law enforcement agencies, to maintain, and provide access to, an official arrest and custody register; the number of complaints made against the police and where applicable other law enforcement officials for arbitrary arrest or detention and the outcome of those complaints, expressed as the proportion of complaints redressed; and the number of civil cases initiated against the police and where applicable other law enforcement officials for wrongful action, and the outcome of those matters, expressed as the proportion of claims upheld by the judiciary.*

Article 12 of the Transitional Constitution safeguards the right of everyone to liberty and security of the person, and prohibits the arrest, detention, deprivation or restriction of liberty except for specified reasons and in accordance with procedures prescribed by law. At the regional and international level, South Sudan's human rights obligations to respect, protect and promote the rights to liberty and security of the person are contained in the Convention on the Rights of the Child and the ACHPR, and its subordinate, interpretive instruments.

Article 6 of the ACHPR guarantees the rights of everyone to liberty and security of the person, and mandates South Sudan to ensure that it prevents the deprivation of freedom except for reasons and conditions



previously laid down by the law. Significantly, it also requires South Sudan to prohibit arbitrary arrest and detention. South Sudan's policy on arrest and detention is further guided by the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, a soft law interpretive instrument adopted by the African Commission on Human and Peoples' Rights to promote a rights-compliant approach to the use of arrest and detention by African states.<sup>72</sup>

These human rights instruments establish clear and specific obligations that compel the SSNPS to adopt the standards they embody and implement them at legal, policy and operational levels. The extent to which regulatory instruments and the SSNPS operational practice reflect the requirements and binding obligations imposed by these human rights documents is a clear indication of the progress made by the police in operationalising rights-based policing practice and programmes in the context of arrest, police custody and pre-trial detention.

Although the Code of Criminal Procedure vests a broad range of persons with the power to arrest – including the public prosecution attorney, magistrate, police officers, chiefs and private persons – applicable legal and regulatory frameworks do not provide the meaning of arrest. The absence of a standard definition of the term 'arrest', and clear guidance on what arrest entails, presents a challenge to existing efforts to ensure that the SSNPS, in pursuing legitimate law enforcement objectives, conducts arrest and detention in a manner that respects and promotes human rights and freedoms.

The Code of Criminal Procedure, however, sets out rules, regulations and procedures that govern the conduct of arrest. Section 75 describes the power of arrest of a public prosecution attorney, magistrate or court, and empowers them to arrest or issue a warrant of arrest for any person who, among other things, commits in their presence an act which constitutes an offence; against whom a case for the commission of an offence has been instituted and a valid request has been filed by the public prosecution attorney; or the order for whose release has been revoked.

Section 76 of the Code explains the powers of arrest by the police and chiefs. It authorises any police officer or chief to arrest any person for whose arrest they have a warrant, or whom they are directed to arrest by a public prosecution attorney, magistrate or court; who has been involved in an offence for which, pursuant to this Act, or under any other law, the police may arrest without warrant; who obstructs a police officer while in the execution of their official duty; and who has escaped or attempted to escape from lawful custody.

Under certain defined circumstances, the Code of Criminal procedure also empowers private persons with the powers of arrest, including the power to arrest any person for whose arrest they have a warrant or whom they are directed to arrest by a public prosecution attorney, magistrate or court; or who has, in their presence, committed an offence for which the police can arrest without a warrant. Section 91 provides a specific procedure that should guide the handling of all arrests made by private persons. It requires the person making the arrest to take the arrested individual to the nearest police station without unnecessary delay, or hand the arrested person over to a police officer.

The law also establishes an alternative framework to arrest and detention. The Code of Criminal Procedure sets the basis for the use of non-custodial measures to penalise minor offences. Section 74 entitles any person who is specified in a warrant of arrest for a minor offence to be released upon the issuance of a citation, in lieu of physical arrest, provided that the incident or act cited in the warrant does not involve, among other things, an act of violence or the use of a firearm. Section 123 permits a public prosecution attorney to release on personal bond any person who has been arrested for a minor offence. In the absence of a public prosecution attorney, a magistrate or court may release the person from custody upon the arrested person giving bail, including a person arrested on an out of court warrant. Furthermore, section 125 also authorises the release on bail, or when appropriate, after executing a bond without securities, of any person arrested for an offence punishable with a fine only.

In addition, regarding children in conflict with the law, the Child Act provides clear parameters for ensuring that the arrest of a child in conflict with the law happens only as a measure of last resort. It directs police officers to arrest a child only if there is a reasonable suspicion that the child has committed a serious crime and where no alternative to arrest can be found.<sup>73</sup> Section 141 of the Act puts forward an alternative framework

72 <http://apcof.org/wp-content/uploads/2017/03/conditions-of-arrestpolice-custody-and-pre-trial-detention-in-africa-luanda-guidelines-trainee-manual.pdf>.

73 Section 139(1) of the Child Act of 2008.

to arrest for the purpose of assessment by a social worker, which includes requesting the child, in a language that the child understands, to accompany the police officer to a place where an assessment can be made; and written notification to the child and, if available, the parents, guardian or family of that child to appear for an assessment at a place and on a date and at a time specified in the written notice.<sup>74</sup> Section 169 further provides, where the child is arrested for the commission of an offence, conditions and procedures for releasing the child on bail, and provides that the terms of release of a child on bail must be reasonable and in accordance with the seriousness of the crime committed as well as the financial capacity of the child and their parents or guardians.<sup>75</sup>

The study did not succeed in obtaining relevant information and data to assess the extent to which the SSNPS are implementing alternatives to arrest, as prescribed by the law. The operationalisation of a rights-respecting alternative framework to arrest and detention is a key step in institutionalising a rights-centric approach to the use of arrest and detention by the SSNPS.

While the Code of Criminal Procedure does not specifically prescribe the provision of access to official police custody registers, it sets a framework for the maintenance of custody registers. Section 96(2) mandates every police station to keep, in the prescribed form, a register of arrests and every arrest made within the local limits of the station to be recorded in the register by the officer in charge of the police station, as soon as the arrested person is brought to the station. It also compels the public prosecution attorney or, in his or her absence, the magistrate or court, as the case may be, to inspect police custody facilities on a daily basis, check the arrests register and verify the validity of procedures, and advise on the treatment of the arrested persons, in accordance with the law.

Despite the existence of a legal framework that protects and promotes a rights-centred approach to the use of arrest and detention, there is evidence of arbitrary and excessive use of the power of arrest and detention by police officers. Reports reveal that police officers commonly conduct arrests without warrants, and where warrants are available, they are often irregular, handwritten documents that are commonly drafted in the absence of investigation or evidence. Reports also highlight the practice of conducting arrests in civil cases as a challenge to the operationalisation of a rights-based use of the power of arrest.<sup>76</sup> Some of the factors that have been underlined as promoting and sustaining misuse of the right to arrest and detention include inadequate police training and capacity, police corruption and impunity, and political interference.<sup>77</sup>

While the Transitional Constitution enshrines a comprehensive Bill of Rights that is compatible with the regional and international human rights framework, and which safeguards the right to litigate and seek redress for grievances, including against the government, and empowers the Supreme Court and other competent courts to uphold, protect and apply the Bill of Rights, there is no information demonstrating the number and outcome of civil cases initiated against the SSNPS for wrongful actions. Available reports, however, illustrate deficiencies and shortcomings regarding the need to ensure the actions of police officers, particularly in law enforcement operations, are lawful and in strict compliance with their obligations to respect and promote basic human rights.<sup>78</sup> Among the key challenges that have been highlighted as affecting existing commitments to ensure the actions and conduct of police officers are lawful is the concern that the composition of the SSNPS includes a large number of former SPLA fighters as well as former militias who are often not provided with the training required to facilitate professional rights-compliant policing.<sup>79</sup> While the Police Act of 2009 mandates the Police Service Council to determine the training needs of the police service and prepare and execute different training plans and programmes, as well as prepare and develop training packages and programmes for police officers, reports underline that police officers receive inadequate training on human rights.<sup>80</sup> This has affected the majority of police officers' knowledge and understanding of basic human rights, which is reported as being poor.<sup>81</sup>

74 Ibid; section 141.

75 Ibid; section 169.

76 United States Department of State, South Sudan 2019 Human Rights Report, p. 7.

77 APCOF, A Review of the Use of Arrest, the Use of Detention and Conditions in Detention in South Sudan Legislation, Practice and Accountability, Policy Paper, 2013, pp. 6-8.

78 Report of the Independent Expert on the Situation of Human Rights in the Sudan, 2011, p. 17.

79 Ibid.

80 The Human Security Baseline Assessment, Policing in South Sudan: Transformation, Challenges and Priorities, 2017, p. 1.

81 <https://paanluelwel.com/2019/06/25/policing-the-community-the-challenges-and-prospects-of-community-policing-in-south-sudan/>.

## 2.2 The police will promptly inform accused persons of the reason for their arrest and any charges brought against them. This must be communicated to the accused person in a way and manner they understand

*The extent to which the police will promptly inform accused persons of the reason for their arrest and any charges brought against them, and the extent to which this is communicated to the accused person in a way and manner they understand, can be established by examining whether: the law and regulation require police to inform an arrested person of the reason for their arrest and any charges brought against them, along with informing them of their rights, promptly and in a way and manner understood by the arrested person; whether language translation services are available to the police; information is available in accessible formats for persons with disabilities and/or sign language interpreters are available to police; and the number of complaints made against the police for failure to provide information on the arrest and charge of accused persons, and the outcomes of those complaints, expressed as the proportion of complaints redressed.*

The Transitional Constitution protects the right of arrested persons to be informed of the reasons for their arrest and the charges brought against them.<sup>82</sup> Although it does not explicitly require police officers, at the time of arrest or promptly thereafter, to inform arrested individuals of their applicable rights and freedoms, such as the right to remain silent and the implications of not remaining silent, the Transitional Constitution embodies and safeguards fair trial rights, which include the right of arrested persons to be informed, at the time of arrest, of the reason for their arrest and any charges brought against them. The rights and entitlements of arrested persons are also set out in the Criminal Procedure Code. The responsibility of the SSNPS to uphold and respect the rights of accused persons is further contained in other binding international and regional human rights instruments, discussed above, including the ACHPR and in soft law instruments such as the Luanda Guidelines.

The Transitional Constitution further guarantees the right of persons with disabilities, and places a clear obligation on all levels of government to guarantee to persons with disabilities the enjoyment of rights and freedoms set out in the Constitution, especially access to public utilities, suitable education and employment. It also compels the state to promote the development of a sign language service for the benefit of people with special needs.

In addition, the Republic of South Sudan has developed a National Disability and Inclusion Policy, whose overall goal is to address and respond to multiple vulnerabilities faced by people living with disabilities, and promote and protect their rights and dignity in an inclusive manner.<sup>83</sup> However, South Sudan has yet to adopt a specific legislative instrument that regulates the rights and welfare of persons with disabilities, or to ratify relevant regional and international human rights instruments on persons with disabilities, such as the Convention on the Rights of persons with Disabilities (CRPD) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.

Although the legal framework reserves certain protections for persons with disabilities, reports illustrate that implementation of these safeguards is weak. Available research points out that even for key public institutions like police stations and courts, obtaining sign language interpreters for the hearing impaired remains a challenge to the institutionalisation of equitable and rights-promoting policing programmes.<sup>84</sup>

No data was available on the number of complaints made against the police for failure to provide information on the arrest and charge of accused persons. However, available reports underline gaps regarding compliance with the legal requirement to inform arrested persons of the reason for their arrest and any charges brought against them. For instance, a 2019 report on human rights practices in South Sudan, by the US Department of State, underscored the existence of deficits regarding informing persons of the charges referred against them.<sup>85</sup>

82 Section 19(2) of the Transitional Constitution.

83 South Sudan National Disability and Inclusion Policy, 2013, p. 6.

84 I Mgijima-Konopi, T Odaudu and R Mapokgol, South Sudan Country Report, African Disability Rights Yearbook, 2019, p. 242.

85 United States Department of State, South Sudan 2019 Human Rights Report, p. 7.

## 2.3 The police will act in a manner that upholds the presumption of an accused person's innocence until proven guilty in accordance with the law

*The extent to which the police act in a manner that upholds the presumption of an accused person's innocence until proven guilty in accordance with the law can be assessed by exploring: whether the presumption of innocence is guaranteed by law; if the law, regulations and police operational procedures provide that an accused person has the right to remain silent, and cannot be compelled to confess guilt or give evidence against themselves; the number of complaints made against the police for violation of procedural rights related to the presumption of innocence, specifically the right to remain silent and the right not to be compelled to confess guilt or give evidence, and the outcome of those complaints, expressed as the proportion of complaints redressed; whether there is a clear framework for how police should treat information of a confidential nature; if confidential information is not disclosed, including the parading of suspects, unless there is a legal requirement to do so and then only to the minimum extent necessary; and complaints against the police for disclosure of confidential information, and the outcome of those complaints expressed as the proportion of complaints redressed.*

24

The law protects the right to be presumed innocent. Article 19 of the Transitional Constitution guarantees everyone the right to be presumed innocent until proven guilty in accordance with the law. The exercise of this right, and the obligation on police officers to operationalise it, is further governed by regional human rights instruments, particularly the African Charter, to which South Sudan is a state party.

However, although the law safeguards the right of everyone to a fair and public hearing, it does not expressly protect the right to remain silent, and the right not to be compelled to confess guilt or give evidence against oneself. However, South Sudan's obligations to guarantee fair admission of evidence at criminal trials is also guided by the African Charter and its soft-law instruments, which prescribe a rights-compliant approach to the admission of evidence in courts.

No data was available to determine the number of complaints made against the police for violation of procedural rights related to the presumption of innocence. This data could have been used to examine the extent to which the SSNPS respects and promotes procedural justice in its operations and activities. Available reports demonstrate concerns regarding police observance of their duties and responsibilities to uphold the right of everyone to be presumed innocent. There is concern that, despite the Transitional Constitution's explicit protection of the right to a fair trial, law enforcement officials commonly presume suspects to be guilty before their cases are heard and determined by courts of law, with concomitant violations of their rights.<sup>86</sup>

While the Police Act of 2009 does not provide a clear framework for how law enforcement officials should treat information of a confidential nature, section 9(5) prohibits police officers from disclosing any information that is deemed secret during or after the termination of their service, or keeping an original of any official document or copy thereof, or extract such original out of the files where any of them is kept, even if such document relates to any duty that has been assigned to them. In the context of war, section 70(h) of the Act further makes it an offence for police officers to disclose any confidential information to an unauthorised person or enemy.

86 United States Department of State, South Sudan 2020 Human Rights Report, p. 10.

## 2.4 The police will ensure that arrested persons are brought promptly before an authorised and competent authority or judicial officer

*The extent to which the police ensure that arrested persons are brought promptly before an authorised and competent authority or judicial officer can be determined by assessing whether: the law provides for police custody time limits, in compliance with regional and international standards, from the time of arrest until suspects are brought in person before a competent authority or judicial officer; custody time limits are adhered to by police and, where applicable, other law enforcement officials; the law and regulations require police stations and facilities under the management of other law enforcement agencies to maintain, and provide access to, an official custody register; and suspects are brought in person before a competent authority or judicial officer within the official custody time limits.*

The Transitional Constitution and the Code of Criminal Procedure provide a specific framework for police custody time limits, by establishing procedural safeguards in respect of persons in police custody. The Transitional Constitution compels police officers to ensure that all persons arrested as part of an investigation are held in police detention facilities for a period not exceeding 24 hours and, if not released on bond, are produced in court.<sup>87</sup> The Code of Criminal Procedure also instructs police officers, following the execution of a warrant of arrest, to bring the arrested person before the public prosecution attorney, magistrate or court specified in the warrant without unnecessary delay, and in any event within 24 hours after their arrest.<sup>88</sup> This framework is compatible with regional and international standards on police custody time limits, which emphasise a maximum police custody time limit of 48 hours, to prevent arbitrary detention and promote the use of police custody as a measure of last resort.

While the law sets police custody time limits and offers guidance to police officers to ensure pre-trial detention complies with human rights standards, reports highlight challenges concerning police knowledge and understanding of the requirement to present arrested persons before a court of law.<sup>89</sup> In addition, available information also underlines non-compliance with court orders that expressly require police officers to present arrested persons before the court as a further challenge to the operationalisation of the prescribed police custody time limits.<sup>90</sup>

Moreover, an assessment of reports by human rights organisations indicates that the lack of sufficient knowledge about custody time limits has been affecting the operation of, and the rights-based approach to, the use of detention by the SSNPS from as early as 2012. For instance, a 2012 report on arbitrary detention in South Sudan conducted by Human Rights Watch established that there is inadequate knowledge of the prescribed 24-hour time limit among key criminal justice actors, including police officers.<sup>91</sup> The report further found that even in circumstances where courts approve continued police detention, they do so on the basis of detainee's paperwork alone, not on an in-person appearance of the suspect, with one police officer in Juba noting that detainees are only physically taken to court if they make such a request.<sup>92</sup>

The Code of Criminal Procedure also requires police stations to maintain an official arrest and custody register. Section 96(2) compels every police station to keep, in the prescribed form, a register of arrests and ensure that every arrest made within the local jurisdiction of the station is recorded in the register by the officer in charge of the police station, as soon as the arrested person is brought to the station.<sup>93</sup>

87 Section 19(4) of the Transitional Constitution.

88 Section 83 of the Code of the Criminal Procedure Act of 2008.

89 United States Department of State, South Sudan 2020 Human Rights Report, p. 7.

90 Ibid.

91 Human Rights Watch, Prison Is Not for Me: Arbitrary Detention in South Sudan, 2012, p. 38.

92 Ibid., p. 39.

93 Section 96(2) of the Code of Criminal Procedure Act of 2008.

## 2.5 The police will ensure that upon arrest, detention or charge, there is a presumptive right to bail or bond

*The extent to which the police ensure that upon arrest, detention or charge, there is a presumptive right to bail or bond can be assessed by examining: whether the law provides that police custody, and detention in facilities under the management of other law enforcement agencies, is a measure of last resort and provides for alternatives to detention, including court summons, bail and bond; if the law provides that police must only deny bail or bond, or recommend the denial of bail or bond (a) on grounds that are clearly established in law and not motivated by discrimination of any kind, and (b) if there are reasonable grounds to believe that the accused has been involved in the commission of a criminal offence that carries a custodial sentence, but there is a danger that he or she will abscond, commit further serious offences, or if the release of the accused will not be in the interests of the safety of the person or in the interests of justice; police officials are trained on decision-making for the issuance of bail or bond to suspects; the number of complaints made against the police for denial of bail or bond, and the outcome of that complaint, expressed as the proportion of complaints redressed; and the number of persons granted bail or bond by police, expressed as a percentage of all persons charged, and disaggregated according to type of offence.*

The Transitional Constitution and the Code of Criminal Procedure regulate the administration of bail and bond, and conditions that guide the issuance of bail and release after arrest. Section 19(4) of the Transitional Constitution empowers courts to release arrested persons on bail. The Code of Criminal Procedure also contains clear and detailed provisions that provide operational guidance to police officers regarding the release of arrested persons on bail or bond.

Section 123 of the Code of Criminal Procedure affirms the rights of everyone arrested for a minor offence, or anyone arrested for an offence punishable with a fine only, to be released on bail.<sup>94</sup> It further sets out specific requirements with which arrested persons must comply to secure their release on bail. It requires release on bail of arrested persons to be based on the following conditions: the arrested person personally executing a bond to appear, with or without securities or sureties; another person executing a bail to bring the arrested person, with or without securities; or by paying a deposit coupled with bond or bail.<sup>95</sup>

In addition, it embodies a set of considerations that should guide the setting, reducing or denying of bail, including the protection of the public, the seriousness of the offence, the previous criminal record of the accused, and the probability of the accused appearing at the trial, and notes that public safety will be the primary consideration.

In assessing the seriousness of the offence, the Code of Criminal Procedure requires officials to consider the alleged injury to the victim, any alleged threats to the victim or a witness to the offence, and the use of a firearm or any other deadly weapon in the commission of the offence. Furthermore, while it expressly prohibits the granting of bail in respect of offences punishable by death, and stipulates that persons accused of offences punishable by imprisonment for a term exceeding 10 years would not ordinarily be released on bail, it permits the release on bail of persons that are accused of offences that fall in the latter group under certain defined circumstances. These include that by reason of the granting of bail the proper investigation of the offence would not be prejudiced, nor a serious risk of the accused escaping from justice be occasioned; or that there are no reasonable grounds for believing that the accused committed the offence, but that there are sufficient grounds for further investigation.

The Child Act also regulates the release on bail of children in conflict with the law. Section 169 obliges police officers to release a child on bail, except in the most serious cases, or if it is in the child's best interest to remove him or her from association of any person. The Act also sets forth conditions that should guide the release of children on bail, including the obligation to appear at a specified time, date and place before the court, or the obligation to report periodically to a specified person or place.

94 Section 123 of the Code of Criminal Procedure Act of 2008.

95 Ibid., section 124.

Section 42 of the Police Act of 2009 makes provision for the training of police officers, and mandates the Police Service Council to determine the training needs of the police service and prepare and execute different training plans and programmes.<sup>96</sup> However, the study did not succeed in obtaining the SSNPS training curriculum to assess whether police officers are trained on decision-making for the issuance of bail or bond to suspects, to ensure fairness, independence and consistency in the decision to issue or deny police bail.

The study did not obtain relevant information to facilitate an assessment of the number of complaints made against the police for denial of bail or bond. However, available information underlines that, despite the explicit constitutional and legal protection of the right to bail and the concomitant obligation placed on, among others, police officers to operationalise it, there is limited knowledge of the right to bail on the part of duty bearers, who also rarely inform detainees of this right.<sup>97</sup> Inadequate knowledge on the part of police officers about bail as a human right and legislatively established standard is a barrier to the fair, equal and non-discriminatory exercise of the right to bail.

## **2.6 The police will 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**

*The extent to which police inform detained persons of their right 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, can be determined by examining whether: the law guarantees the right to challenge the lawfulness of detention and the right to compensation if an arrest or detention is unlawful; suspects are aware of their right to challenge the lawfulness of their detention in court; police and where applicable other law enforcement budgets make sufficient provision for the payment of compensation; and by exploring the percentage of claims for compensation or other forms of redress awarded and provided.*

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Section 20 of the Transitional Constitution protects the right of everyone to litigate and seek redress for violations of human rights, and prohibits the denial of the right to resort to courts of law to remedy and redress grievances, whether against government or any individual or organisation. The constitutional right to challenge the lawfulness of detention is a safeguard that is engendered by the protection provided by article 12 of the Transitional Constitution, which guarantees everyone the right to liberty and security of the person, and prohibits the practice of subjecting anyone to arrest, detention, deprivation or restriction of liberty except for specified reasons and in accordance with procedures prescribed by law. The right of arrested persons to challenge the lawfulness of their arrest and detention before a court of law is further guaranteed in the African Charter, as interpreted by the Luanda Guidelines.

This study did not obtain relevant data to assess the extent to which suspects are aware of their right to challenge the lawfulness of their detention in court. However, despite the presence of a comprehensive Bill of Rights, and the specific protections and guarantees it offers, available information indicates that there is very limited access to legal representation and public awareness of the human rights standards, and their applicability, as enshrined in the Transitional Constitution.<sup>98</sup> In addition, reports also reveal that accessibility to printed legal materials, including binding laws, is poor.<sup>99</sup> Poor public awareness of the human rights values enshrined in the Transitional Constitution prevents the public from effectively using the law and its protections to question the actions of duty bearers and vindicate their rights where state actions are incompatible with human rights standards.

96 Section 42 of Police Act of 2009.

97 United States Department of State, South Sudan 2018 Human Rights Report, p. 8.

98 Policy Department DG External Policies, South Sudan: Enhancing Capacities for Human Rights, 2013, p. 13.

99 Ibid.

## 2.7 The police will ensure that arrested and detained persons have access to interpreters and legal assistance, as required

*The extent to which the police ensure that arrested and detained persons have access to interpreters and legal assistance can be established by examining whether: the law guarantees the right of all accused persons to the services of a lawyer or suitable paralegal services; and whether the law provides that all persons detained in police custody, or places of detention under the management of other law enforcement agencies, have the following rights in relation to legal assistance: (a) access without delay or restriction to lawyers or paralegals, at the latest prior to and during any questioning by the police, (b) confidentiality of communication between lawyers or paralegals and suspects, (c) the means to contact a lawyer or paralegal, and (d) the right to access case files as required by the Constitution and/or criminal procedure, and have adequate time and facilities to prepare a defence.*

Section 19(7) of the Transitional Constitution specifies that all accused person have the right to defend themselves in person or through a lawyer of choice, or, in any serious offence in circumstances where they cannot afford legal representation, to have legal aid assigned to them by the government. Section 93(2) of the Code of Criminal Procedure also stipulates that arrested persons shall always be entitled to contact their advocates. Section 144 of the Child Act sets out the procedure that must be followed after the arrest of a child above the minimum age of prosecution (12 years). Where the arrest has taken place, the Act requires police officers to notify the child in a language they understand of the right to choose and be represented by a legal representative at their own cost, and the right to be provided with a legal representative by the state in serious offences.

Although, as noted, existing regulatory instruments contain the basic requirement to inform arrested persons of their rights to legal assistance, in accordance with regional and international human rights laws, they do not provide police officers with specific rules and principles that should regulate key aspects of the right to legal representation. This includes a lack of guidance on the need to institutionalise and ensure police officers promote the right to: access without delay or restriction to lawyers or paralegals, at the latest prior to and during any questioning by the police; confidentiality of communication between lawyers or paralegals and suspects; effective and accessible means to contact a lawyer or paralegal; and access case files and have adequate time and facilities to prepare a defence.

## 2.8 The police will ensure that arrested and detained persons are treated humanely and kept under humane conditions

*The extent to which police officers ensure that arrested and detained persons are treated humanely and kept under humane conditions can be ascertained by assessing whether: the law provides minimum standards for conditions of detention in police custody and places of detention under the management of other law enforcement agencies, including standards of accommodation, nutrition, hygiene, clothing, bedding, exercise, physical and mental healthcare, contact with the community, and religious observance in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules); there is a system for the regular and independent monitoring of police custody and places of detention under the management of other law enforcement agencies, and internal and external complaints mechanism available to detainees; percentage of police and where applicable other law enforcement agencies' budgets allocated to the upkeep and maintenance of detention facilities; number of complaints made against the police and where applicable other law enforcement officials for conditions of detention that are inhumane or not consistent with the right to dignity of the person, and the outcome of that complaint, expressed as the proportion of complaints redressed.*



The law provides certain safeguards to ensure conditions of detention in police custody are consistent with international standards. The Transitional Constitution, although it does not embody distinct and specific standards in relation to conditions of detention, guarantees the right of everyone to be treated with dignity, and prohibits the treatment or punishment of any person in a manner that is cruel, inhuman or degrading. The Code of Criminal Procedure also proscribes the treatment of arrested persons in a way that violates their human dignity. In addition, it forbids the physical or moral abuse of arrested persons. Further, section 93(5) provides that arrested persons shall have the right to obtain a reasonable amount of food stuff, clothing and cultural materials, at their own cost, subject to the conditions relating to security and public order. The Child Act also includes minimum standards for conditions of detention. Section 150, which regulates the detention of a child in police custody before their appearance at an assessment procedure, articulates that, while in detention in police custody, a child shall: be held in conditions and treated in a manner that takes account of their age; be held separately from adults and boys must be held separately from girls; be held, as far as possible, in conditions which will minimise the risk of harm to that child, including the risk of harm from other children. It further requires the child to be guaranteed the right to adequate food; medical treatment when required; clothing, including sufficient blankets and bedding; and exercise. The legal requirement to ensure conditions of detention are compatible with international standards is also enunciated in the Luanda Guidelines.

As regards monitoring police custody, the Transitional Constitution established the independent Human Rights Commission with a clear and specific mandate, including the monitoring of police custody facilities. Section 146 details the function of the Commission, which includes visitation of police jails, prisons and related facilities with a view to assessing and inspecting conditions of the inmates and making recommendations to the relevant authority, and monitoring the application and enforcement of the rights and freedoms enshrined in the Constitution. Section 33 of the Code of Criminal Procedure also mandates the public prosecution attorney or, in their absence, the magistrate or court, as the case may be, to inspect, on a daily basis, custody facilities, check the arrests register and verify the validity of procedures, and advise on the treatment of arrested persons in accordance with the law. Moreover, the obligation to ensure regular and independent monitoring of police custody facilities also flows from South Sudan's human rights obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which it is a state party.

The Human Rights Commission, in the exercise of the authority bestowed on it by the Transitional Constitution, regularly monitors police detention facilities and prisons, among others, and prepares independent reports with targeted recommendations to duty bearers. The study did not succeed in gathering sufficient, reliable data to effectively explore the number of complaints made against the police for conditions of detention that are inhumane or not consistent with the right to dignity of the person, and the outcome of that complaint. However, existing reports indicate that conditions of state-managed prison and detention sites are overcrowded, unsanitary and have inadequate medical care.<sup>100</sup>

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100 [https://www.voanews.com/a/covid-19-pandemic\\_south-sudan-frees-some-prisoners/6187833.html](https://www.voanews.com/a/covid-19-pandemic_south-sudan-frees-some-prisoners/6187833.html).

## COMMON STANDARD 3: POLICE ACTIONS

### **3.1 The police will act in a manner that 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**

*The extent to which the police will act in a manner that 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 can be evaluated by ascertaining whether: values are incorporated into police service core documents, such as mission statements, codes of conduct and disciplinary codes; police take an oath to uphold these values, and they are reinforced through training and regular communication; managerial and operational practice supports and reflects adherence to these values through positive measures, performance appraisals, evaluations, warnings and discipline; there exists within the police organisation a Code of Conduct which is based on the Common Standards and other relevant regional and international standards for rights-based policing practices; training for police includes training on the Code of Conduct; percentage of police who annually receive training on the Code of Conduct; percentage of police who have access to visible posters and pamphlets reminding them of the Code of Conduct; the number of officers disciplined for breaches of the Code of Conduct, including the nature of the breach, type and severity of sanction, and rank of police and other law enforcement officials; police are subject to regular performance monitoring and review in accordance with policy; percentage of police who are reviewed on an annual basis; performance appraisals form the basis of promotions and designation to particular units; a clear disciplinary procedure exists in law and practice; there exists a clear framework indicating what actions of police are considered misconduct or offences, and the consequences of violating those rules; police receive training on the type of actions that will constitute misconduct or offences, and the consequences of violating those rules; number of police subject to disciplinary proceedings, expressed as a percentage of total number of officials, and the outcome of those proceedings; police are encouraged to*

*report acts of misconduct committed by their colleagues; police are prohibited from holding public office or positions within political parties, and from publicly associating themselves with political parties, objectives and activities; there is a clear distinction between the executive direction and policy role and the operational independence of the police and other law enforcement agencies; the police have budgets adequate to carry out their mandate (measured as the annual budget of the police and other law enforcement agencies, as a proportion of the national budget, with analysis of major items of expenditure); the budget is spent according to approved budget expenditure items.*

The Transitional Constitution lays out the basic values that should guide policing in the country. It requires the provision of services to be governed by the Constitution and the law, and mandates police officers to respect the will of the people, the rule of law and order, civilian authority, democracy, human rights, fundamental freedoms and execute judicial orders. It also outlines the mission of the SSNPS, which it articulates as to prevent, combat and investigate crime; maintain law and public order; protect the people and their properties; and uphold and enforce the Constitution and the law.<sup>101</sup>

The Police Act of 2009 also requires police service to be a regular service with the primary responsibility of ensuring the security of citizens and maintaining public order, implementing the law in full neutrality and honesty, and adherence to the law and national and international standards.<sup>102</sup> It further enjoins police officers to operationalise the values of honesty and trust, respect the dignity of their position and that of citizens, and conduct themselves in a way that reflects these values, which must be in line with the code of conduct and values of the society.<sup>103</sup> The Act also makes provision for oath taking and administration, and compels all graduates of police college, who have been duly awarded the title of a police officer by the president, to take the oath of allegiance before the president.<sup>104</sup> In addition, the Act also empowers, subject to regulations and instructions issued pursuant to its provision, a police commissioner to issue standing orders to organise and control the performance of his or her unit.<sup>105</sup>

In relation to the training of SSNPS members, the Act requires the administration of training to be in compliance with the standards it establishes, and all rules and regulations adopted in accordance with it, and permits the Police Service Council to, among other things, determine the training needs of the police service, and prepare and develop training packages and programmes for the police service.<sup>106</sup>

Furthermore, the Act establishes police courts – Police Summary Court, Police Non-Summary Court, Police Court of Appeal and Police Supreme Court – and details their powers and jurisdictions. Subject to the provisions of this Act, it empowers police courts to decide on conduct by any police officer which is considered criminal, or a contravention of the Act or any other legislation or regulations, if committed while discharging official duties. However, it notes that complaints against police officers that are received through a civilian complaint mechanism, established by regulations, should be referred to judicial courts, subject to the regulations.

In addition, it places the administrative and legal supervision of the police courts with the director in charge of the Legal Affairs Directorate. The competence and powers of police courts are further explained in the Act: the Police Summary Courts are established to decide on violations provided for in the police regulations, and impose penalties determined for such violations. Police Non-Summary Courts are required to decide on crimes and contraventions provided for in the Act itself, or under any other law. The court may pass any penalty or punishment pertaining to these contraventions or crimes. The Police Court of Appeal and the Police Supreme Court are entitled to decide questions of appeal.<sup>107</sup>

The Act further envisages summary disciplinary processes against police officers, and stipulates that police officers may be subjected to summary discipline before any senior officer, and requires police regulations to specify powers, competences and disciplinary measures.<sup>108</sup>

101 Sections 155(2) and (6) of the Transitional Constitution.

102 Section 6(2) of the Police Act of 2009.

103 Ibid., sections 9(2) and (3).

104 Ibid., section 29.

105 Ibid., section 81.

106 Ibid., section 42.

107 Ibid., sections 52–58.

108 Ibid., section 63.

There exists a clear framework indicating what actions of police are considered misconduct or offences, and the consequences of violating those rules. Specific crimes and contraventions include: the use of criminal force; disobedience of lawful orders; unjustified disposal of weapons, ammunition and accoutrements; desertion of duty; contraventions during operations; the giving of false information or accusation; conduct unbecoming of police personnel; and partiality in discharge of functions and duties.<sup>109</sup>

The Police Act of 2009 establishes the Police Service Council, and authorises it to determine the training needs of police officers and prepare and execute different training plans and programmes, and prepare and develop training packages and programmes for SSNPS members. Although legal and regulatory tools envisage the provision of training to police officers, the study was unable to secure the SSNPS training curriculum, or training college records, to evaluate the extent to which police officers are provided with basic and continuous training on the values embodied in key policy and regulatory instruments. However, available reports show poor literacy levels within the SSNPS. For instance, a report by the African Union Commission of Inquiry on South Sudan points out that, from the Commission's consultations and other reports, there is evidence that 80% of police officers are functionally illiterate.<sup>110</sup> These conditions impede the ability of police officers to execute their mandate effectively and provide basic policing services to the public.

However, measures are being undertaken to impart basic competencies but the task is difficult in view of the numbers involved.<sup>111</sup> UNPOL is a key role-player that continues to contribute to the capacity development and effectiveness of the SSNPS and other national law enforcement agencies by providing technical assistance and advice in line with human rights principles and international humanitarian law.<sup>112</sup> One of its core achievements to date is the ongoing training and sensitisation activities on internationally accepted policing standards for the SSNPS and other local law enforcement agencies.<sup>113</sup>

The study did not succeed in acquiring internal police records, and administrative and human resources documents, to determine the number of police officers who have been disciplined for breaches of existing codes of behaviour; whether police officers are subject to regular performance monitoring and review; and the actual percentage of police who are reviewed on an annual basis. The absence of this information is a challenge to the ongoing contributions and police reform efforts of key national stakeholders, and other international organisations, to promote the operationalisation of policing techniques and practices that comply with regional and international standards.

Regarding whether the police have budgets adequate to carry out their mandate, and whether the budget is spent according to approved budget expenditure items, available evidence demonstrates that there are challenges in terms of resource allocation, with much of its budgetary allocation being spent on the payment of salaries and remuneration. This is a challenge which dates back to the pre-independence period. For instance, it is reported that in 2007, the SSNPS budget was USD50.3 million, and that 80% went into salaries. In 2011, the SSNPS budget was USD267 million, of which USD253 million (95%) went to salaries while the rest, USD14 million, was spent on operating costs and capital outlay.<sup>114</sup> While it is important for police officers to be offered salaries that comply with international standards, and living conditions that are consistent with respect for human dignity, the undesired impact of uneven budgetary expenditure by police organisations is the likelihood that overexpenditure in one area may result in the institution lacking the necessary resources to invest in other important areas, such as capacity building and infrastructure development.

109 Ibid., sections 65–75.

110 African Union Commission, Final Report of the African Union Commission of Inquiry on South Sudan, 2014, p. 71.

111 Ibid.

112 <https://unmiss.unmissions.org/un-police>.

113 Ibid.

114 African Union Commission, Final Report of the African Union Commission of Inquiry on South Sudan, 2014, p. 69.

### 3.2 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 fulfilment of their lawful duty

*The extent to which 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 fulfilment of their lawful duty can be assessed by examining: whether legislation criminalises the arbitrary or unlawful use of force; obedience to superior officers' orders does not excuse arbitrary or unlawful use of force; the number of police prosecuted under domestic legislation or common law for excessive or unlawful use of force, and the outcome of those prosecutions, expressed as the proportion of complaints redressed; the percentage of (a) recruits and (b) police who annually receive training and retraining on the principles of minimum use of force, on the use of weapons and firearms, and on the use of non-violent conflict resolution methods as (i) theory and (ii) practice; the number of police requalified in the use of weapons per year as a ratio of the number of police and other law enforcement officials issued with a firearm; police budgets make provision for sufficient training on use of force; less lethal equipment is available to the police and used in accordance with policy; the percentage of police who annually receive training and retraining on less lethal equipment; weapons are only issued to personnel who are assessed as mentally, physically and morally fit and trained to use them; there is automatic review and investigation of incidents of the use of force resulting in death or serious injury, and the investigations are conducted impartially with integrity; police records on the number of people injured or killed during the course of police and other law enforcement action, as a ratio of statistics of serious crime reported, overall number of crimes reported, number of police and the number of officials wounded or killed on duty.*

Applicable regulatory documents on policing contain some provisions on police use of force, which provide some measure of guidance to police officers on lawful and professional use of force. The Police Act of 2009,<sup>115</sup> the principal instrument on policing, offers limited guidance on police use of force. It permits police officers, in the performance of policing powers and functions, to use reasonable force, where necessary, and according to the restrictions provided for by law. However, in relation to the use of force, the Act only criminalises the use of criminal force by police officers against each other, and imposes a sentence of imprisonment for a term not exceeding three years or a fine or both, and they may also be dismissed from the service. In addition, if the victim is a senior officer or senior non-commissioned officer, the term of imprisonment may be extended for a term not exceeding five years. The Code of Criminal Procedure, although it makes provision for the use of force to disperse unlawful assemblies and close certain premises during such assemblies, does not expressly criminalise the use of unlawful force.

The absence of comprehensive provisions on police use of force, and gaps in key legislative instruments on policing, leads to the omission of the general principles that govern the use of force by police officers and poses a challenge to the need for the institutionalisation of lawful and expert use of force that complies with regional and international human rights obligations. No data was publicly available on the number of police officers prosecuted for excessive or unlawful use of force. However, available reports reveal the existence of challenges in relation to police use of force. For instance, at a training exercise on how to earn and promote public trust in the police, organised by UNPOL, a police officer discussed how some members of the public have developed a negative attitude towards the police because some police officers have used excessive physical force when dealing with civilians.<sup>116</sup> While the use of force by police officers is permitted under certain limited circumstances, the use of arbitrary and excessive force by law enforcement officers can diminish public confidence and trust in the police and negatively impact legitimate crime prevention and reduction efforts.

<sup>115</sup> Section 8(2) of Police Act of 2009.

<sup>116</sup> <https://unmiss.unmissions.org/trust-and-human-rights-take-centre-stage-south-sudanese-police-are-trained-un-counterparts>.

The study was not able to access the police training curriculum and other records to determine the level and extent to which police officers receive training on the principles of minimum use of force, on the use of weapons and firearms, and on the use of non-violent conflict resolution methods; or police budgets to ascertain whether they make provision for sufficient training on the use of force. However, available information highlights that among the institutional constraints affecting policing are factors such as insufficient education and training, inadequate equipment and poor conditions of service.<sup>117</sup>

### 3.3 The police will act in a manner that ensures all citizens enjoy their fundamental rights and freedoms without discrimination

*The extent to which the police will act in a manner that ensures all citizens enjoy their fundamental rights and freedoms without discrimination can be assessed by examining whether all persons are received and treated fairly and are not subject to discrimination, harassment or arbitrary arrest.*

The Transitional Constitution provides that everyone is equal before the law, and guarantees the right of everyone to the equal protection of the law without discrimination of any kind. The duty of the SSNPS to provide equitable and non-discriminatory policing is also contained in other binding regional and international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women and the African Charter on Human and Peoples' Rights.

The Police Act of 2009 also compels police officers to provide non-discriminatory policing services. It requires them to act impartially in the execution of their functions and duties, and expressly provides that any police officer who shows partiality in the discharge of their functions and powers commits an offence and shall, on conviction, be punished with reprimand upon the first offence, and imprisonment for a term not exceeding one year or a fine or both upon a subsequent conviction.

However, available reports underline the presence of constraints, including institutional challenges, that obstruct the provision of equitable policing services to everyone. In the context of the fight against gender-based violence, for instance, reports emphasise that most cases do not make it to court partly because, even if they are reported, police officers are ill-equipped to handle them.<sup>118</sup> The limited ability of police officers to effectively identify and address incidents of gender-based violence and violence in the domestic space is a serious challenge, particularly in light of the high number of reported cases. For instance, reports reveal that between 2016 and 2017, nearly a quarter of all reported conflicts in Juba and Bor were cases of domestic violence and 72% of women report having been affected by physical or sexual violence since 2013.<sup>119</sup>

Reports also indicate that police officers in South Sudan are poorly trained and under-resourced, and that most have limited understanding of women's rights and often do not treat survivors with respect or sensitivity.<sup>120</sup> In addition, there is evidence of a high rate of illiteracy within the police, with many police officers unable to read or write.<sup>121</sup>

Furthermore, there are media reports<sup>122</sup> of the police discouraging public protests against the government, and warning against their preparation and staging. In addition to guarantees of equality before the law, the Transitional Constitution also safeguards freedom of assembly and association. Police officers have a duty to facilitate and manage public gatherings and assemblies impartially and in a non-discriminatory manner.

117 <https://paanluelwel.com/2019/06/25/policing-the-community-the-challenges-and-prospects-of-community-policing-in-south-sudan/>.

118 Refugees International, Still in Danger: Women and Girls Face Sexual Violence in South Sudan Despite Peace Deal, 2019, p. 22.

119 K Smith, Building a Constituency for Peace in South Sudan, 2017, p. 14.

120 Refugees International, Still in Danger: Women and Girls Face Sexual Violence in South Sudan Despite Peace Deal, 2019, p. 22.

121 <https://peacekeeping.un.org/en/high-rate-of-illiteracy-creates-challenge-police-officers-combating-crime-aweil>.

122 M Mayar, 2021, South Sudan Police warn against anti-government protests. available at: [https://www.voaafrica.com/a/africa\\_south-sudan-focus\\_south-sudan-police-warn-against-anti-government-protests/6210112.html](https://www.voaafrica.com/a/africa_south-sudan-focus_south-sudan-police-warn-against-anti-government-protests/6210112.html).

Moreover, there is evidence of unequal distribution of police stations across the country, which may engender unequal access to justice and obstruct the public's equal enjoyment of their fundamental rights and freedoms.<sup>123</sup>

### **3.4 The police will act in a manner that upholds the absolute prohibition against torture and other cruel, inhuman or degrading treatment or punishment. The police will not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment. No circumstances will override this prohibition, including threats of war, political instability or periods of emergency.**

*The extent to which the police will act in a manner that upholds the absolute prohibition against torture and other cruel, inhuman or degrading treatment or punishment; the police will not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment; and no circumstances will override this prohibition, including threats of war, political instability or periods of emergency, can be evaluated by assessing whether: domestic legislation prohibits torture, which is defined in accordance with Article 1 of CAT; police policies and codes of conduct define torture and outline detailed steps the police must take to prevent torture, and to respond to any allegations of torture; obedience to a superior's orders is not a defence to an act of torture or other ill-treatment; any statement made as a result of torture is not permitted to be used as evidence in any proceedings, except that in the case of suspects accused of torture, then evidence may be led that the statement was made as a result of torture; the prohibition of torture and ill-treatment is included in the training of all police; the training stresses the human rights principles underpinning the prohibition, and involves practical examples of what constitutes prohibited actions; percentage of police who annually receive training on the prohibition and prevention of torture, disaggregated by rank; procedural safeguards exist to prevent the use of violence, threats or intimidation during interrogation or interviewing of suspects and witnesses; the law, regulations and police and other law enforcement operational procedures provide the following rights of suspects during questioning and confession: (a) freedom from torture and other ill-treatment, (b) the presence of a lawyer, (c) a medical examination, (d) an interpreter, if required, (e) the right to remain silent; the law provides that information about every questioning session be recorded, including information about the (a) duration, (b) intervals, (c) identity of the officials carrying out the questioning, and (d) confirmation that the detained person was availed the opportunity to seek legal assistance or a medical examination; audio or audio-visual recording of questionings and confessions are taken and made available; number of complaints made against the police for violation of procedural rights during questioning and confessions, and the outcome of those complaints, expressed as the proportion of complaints redressed; the number and nature of complaints of torture and other ill-treatment by the police as submitted by individual complainants, by non-governmental organisations (NGOs) or organisations external to the police to international and regional human rights mechanisms or identified in a court of law; the number and nature of complaints of torture made by police and about their colleagues, and the outcome of the complaints, expressed as a proportion of complaints redressed; percentage of all complaints of torture and other ill-treatment that are independently and effectively investigated by an impartial domestic body, and the outcomes of the complaints, expressed as a proportion of complaints redressed; number of police charged with torture and other ill-treatment, and the outcome of the cases, expressed as a proportion of complaints redressed.*

The Transitional Constitution safeguards the right of everyone to be free from torture or cruel, inhuman or degrading treatment or punishment. It also mandates police officers, in the discharge of their duties and functions, to be faithful to the law and respect human rights and fundamental freedoms. The Police Act of

<sup>123</sup> See, for instance, the report on how UNMISS constructed the first police station in Terekeka in 2020 at <https://reliefweb.int/report/south-sudan/small-project-major-impact-unmiss-constructs-first-ever-police-station-terekeka>.

2009, although it does not enshrine any provision that explicitly prohibits torture, requires police officers, in implementing the law, to adhere to the law, and national and international standards. In addition, the Code of Criminal Procedure forbids any treatment that may undermine the human dignity of arrested persons, or may constitute physical or moral abuse.

The obligation to prohibit torture in all forms is also set forth in regional and international human rights documents which are legally binding on South Sudan. These include CAT and the ACHPR, as interpreted by the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines).

However, existing criminal law standards do not prohibit or criminalise torture, as defined in Article 1 of CAT. In addition, South Sudan does not have a specific anti-torture legislative tool that comprehensively domesticates and operationalises the specific provisions of CAT and the Robben Island Guidelines, while offering targeted guidance to police officers on how to prevent and combat all forms of torture. Despite the Transitional Constitution's explicit prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and the binding obligations established by CAT and the African Charter to prohibit and combat torture, reports indicate the presence of challenges in relation to incidents of torture and other forms of ill-treatment by police officers. Reports reveal that torture and ill-treatment are practised by security actors, including police officers, during arrests and detentions. Political opponents, journalists, human rights workers and others have been harassed, beaten, raped or tortured in police custody before being transferred to prison.<sup>124</sup>

A report published in 2011 documents how diplomats, researchers and police recruits recounted cases of torture and other ill-treatment of police recruits by their instructors, including campus-wide punishment that lasted for days.<sup>125</sup> Furthermore, the African Union Commission report on South Sudan also found that the general human rights record of the SSNPS is a serious issue that continues to blight the reputation of police officers. It notes that police officers have been accused of perpetrating human rights violations in various parts of the country, including the abuse of civilians, foreign nationals and staff members of international organisations.<sup>126</sup>

### 3.5 The police will act in a manner that ensures all persons deprived of their liberty are treated with humanity and respect for their inherent dignity

*The extent to which the police will act in a manner that ensures all persons deprived of their liberty are treated with humanity and respect for their inherent dignity can be ascertained by assessing whether: the police will keep persons awaiting trial separate from convicted persons; provide all persons deprived of their liberty with adequate food and clothing, unless the detained person elects to provide their own; facilitate assistance from medical practitioners; inform family and friends of the detention and allow the detained person 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; allow all persons deprived of their liberty to access legal assistance services and receive visits from their legal advisors that are within the sight, but not hearing, of officials.*

The law safeguards the rights of individuals in conflict with the law, and regulates the treatment of people deprived of their liberty. With respect to children in conflict with the law, the Child Act requires<sup>127</sup> children, while in detention in police custody, to be detained separately from girls. The obligation to keep categories of detainees separate, according to their status, which includes the separate detention of men and women, children and adults, and convicted from pre-trial detainees, while also being mindful of specific vulnerabilities, is further embodied in the African Charter, as interpreted by the Luanda Guidelines.

124 <https://allafrica.com/stories/202202040393.html>.

125 <https://www.nytimes.com/2011/02/25/world/africa/25sudan.html>.

126 African Union Commission, Final Report of the African Union Commission of Inquiry on South Sudan, 2014, p. 71.

127 Section 150(4)(b) of the of the Child Act of 2008.



As regards the provision of adequate food and clothing to all persons deprived of their liberty, the Code of Criminal Procedure<sup>128</sup> specifies that arrested persons have the right to obtain a reasonable amount of food stuff, clothing and cultural materials, at their own cost, subject to the conditions relating to security and public order. In addition, it stipulates that arrested persons have the right to inform their family, or the body to which they belong, and contact the same. Where the arrested person is a juvenile, or suffering from a mental infirmity, or any disease, in such a way that he or she may not be able to contact their family, or the body to which they belong, it mandates the police, public prosecution attorney, magistrate or the court, on its own initiative, to notify the family or the appropriate body.

In relation to the right of access to legal assistance, the Transitional Constitution<sup>129</sup> guarantees the right of accused persons to defend themselves in person or through a legal representative of their own choice or to have legal aid assigned to them by the government, where they cannot afford a lawyer to defend themselves in any serious offence. The Code of Criminal Procedure<sup>130</sup> also protects the rights of arrested individuals to have access to legal representatives and assistance.

At the operational level, despite constitutional and legal guarantees of the right of access to legal services, available information reveals the existence of shortcomings regarding the extent to which police officers facilitate the exercise of the right to access legal practitioners and services. Reported challenges include failure to inform detainees of the right, and non-observance of the legal requirement to provide defendants with legal aid and assistance if they cannot afford it.<sup>131</sup> Reports further highlight police corruption as one of the factors that impedes access to justice for many people.<sup>132</sup>

### **3.6 The police will act in a manner that adheres to the absolute prohibition against extra-judicial executions and the government will enact legislation 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.**

*The extent to which the police will act in a manner that adheres to the absolute prohibition against extra-judicial executions and the government will enact legislation to ensure that such actions are investigated and prosecuted as a matter of priority and as punishable criminal offences under law; and the police will not derogate from this principle on account of war, armed conflict or other national emergencies can be established by examining whether: the law provides that any transfer of detainees is only permitted in accordance with the law, and that detainees are only moved to and between official gazetted places of detention, and their movements recorded in an official register; the law prohibits incommunicado detention; the number and nature of complaints of death as a result of police action, or deaths in custody, as submitted by individual complainants, NGOs or organisations external to the police to international and regional human rights mechanisms; the number and nature of complaints of death as a result of police action, or deaths in custody, made by police and other law enforcement officials about their colleagues, and the outcome of the complaints, expressed as a proportion of complaints redressed; percentage of all complaints of death as a result of police, or deaths in custody, independently and effectively investigated by an impartial domestic body, and the outcomes of the complaints, expressed as a proportion of complaints redressed; number of police charged with murder and the outcome of the cases, expressed as a proportion of complaints redressed.*

128 Section 93(5) of the Code of Criminal Procedure Act of 2008.

129 Section 19(7) of the Transitional Constitution.

130 Section 93(2) of the Code of Criminal Procedure Act of 2008.

131 United States Department of State, South Sudan 2020 Human Rights Report, p. 9.

132 <https://radiotamazuj.org/en/news/article/feature-in-south-sudan-justice-is-for-the-rich>.

The Code of Criminal Procedure sets the minimum requirement for the transfer of detainees. It requires arrested persons to be placed under the custody of police officers, and not be transferred, or placed in any other place, except in response to the order or directives of the public prosecution attorney, magistrate or the court.<sup>133</sup> In addition, although it does not contain any provision that explicitly proscribes incommunicado detention, it protects the right of arrested persons to inform their family of their arrest.<sup>134</sup> Furthermore, the Transitional Constitution<sup>135</sup> also offers some safeguards against incommunicado detention. It provides that arrested persons may be held in detention for a period not exceeding 24 hours and, if not released on bond, to be produced in court. The obligation to prevent incommunicado detention is further set forth in the African Charter, as explained in the Luanda Guidelines.

Section 150 of the Child Act also prohibits the detention of a child in police custody for a period exceeding 48 hours prior to appearing before a public attorney or judge, and requires the preparation of a register in which details regarding the detention in police cells of all persons under the age of 18 years must be recorded. This register can be examined by a parent, guardian, legal representative, prosecutor, judge or social worker, among others.<sup>136</sup>

However, South Sudan has not ratified the International Convention for the Protection of all Persons against Enforced Disappearance, the international human rights instrument designed to prevent and combat enforced disappearance.

### 3.7 The police will act in a manner that 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.

*The extent to which the police will act in a manner that 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; make known and provide victims with assistance, including psychological, medical and social services; and the police organisation will ensure that officers receive training to sensitise them to the diverse needs of victims can be determined by exploring whether: police receive training on the handling and obtaining of information from victims with special needs, such as children, persons with disabilities, persons who have been sexually assaulted, and the training is applied in practice; victims receive prompt and courteous assistance from the police, and give their statements in private in sensitive cases; victims are not discriminated against in the provision of services by the police on the basis of gender, race, nationality, ethnic group, disability or sexual orientation; victims are provided with accurate and timely information regarding how they should interact with the criminal justice system, what to expect, the progress of investigations, and the release of the accused; the privacy of victims is respected; police support victims and witnesses to obtain witness protection where necessary and where available, and are protected from contact with the accused person; victims are informed of and referred by the police and other law enforcement officials to service providers offering impartial, informal mechanisms of complaint resolutions; victims are informed of and referred to, on a needs basis, psychological, medical and social services; all medical information is kept confidential and only shared as necessary within the code of medical ethics; the number of victims paid compensation as a percentage of the number of reported crimes.*

Applicable legal instruments provide limited operational guidance to police officers on the treatment of victims of crime. In addition, South Sudan has not enacted a specific legislative instrument that comprehensively regulates the treatment and provision of support and assistance to victims of crime in the country.

133 Section 93 of the Code of Criminal Procedure.

134 Ibid.

135 Section 19(4) of the Transitional Constitution.

136 Section 150(3) of the Child Act of 2008. Furthermore, reports underline that conditions such as unclear jurisdictions between customary and

statutory courts, depleted judicial capacities and corruption in the country mean that sometimes justice is not dispensed at all, or that responsibility for providing justice is shifted to security actors.<sup>137</sup> Circumstances and conditions that allow security actors to exercise the responsibility of dispensing justice act as barriers to the need to provide justice in a fair, impartial and professional manner, and impede the rights of victims to access justice.

Moreover, there are structural and systemic challenges that affect the right of access to justice for victims of crime. These include the unavailability of courts, proximity to courts and the high cost of court processes and procedures.<sup>138</sup> They also include a bias towards traditional practices, particularly in cases of gender-based violence and where economic factors such as the dowry are at stake.

Reports also point out gaps in relation to the treatment of victims of crime by police officers, particularly victims of domestic violence. A policy brief on police reform in South Sudan underlines that female survivors of domestic violence reported that they are reluctant to lodge complaints with police officers because they expect to be rejected and laughed at.<sup>139</sup> This challenge is reinforced by concerns that some police officers do not accept sexual violence as a crime.<sup>140</sup> Furthermore, a document that analysed a sample of 40 reported incidents of conflict-related sexual violence that occurred in South Sudan between January 2020 and August 2021 notes that police officers were also implicated in sexual violence.<sup>141</sup>

### **3.8 The police will act in a manner that does not discriminate against women, juveniles or minority communities. Police in frequent contact with suspects, offenders, victims and witnesses from these groups should receive sensitisation training.**

*The extent to which the police act in a manner that does not discriminate against women, juveniles or minority communities; and police in frequent contact with suspects, offenders, victims and witnesses from these groups receive sensitisation training, can be established by assessing whether: internal and independent oversight mechanisms have the mandate to investigate and report on inequality or discrimination by the police; number of complaints made about police regarding discriminatory, unfair or unequal treatment, and the outcome of the complaints, expressed as a proportion of complaints redressed; police basic and in-service training incorporates elements of sensitivity training, equality and managing diversity; number, gender and age of police who attend specific training to deal with discrimination or the treatment of specific vulnerable group/s; the existence or establishment of specialised units to deal with crimes against vulnerable groups (such as victims of sexual offences, children, refugees or persons with disabilities); recruitment, selection and promotion practices of the police reflect the ethnic, racial, language and gender diversity of the national population and police and other law enforcement agencies; disciplinary processes do not discriminate against minority groups.*

The Transitional Constitution stipulates that everyone is equal before the law, and is entitled to equal protection of the law without discrimination on any basis, including race, ethnic origin, sex, language, religious creed, political opinion, birth or social status. Section 19 also specifically protects the rights of women, and mandates all levels of government to promote the participation of women in public life and their representation in the legislative and executive organs by at least 25% as an affirmative action to redress imbalances created by history, customs and traditions; and enact laws to combat harmful customs and traditions which undermine the dignity and status of women.

137 K Smith, Building a Constituency for Peace in South Sudan, 2017, p. 13.

138 Cordaid South Sudan, Just Future Project South Sudan, Perception Survey, 2021, p. 15.

139 The North-South Institute, Police Reform in an Independent South Sudan, 2012.

140 <https://reliefweb.int/report/south-sudan/massive-challenges-ahead-south-sudan-s-police-launch-action-plan-against-sexual>.

141 Insecurity Insight, Sexual Violence in South Sudan, 2022, p. 4.

The Police Act of 2009 also mandates police officers to provide equitable services, and prohibits partiality in the provision of policing services. In addition, section 9 of the Child Act proscribes discrimination against children on the basis of their parents' or guardians' gender, race, religion, language, opinion, disability, HIV status, refugee status or criminal record, and prescribes a sentence of imprisonment for a term not exceeding one year or a fine or both.

The obligation to offer policing services that uphold the principle of equality before the law and equal protection and benefit of the law is also embodied in other binding regional and international human rights instruments, such as the African Charter and the Convention on the Elimination of All Forms of Discrimination Against Women.

As regards the investigation and reporting of allegations of inequality and discrimination, the Transitional Constitution establishes an independent human rights commission, and empowers it, among other things, to monitor the application and enforcement of the rights and freedoms it enshrines; and investigate, on its own initiative, or on the basis of a complaint made by any person or group of persons, any violation of fundamental human rights and freedoms.

Available reports underscore gaps in terms of the extent to which police officers at operational level respect and promote the rights of women to receive equitable services, and to be free from discrimination. For instance, this can be seen in relation to the failure by some police officers to accept sexual violence as a crime against women, and the perpetration of sexual violence by police officers themselves.<sup>142</sup>

Furthermore, regarding whether the recruitment, selection and promotion practices of the SSNPS reflect the diversity of the country, reports indicate that, while the percentage of female officers in the SSNPS is about 25%, their potential to contribute to improving policing service and develop with the service is affected, since they are relegated to administrative roles.<sup>143</sup> The African Union Commission notes in its report on South Sudan that the role of women within the SSNPS reflects existing power relations and gender roles within South Sudanese society, as confirmed by a number of those who spoke to the Commission.<sup>144</sup> In addition, another report highlights that some young police officers interviewed for the study suggested that cronyism plays a significant role in promotions and in the allocation of sought-after assignments, such as attending regional security meetings and summits.<sup>145</sup>

### **3.9 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 again, if force becomes necessary, only use the minimum force necessary.**

*The extent to which 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; and whether, regarding unlawful but peaceful assemblies,*

142 <https://reliefweb.int/report/south-sudan/massive-challenges-ahead-south-sudan-s-police-launch-action-plan-against-sexual>.

143 The North-South Institute, *Police Reform in an Independent South Sudan*, 2012, p. 3.

144 African Union Commission, *Final Report of the African Union Commission of Inquiry on South Sudan*, 2014, p. 72.

145 The Human Security Baseline Assessment, *Policing in South Sudan: Transformation, Challenges and Priorities*, 2017, p. 4.

*police will avoid the use of force and, if force is necessary, only use force to the minimum extent; and in violent assemblies, police will use less dangerous means of crowd control, but again, if force becomes necessary, only use the minimum force necessary can be analysed by establishing whether: the right to freedom of assembly is recognised in the law; the police are guided by a framework that sets out criteria for the limitation or restriction of assemblies that includes: the principle of legality, legitimate interest, proportionality, necessity, non-discrimination and equality before the law; the police have processes and procedures for spontaneous and planned assemblies that include: appointment of role players for each assembly, the gathering of intelligence, risk assessment and contingency planning and internal briefing; all police receive training on the effective and rights-based management of an assembly, which includes, at a minimum: (a) the right to assembly, (b) communication skills training, (c) understanding participant behaviour, (d) techniques in minimising conflict, including negotiation and mediation skills, (e) tactics to de-escalate tension and violence, (f) lawful use of force and firearms, (g) proper use of less lethal weapons to minimise abuse and misuse, (h) safety and protection of vulnerable groups in an assembly context, (i) roles and mandate of internal and external oversight mechanisms, (j) principles of accountability; police deployed to assemblies are provided with a range of appropriate personal protective equipment and appropriate less lethal weapons to reduce reliance on methods that are capable of causing death or serious injury; for each assembly, there is a clear, transparent and single command structure; individual officers are identifiable; there are clear agreements on the command and accountability of any non-police units utilised in the policing of assemblies; there are comprehensive and systematic internal review and de-briefing mechanisms for the post-assembly environment; there is automatic review and investigation of incidents of the use of force resulting in death or serious injury, and the investigations are conducted impartially with integrity.*

The Transitional Constitution recognises and guarantees the right of peaceful assembly. The obligation to protect the right to freely assemble with others is further established by the African Charter, as interpreted by the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa. The Code of Criminal Procedure also safeguards the right of assembly. However, it makes provision for the classification of certain types of assemblies as unlawful, which can be dispersed using civil or military force. This includes assemblies which pose a threat to the safety and soundness of Southern Sudan, government institutions, state institutions and the public welfare.<sup>146</sup> Section 159 further provides that an assembly may be designated as an unlawful assembly if the common objective of the person composing the assembly is one or more of the following: to overthrow by force or show of force the government or any government or state institutions, or any public servant in the exercise of his or her lawful powers; to resist the execution of any law or of any legal process; to commit any mischief or criminal trespass or any other offence; by means of force or show of force to enforce a right or supposed right; by means of force or show of force to compel any person to do what he or she is not legally bound to do or to omit to do what he or she is legally supposed to do; any assembly which is without a permit required by local law or regulation or which fails to comply with the conditions set forth in such permit; or any assembly which, having been prohibited by the local authority, the public prosecution attorney, magistrate or court on the recommendation of the Chief Inspector of Police, takes place.<sup>147</sup>

It also empowers the Chief Inspector of Police to direct the conduct of all assemblies and processions on the public roads or in the public streets or other public places, and prescribe the routes by which, and the time at which, such processions may pass.<sup>148</sup> In addition, it authorises the Chief Inspector to require, by special or general notice, individuals who intend to convene an assembly to obtain a permit if such an assembly, if uncontrolled, is likely to cause a breach of the peace or annoyance to the public.<sup>149</sup>

Although the Code of Criminal Procedure regulates the convening and conduct of assemblies, it does not contain provisions that provide guidance to police officers in assessing whether to restrict or limit assemblies, or on the application of key principles, such as the principles of legality, legitimate interest, proportionality, necessity, non-discrimination and equality before the law.

146 Section 158(2) of the Code of Criminal Procedure Act of 2008.

147 Ibid., section 159.

148 Ibid., section 165(1).

149 Ibid., section 165(2).

As regards the use of force in the management of public assemblies, the Code of Criminal Procedure makes provision for the use of military and civil force to disperse public assemblies, and empowers any public prosecution attorney, or in his or her absence a magistrate, court or officer in charge of a police station, to disperse an assembly by force if it fails to disperse after being commanded to do so. It also authorises police officers, following the decision of the Chief Inspector of Police, to close certain premises during an unlawful assembly, riot or disturbance of public tranquillity, and with the written permission of the public prosecution attorney, to use force as may be reasonably necessary to close and keep closed the premises identified in the decision.

Existing reports reveal shortcomings regarding the obligation of police officers to facilitate public assemblies and promote the rights to assemble as enshrined in the Transitional Constitution and the African Charter, particularly where they are perceived to be against the interests and plans of the government. For instance, media reports in August 2021 contain information and publications on the prohibition of assemblies and public protests, highlighting the government's warning of a tough crackdown against anyone intending to participate in a planned protest against it.<sup>150</sup>

As regards whether police officers receive training on the effective and rights-based management of an assembly, the study did not successfully obtain SSNPS training records, curricula and other relevant internal documents to conduct a full and complete assessment. This information could have facilitated an analysis of the extent to which the SSNPS has operationalised constitutional and regional human rights principles on the right of everyone to freely assemble with others.

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150 <https://www.rfi.fr/en/africa/20210830-protests-banned-in-juba-as-south-sudan-inaugurates-new-parliament>.

## COMMON STANDARD 4: POLICE ORGANISATIONS

### 4.1 The police will account for violations by officers of citizens' human rights

*The extent to which the police will account for violations by officers of citizens' human rights can be explored by assessing: number and type of reported complaints of human rights violations by the police; number and type of sanctions imposed on police for abuse of human rights, both judicial and disciplinary, with sanctions being disaggregated according to the nature of the complaint, type and severity of sanction, and rank of police; there is a system of internal discipline management; the percentage of internal investigations that result in sanction of the perpetrator or further action being taken, and the nature of the action; a mechanism of independent oversight exists; there is automatic investigation of incidents of deaths as a result of police action and deaths in custody, and the investigations are conducted impartially with integrity; the percentage of external investigations that result in sanction of the perpetrator or further action being taken by or against the police and other law enforcement officials, and the nature of the action.*

The study did not secure SSNPS internal records and statistics to review and analyse the number and type of reported complaints of human rights violations by police officers. However, available reports by other institutions<sup>151</sup> underline complaints of arbitrary arrest and detention, corruption, excessive use of force, sexual offences against women and suppression of the right to freely assemble with others.

<sup>151</sup> See, for instance, United States Department of State, South Sudan 2021 Human Rights Report, 2021, p. 8; FORCIER, Search for Common Ground Endline Evaluation: Facilitating Access to Justice in South Sudan, 2018, p. 35; See also information on the following links: <https://unmiss.unmissions.org/trust-and-human-rights-take-centre-stage-south-sudanese-police-are-trained-un-counterparts>; <https://reliefweb.int/report/south-sudan/massive-challenges-ahead-south-sudan-s-police-launch-action-plan-against-sexual>; <https://www.rfi.fr/en/africa/20210830-protests-banned-in-juba-as-south-sudan-inaugurates-new-parliament>.

Regarding the existence of independent oversight and accountability mechanisms, the Transitional Constitution<sup>152</sup> enjoins the Human Rights Commission to monitor the Bill of Rights, and empowers it to monitor the enforcement of norms and values and investigate, on its own initiative, or upon a complaint made by any person or group of persons, any violation of human rights.

## **4.2 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 it serves.**

*The extent to which 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; and 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 it serves can be assessed by examining whether: screening instruments exist to ensure the selection of candidates who exhibit appropriate moral, physical, and psychological qualities, and these are applied; Police and where applicable other law enforcement promotions are based on competence and merit; and all police and where applicable other law enforcement officials have clear job criteria.*

Section 27 of the Police Act of 2009 regulates admission to police college. It requires admission to police college to be open to all Sudanese nationals from Southern Sudan irrespective of ethnicity, religion and gender. It also calls for admission to be subject to certain conditions, including that the candidate be of good conduct and that they have never been convicted of a criminal offence; be mentally sound and physically fit to work in the police service; pass prescribed tests or examinations to join the police service; and be a holder of at least a Sudan school certificate or its equivalent.<sup>153</sup> Further, it requires the president, upon the recommendation of the Minister of Internal Affairs, and following the successful completion of the training package at the police college, to appoint officers to the police service.<sup>154</sup>

The Act also obliges the IGP to form promotion committees at all levels of the police service, which are to submit their recommendations for promotions to him. Moreover, it requires the promotion of police officers to be approved by the president, upon a recommendation by the Minister of Internal Affairs in consultation with the IGP.<sup>155</sup> The Act further establishes the ranking structure, and sets out the duties and competence of police officers.<sup>156</sup>

152 Sections 9(4) & 146(1)(b) of the Transitional Constitution.

153 Section 27 of the Police Act of 2009.

154 Ibid., section 28.

155 Ibid., section 32.

156 Ibid., section 25.



### 4.3 The police will ensure members receive comprehensive and ongoing training on their rights and obligations

*The extent to which the police will ensure members receive comprehensive and ongoing training on their rights and obligations can be ascertained by assessing whether: training on human rights, based on the EAC/EAPCCO training manual, is incorporated in basic, in-service and management training, and training includes theoretical as well as practical skills training on human rights, based on scenarios related to daily practice; civil society and human rights experts are involved in human rights training; percentage of police officials who receive human rights training in their basic training; percentage of police officials who received refresher training in the last two years, disaggregated according to gender and rank; member organisations collaborate regionally to promote and undertake human rights training.*

No information or records regarding the training of SSNPS members on their rights and obligations, or whether training includes theoretical as well as practical skills training, was available to the study. However, although the Police Act of 2009 makes provision for the training of police officers, and empowers the Police Service Council to determine the training needs of police officers, reports indicate that SSNPS is beset by challenges of inadequate training and capacity development, as well as under-resourcing. In addition, while the Act sets out the powers, functions, duties and competence of police officers, it does not explicitly explain the rights of police officers.

Regarding whether civil society and human rights experts are involved in human rights training, reports show that UNPOL, in particular, has a significant involvement in the provision of human rights training to SSNPS members.

The Act also envisages the improvement of policing practices through the establishment of community police systems, to help police officers in the performance of their functions and duties. It sets out the objectives of community policing as including: the creation of a partnership between the community and the police with a view to preventing crime; the development and enhancement of relations between the police and the community; the enhancement of respect for human rights; the enhancement of the role of the community in crime prevention; and provision of assistance to crime victims. However, available evidence demonstrates that existing community structures are weak and under-resourced, conditions which have affected public trust and confidence in their ability to execute their obligations and prevent crime.<sup>157</sup>

157 K Smith, Building a Constituency for Peace in South Sudan, 2017, p. 13.

#### 4.4 Police 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 action

*The extent to which police will not only refrain from engaging in acts of corruption and abuse of power, but will rigorously oppose and combat all such actions and; 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 action can be examined by assessing whether; Remuneration of police and where applicable other law enforcement officials is sufficient to maintain a reasonable standard of living for themselves and their families; expressed as a percentage of average salaries for civil servants in the region; Number of complaints internally made against the police and where applicable other law enforcement officials for corruption, and the outcome of those complaints, expressed as the proportion of complaints redressed; There is a law that prohibits or regulates outside business, financial and commercial interests.; Police are required to declare, or refrain from engaging in, business, financial and commercial interests; Corruption is a serious disciplinary and criminal offence. There is an independent and external oversight body that monitors and reports on police abuse of power and corruption; There is a clear budget for police expenditure, and a policy rationale.*

The Police Service Act of 2009 regulates salaries and privileges of police officers. It requires the president to determine the salaries, rights and privileges of the police service that will ensure them a life of dignity and an appropriate social standard, which should enable police officers to efficiently discharge their responsibilities and duties.<sup>158</sup> It also emphasises that, when determining salaries, rights and privileges, due consideration should be given to the functions and duties, threats and dangers that the police officers encounter.<sup>159</sup> In addition, it makes provision for the issuance of periodic allowances to police officers, non-commissioned officers and privates, and prohibits the withholding of salaries, wages or other entitlements, except in the case of repaying a debt to the government, or as part of the execution of a judgment passed by a competent court, provided that the amount withheld does not exceed one-quarter of the salary.<sup>160</sup>

Furthermore, without explicitly listing corruption as a disciplinary offence, the Act prohibits police officers from performing any duties for others against material or moral compensation, or even without compensation, unless written permission is obtained from the police; or accept membership to any board of a corporation or institution, or accept any other position there, except upon the approval of the IGP or the Minister of Internal Affairs.<sup>161</sup>

Research reports reveal corruption within members of the SSNPS as an existing challenge to the provision of a professional policing service, partly amplified by inadequate remuneration practices. A 2018 research report under a project that aimed to improve access to justice and legal remedies for rural and marginalised citizens of South Sudan found that in the Bor region, community members had to bribe the police to get their case resolved. Some participants mentioned that even when you pay a bribe, your case may still not be resolved.<sup>162</sup> This finding confirms those of the African Union Commission, which underscored in its report on South Sudan that corruption in the form of extortion is the most prevalent form of misconduct by police, attributed in part to the low salaries that they earn.<sup>163</sup>

158 Section 45 of the Police Act of 2009.

159 Ibid., section 45(2).

160 Ibid., section 45(4)(5).

161 Ibid., section 9(5)(e).

162 FORCIER, Search for Common Ground Endline Evaluation: Facilitating Access to Justice in South Sudan, 2018, p. 35.

163 African Union Commission, Final Report of the African Union Commission of Inquiry on South Sudan, 2014, p. 71.

## PRELIMINARY OBSERVATIONS

Police reform and development as a project is always a lengthy process that requires organisational commitment and sustained leadership. Since South Sudan gained independence in 2011, progress has been made to improve the policing capacity and experience of the SSNPS, and to ensure that they provide professional and accountable policing services. With the support of available data and information, this study sought to establish the extent to which the SSNPS is implementing the Common Standards for Policing in Eastern Africa at the legal, policy and operational levels. On the basis of specific findings outlined in this report, the following observations are offered as an initial reflection on deepening existing reform efforts.

### On police training

#### **Observation 1: Develop and implement literacy programmes**

Literacy skills are key to the provision of basic policing services to the public, and how police officers interact with – and treat – suspects, accused persons and victims of crime. However, it emerged from the study that there is a high rate of illiteracy within the SSNPS, with many police officers unable to read or write, which serves as a challenge to the execution of their mandate, and impacts the effectiveness of their performance. To facilitate the full and effective execution of their powers and functions, and ensure police officers provide a policing service that complies with international standards, the SSNPS should develop and implement coordinated literacy programmes across the country.

#### **Observation 2: Provide training on human rights**

Available reports highlight increasing incidents of serious human rights violations and abuses by security actors, including police officers. There is a need to operationalise these human rights values and standards through basic and continuous training of police officers. Currently, while significant effort is being made by institutions like UNPOL, some police officers lack the necessary training to provide rights-affirming service.

There is a need for the SSNPS to continue efforts to provide comprehensive human rights training to all ranks. Practically focused training on human rights, based on the EAC/EAPCCO training manual, should

be incorporated into basic, in-service and management training, and should include theoretical as well as practical skills training on human rights, based on scenarios related to daily practice. Police officials should receive regular refresher human rights training.

### **Observation 3: Conduct perception surveys within the SSNPS**

Perception surveys within police organisations are informative tools to establish how individual police officers perceive their role in society, and the extent to which they understand their role as promoting rights-based policing services. They also serve to estimate the needs and aspirations of police officers. The study encountered very limited data and statistics based on targeted surveying of police officers. The absence of this information poses a challenge to efforts to ascertain the extent to which police officers have internalised the human rights norms and values enshrined in constitutional and regulatory policy frameworks that regulate their functions and duties, as well as other interventions and commitments aimed at establishing a professional and reform-oriented police service. There is a need for the SSNPS to conduct internal surveys to evaluate what police officers think of their role in society, and to facilitate the determination of areas of potential or urgent intervention.

## **On gender mainstreaming responding to gender-based violence**

### **Observation 4: Develop the capacity of police officers to deal with gender-based violence**

The Transitional Constitution embodies a Bill of Rights. South Sudan has also ratified other regional and international human rights instruments, such as the African Charter, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. In the context of violence against women, one of the key findings of the report is that sexual and gender-based violence and violence within the domestic space are widespread and deeply entrenched. Sexual and gender-based violence are gross violations of fundamental human rights, with serious short- and long-term consequences for victims. While the underlying factors that instigate gender-based violence are complex, there is a need to train, equip and capacitate police officers with skills to prevent and respond to sexual and gender-based violence in an effective and professional manner. The SSNPS is also encouraged to develop a national action plan to implement and promote the Common Standards through a gender lens as per recent EAPCCO decisions to promote gender mainstreaming in policing.

### **Observation 5: Ratify the Maputo Protocol**

A key crime-related challenge is entrenched gender-based violence and violence against women. In terms of compliance with binding regional human rights obligations to protect women from sexual and gender-based violence, South Sudan has not ratified the Maputo Protocol, which establishes specific obligations for state parties to protect and guarantee the rights of women to respect for their dignity, peace, protection from harmful practices, protection in armed conflicts and access to justice and equal protection before the law. To reinforce and strengthen existing commitments to protect women from crime, violence and other harmful practices, there is need to ratify and operationalise the Maputo Protocol, and give full domestic effect to its provisions.

### **Observation 6: Gender policy and recruitment**

A key finding of the study is the limited role that female police officers play in the provision of policing services, with many being relegated to administrative roles. To give effect to section 16 of the Transitional Constitution, improve the role of female police officers within the service and promote their growth and development, the SSNPS should accord all female police officers equal opportunity with their male counterparts and institutionalise equal conditions of growth and development for all police officers.

In this regard the SSNPS should develop and adopt a gender policy and action plan that will both actively invest in the recruitment and development of women in the service as well as assist the service in its response to gender-based violence.

## On infrastructure and administration

### **Observation 7: Assert the primacy of the police to provide security services as defined in the Police Act of 2009**

Due to conflicting mandates and areas of responsibility, the SPLA and the NSS have taken over certain policing responsibilities from the police. The Police Act of 2009 establishes the police as the principal agency that provides internal security across the country. The SSNPS needs to assert the exercise of powers and functions determined by the Act, and take the lead as the principal state agency that is legally mandated to provide internal security.

### **Observation 8: Allocate an adequate budget to support effective and equitable provision of policing services**

Lack of adequate resources to effectively respond to the policing needs of the public undermines the right of everyone to be free from crime and violence, and diminishes public confidence and trust in the police. In some cases, limited access to resources and equipment hampers the ability of SSNPS members to provide policing services and discharge their legal and constitutional duty in an equitable and effective manner. There is a need for SSNPS to provide adequate resources, equipment and vehicles to police officers to ensure they are well equipped to serve the public effectively.

### **Observation 9: Establish additional police stations**

Strategically located police stations play an important role in ensuring equitable access to justice for all, particularly historically marginalised groups and communities. A key finding of the study is that there is uneven distribution of police stations across the country, and poor coverage of some areas, particularly rural and semi-urban areas. To improve coverage and strengthen access to justice for all, the SSNPS should invest resources in establishing police stations in areas that are currently inadequately covered.

## On policy development

### **Observation 11: Develop and adopt policy on use of force**

The existing regulatory framework on police use of force is lean and not comprehensive. This has resulted in the omission of general principles applicable to the use of force in all circumstances, namely precaution, non-discrimination, necessity and proportionality. To ensure professional and expert use of force by police officers, the SSNPS should develop and adopt a comprehensive policy on the use of force, in accordance with General Comment No. 3 of the African Charter on the Right to Life, the EAPCCO SOP on the use of force, and other relevant regional and international human rights instruments, and ensure regular and comprehensive training for its officers on the legal use of force.

### **Observation 12: Develop and implement anti-corruption programmes**

Another key finding of the study is that there is a high level of corruption within SSNPS members. Corruption has a negative impact on law enforcement; it affects the image of the institution and vitiates public trust and confidence in the organisation. The SSNPS should develop and implement anti-corruption programmes and policies that also make corruption a serious disciplinary offence, and sensitise police officers on the impact of corruption on the institution's image and credibility.

### **Observation 13: Develop and implement guidelines, and command and control during joint police military deployments**

Section 14(1) of the Police Service Act of 2009 empowers the president to order joint security operations consisting of police officers and military personnel. Internationally, the guiding principle is that military personnel should, as far as possible, be excluded from enforcing national laws. There are serious concerns regarding the suitability and capacity of military personnel to be deployed in internal security settings,

including training and human rights concerns. However, it is generally acceptable that, in certain clear and limited circumstances, military personnel can be deployed to assist the police. The SSNPS should develop clear guidelines that govern the conduct of joint operations, and regulate key aspects such as command and control during joint operations, providing for the military to remain under the command and authority of the police during joint operations.

### **Observation 14: Adopt and implement victim support policy and guidelines**

Victims of crime, particularly violent crime, are vulnerable groups that deserve the support and service of police officers. It is important for police officers to provide victims of crime with professional assistance and ensure investigations are conducted in an effective, professional and prompt manner. The SSNPS should adopt policy and guidelines that specify the role of police officers regarding the provision of support and assistance to victims of crime, and ensure police officers receive training on this.

## **On accountability**

### **Observation 15: Improve accessibility of internal policy documents**

Accessibility of internal police policy instruments is critical to establishing accountable policing institutions that provide transparent service to the public. A challenge the study encountered in trying to assess policing conduct against the prescripts of internal policy documents of the SSNPS, was the limited accessibility of internal regulatory instruments. The SSNPS should strengthen existing efforts to popularise its services by improving the accessibility of its guiding policy instruments.

### **Observation 16: Establish a framework for civilian police oversight**

Globally, the police at both institutional and individual levels are entrusted with the authority to exercise public power, including the power to use force and the authority to execute arrest and detention. To ensure they exercise this power in a manner that respects and promotes fundamental human rights and freedoms, and discharge their responsibilities in a professional way, most police organisations have a mechanism for police complaints, oversight and accountability. The SSNPS does not, however, have a system of civilian oversight and review. To strengthen existing efforts to institutionalise accountable policing, and give effect to the African Commission on Human and Peoples' Rights Resolution 103a on police reform, accountability and civilian police oversight in Africa, there is need to establish an independent and effective police oversight structure to oversee the operations of the SSNPS. In this regard, guidance can be drawn from the National Police Service of Kenya, another member of the EAC.

### **Observation 17: Establish internal police complaints and disciplinary mechanism**

In addition to an external civilian police oversight system, as part of a misconduct prevention approach, most police organisations have an internal control mechanism. The SSNPS does not have an internal complaints management system. There is a need to establish and capacitate an internal police complaints mechanism, to receive, manage and investigate certain types of complaints against the police. To avoid overlap and duplication of roles, a legislative instrument that establishes an external civilian oversight body will set out the mandate of the body and regulate its operation.

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# APPENDIX

## **INDICATORS FOR THE COMMON STANDARDS FOR POLICING IN EASTERN AFRICA**

## COMMON STANDARD 1: Role of the police



### 1.1 The police will protect life, liberty and security of the person.

INDICATOR	MEASURE	MEANS OF VERIFICATION
1.1.1 The actions of police and where applicable other law enforcement officials are based on law and human rights.	1.1.1.a Relevant laws, policy and operational documents include human rights values, and give clear guidance about what it means to protect and uphold fundamental human rights.	Constitution, relevant laws, police operational procedures, ratification of relevant international and regional human rights treaties.
1.1.2 The police and where applicable other law enforcement officials have a clear structure to implement their mandates.	1.1.2.a There is a clear chain of command, particularly in the first line of supervision of police officers and where applicable other law enforcement officials, to ensure the mandate of the police and where applicable other law enforcement agencies is transmitted and implemented across the organisation.	Standing orders, human resource policy and performance management systems, and suggestion forms.
1.1.3 The police and public perceive the role of the police and other law enforcement officials as protecting fundamental rights and freedoms, life, liberty, security and property of the person.	1.1.3.a Percentage of police and where applicable other law enforcement officials, and public surveyed who believe police and other law enforcement officials' actions are based on, and comply with, human rights principles, and act in a manner that is consistent with human rights in the prevention and detection of crime.	Perception survey, report of independent bodies such as national human rights institutions, oversight authorities, or civil society organisations.



### 1.2 The police will maintain public safety and social peace.

INDICATOR	MEASURE	MEANS OF VERIFICATION
1.2.1 The police and where applicable other law enforcement officials have a clear mandate to promote public safety and social peace and property.	1.2.1.a The law clearly defines the mandate of the police and where applicable other law enforcement officials in terms of their responsibility to maintain public safety and social peace.	Constitution and relevant laws.
1.2.2 Public trust the effectiveness of the police and where applicable other law enforcement officials to maintain public safety and social peace.	1.2.2.a The percentage of people surveyed who believe the police and where applicable other law enforcement officials are (a) prompt and (b) responsive to threats and concerns about safety.	Public perception surveys, media reports, reports of civil society organisations or independent oversight authorities, incidents of vigilantism and mob justice.
	1.2.2.b The police and where applicable other law enforcement officials are accessible to the public.	Distribution of stations, resourcing, demographics of community outreach and dialogue mechanisms.



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

INDICATOR	MEASURE	MEANS OF VERIFICATION
1.3.1 The police and where applicable other law enforcement officials have a mandate that clearly stipulates the primacy of rule of law.	1.3.1.a The law clearly defines the mandate of the police and where applicable other law enforcement officials in terms of its responsibility to adhere to the rule of law and uphold fundamental human rights.	Constitution and relevant laws.
	1.3.1.b Police and where applicable other law enforcement officials are responsive to the needs of the public and provide assistance in terms of their legal mandate.	Public perception surveys, media reports, reports of civil society organisations or independent oversight authorities.
1.3.2 Police and other law enforcement officials adhere to the principle of the rule of law.	1.3.2.a The relevant laws, regulations and operational procedures are consistent with international human rights law, the constitution, and provide legal parameters for police and where applicable other law enforcement operational practices (including stop and search, arrest, detention, interrogation, surveillance, and the use of force).	Constitution, relevant laws, and police and where applicable other law enforcement operational procedures.
	1.3.2.b Police and where applicable other law enforcement officials enforce court orders and decisions by oversight authorities.	Case law, court records, media reports, annual reports, number of complaints received by internal and external oversight bodies.
	1.3.2.c Police and where applicable other law enforcement officials enforce the law equally and do not discriminate on the basis of social or gender status, or the political affiliation, of suspects, witnesses or victims.	Public perception surveys, reports of civil society organisations, reports of independent oversight authorities, reports of national human rights institutions.

## COMMON STANDARD 2: Policing in accordance with the rule of law



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

INDICATOR	MEASURE	MEANS OF VERIFICATION
2.1.1 Arrests are only carried out pursuant to a warrant or where the arresting official has reasonable grounds to suspect that a person has committed an offence or is about to commit an arrestable offence.	2.1.1.a The right to liberty and security of the person is guaranteed by law.	Constitution, relevant laws, police operational procedures, ratification of relevant international and regional human rights treaties.
	2.1.1.b The law provides a definition of arrest that limits the deprivation of liberty to the execution of a warrant or where the arresting officer has reasonable grounds to suspect that a person has committed an offence or is about to commit an arrestable offence.	Constitution, relevant laws, law of criminal procedure, police operational procedures.
	2.1.1.c The law provides alternatives to the use of arrest, particularly for minor crimes.	Constitution, relevant laws, and police operational procedures.
	2.1.1.d Alternatives to arrest, particularly for minor crimes, are utilised by the police and other law enforcement officials.	Police and where applicable other law enforcement operational procedures, annual reports, police and other law enforcement statistics, reports of civil society, national human rights institutions and independent oversight authorities.
	2.1.1.e The law and regulations require police stations, and other places of detention under the management of other law enforcement agencies, to maintain, and provide access to, an official arrest and custody register.	Constitution, relevant laws, police and other law enforcement operational procedures.
	2.1.1.f Number of complaints made against the police and where applicable other law enforcement officials for arbitrary arrest or detention and the outcome of those complaints, expressed as the proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	2.1.1.g Number of civil cases initiated against the police and where applicable other law enforcement officials for wrongful action, and the outcome of those matters, expressed as the proportion of claims upheld by the judiciary.	Court records, annual budgets.



### 2.2 The police will promptly inform accused persons of the reason for their arrest and any charges brought against them – this must be communicated to the accused person in a way and manner they understand.

INDICATOR	MEASURE	MEANS OF VERIFICATION
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2.2.1 All arrested and charged persons receive information on their arrest and charge in a language, way and manner they understand.	2.2.1.a The law and regulation require police and where applicable other law enforcement officials to inform an arrested person of the reason for their arrest and any charges brought against them, along with their rights, promptly and in a way and manner understood by the arrested person.	Constitution, relevant laws, police and other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
	2.2.1.b Language translation services are available to the police and where applicable other law enforcement agencies.	Police and where applicable other law enforcement operational procedures, and evidentiary or documentary records.
	2.2.1.c Information is available in accessible formats for persons with disabilities and/or sign language interpreters are available to police and where applicable other law enforcement agencies.	Police and where applicable other law enforcement operational procedures and evidentiary or documentary records.
	2.2.1.d Number of complaints made against the police and where applicable other law enforcement officials for failure to provide information on the arrest and charge to accused persons, and outcome of those complaints, expressed as the proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society organisations, and media reports.



### 2.3 The police act in a manner that upholds the presumption of an accused person's innocence until proven guilty in accordance with the law.

INDICATOR	MEASURE	MEANS OF VERIFICATION
2.3.1 The presumption of innocence is respected by police and other law enforcement officials.	2.3.1.a The presumption of innocence is guaranteed by law.	Constitution, relevant laws, police and where applicable other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
	2.3.1.b The law, regulations and police and where applicable other law enforcement operational procedures provide that an accused person has the right to remain silent, and cannot be compelled to confess guilt or give evidence against themselves.	Constitution, relevant laws, police and other law enforcement operational procedures.
	2.3.1.c Number of complaints made against the police and where applicable other law enforcement officials for violation of procedural rights related to the presumption of innocence, specifically the right to remain silent and the right not to be compelled to confess guilt or give evidence, and the outcome of those complaints, expressed as the proportion of complaints redressed.	Court records, internal police and where applicable other law enforcement oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
2.3.2 Police and other law enforcement officials maintain confidentiality of information that is of a sensitive nature, particularly information in respect of victims of crime.	2.3.2.a There is a clear framework for how police and other law enforcement officials should treat information of a confidential nature.	Relevant laws, policy and police and where applicable other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
	2.3.2.b Confidential information is not disclosed including the parading of suspects unless there is a legal requirement to do so and then only to the minimum extent necessary.	Relevant laws, policy and police operational procedures, public surveys, media reports, reports of oversight mechanisms and civil society organisations, policy and interagency cooperation agreements regarding sharing of information on crime, policing and other law enforcement strategies.
	2.3.2.c Complaints against the police and where applicable other law enforcement officials for disclosure of confidential information, and the outcome of those complaints expressed as the proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society organisations, media reports.



## 2.4 The police ensure that arrested persons are brought promptly before an authorised and competent authority or judicial officer.

INDICATOR	MEASURE	MEANS OF VERIFICATION
2.4.1 Custody time limits are respected by police officials.	2.4.1.a The law provides for police and where applicable other law enforcement custody time limits, in compliance with regional and international standards, from the time of arrest until suspects are brought in person before a competent authority or judicial officer.	Constitution, relevant laws, police and where applicable other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
	2.4.2.b Custody time limits are adhered to by police and where applicable other law enforcement officials.	Court records, internal police and where applicable other law enforcement oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports, reports of monitoring visits to places of detention.
	2.4.2.c The law and regulations require police stations and facilities under the management of other law enforcement agencies to maintain, and provide access to, an official custody register.	Constitution, relevant laws, law of criminal procedure, police and where applicable other law enforcement operational procedures, ratification of relevant international and regional human rights treaties, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	2.4.2.d Suspects are brought in person before a competent authority or judicial officer within the official custody time limits.	Constitution, relevant laws, police and where applicable other law enforcement operational procedures, external oversight authority reports, reports of national human rights institutions and civil society, media reports, reports of monitoring visits to places of detention, ratification of relevant international and regional human rights treaties.



## 2.5 The police ensure that upon arrest, detention or charge, there is a presumptive right to bail or bond.

INDICATOR	MEASURE	MEANS OF VERIFICATION
2.5.1 Police and where applicable other law enforcement officials uphold the presumptive right to bail or bond.	2.5.1.a The law provides that police custody, and detention in facilities under the management of other law enforcement agencies, is a measure of last resort and provides for alternatives to detention, including court summons, bail and bond.	Constitution, relevant laws, police and other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
	2.5.1.b The law provides that police officials or other mandated law enforcement officials must only deny bail or bond, or recommend the denial of bail or bond: (a) on grounds that are clearly established in law and not motivated by discrimination of any kind; and (b) if there are reasonable grounds to believe that the accused has been involved in the commission of a criminal offence that carries a custodial sentence, but there is a danger that he or she will abscond, commit further serious offences, or if the release of the accused will not be in the interests of the safety of the person or in the interests of justice.	Constitution, relevant laws, police and other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
	2.5.1.c Police and where applicable other law enforcement officials are trained on decision-making for the issuance of bail or bond to suspects.	Training curriculum.
	2.5.1.d Number of complaints made against the police and where applicable other law enforcement officials for denial of bail or bond, and the outcome of that complaint, expressed as the proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	2.5.1.e Number of persons granted bail or bond by police and other law enforcement officials, expressed as a percentage of all persons charged, and disaggregated according to type of offence.	Police and where applicable other law enforcement statistics, court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.

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## 2.6 The police 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.

INDICATOR	MEASURE	MEANS OF VERIFICATION
2.6.1 Police and where applicable other law enforcement officials recognise the enforceable right to compensation for arbitrary or unlawful arrest or detention.	2.6.1.a The law guarantees the right to challenge the lawfulness of detention and the right to compensation if an arrest or detention is unlawful.	Relevant laws, ratification of relevant international and regional human rights treaties.
	2.6.1.b Suspects are aware of their right to challenge the lawfulness of their detention in court.	Registers of notification of rights, information pamphlets and posters.
	2.6.1.c Police and where applicable other law enforcement budgets make sufficient provision for the payment of compensation.	Annual reports, annual budget and financial audits.
	2.6.1.d The percentage of claims for compensation or other forms of redress awarded and provided.	Annual reports and audited statements of the police and other law enforcement agencies, court records, internal and external records of police and other law enforcement agencies.





## 2.7 The police ensure that arrested and detained persons have access to interpreters and legal assistance, as required.

INDICATOR	MEASURE	MEANS OF VERIFICATION
2.7.1 Police and where applicable other law enforcement officials uphold the right of all persons to access a lawyer.	2.7.1.a The law guarantees the right of all accused persons to the services of a lawyer or suitable paralegal services.	Constitution, relevant laws, police and where applicable other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
	2.7.1.b The law provides that all persons detained in police custody, or places of detention under the management of other law enforcement agencies, have the following rights in relation to legal assistance: (a) access without delay or restriction to lawyers or paralegals, at the latest prior to and during any questioning by the police; (b) confidentiality of communication between lawyers or paralegals and suspects; (c) the means to contact a lawyer or paralegal; and (d) the right to access case files as required by the constitution and/or criminal procedure, and have adequate time and facilities to prepare a defence.	Constitution, relevant laws, police and where applicable other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.



## 2.8 The police ensure that arrested and detained persons are treated humanely and kept under humane conditions.

INDICATOR	MEASURE	MEANS OF VERIFICATION
2.8.1 Conditions of detention in police custody and places of detention under the management of other law enforcement agencies are humane and consistent with the right of suspects to dignity.	2.8.1.a The law provides minimum standards for conditions of detention in police custody and places of detention under the management of other law enforcement agencies, including standards of accommodation, nutrition, hygiene, clothing, bedding, exercise, physical and mental healthcare, contact with the community, and religious observance in accordance with the Mandela Rules.	Constitution, relevant laws, police and other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
	2.8.2.b There is a system for the regular and independent monitoring of police custody and places of detention under the management of other law enforcement agencies, and internal and external complaints mechanism available to detainees.	Constitution, relevant laws, police and other law enforcement operational procedures, ratification of relevant international and regional human rights treaties, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	2.8.2.c Percentage of police and where applicable other law enforcement agencies' budgets allocated to the upkeep and maintenance of detention facilities.	Annual reports and audited statements.
	2.8.2.d Number of complaints made against the police and where applicable other law enforcement officials for conditions of detention that are inhumane or not consistent with the right to dignity of the person, and the outcome of that complaint, expressed as the proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.

## COMMON STANDARD 3: Police actions



### 3.1 The police will act in a manner that 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.

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.1.1 The police and where applicable other law enforcement officials have a clear set of values, and efforts are made to ensure these are upheld.	3.1.1.a Values are incorporated into police service and other law enforcement agencies' core documents, such as mission statements, codes of conduct and disciplinary codes.	Policy documents.
	3.1.1.b Police and where applicable other law enforcement officials take an oath to uphold these values, and they are reinforced through training and regular communication.	Internal communication documents and public addresses by management and membership.
	3.1.1.c Managerial and operational practice supports and reflects adherence to these values through positive measures, performance appraisals, evaluations, warnings and discipline.	Surveys among police and other law enforcement officials, public perception surveys, policy documents.
3.1.2 Police and where applicable other law enforcement agencies adopt and promote a Code of Conduct based on the Common Standards for Policing in Eastern Africa.	3.1.2.a There exists within police and where applicable other law enforcement agencies, a Code of Conduct which is based on the Common Standards and other relevant regional and international standards for rights-based policing practices.	Code of Conduct, police and other law enforcement operational procedures.
	3.1.2.b Training for police and where applicable other law enforcement officials includes training on the Code of Conduct.	Training curriculum.
	3.1.2.c Percentage of police and where applicable other law enforcement officials who annually receive training on the Code of Conduct.	Human resources or training academy records.
	3.1.2.d Percentage of police and where applicable other law enforcement who have access to visible posters and pamphlets reminding them of the Code of Conduct.	Site visits to places of detention, websites, media statements, reports of independent oversight authorities.
	3.1.2.e The number of officers disciplined for breaches of the Code of Conduct, including the nature of the breach, type and severity of sanction, and rank of police and other law enforcement officials.	Administrative documents, including human resource documentation.
3.1.3 The police and where applicable other law enforcement agencies have a system of performance review and discipline.	3.1.3.a Police and where applicable other law enforcement officials are subject to regular performance monitoring and review in accordance with policy.	Human resource policies, reports of independent oversight or complaints bodies.
	3.1.3.b Percentage of police and where applicable other law enforcement officials who are reviewed on an annual basis.	Human resource records.
	3.1.3.c Performance appraisals form the basis of promotions and designation to particular units.	Human resource policies.
	3.1.3.d A clear disciplinary procedure exists in law and practice.	Human resource policies, data on disciplinary procedures brought against officials and the outcomes of the action.
	3.1.3.e There exists a clear framework indicating what actions of police and where applicable other law enforcement officials are considered misconduct or offences, and the consequences of violating those rules.	Relevant laws, regulations, and police and other law enforcement operational procedures.
	3.1.3.f Police and where applicable other law enforcement officials receive training on the type of actions that will constitute misconduct or offences, and the consequences of violating those rules.	Training curriculum.
	3.1.3.g Number of police and where applicable other law enforcement officials subject to disciplinary proceedings, expressed as a percentage of total number of officials, and the outcome of those proceedings.	Human resource data, data on disciplinary procedures brought against officials and the outcomes of the action.
	3.1.3.h Police and where applicable other law enforcement officials are encouraged to report acts of misconduct committed by their colleagues.	Policy documents.

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.1.4 The police and other law enforcement officials are free from partisan political interference.	3.1.4.a Police and where applicable other law enforcement officials are prohibited from holding public office or positions within political parties, and from publicly associating themselves with political parties, objectives and activities.	Relevant laws, public surveys, media reports, reports of civil society organisations and oversight mechanisms, police and other law enforcement policy and code of conduct.
	3.1.4.b There is a clear distinction between the executive direction and policy role and the operational independence of the police and other law enforcement agencies.	Relevant laws and policy.
	3.1.4.c The police and where applicable other law enforcement agencies have budgets adequate to carry out their mandate (measured as the annual budget of the police and other law enforcement agencies, as a proportion of the national budget, with analysis of major items of expenditure).	Annual reports and audited statements of the police and other law enforcement agencies, media reports, reports of civil society organisations and oversight mechanisms.
	3.1.4.d The budget is spent according to approved budget expenditure items.	Annual reports and audited statements of police and other law enforcement agencies.



### 3.2 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 fulfilment of their lawful duty.

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.2.1 Legislation, policy and practice support the proportionate, minimal and strictly necessary use of force.	3.2.1.a Legislation criminalises the arbitrary or unlawful use of force.	Relevant laws, policy and police and other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
	3.2.1.b Obedience to superior officer's orders does not excuse arbitrary or unlawful use of force.	Relevant laws, policy and police and where applicable other law enforcement operational procedures, ratification of relevant international and regional human rights treaties, policy statements by the police and other law enforcement agencies, reports of civil society, national human rights institutions and independent police oversight authorities.
	3.2.1.c Number of police and where applicable other law enforcement officials prosecuted under domestic legislation or common law for excessive or unlawful use of force, and the outcome of those prosecutions, expressed as the proportion of complaints redressed.	Court records, internal police and where applicable other law enforcement oversight documentation, external police and other law enforcement oversight authority reports, reports of national human rights institutions and civil society, media reports.
3.2.2 Police and where applicable other law enforcement officials are trained to use minimum force.	3.2.2.a Percentage of (a) recruits and (b) police and other law enforcement officials who annually receive training and re-training on the principles of minimum use of force, on the use of weapons and firearms, and on the use of non-violent conflict resolution methods as (i) theory and (ii) practice.	Training curriculum, human resource or training academy records.
	3.2.2.b Number of police and where applicable other law enforcement officials re-qualified in the use of weapons per year as a ratio of the number of police and other law enforcement officials issued with a firearm.	Police and where applicable other law enforcement administrative reports, training records, weapon re-qualification records.
	3.2.2.c Police and where applicable other law enforcement budgets makes provision for sufficient training on use of force.	Annual budgets and financial audits.

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.2.3 Less-lethal equipment is available.	3.2.3.a Less lethal equipment is available to the police and other law enforcement officials and used in accordance with policy.	Weapons register, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	3.2.3.b Percentage of police and where applicable other law enforcement officials who annually receive training and re-training on less lethal equipment.	Training curriculum, human resource or training academy records.
3.2.4 Strict control is exercised over the use, storage and distribution of firearms.	3.2.4.a Weapons are only issued to personnel who are assessed as mentally, physically and morally fit and trained to use them.	Weapons register, assessment records.
	3.2.4.b There is automatic review and investigation of incidents of the use of force resulting in death or serious injury, and the investigations are conducted impartially with integrity.	Relevant laws, policy and police and other law enforcement operational procedures, ratification of relevant international and regional human rights treaties, court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	3.2.4.c Police and where applicable other law enforcement records on the number of people injured or killed during the course of police and other law enforcement action, as a ratio of statistics of serious crime reported, overall number of crimes reported, number of police and other law enforcement officials, and the number of officials wounded or killed on duty.	Coroners' or forensic pathologists' reports on the cause of death, court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.



### 3.3 The police will act in a manner that ensures all citizens enjoy their fundamental rights and freedoms without discrimination.

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.3.1 Police and where applicable other law enforcement officials enforce the law equitably.	3.3.1.a All persons are received and treated fairly and are not subject to discrimination, harassment or arbitrary arrest.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.



**3.4 The police will act in a manner that upholds the absolute prohibition against torture and other cruel inhuman or degrading treatment or punishment. The police will not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment. No circumstances will override this prohibition, including threats of war, political instability or periods of emergency.**

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.4.1 Legislation and policy prohibit torture and other cruel, inhuman or degrading treatment or punishment ('other ill-treatment').	3.4.1.a Domestic legislation prohibits torture, which is defined in accordance with Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Constitution, relevant laws, ratification of relevant international and regional human rights treaties.
	3.4.1.b Police and where applicable other law enforcement policies and codes of conduct define torture and outlines detailed steps the police and other law enforcement officials must take to prevent torture, and to respond to any allegations of torture.	Police and where applicable other law enforcement official procedures, code of conduct.
	3.4.1.c Obedience to a superior's orders is not a defence to an act of torture or other ill-treatment.	Constitution, relevant laws, ratification of relevant international and regional human rights treaties.
	3.4.1.d Any statement made as a result of torture is not permitted to be used as evidence in any proceedings, except that in the case of suspects accused of torture, then evidence may be led that the statement was made as a result of torture.	Constitution, relevant laws, ratification of relevant international and regional human rights treaties.
3.4.2 The police and where applicable other law enforcement officials are trained on the prohibition and prevention of torture.	3.4.2.a The prohibition of torture and ill-treatment is included in the training of all police and other law enforcement officials. The training stresses the human rights principles underpinning the prohibition, and involves practical examples of what constitutes prohibited actions.	Training curriculum.
	3.4.2.b Percentage of police and where applicable other law enforcement officials who annually receive training on the prohibition and prevention of torture, disaggregated by rank.	Reports of human resources, training colleges, and training service providers (such as civil society organisations or national human rights institutions).
3.4.3 Police and where applicable other law enforcement officials' actions and processes are designed to remove the potential for torture.	3.4.3.a Procedural safeguards exist to prevent the use of violence, threats or intimidation during interrogation or interviewing of suspects and witnesses.	Relevant laws, police and other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
	3.4.3.b The law, regulations and police and other law enforcement operational procedures provide the following rights of suspects during questioning and confession: (a) freedom from torture and other ill-treatment; (b) the presence of a lawyer; (c) a medical examination; (d) an interpreter, if required; (e) the right to remain silent.	Constitution, relevant laws, police and other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
	3.4.3.c The law provides that information about every questioning session be recorded, including information about the (a) duration, (b) intervals, (c) identity of the officials carrying out the questioning, and (d) confirmation that the detained person was availed the opportunity to seek legal assistance or a medical examination.	Constitution, relevant laws, police and other law enforcement official procedures, ratification of relevant international and regional human rights treaties.
	3.4.3.d Audio or audio-visual recording of questionings and confessions are taken and made available.	Police and where applicable other law enforcement operational procedures, court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	3.4.3.e Number of complaints made against the police and where applicable other law enforcement officials for violation of procedural rights during questioning and confessions, and the outcome of those complaints, expressed as the proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.4.4 Allegations of torture are independently and effectively and promptly investigated.	3.4.4.a The number and nature of complaints of torture and other ill-treatment by the police and where applicable other law enforcement officials as submitted by individual complainants, by NGOs or organisations external to the police to international and regional human rights mechanisms or identified in a court of law.	Ratification of relevant international and regional human rights treaties (including optional and reporting protocols), State reports to UN and AU mechanisms, shadow reports of national human rights institutions and non-government organisations, working documents of UN and AU mechanisms, decisions of international criminal courts and tribunals.
	3.4.4.b The number and nature of complaints of torture made by police and where applicable other law enforcement officials about their colleagues, and the outcome of the complaints, expressed as the proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	3.4.4.c Percentage of all complaints of torture and other ill-treatment that are independently and effectively investigated by an impartial domestic body, and the outcomes of the complaints, expressed as a proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	3.4.4.d Number of police and where applicable other law enforcement officials charged with torture and other ill-treatment, and the outcome of the cases, expressed as a proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.



### 3.5 The police will act in a manner that ensures all persons deprived of their liberty are treated with humanity and respect for their inherent dignity.

The police will:

#### 3.5.1 The police will keep persons awaiting trial separate from convicted persons.

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.5.1.1 Conditions of detention in police custody and places of detention under the management of other law enforcement agencies are humane and consistent with the right of an accused person to dignity.	3.5.1.1.a Categories of detainees are held separately, according to their status, which includes the separate detention of men and women, children and adults, and convicted from pre-trial detainees, while also being mindful of specific vulnerabilities.	Constitution, relevant laws, police and other law enforcement operational procedures, ratification of relevant international and regional human rights treaties, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.

#### 3.5.2 Provide all persons deprived of their liberty with adequate food and clothing, unless the detained person elects to provide their own.

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.5.2.1 Conditions of detention in police custody and places of detention under the management of other law enforcement agencies are humane and consistent with the right of an accused person to dignity.	3.5.2.1.a The police and where applicable other law enforcement officials provide detainees under their care with adequate food and water, and clothing, where necessary.	Constitution, relevant laws, police and where applicable other law enforcement operational procedures, ratification of relevant international and regional human rights treaties, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	3.5.2.1.b Number of complaints made against the police and other law enforcement officials for conditions of detention that are inhumane or not consistent with the right to dignity of the person, and the outcome of that complaint, expressed as the proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.

### 3.5.3 Facilitate assistance from medical practitioners.

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.5.3.1 Detainees receive prompt and adequate health care.	3.5.3.1.a The number detainees seeking medical attention, and the percentage who received health care while in custody, including nature of the care and the time taken between complaint and receipt of services.	Detainee medical records, custody records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	3.5.3.1.b The number of detainees transferred to hospitals for treatment as a percentage of total number of detainees.	Detainee medical records, custody records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	3.5.3.1.c The law provides for physical and mental health assessment screenings and a process for the diversion of persons to mental healthcare facilities if required.	Constitution, relevant laws, police and other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
	3.5.3.1.d Number of complaints made against the police and where applicable other law enforcement officials for denial of healthcare or failure to provide healthcare, and the outcome of those complaints, expressed as the proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.

### 3.5.4 Inform family and friends of the detention and allow the detained person 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.

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.5.4.1 Detainees have access to family, next of kin or others while in police custody.	3.5.4.1.a The law provides for the right of access by detainees to family members, or another person of their choice.	Constitution and relevant laws, ratification of relevant international and regional human rights treaties.
	3.5.4.1.b Visits to detainees in police custody and places of detention under the management of other law enforcement agencies are recorded in a custody or prisoner register and/or occurrence book, with explanations provided for any limitations on this right.	Occurrence book/custody register, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	3.5.4.1.c Number of complaints made against the police and where applicable other law enforcement officials for denial of access to family members, and the outcome of those complaints, expressed as the proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.

### 3.5.5 Allow all persons deprived of their liberty to access legal assistance services and receive visits from their legal advisors that are within the sight, but not hearing, of officials.

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.5.5.1 Police and where applicable other law enforcement officials uphold the right of all persons to access a lawyer.	3.5.5.1.a Number of complaints made against the police and where applicable other law enforcement officials for denial of access to a lawyer or paralegal, and the outcome of that complaint, expressed as the proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	3.5.5.1.b Number of defendants with legal representation at first appearance before a judicial authority, expressed as a percentage of all first appearances, disaggregated by type of offence and location of court.	Court records, legal aid records.
	3.5.5.1.c Number of defendants with access to an interpreter, expressed as a percentage of defendants who requested an interpreter that received assistance, disaggregated by type of offence and location of police station/court.	Court records, custody records, internal police and other law enforcement agency documentation.
	3.5.5.1.d Number of complaints made against the police and where applicable other law enforcement officials for denial of access to an interpreter, and the outcome of that complaint, expressed as the proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.



**3.6 The police will act in a manner that adheres to the absolute prohibition against extra-judicial executions and the government will enact legislation 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.**

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.6.1 The movement of detainees while in the custody is recorded and known at all times.	3.6.1.a The law provides that any transfer of detainees is only permitted in accordance with the law, and that detainees are only moved to and between official gazetted places of detention, and their movements recorded in an official register.	Constitution, relevant laws, police and where applicable other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
	3.6.1.b The law prohibits incommunicado detention.	Constitution, relevant laws, police and where applicable other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
3.6.2 Allegations of death as a result of police and where applicable other law enforcement officials' action, or deaths in custody, are independently and effectively investigated.	3.6.2.a The number and nature of complaints of death as a result of police and where applicable other law enforcement officials' action, or deaths in custody, as submitted by individual complainants, NGOs or organisations external to the police and other law enforcement agencies to international and regional human rights mechanisms.	Ratification of relevant international and regional treaties (including optional and reporting protocols), state reports to UN and AU mechanisms, shadow reports of national human rights institutions and non-government organisations, working documents of UN and AU mechanisms, decisions of international criminal courts and tribunals.
	3.6.2.b The number and nature of complaints of death as a result of police and where applicable other law enforcement officials' action, or deaths in custody, made by police and other law enforcement officials about their colleagues, and the outcome of the complaints, expressed as the proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	3.6.2.c Percentage of all complaints of death as a result of police and where applicable other law enforcement action, or deaths in custody, independently and effectively investigated by an impartial domestic body, and the outcomes of the complaints, expressed as a proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	3.6.2.d Number of police and where applicable other law enforcement officials charged with murder and the outcome of the cases, expressed as a proportion of complaints redressed.	Court records, internal oversight documentation, internal and external oversight authority reports, reports of national human rights institutions and civil society, media reports.





**3.7 The police will act in a manner that 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.**

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.7.1 Police and where applicable other law enforcement officials are sensitised to the impact of crime on victims and of their particular needs.	3.7.1.a Police and where applicable other law enforcement officials receive training on the handling and obtaining of information from victims with special needs, such as children, persons with disabilities, persons who have been sexually assaulted, and the training is applied in practice.	Training curriculum, manuals and reports of national human rights institutions and civil society, media reports.
3.7.2 Victims are treated with dignity and respected.	3.7.2.a Victims receive prompt and courteous assistance from the police and other law enforcement officials, and give their statements in private in sensitive cases.	Survey of victims who have come into contact with the police and where applicable other law enforcement officials, incident reports from civil society organisations, police and where applicable other law enforcement policy and operational procedures, case file notes.
	3.7.2.b Victims are not discriminated against in the provision of services by the police on the basis of gender, race, nationality, ethnic group, disability or sexual orientation.	Survey of victims who have come into contact with the police and other law enforcement officials, incident reports from civil society organisations, police and where applicable other law enforcement policy and operational procedures, case file notes.
	3.7.2.c Victims are provided with accurate and timely information regarding how they should interact with the criminal justice system, what to expect, the progress of investigations, and the release of the accused.	Survey of victims who have come into contact with the police and other law enforcement officials, incident reports from civil society organisations, police and where applicable other law enforcement policy and operational procedures, case file notes.
	3.7.2.d The privacy of victims is respected.	Survey of victims who have come into contact with the police and other law enforcement officials, incident reports from civil society organisations, police and where applicable other law enforcement policy and operational procedures, case file notes.
	3.7.2e Police and other law enforcement officials support victims and witnesses to obtain witness protection where necessary and where available, and are protected from contact with the accused person.	Survey of victims who have come into contact with the police and other law enforcement officials, incident reports from civil society organisations, police and where applicable other law enforcement policy and operational procedures, case file notes.
	3.7.2.f Victims are informed and referred by the police and other law enforcement officials to service providers offering impartial, informal mechanisms of complaint resolutions.	Survey of victims who have come into contact with the police and other law enforcement officials, incident reports from civil society organisations, police and where applicable other law enforcement policy and operational procedures, case file notes.
	3.7.2.g Victims are informed of and referred to, on a needs basis, psychological, medical and social services.	Survey of victims who have come into contact with the police, incident reports from civil society organisations, police policy and operational procedures, case file notes.
3.7.3 Police and where applicable other law enforcement officials will respect confidentiality of victims and suspects.	3.7.3.a All medical information is kept confidential and only shared as necessary within the code of medical ethics	Police and where applicable other law enforcement regulations and policy, survey of victims who have come into contact with the police and other law enforcement officials, incident reports from civil society organisations, police and other law enforcement policy and operational procedures, case file notes.
3.7.4 Restitution and compensation is available to victims.	3.7.4.a Number of victims paid compensation as a percentage of number of reported crimes.	Relevant laws, police or state records/ reports of compensation paid, police and where applicable other law enforcement agencies' crime statistics.



**3.8 The police will act in a manner that does not discriminate against women, juveniles or minority communities. Police who are in frequent contact with suspects, offenders, victims and witnesses from these groups should receive sensitisation training.**

INDICATOR	MEASURE	MEANS OF VERIFICATION
3.8.1 Discrimination is reported and addressed.	3.8.1.a Internal and independent oversight mechanisms have the mandate to investigate and report on inequality or discrimination by the police and where applicable other law enforcement officials.	Relevant laws.
	3.8.1.b Number of complaints made about police and where applicable other law enforcement officials regarding discriminatory, unfair or unequal treatment, and the outcome of the complaints, expressed as the proportion of complaints redressed.	Court records, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
3.8.2 Police and where applicable other law enforcement officials are properly trained to deal with diversity.	3.8.2.a Police and where applicable other law enforcement officials' basic and in-service training incorporates elements of sensitivity training, equality and managing diversity.	Training curriculum.
	3.8.2.b Number, gender and age of police and other law enforcement officials who attend specific training to deal with discrimination or the treatment of specific vulnerable group/s.	Reports of human resources, training colleges, and training service providers (such as civil society organisations or national human rights institutions).
3.8.3 Police and where applicable other law enforcement officials recognise the importance of providing specific capacity to meet the needs of vulnerable groups or groups with special needs.	3.8.3.a The existence or establishment of specialised units to deal with crimes against vulnerable groups (such as victims of sexual offences, children, refugees or persons with disabilities).	Police and other law enforcement policy and operational procedures, annual reports, reports from independent observers on the nature and functioning of these units.
3.8.4 Police and where applicable other law enforcement officials are not discriminated against on the basis of ethnic, racial, language or gender diversity.	3.8.4 a Recruitment, selection and promotion practices of the police and where applicable other law enforcement agencies reflect the ethnic, racial, language and gender diversity of the national population and police and other law enforcement agencies.	Human resource policies and reports.
	3.8.4.b Disciplinary processes do not discriminate against minority groups.	Human resource policies and reports, interviews with police and other law enforcement representative bodies.



**3.9 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 again if force becomes necessary, only use the minimum force necessary.**

INDICATOR	MEASURE	MEANS OF VERIFICATION
<b>3.9.1</b> The police and where applicable other law enforcement officials respect the right to freedom of assembly as a matter of principle, and their actions aim to facilitate rather than to restrict this right.	3.9.1.a The right to freedom of assembly is recognised in the law.	Constitution, relevant laws, ratification of relevant international and regional human rights treaties.
	3.9.1.b The police and where applicable other law enforcement officials are guided by a framework that sets out criteria for the limitation or restriction of assemblies that includes: the principle of legality, legitimate interest, proportionality, necessity, non-discrimination and equality before the law.	Constitution, relevant laws, police and where applicable other law enforcement operational procedures, ratification of relevant international and regional human rights treaties.
	3.9.1.c The police and where applicable other law enforcement officials have processes and procedures for spontaneous and planned assemblies that include: appointment of role players for each assembly, the gathering of intelligence, risk assessment and contingency planning and internal briefing.	Relevant laws, police and other law enforcement operational procedures.
<b>3.9.2</b> Police and, where applicable, other law enforcement officials are equipped with the training and resources necessary to avoid the use of force during assemblies unless absolutely necessary.	3.9.2.a All police and where applicable other law enforcement officials receive training on the effective and rights-based management of an assembly, which includes, at a minimum: <ul style="list-style-type: none"> <li>(a) the right to assembly;</li> <li>(b) communication skills training;</li> <li>(c) understanding participant behaviour;</li> <li>(d) techniques in minimising conflict, including negotiation and mediation skills;</li> <li>(e) tactics to de-escalate tension and violence;</li> <li>(f) lawful use of force and firearms;</li> <li>(g) proper use of less lethal weapons to minimise abuse and misuse;</li> <li>(h) safety and protection of vulnerable groups in an assembly context;</li> <li>(i) roles and mandate of internal and external oversight mechanisms;</li> <li>(j) principles of accountability.</li> </ul>	Training curriculum, reports of human resources, training colleges, and training service providers (such as civil society organisations or national human rights institutions).
	3.9.2. b Police and where applicable other law enforcement officials deployed to assemblies are provided with a range of appropriate personal protective equipment and appropriate less lethal weapons to reduce reliance on methods that are capable of causing death or serious injury.	Weapons and equipment register, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
<b>3.9.3</b> The police and, where applicable, other law enforcement officials are accountable for their actions during assembly operations.	3.9.3.a For each assembly, there is a clear, transparent and single command structure.	Relevant laws, police and where applicable other law enforcement operational procedures, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	3.9.3.b Individual officers are identifiable.	Relevant laws, police and where applicable other law enforcement operational procedures.
	3.9.3.c There are clear agreements on the command and accountability of any non-police units utilised in the policing of assemblies.	Relevant laws, police and where applicable other law enforcement operational procedures.
	3.9.3.d There are comprehensive and systematic internal review and de-briefing mechanisms for the post-assembly environment.	Relevant laws, police and where applicable other law enforcement operational procedures.
	3.9.3.e There is automatic review and investigation of incidents of the use of force resulting in death or serious injury, and the investigations are conducted impartially with integrity.	Relevant laws, police and where applicable other law enforcement operational procedures, reports of independent oversight authorities.

## COMMON STANDARD 4: Police organisations



### 4.1 The police will account for violations by officers of citizens' human rights.

INDICATOR	MEASURE	MEANS OF VERIFICATION
4.1.1 Violations of human rights are identified and addressed.	4.1.1.a Number and type of reported complaints of human rights violations by the police and where applicable other law enforcement officials.	Police and other law enforcement records and statistics, reports of civil society, independent complaints and monitoring authorities, and national human rights institutions.
	4.1.1.b Number and type of sanction imposed on police and where applicable other law enforcement officials for abuse of human rights, both judicial and disciplinary, with sanctions being disaggregated according to the nature of the complaint, type and severity of sanction, and rank of police and other law enforcement official.	Court records, administrative documents, records of independent oversight mechanisms and national human rights institutions, police annual reports, media reports.
4.1.2 There is a strong system of internal discipline management in the police and where applicable other law enforcement agencies.	4.1.2.a There is a system of internal discipline management.	Relevant laws, records of discipline, annual reports, media reports, reports of civil society.
	4.1.2.b The percentage of internal investigations that result in sanction of the perpetrator or further action being taken, and the nature of the action.	Relevant laws, records, annual reports, media reports, reports of civil society.
4.1.3 There is independent oversight.	4.1.3.a A mechanisms of independent oversight exists.	Constitution, relevant laws and annual reports.
	4.1.3.b There is automatic investigation of incidents of deaths as a result of police action and deaths in custody, and the investigations are conducted impartially with integrity.	Relevant laws, records of independent police oversight mechanisms and national human rights institutions, police annual reports, media reports, reports of civil society.
	4.1.3.c The percentage of external investigations that result in sanction of the perpetrator or further action being taken by or against the police and other law enforcement officials, and the nature of the action.	Relevant laws, records of independent oversight mechanisms and national human rights institutions, annual reports, media reports, reports of civil society.



**4.2 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 it serves.**

INDICATOR	MEASURE	MEANS OF VERIFICATION
4.2.1 Police and where applicable other law enforcement officials are recruited, appointed and promoted according to clear and professional criteria.	4.2.1.a Screening instruments exist to ensure the selection of candidates who exhibit appropriate moral, physical, and psychological qualities, and these are applied.	Recruitment policy, reports on appointment and promotions, reports of police and other law enforcement representatives, media reports, human resource policy, complaints by officials or their representative bodies, job descriptions of police and where applicable other law enforcement officials.
	4.2.1.b Police and where applicable other law enforcement promotions are based on competence and merit.	Recruitment policy, reports on appointment and promotions, reports of police and other law enforcement representatives, media reports, human resource policy, complaints by officials or their representative bodies, job descriptions of police and where applicable other law enforcement officials.
	4.2.1.c All police and where applicable other law enforcement officials have clear job criteria.	Recruitment policy, reports on appointment and promotions, reports of police and other law enforcement representatives, media reports, human resource policy, complaints by officials or their representative bodies, job descriptions of police and where applicable other law enforcement officials.



**4.3 The police will ensure members receive comprehensive and on-going training on their rights and obligations.**

INDICATOR	MEASURE	MEANS OF VERIFICATION
4.3.1 The police and where applicable other law enforcement agencies will ensure members receive comprehensive and on-going training on their rights and obligations.	4.3.1.a Training on human rights, based on the EAC/EAPCCO Training Manual, is incorporated in basic, in-service and management training, and training includes theoretical as well as practical skills training on human rights, based on scenarios related to daily practice.	Training curriculum, reports of training colleges, reports of service providers such as civil society organisations/experts, police annual report.
	4.3.1.b Civil society and human rights experts are involved in human rights training.	Reports of training colleges, reports of service providers such as civil society organisations/experts, annual report.
	4.3.1.c Percentage of police and where applicable other law enforcement officials who receive human rights training in their basic training.	Training curriculum, reports of training colleges, reports of service providers such as civil society organisations/experts, police annual report.
	4.3.1.d Percentage of police and where applicable other law enforcement officials who received refresher training in the last two years, disaggregated according to gender and rank.	Training curriculum, reports of training colleges, reports of service providers such as civil society organisations/experts, annual report.
	4.3.1.e. Member organisations collaborate regionally to promote and undertake human rights training.	Training curriculum, reports of the EAC/EAPCCO on training, annual reports.



**4.4 Police 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 action.**

INDICATOR	MEASURE	MEANS OF VERIFICATION
4.4.1 Police and where applicable other law enforcement officials with high levels of integrity, honesty, ethical standards and expertise are employed.	4.4.1.a The recruitment, appointment, promotion and termination of employment of police and where applicable other law enforcement officials and other employees of the police and other law enforcement agencies are not arbitrary, but based on standards of fairness, openness, ability and performance.	Recruitment policy, reports on appointment and promotions, reports of police and other law enforcement representatives, media reports, human resource policy, complaints by police and where applicable other law enforcement officials or their representative bodies.
	4.4.1.b Remuneration of police and where applicable other law enforcement officials is sufficient to maintain a reasonable standard of living for themselves and their families; expressed as a percentage of average salaries for civil servants in the region.	Budgets and human resource statements on salary bands.
4.4.2 There are clear policies on anti-corruption in the police and where applicable other law enforcement agencies.	4.4.2.a Police and where applicable other law enforcement officials are made aware of and are bound by a code of conduct.	Police and where applicable other law enforcement operational procedures, website, media statements, reports of independent oversight authorities.
	4.4.2.b Number of complaints internally made against the police and where applicable other law enforcement officials for corruption, and the outcome of those complaints, expressed as the proportion of complaints redressed.	Police and other law enforcement data, internal oversight documentation, external oversight authority reports, reports of national human rights institutions and civil society, media reports.
	4.4.2.c Number of police and other law enforcement officials who receive training annually, as a percentage of the total number, on ethical standards and conduct applicable to the performance of their lawful duties.	Reports of human resources, training colleges, and training service providers (such as civil society organisations or national human rights institutions).
4.4.3 Conflict of interest is recognised and addressed.	4.4.3.a There is a law that prohibits or regulates outside business, financial and commercial interests.	Relevant laws and policy.
	4.4.3.b Police and where applicable other law enforcement officials are required to declare, or refrain from engaging in, business, financial and commercial interests.	Relevant laws, policy, and declaration register.
	4.4.3.c Percentage of police and where applicable other law enforcement officials who make declarations.	Register of declarations, media reports, reports of independent researchers and civil society organisations.
	4.4.3.d Accessibility of the register to the public.	Policy, media reports, reports of independent researchers and civil society organisations.
4.4.4 Appropriate action is taken following allegations of corruption.	4.4.4.a Corruption is a serious disciplinary and criminal offence.	Relevant laws and regulations.
	4.4.4.b There is automatic investigation of incidents of corruption, and the investigations are conducted impartially with integrity.	Court records, police and where applicable other law enforcement administrative documents, records of independent oversight mechanisms and national human rights institutions, annual reports, media reports.
	4.4.4.c There is an independent and external oversight body that monitors and reports on police and other law enforcement abuse of power and corruption.	Relevant laws, annual and other reports of the independent external oversight body.
	4.4.4.d Number of cases of corruption investigated, and the percentage of these that resulted in further action, with details of that action, and the outcome of the case, expressed as the proportion of complaints redressed.	Court records, administrative documents, records of independent oversight mechanisms and national human rights institutions, annual reports, media reports.

INDICATOR	MEASURE	MEANS OF VERIFICATION
4.4.5 Use of state and police and where applicable other law enforcement property is managed properly.	4.4.5.a There is a clear budget for police and where applicable other law enforcement expenditure, and a policy rationale.	Annual budget, audited financial statements, reports of independent oversight mechanisms and national human rights institutions, police annual reports, media reports.
	4.4.5.b Police and where applicable other law enforcement officials adhere to integrity controls, including on public bidding of major procurements, and conduct effective audits.	Annual budget, audited financial statements, reports of independent oversight mechanisms and national human rights institutions, police annual reports, media reports.



#### 4.5 In fulfilling their mandate, the police will cooperate with role-players within and outside the criminal justice system, including citizens and civil society organisations.

INDICATOR	MEASURE	MEANS OF VERIFICATION
4.5.1 Police and where applicable other law enforcement agencies have and maintain partnerships with other key role players in and outside the criminal justice system.	4.5.1.a Partnership between the police and other law enforcement agencies and relevant role players.	Policy.
	4.5.2 The police and where applicable other law enforcement agencies collaborate with stakeholder in and outside of the criminal justice system.	4.5.2.a There are systems in place that facilitate regular and sustained interaction between the police and where applicable other law enforcement agencies and stakeholders within and external to the criminal justice system, such as court user committees.
4.5.2	4.5.2.b Police and where applicable other law enforcement collaborations result in improvement to access to justice.	Memorandum of understanding, press, meeting reports, policy documents.
	4.5.3 The police and where applicable other law enforcement officials collaborate with civil society organisations and the community.	4.5.3.a There are structures such as community police forums.
4.5.3	4.5.3.b Community Police Forums are seen as functional and valuable.	Perception surveys, minutes of community forum meetings.

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#### 4.6 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.

INDICATOR	MEASURE	MEANS OF VERIFICATION
4.6.1 States in East Africa collaborate on law enforcement and crime prevention.	4.6.1.a Police and where applicable other law enforcement agencies are active participants on the EAC, EAPCCO, the Intergovernmental Authority on Development (IGAD), the Regional Centre on Small Arms (RECSA), the Common Market for Eastern and Southern Africa (COMESA), the International Conference on the Great Lakes Region (ICGLR), and other relevant Regional Economic Communities (RECs).	Minutes of meetings.
	4.6.1.b Police and where applicable other law enforcement agencies implement the resolutions and recommendations of the EAC, EAPCCO, IGAD, RECSA, COMESA, ICGLR, and other relevant RECs.	Minutes of meetings.
	4.6.1.c EAC, EAPCCO, IGAD, RECSA, COMESA, ICGLR, and other relevant RECs engage actively on regional co-operation projects.	Minutes of meetings and reports.
	4.6.1.d Police and where applicable other law enforcement agencies in the region co-operate on bilateral projects.	Bilateral agreements.
	4.6.1.e Joint training between police and where applicable other law enforcement agencies in the region takes place.	Training reports.

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## ABOUT THIS REPORT

The African Policing Civilian Oversight Forum (APCOF) is a partner with the Raoul Wallenberg Institute (RWI) in a Regional Africa Programme to achieve demonstrable improvement in access to justice for all and implementation of human rights commitments in Africa. APCOF and RWI have been working to support regional and continental commitments and interventions in Africa that are designed to promote rights-based reform of police organisations and their operational culture.

Working together with EAPCCO, the aim of conducting this study is to promote compliance with the Common Standards, and provide a platform for engagement for support and development towards meeting not only the Common Standards, but also, through them, broader goals of good governance as well as rule-of-law and human rights compliance across the region.

## ABOUT RWI

The Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) is an independent academic institution established at Lund University in Sweden in 1984. For more than 30 years, RWI has worked to promote human rights by means of education, research and institutional development through cooperation with primarily government, academic and national human rights institutions in Europe, Africa, Asia, the Middle East and Latin America. RWI implements a wide range of human rights capacity development programmes internationally that seek to advance lasting change when it comes to the practical application of human rights through long-term, constructive cooperation with individuals, groups, institutions and organisations to maintain and strengthen abilities to define and achieve mutual human rights objectives, and through a process itself guided by human rights.

## ABOUT APCOF

The African Policing and Civilian Oversight Forum (APCOF) is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF believes that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community.

APCOF achieves its goals through undertaking research and providing technical support and capacity building to state and non-state actors including civil society organisations, the police and new and emerging oversight bodies in Africa. APCOF was established in 2004, and its Secretariat is based in Cape Town, South Africa.

## ABOUT THE SOUTH SUDAN HUMAN RIGHTS COMMISSION

The South Sudan Human Rights Commission (SSHRC) is an independent National Human Rights Commission in the Republic of South Sudan established by provisions of Article 145 and 146 of the Transitional Constitution of the Republic of South Sudan, 2011.

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