

COMMON STANDARDS FOR POLICING IN EASTERN AFRICA: KENYA



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



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ABBREVIATIONS AND ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
APCOF	African Policing Civilian Oversight Forum
APS	Administration Police Service
CAT	Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CHRI	Commonwealth Human Rights Initiative
COVID-19	Novel Coronavirus
CPC	Criminal Procedure Code
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organisations
DCI	Directorate of Criminal Investigations
DIG	Deputy Inspector General
EAC	East African Community
EAPCCO	Eastern African Police Chiefs Cooperation Organisation
IAU	Internal Affairs Unit
ICCPR	International Covenant on Civil and Political Rights
IG	Inspector General
IMLU	Independent Medico Legal Unit
IPOA	Independent Policing Oversight Authority
KNCHR	Kenya National Commission on Human Rights
KPS	Kenya Police Service
LRF	Legal Resources Foundation Trust
MoU	memorandum of understanding
NCAJ	National Council on the Administration of Justice
NHRIs	National Human Rights Institutions
NPS Act 2011	National Police Services Act 2011
NPS	National Police Service
NPSC	National Police Service Commission
OPCAT	Optional Protocol to the Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment
PRWG-K	Police Reforms Working Group-Kenya
RODI	Kenya Resources Oriented Development Initiatives
RWI	Raoul Wallenberg Institute for Human Rights
SOPs	Standard Operating Procedures
SSOs	Service Standing Orders

INTRODUCTION

One of the most significant and recent efforts of police reform in Kenya followed the 2007–2008 post-election violence. A commission of inquiry, the Waki Commission, was instituted to investigate policing in the management of post-election violence. The observations and findings of the Waki Commission formed the foundation of police reform commitments in the country. In response to the Commission's recommendations, the government established a national taskforce on police reforms in 2009, led by retired judge Philip Ransley, to develop a framework for police reforms that would guide subsequent reform efforts.¹

The Ransley recommendations outlined the basis of policing values and principles that were subsequently adopted and written into the Constitution of 2010 and other relevant legislation and policy instruments, and which now form the normative foundation upon which policing in Kenya is based. The adoption of the Constitution has introduced a framework designed to initiate significant shifts – at the institutional and individual levels – in policing approach and attitude, by spearheading legal, policy and institution reforms, and by strengthening oversight and accountability mechanisms over the police.

Around the same time, the Common Standards for Policing in the East African Community (EAC) (the Common Standards) were developed in 2010 through a collaborative process involving the EAC and the Eastern 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, Democratic Republic of Congo, 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

¹ Audit of the Status of Police Reform in Kenya: A Joint Report by the Kenya National Commission on Human Rights and the Centre for Human Rights and Peace, University of Nairobi, 2015, p. 8.

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 further 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 is 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 is 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 each member's progress to meeting the Common Standards 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 can 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 compliance by the Uganda Police Force with the Common Standards in 2019 represented a first example of measuring and analysing the implementation of the Common Standards in individual countries. This study into compliance by the Kenyan National Police Service with the Common Standards forms part of the second set of country assessments.

It is hoped the study will further help support the efforts of the National Police Service of Kenya and their partners in government and civil society to implement these reform efforts at the legislative, policy and operational levels. The study concludes with several observations highlighting where the police and the partners in civil society might be able to collaborate to build a democratic and rights-compliant police in Kenya.

METHODOLOGY

This study assesses the level of procedural and substantial implementation, and related challenges, of the Common Standards in Kenya by the National Police Service (NPS).

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 NPS and its stakeholders.

The assessment is based on a set of monitoring indicators, attached as Appendix 1, 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 themselves. 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 interrogated by the legal subcommittee of EAPCCO before being approved by the EAPCCO Police Chiefs in September 2019 along with an appeal to member counties to participate in the assessment. In September 2020, the republics of Kenya, Sudan and Djibouti volunteered for the assessment.

In collecting the raw data, an agreement was reached with the NPS to conduct an assessment of compliance with the Common Standards in Kenya, with local partners from the Police Reforms Working Group-Kenya (PRWG-K) under the leadership of the Independent Medico Legal Unit (IMLU) contracted to do the data collection. This research was carried out between September and November 2020.

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 UN, AU and EAC that are common to the five states of East Africa. In this way, the Standards reflect the political and legal commitments to policing already made by the five countries. 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 at Appendix A.

COMMON STANDARD 1: Role of the police

- 1.1 The police will protect life, property, 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;
- 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 and specifically conduct themselves in a way that does not discriminate against women, juveniles and minority communities (including but not limited to the differently abled, migrants, internally displaced persons and refugees). Police who are in frequent contact with suspects, offenders, victims and witnesses from these groups should receive sensitisation training;
- 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 humanely and with respect for their inherent dignity;
- 3.6 considers and treats all persons deprived of their liberty as innocent until proven guilty by a competent judicial authority;
- 3.7 provides all persons deprived of their liberty with adequate food and clothing, unless the detained person elects to provide their own;
- 3.8 facilitates assistance from medical practitioners;
- 3.9 informs 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;
- 3.10 allows all persons deprived of their liberty to access legal assistance and receive visits from their legal advisors which are within the sight, but not in the hearing of officers;
- 3.11 adheres to the absolute prohibition on extra judicial executions and the government will legislate to ensure that such actions are investigated and prosecuted as a matter of priority and as punishable criminal offences under law. Police will not derogate from this principle on account of war, armed conflict or other national emergencies;
- 3.12 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; and
- 3.13 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

Police Organisations will:

- 4.1 be a service that upholds the law as opposed to a force that enforces the law;
- 4.2 strive to promote a police organisation that is operationally independent of the executive and upholds the principles of democratic policing;
- 4.3 increase public confidence, promote and encourage greater transparency and accountability in all its activities;
- 4.4 account for violations by officers of citizens' human rights and ensure that inquiries are conducted in a fair and transparent manner;
- 4.5 ensure that internal oversight mechanisms are strengthened in accordance with expected standards;
- 4.6 implement basic standards for the recruitment of officers, including selection of candidates by proper screening processes to ensure that they exhibit appropriate moral, psychological and physical qualities for their role;
- 4.7 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;
- 4.8 ensure their personnel receive comprehensive and continuous training in observance of human rights and policing;
- 4.9 ensure that the training curriculum is periodically reviewed and updated in accordance with changing policing needs;
- 4.10 refrain from engaging in acts of corruption and abuse of power, and will rigorously oppose and combat all such actions;
- 4.11 investigate corruption and abuse of power and take preventative measures, including policing anti-corruption tendencies;
- 4.12 cooperate with role-players within and outside the criminal justice system, including citizens and civil society organisations in fulfilling their mandates; and
- 4.13 promote bilateral, regional, multilateral and global law enforcement and crime prevention cooperation and assistance. To further this aim, measures should be taken to prevent crime at a domestic level, strengthen information sharing and facilitate technical assistance, including exchange programmes and training.

PART 2

COMMON STANDARDS FOR POLICING IN EASTERN AFRICA:

ASSESSMENT OF THE
KENYA 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 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 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, 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 actions 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.

Kenya has ratified most of the important regional and international human rights instruments, and constitutional framework and national legislative and policy documents regulating policing services in the country are informed by human rights norms and standards, providing guidance about what it means to protect and uphold fundamental human rights.

By becoming a party to these regional and international human rights instruments, Kenya has assumed the duty and obligation, under the international human rights system, to protect and uphold the fundamental human rights and freedoms of all. This includes putting in place measures to ensure that the institution, conduct and practices of all law enforcement officials comply with international human rights standards.

At the international level, Kenya's treaty obligations and duties include compliance with the provisions of the Charter of the United Nations, the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

At the continental level, Kenya's obligations stem from the African Charter on Human and Peoples' Rights (ACHPR), together with its Protocol on the Rights of women in Africa (Maputo Protocol), and the African Charter on the Rights and Welfare of the Child. At subregional level, Kenya is a state party to the Treaty for the Establishment of the East African Community, which is the instrument that set the foundation for the movement towards the establishment and monitoring compliance with Common Standards for Policing in Eastern Africa.²

At the domestic level, Article 2(5) and (6) of the Constitution of Kenya, 2010 (the Constitution) sets the requisite legal foundation for the domestication of these human rights treaties and conventions, by stipulating that general rules and principles of international law form part of the laws of Kenya, and that any treaty or convention ratified by Kenya constitutes part of the laws of Kenya. Constitutional provisions and the national legislative instruments and operational procedures that regulate policing have also translated these binding international human rights treaties and conventions into basic policing standards that express and guarantee human rights.

Chapter Four of the Constitution contains a justiciable Bill of Rights, whose purpose is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.³ It puts forward the fundamental rights and freedoms that are binding on all persons and state organs, including the National Police Service (NPS), which is enjoined to promote, maintain and uphold these values. Relevant human rights and freedoms enshrined in the Constitution include:

- The right to life;
- Equality and freedom from discrimination;
- Respect for human dignity of all;
- Freedom and security of the person, and protection from torture and other forms of ill-treatment;
- Freedom from slavery and servitude;
- The right to privacy;
- The right of access to information;
- Freedom of movement, expression, association, conscience, religion, thought, belief and opinion;
- Rights of women, children and persons with disabilities;
- Affirmative actions for minorities and marginalised groups;
- The right to assemble freely with others, demonstrate, picket and present petition to public authorities; and
- Protection of the rights of arrested persons.

In addition, the Constitution expressly states that the rights and freedoms it guarantees in the Bill of Rights do not exclude the application of other protections that are not contained in the Bill of Rights but which are recognised by law.⁴ The utility of this provision lies in the fact that it anticipates the application of fundamental principles and values of human rights that are articulated in treaties and conventions ratified by Kenya, but which are not explicitly reflected in the Constitution.

The legal framework that regulates the provision of policing services emphasises the rights and protections reserved for individuals that interact with law enforcement officials, and specifies the standards of treatment to be accorded to those that come into conflict with the law. Relevant legal and policy instruments include the National Police Services Act 2011 (NPS Act 2011), the Criminal Procedure Code (CPC), the Children Act 2001, the Prevention of Torture Act 2017, the Independent Police Oversight Authority Act 2011, the National Police Service Commission Act 2011 and the Service Standing Orders (SSOs).

Applicable constitutional provisions and the legislative framework that governs policing are generally consistent with international standards on policing. They clearly articulate the rights and duties of all parties, and provide sufficient safeguards and guarantees to ensure police actions are based on law and human rights.

2 It entered into force on 7 July 2000.

3 Article 19(2) of the Constitution.

4 Article (19)(3)(b) of the Constitution.

The key obstacle to achieving the objectives of the Common Standards, however, is not the absence of domestication of standards and principles that support improved policing, but the lack of regular and consistent application of existing norms and standards. Specific details regarding this challenge are discussed below in the sections that examine the level of compliance with Common Standards 2 and 3.

The law also clearly outlines the ranking structure of the NPS to implement their mandate, and there is a clear chain of command, particularly in the first line of supervision of police officers, to ensure this mandate is implemented across the organisation. The NPS is established by the Constitution and operationalised by the NPS Act 2011.⁵ The Constitution placed the two erstwhile Services, Kenya Police Service (KPS) and Administration Police Service (APS), under the command of the Inspector General (IG).⁶ The NPS thus consists of the KPS, APS, the Directorate of Criminal Investigations (DCI) and the Internal Affairs Unit (IAU). The latter two are constituent parts of the NPS in terms of sections 28 and 87 of the Constitution. The Constitution establishes the command of the NPS, led by the IG, appointed by the president with the approval of parliament. The IG is the overall commander of the NPS, and leads both the KPS and the APS. He/she exercises command over the NPS, and performs any other function entrusted to him/her by national legislation. In addition, both the KPS and the APS are headed by a Deputy Inspector General (DIG), appointed by the president with the recommendation of the National Police Service Commission (NPSC).⁷

The NPS Act 2011 also provides for the establishment of the National Police Reserve (the reserve). It articulates the parameters and composition of the reserve to consist of residents of Kenya – other than existing members of the NPS – who have attained the age of 18 years, to serve on a voluntary basis. Police reservists who the Act provides are to be recruited, enlisted and trained in terms of the rules developed by the NPSC, are mandated to assist the NPS in the fulfilment of their functions, and are subjected to the same requirements as a police officer. They are to serve for a period of two years, which can be renewed for a further period of two years.

Additionally, the Act allows the IG to call out reserve police officers following the declaration of a state of war or state of emergency in terms of the provisions of the Constitution, and requires them to remain on duty until they are discharged by the IG. Significantly, while the Act states that reserve police officers serve on a voluntarily basis and are not entitled to claim any remuneration except for allowances provided for by the law, it guarantees reserve police officers that have been deployed pursuant to the declaration of a state of war or emergency pay and allowances equal to that offered to a police officer of similar rank.

The NPS is further governed by the SSOs. Chapter 8 sets out the ranks, duties and responsibilities of the NPS, establishing a clear ranking structure and chain of command to facilitate effective decision-making and organisational communication. The SSOs affirm that a police officer is accountable to only one supervisor at a time, who is his or her immediate supervisor, except in instances where s/he is executing a special assignment or is assigned to another unit, in which case the SSOs state that s/he is accountable to the first line supervisor who is in charge of the assignment. To achieve effective and sustainable coordination and control, the SSOs provide for the number of police officers under the control of a supervisor to be reasonable, the precise number of which is to be guided by a combination of factors such as the nature of the task being executed, its complexity, the size of the area to be supervised and the level of experience of the individual police officers.

Further, in 2018, the NPS offered a policy framework and strategy that sought to reorganise the NPS and harmonise its command structure by integrating 36,680 General Duty KPS with 24,572 General Duty APS and become one under the command of the DIG-KPS. This integration also meant a larger General Duty police under KPS, and increased the General Duty police population ratio from 1:991 to 1:643. Under this structure, although some designations were abolished, the following designations and positions were created: Regional Police Commander, County Police Commander, Sub County Police Commander and Officer in Charge Police Station – to be the ward Commander in charge of a police station and its posts/patrol bases. This reorganisation further set distinct reporting functions for DIGs and DCI. The DIG-KPS is now charged with public security and safety, the DIG-APS with protective and border security, and the DCI with criminal investigations.⁸

The SSOs further authorise the IG to appoint, from the ranks of county commanders in each of 47 counties, the most senior police officer from either the KPS or the APS, to coordinate the operational command and control

5 Article 243 of the Constitution.

6 Article 243(2) of the Constitution.

7 Article 245 of the Constitution.

8 NPS Information Pack: Policy Framework and Strategy for the Reorganization of the National Police Service and Provision of Decent and Affordable Housing for Police Officers and Integration with Communities and Neighbourhoods, 2018.

at the county level. SSOs also call for joint operations to be determined in accordance with standard operation procedures offered by the IG, in consultation with the two DIGs and the DCI.⁹ At the operational level, the reorganisation and intergration of KPS and APS, under the command of DIG-KPS, provides a harmonised command structure, and a clear hierarchy of command for police officers.

Regarding whether the police perceive their role as being the protection of fundamental human rights and freedoms, the study did not succeed in obtaining relevant data to conduct this assessment. The absence of this information poses a challenge to efforts to ascertain the extent to which police officers have operationalised human rights standards enshrined in the legal and regulatory framework that regulates their service, as well as other interventions aimed at fostering rights-based policing.

However, a baseline survey on policing standards and gaps in Kenya, conducted by the Independent Policing Oversight Authority (IPOA), reported a high number of incidents of police misconduct among the police. It found that 53% of respondent police officers had experienced incidents of misconduct in the last 12 months before the survey. The nature of misconduct raised by the police includes assault, unlawful shooting, bribery, use of excessive force, injuries from a weapon, falsification of evidence and threats of imprisonment. The survey also found that 90% of respondent police officers indicated that they do not report incidents of wrongdoing by their colleagues for fear of reprisal.¹⁰ The IAU, a unit within the NPS whose main function is to receive and investigate complaints against the police by members of the public and NPS members, has also documented allegations of misconduct against NPS members. In its Annual Performance Report 2020, for instance, the unit recorded a total of 1 043 complaints, of which 849 were from members of the public and 168 from members of the NPS. 26 complaints come from anonymous persons. The nature of complaints range from harassment and intimidation, bribery corruption and extortion, physical assault, threats to life, obstruction of justice and unlawful detention, among others.¹¹

Available data further demonstrates that the public perceives the police as being responsible for a large number of human rights violations in the execution of their functions. A 2018 survey on the status of human rights in Kenya found that 33% of the respondents perceived the NPS as responsible for the most human rights violations. Similarly, only 33% of respondents indicated that they trust the police, and 12% viewed unlawful killing by the police and harassment as posing the most risk to them. The study also established that one in three Kenyans had seen or heard about unlawful killing by the police in the six months preceding the survey. Other cited violations of human rights by the police include police brutality, sexual violence, denial of health services and discrimination.¹²

1.2 The police will maintain public safety and social peace

Compliance with the extent to which the police see their role as to maintain public safety and social peace can be assessed by examining whether the law clearly defines the mandate of the police in terms of their responsibility to public safety and social peace, and the percentage of people surveyed who believe the police are prompt and responsive to threats and concerns about safety.

The Constitution and the NPS Act 2011 clearly stipulate the mandate of the police. The Constitution is more deliberate in terms of requiring the NPS to adopt rights-based policing practices, and provides that the objects and functions of the NPS are to: strive for the highest standards of professionalism and discipline for its members, prevent corruption and promote and practice transparency and accountability, comply with constitutional standards of human rights and fundamental freedoms, train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity, and foster and promote relationship with the broader public.¹³

9 Supra n. 1, p. 24.

10 IPOA, Baseline Survey on Policing Standards and Gaps in Kenya, 2013, pp. 18, 19.

11 Internal Affairs Unit, Annual Performance Report 2020. pp 13, 19 & 22.

12 Amnesty International Kenya, Kenya Section of the ICJ, KNCHR et al: Better, but Still Unequal: The State of Human Rights in Kenya. An opinion poll on the 70th anniversary of the Universal Declaration of Human Rights, pp. 4, 9, 10 and 11.

13 Article 244 of the Constitution.

To give effect to the foundation set by the Constitution, the NPS Act 2011 specifically defines and delineates the mandate of the KPS and the APS. It puts forward the functions of KPS as including the provision of assistance to the public when needed, the maintenance of law and order, preservation of peace, protection of life and property, enforcement of all laws and regulations, investigation of crimes and prevention and detection of crime. The Act also requires the KPS to perform any other functions that may be prescribed by the IG.¹⁴

In addition to the provision of assistance to the public, the maintenance of law and order and the preservation of peace, the Act requires the APS to provide other policing services which include: the provision of border patrol and border security, provision of specialised stock theft prevention service, protection of government property, rendering of support services to government agencies in the enforcement of administrative functions, and coordinating with government agencies in conflict management and peacebuilding.¹⁵ At individual level, the Act requires police officers to perform their duties and functions at any place in the country where they are deployed, and guarantees them all the rights enshrined in the Constitution.¹⁶

The Act further establishes the DCI, the main investigative component of the NPS. Section 35 sets out the functions of the DCI as including the collection and provision of criminal intelligence; undertaking investigations on serious crimes including homicide, narcotic crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organised crime, and cyber-crime among others; maintaining law and order; detecting and preventing crime; maintaining criminal records; conducting forensic analysis; investigating any matter that may be referred to it by the Independent Police Oversight Authority; and performing any other function conferred on it by any other written law, among others. In addition, Chapter four of the SSOs regulates the establishment, functions, deployment and organisational structure of the DCI, and sets out its various formations, units and components.

Existing legal and regulatory frameworks clearly demonstrate that the NPS have made significant progress towards institutionalising a rights-centric policing culture. This is evidenced in legislative, institutional and policy reform and other initiatives, such as the establishment of community policing initiatives. However, there remain significant challenges in terms of achieving trust and cooperation between the public and police. Some of the conditions that are cited as negatively impacting public trust and confidence in the police include: sustained police misconduct, corruption, excessive use of force and brutality, extrajudicial execution of suspected criminals and a dearth of professionalism in the investigations of human rights violations.¹⁷

With respect to public perception of police responsiveness, available data and reports indicate a lack of confidence in the police to promptly respond to threats and concerns about safety. The baseline survey on policing standards and gaps by IPOA also established that 35% of respondents that chose not to report incidents of police misconduct believed that no steps would be taken if they reported, while 33% said that they feared victimisation if they reported and a further 4.6% mentioned threats by the police if they reported as a reason for non-reporting of misconduct.¹⁸

Research conducted by the University of Edinburgh, DIGNITY and the Independent Medico Legal Unit (IMLU) to determine vulnerability to violence among the urban poor in Nairobi found that, of those respondents who did not report incidents of crime to the police, 59 said that they believed nothing would happen if they reported, 24 indicated that the police do not conduct sufficient investigations and 34 felt that there is no justice for the poor.¹⁹

A police satisfaction survey and needs analysis report conducted by Transparency International Kenya in Nairobi and Kisumu found that 27% of respondents from Nairobi and 22% from Kisumu chose not to involve the police in circumstances where their intervention was required, and 53% of the respondents who approached the police for their intervention were dissatisfied with the manner in which the police handled their cases. The report also determined that 32% of respondents that visited police stations to obtain services in Nairobi and 23% in Kisumu reported that they paid some money for the service, while a quarter of respondents that approached the police to report a crime averred that they paid some money during that interaction.²⁰

14 Section 24 of the National Police Service Act.

15 Section 27 of the National Police Service Act.

16 Sections 45 and 46 of the National Police Service Act.

17 ICTJ, *A Failure to Reform. A Critique of Police Vetting in Kenya*, 2017, p. 10.

18 IPOA, *supra n. 11*, p. 17.

19 Peter Kiama et al., *Violence amongst the Urban Poor in Nairobi*, 2016, p. 20.

20 Transparency International Kenya, *Kenya Police Service Satisfaction Survey and Needs Analysis Report*, 2016, pp. 8, 9 and 24.

1.3 Police adhere to the rule of law as an essential element of 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 rights and freedoms can be observed from the extent to which: 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 practice, including stop and search, arrest, detention, interrogation, surveillance and use of force; police enforce court orders and decisions by oversight authorities; 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.

The concept of the rule of law has many aspects and elements. Within the United Nations system, the rule of law refers to:

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.²¹

Legal principles that regulate policing define the responsibility of the NPS to adhere to the rule of law. The Constitution clearly establishes the values and principles upon which policing and national security must be based. It requires the provision of policing services to be subjected to the authority of the Constitution, and be pursued in accordance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms.²²

The Constitution further prohibits members of the NPS, in performing their functions and exercising their powers, from acting in a partisan manner, and requires them to prevent corruption and promote transparency and accountability, protect and uphold human rights and freedoms and ensure all staff are adequately trained to respect the human rights and dignity of everyone.²³ To give effect to this constitutional framework, the NPS Act 2011 defines the functions, powers and obligations of the NPS, and subjects their operation to the principles enshrined in the Constitution and the Bill of Rights.²⁴

The mandate of the NPS is also governed by the SSOs, which require the actions of all police officers to be guided by the principles set out in the Constitution, the Act and Standing Orders, including commitment to the welfare of the public through the rule of law and professionalism. The SSOs also instruct the police to respect and protect the dignity and human rights and freedoms of everyone, and to carry out their functions in a manner that is consistent with the highest degree of professional effectiveness and dignity.²⁵

Critical aspects of this standard and indicator are found in the extent to which the law and operational documents provide parameters for police operational practices, including stop and search, arrest, detention, interrogation, surveillance and use of force. The NPS Act 2011, the CPC, the Children Act and the SSOs provide specific conditions, rules and guidance that are designed to secure the safe and lawful arrest and detention of suspects, including children.

To prevent police abuse of power in the execution of arrest without a warrant, the Criminal Procedure Code obliges the arresting officer to present the arrested individual before a magistrate or an officer in charge of the police station.²⁶ The Fifth Schedule of the NPS Act 2011 also contains safeguards against abuse of

21 United Nations, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, 2004, p. 4.

22 Article 238(2)(a)(b).

23 Articles 239(3)(a) and 244(b)(c)(d).

24 Sections 24, 27 and 49 of the National Police Service Act.

25 See section on Ethical Standards and Principles of the National Police Service Standing Orders, 2017.

26 Section 33 of the Criminal Procedure Code.

the power of arrest. It stipulates that arrest and detention must be carried out only as provided for by the law, and grants all arrested and detained persons the rights guaranteed in Articles 49, 50 and 51 of the Constitution. It also sets forth standards which all police detention facilities must comply with, including the following:

- Hygienic conditions conducive for human habitation;
- Adequate light, toilet and washing facilities and outdoor area;
- Men and women to be kept separately;
- Juveniles and children to be kept separately from adults; and
- Police detainees to be kept separately from convicted prisoners.

The Fifth Schedule also requires police officers in charge of police stations to maintain custody registers with detailed information about the arrest and detention. The Children Act 2011 also sets legal parameters for the arrest and treatment of children in conflict with the law. Schedule five directs the police to ensure that any arrested child is presented before a court as soon as practicable, and prohibits the police from detaining a child for more than 24 hours without the permission of the court. This schedule further places an obligation on the police to inform either the parent of the child or the Director of Children's Services that the child has been arrested. Notably, the Children Act provides for the best interests of the child to be a guiding consideration in all matters concerning the child.

Chapter 22 of the SSOs also offers guidelines to police officers for conducting successful interrogations and interviews, and requires police officers to develop operational manuals to guide the recording of interviews. Additionally, the NPS Act 2011 and the SSOs specify conditions under which force may be used. The Sixth Schedule of the Act instructs police officers to apply non-violent means first before resorting to the use of force. The schedule further requires the use of force to be proportional to the objectives sought to be achieved, the seriousness of the offence, the resistance encountered, and to be applied only to the extent that it is necessary.

With regard to police responsiveness to the public, reports indicate poor police response to the needs of the public, and provision of assistance in accordance with their mandate. According to IPOA's annual performance report for the year 2019, the oversight and accountability body received a total of 1,054 complaints of police inaction and negligence of mandate, making it the largest cause of complaints from the public.²⁷ Similarly, in the last three annual performance reports, the IAU documented a total of 1,369 complaints of police inaction, making it the most prevalent kind of misconduct committed by the police.²⁸

Other research findings also highlight the challenge of police responsiveness to the needs of the public. A research report by the University of Edinburgh suggests that only 4.9% of respondents who reported experience with violence received assistance from the police. Respondents also indicated that incidents reported to the police were not resolved mainly due to failure by the police to conduct investigations and arrest the suspects.²⁹ Another study by the Centre for Human Rights and Policy Studies and the African Policing Civilian Oversight Forum on local policing accountability in four sites in Kenya found that respondents perceive police officers as unavailable and unwilling to serve the public and protect them from crime, and are responsive only in instances where they are offered money.³⁰

Lack of effective and sustained police response to the needs of the public undermines police–public relations. Numerous factors contribute to poor provision of policing services and may include unavailability of resources, such as transport vehicles, communication equipment and poor and unequal distribution of police officers and police stations.³¹

27 IPOA Performance Report Jan.–Jun. 2019, p. 14, and Performance Report Jul.–Dec., p. 15.

28 Internal Affairs Unit Annual Performance Report, 2018, 2019 & 2020.

29 Peter Kiama et al., *Violence amongst the Urban Poor in Nairobi*, 2016, pp. 18, 19.

30 Centre for Human Rights and Policy Studies and African Policing Civilian Oversight Forum, *Local Policing Accountability in Kenya: Challenges and Opportunities*, 2014, p. 15.

31 This is evident in the report by Transparency International Kenya, *supra* n. 19.

As regards the compatibility of laws with international standards, all legal and policy instruments applicable to the work of the NPS are consistent with international human rights and standards, and provide legal parameters for police operational practices, including stop and search, arrest, detention, interrogation, surveillance and use of force. In addition, as part of measures adopted to manage the spread of COVID-19, the Chief Justice, as the Chairperson of the NCAJ, issued directions in relation to the handling of cases during the period.

Available information, however, indicates a lack of commitment to implement this legal and policy framework by the police at the operational level. Reports demonstrate that police abuse the broad discretion granted by the law to execute arrests without a warrant to arbitrarily arrest and detain people, particularly poor young men, in many cases accusing them of more serious crimes than they had committed.³²

Data further suggests that police arrest people for petty offences, which the African Commission on Human and Peoples' Rights has urged State Parties to decriminalise because of their inconsistency with regional and national human rights instruments. An audit study on Kenya's criminal justice system conducted by the National Council on the Administration of Justice (NCAJ), the Legal Resources Foundation Trust (LRF) and Resources Oriented Development Initiatives (RODI – Kenya) in 2015 in 18 counties found that, in 2013/2014, 21,326 suspects were in police custody for being drunk and disorderly, 5,584 for loitering and 5,428 for disturbance or nuisance.³³

The existence and enforcement of this nature of offences is problematic, as most of them are framed in broad and vague language. As a result, they not only fail to identify the specific conduct that is being criminalised, but are also capable of wide interpretation by law enforcement officials, which gives police officers wide discretion to determine which conduct constitutes a crime. This often results in the arbitrary application of laws. The principle of rule of law mandates law makers to ensure that all laws are clear, precise and accessible to the public, and clearly set out the specific elements of the offence. This will allow the public to tailor their conduct to comply with what the law requires, and generally promote greater accessibility to justice. Moreover, the IAU, in its 2020 Annual Performance Report, underlines non-cooperation from field commanders – as a result of misinterpretation of the concept of police oversight – as a challenge it is experiencing in the execution of its mandate.³⁴

Reports further indicate that police continue to arrest and detain large groups of children in crackdowns and operations designed to clear streets of homeless children, in many cases accusing them of committing petty offences.³⁵ In its Concluding Observations on the Combined Third to Fifth Periodic Reports of Kenya, the UN Committee on the Rights of the Child noted its concerns at reports of police violence against children, and urged Kenya to effectively enforce the NPS Act 2011, prevent the ill-treatment of children by the police and ensure perpetrators are held accountable.³⁶

Reports also show that police use unnecessary force and violence in the provision of policing services, including recently in the enforcement of policies and regulations aimed at preventing the spread of the novel coronavirus (COVID-19). There are gaps and challenges in the use of force, particularly in terms of ensuring that public order policing is conducted in a manner that respects, protects and promotes fundamental human rights and freedoms.³⁷

Furthermore, reports indicate numerous incidents of police failure to enforce court orders, and non-cooperation with the external oversight and accountability authority. In its third-cycle Universal Periodic Review shadow report, the KNHCR reported persistent disregard for and disobedience of court orders by duty bearers, including a case in which the police failed to produce a person in court despite the issuance of at least 12 court orders instructing them to do so. Furthermore, in its performance report for 2019, IPOA reports 49 cases of contempt of court order by police officers.

32 U.S. Department of State, 2018 Country Reports on Human Rights Practices: Kenya, pp. 7, 11.

33 National Council on the Administration of Justice, *Criminal Justice System in Kenya: An Audit*, 2016, pp. 85, 86.

34 Internal Affairs Unit Annual Performance Report 2020. p. 32.

35 S Cherono, *Police arrest, lock up 460 street children*, *Nation*, 2017; see also A Blomfield, *Revealed: How raid by Kenyan Police drove street children to their death*, *The Guardian*, 2016.

36 Committee on the Rights of the Child, *Concluding Observations on the Combined Third to Fifth Periodic Reports of Kenya*, 2016, p. 8.

37 The Independent Medico Legal Unit, *A Status Report on the Situation of Human Rights Protection in the Measures to Combat Covid-19 Pandemic*, 2020, p. 6.

IPOA also stresses that non-cooperation by the police, including obstruction of investigation by some senior NPS command, remains a significant challenge to the execution of its statutory mandate. IPOA further notes that, in some instances, police officers decline to produce key documents, while others frustrate investigations and attempts at identifying their colleagues who are suspected of wrongdoing. Additionally, IPOA points out failure by police officers to notify the body, as required by the law, of any death or serious injury in police custody or as a result of police conduct as a further impediment to the exercise of its powers and duties.³⁸ In its end-of-term Board report, IPOA further raises concerns about concerted efforts by police officers to cover up crimes through tampering with documents and exhibits, and shoddy and hasty investigations by the police to circumvent justice.³⁹ Moreover, the IAU, in its 2020 Annual Performance Report, underlines non-cooperation from field commanders - as a result of misinterpretation of the concept of police oversight - as a challenge it is experiencing in the execution of its mandate.⁴⁰ Non-cooperation with IPOA and the IAU significantly undermines the objectives of holding the police accountable to the public, and underscores the need to address this deficiency and secure police support and cooperation with the operations of the authority.

In addition, reports suggest failure by the police to promote equality in the enforcement of the law. According to Human Rights Watch, police officers have a practice of using excessive and unlawful force in the enforcement of laws in low-income areas, and failing to ensure that incidents of death as a result of police actions are reported, properly investigated and prosecuted.⁴¹ Other reports indicate policing in some informal settlements is generally slow, corrupt and unlikely to effectively investigate crimes for successful prosecution, and public encounters with police officers are likely to end in harassment or the payment of bribes to avoid arbitrary arrest.⁴² In addition, research findings also highlight the targeting and killing of youth in informal settlements by police officers.⁴³

Reports further reveal that police use mass arrests, swoops and operations that target low-income people, street families and other vulnerable groups such as women and refugees to enforce laws against petty offences, in many cases to clear and prevent the occupation of urban spaces by these groups or to extort bribes.⁴⁴

There are numerous reports also indicating that there is unequal enforcement of the law by police officers, particularly in the context of public order policing, where police are more inclined to disperse assemblies and gatherings if the objectives of the assemblies are inconsistent with the views of the ruling party, sometimes using unlawful and deadly force.⁴⁵ In a report following the monitoring of police conduct during public protests and gatherings, IPOA recommends that the NPS

*Abide by Article 239 of the Constitution while performing their functions and exercising their powers. The Service should not act in a partisan manner, further any interest of a political party or cause, or prejudice a political interest or political cause that is legitimate under the Constitution. The Service should remain impartial in carrying out its functions.*⁴⁶

Furthermore, in a preliminary report on investigation of human rights abuse in the context of crackdowns against terrorism, the KNCHR reports that counterterrorism initiatives continue to disproportionately target and profile certain groups of people and members of a specific religion in the country, along ethnic and religious lines.⁴⁷

38 IPOA Performance Report Jul.-Dec. 2019, pp. 45, 46; see also Performance Report for Jan.-Jun. 2018, p. 13.

39 IPOA Board End Term Report May 2012-May 2018, p. 93.

40 Internal Affairs Unit Annual Performance Report 2020. P 32.

41 Human Rights Watch Kenya, Nairobi Police Executing Suspects: Dozens Killed in Low-Income Areas, 2019.

42 P Mutahi, Between Illegality and Legality: (In)security, Crimes and Gangs in Nairobi Informal Settlements, 2011, p. 11.

43 T Probert, B Kimari and M Ruteere, Strengthening Policing Oversight and Investigations in Kenya: A Study of IPOA Investigations into Deaths Resulting from Police Action, 2020, p. 11.

44 Addressing Petty Offences in Kenya: Which Way Forward, https://pettyoffences.org/addressing-petty-offences-in-kenya-which-way-forward/#_ftn2.

45 See, for instance, the report by Human Rights Watch Kenya, Fresh Evidence of Election Period Abuses: Police, Armed Gangs Killed Dozens, 2018.

46 IPOA, Monitoring Report on Police Conduct during Public Protests and Gatherings, 2017, p. 28.

47 KNCHR, The Error of Fighting Terror with Terror. Preliminary report of KNCHR investigations on human rights abuses in the ongoing crackdown against terrorism, 2015, p. 36.

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

19

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

The extent to which the police will not arbitrarily arrest or detain and will only deprive persons of their liberty in accordance with the law can be assessed by the degree to which: the law guarantees 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; 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; number of complaints made against the police for arbitrary arrest or detention and the outcome of those complaints, expressed as the proportion of complaints redressed; number of civil cases initiated against the police for wrongful action, and the outcome of those matters, expressed as the proportion of claims upheld by the judiciary.

Article 29 of the Constitution guarantees everyone the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily, and the right not to be detained without trial. At the regional and international levels, Kenya's treaty obligations to respect and promote the right to liberty and security of persons are embodied in the ICCPR, the African Charter on Human and Peoples' Rights (ACHPR) – the principal human rights instrument on the continent – and the Maputo Protocol. Article 6 of the ACHPR enshrines the right to liberty and security of the person, and places an obligation on Kenya not to deprive people of their freedom, except in accordance with the law, or subject them to arbitrary arrest and detention. In addition, Kenya's approach to arrest and detention is also guided by the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, which is a subordinate instrument

adopted by the African Commission on Human and Peoples' Rights in 2014 and which, among other things, promotes a rights-based approach to arrest and detention.

These normative frameworks, and the concomitant obligation on the NPS to operationalise, respect and uphold the right to liberty and security of the person at individual and organisational levels, are reflected in the legislative and policy instruments that govern their operations, including the NPS Act 2011, the CPC, the Children Act and the SSOs, which require police officers to conduct arrest and detention only in accordance with the law.⁴⁸ As regards the definition of arrest, the NPS Act 2011 articulates a short definition. It states that arrest 'means the act of apprehending a person for suspected commission of an offence or by the action of legal authority'.

The CPC sets out basic elements of an arrest procedure. It requires the person effecting the arrest to actually touch or confine the body of the person to be arrested, unless the person submits to the custody by word or action. It further classifies arrestable offences into two groups: cognisable offences, which are offences for which police officers may arrest without warrant; and non-cognisable offences, which are offences for which police officers need a warrant of arrest before executing the arrest.

It also permits arrest without warrant to be carried out by both police officers and private persons. Circumstances under which police officers can conduct arrest without a warrant are set out in the CPC, the NPS Act 2011 and the SSOs. The SSOs oblige police officers to conduct a clear and unbiased assessment of the facts before conducting the arrest of any suspect.

Under limited circumstances, the CPC further empowers private persons to conduct arrest without warrant. It allows a private person to arrest any person who, in his view, commits a cognisable offence, or who he reasonably suspect of having committed a crime. It also authorises the owner of a property, or his servants, to arrest individuals found committing an offence that involves injury to the property.⁴⁹ While the law specifies the definition of arrest and sets legal parameters for conducting arrest, the NCAJ affirms that some police officers have detained people accused of committing offences that are not known to law or provided for by the Penal Code, such as 'city planning', which some police officers have utilised to arrest and detain several persons.

Despite these frameworks, however, the police continue to have broad discretion to conduct arrests without a warrant. They are permitted to do so, inter alia, in the following circumstances:

- Any person whom s/he suspects upon reasonable grounds of having committed a cognisable offence;
- Any person who commits a breach of the peace in his/her presence;
- Any person who obstructs a police officer while in the execution of duty, or who has escaped or attempts to escape from lawful custody;
- Any person whom s/he finds in a highway, yard or other place during the night and whom s/he suspects upon reasonable grounds of having committed or being about to commit a felony; and
- Any person whom s/he finds in a street or public place during the hours of darkness and whom s/he suspects upon reasonable grounds of being there for an illegal or disorderly purpose, or who is unable to give a satisfactory account of him/herself.

The law also recognises alternatives to arrest. Article 49(2) of the Constitution sets the foundation for the use of non-custodial means to address minor crimes. It prohibits the remand in custody of anybody if the offence of which they are accused is punishable by a fine only or by imprisonment for not more than six months. The CPC and the SSOs reinforce this specification. The SSOs compel police officers to release any person arrested for committing a minor offence on cash bail, unless the officer has reasonable grounds for believing that the arrested person will abscond while on bail.

The implementation of alternatives to arrest is, however, weak. In the Bail and Policy Guidelines designed to guide police and judicial officers in the application of laws that govern the provision of bail and bond, the National Council on the Administration of Justice (NCAJ) notes that there is a policing practice to detain persons who have committed minor offences, contrary to the directive of the Constitution and the SSOs. This

48 Chapter 56 section 12(1) of the National Police Service Standing Orders, 2017.

49 Section 34 of the Criminal Procedure Code.

includes individuals who are accused of committing offences such as loitering, being drunk and disorderly and creating a disturbance.⁵⁰

Moreover, the law provides for the maintenance of a custody register. Schedule five of the NPS Act 2011 requires police officers that are in charge of police stations and other places of deprivation of liberty to maintain an arrest and custody register, and ensure that the following information in respect of the detained person is recorded:

- Name of the arrested person;
- Reasons for the arrest and detention;
- Date and time of the arrest and detention;
- Date and time of first appearance before a court;
- Identity of the arresting officer;
- Date and time for interrogations and identity of interrogators; and
- Date and time of any transfer of the detainee to another place of detention.

The Act further obligates officers in charge of police stations and other police detention facilities to appoint a police officer and assign him the duty of monitoring the welfare of detainees, and ensuring that the register is appropriately updated. The SSOs also emphasise the need for maintaining arrest and custody registers and provide operational guidance to police officers on how to maintain a custody register as part of effective management of a police station.

Despite the existence of sufficient legal safeguards that promote rights-centred arrest and detention, there are reports of arbitrary and excessive use of the rights to arrest and detain. In its performance report for 2018 and 2019, IPOA registered 336 complaints of unlawful arrest and detention. The IAU also reported 13 incidents of unlawful detention, in its 2020 performance report. Actual incidents of arbitrary arrest and detention are likely to be much higher, as other reports and findings suggest the prevalence of unlawful arrest and detention. Notably, there is no available data that demonstrates the outcome of these complaints. IPOA is authorised to investigate complaints relating to criminal offences committed by police officers, and make appropriate recommendations to the relevant government authorities, including recommendations for criminal prosecution or internal disciplinary action. Available information on complaints processing and management by IPOA, however, does not offer disaggregated data on the number of complaints of arbitrary arrest and detention referred for action.

While the Constitution empowers everyone with the right to institute legal proceedings and claim redress for violations of fundamental human rights and freedoms, there is no data that specifies the number of civil cases instituted against the police for unlawful action. Media reports and reports by civil society organisations document numerous cases in which the NPS is being sued for wrongful conduct and violations of constitutional rights and protections. In December 2018, for instance, a court ordered six police officers to pay four million shillings to a lawyer who was unlawfully arrested and detained, and 3.8 million shillings to 19 others who were arbitrarily arrested and detained in 2016. Further, a report by Amnesty International Kenya details a recent class suit initiated by four rights groups against the NPS for widespread violations of human rights in the enforcement of measures adopted to combat the novel coronavirus.⁵¹

50 National Council on the Administration of Justice, Bail and Bond Policy Guidelines, p. 12.

51 <https://www.amnestykenya.org/class-suit-police-brutality/>.

2.2 The police will promptly inform accused persons of the reasons 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 reasons for their arrest and any charges brought against them – this must be communicated to the accused person in a way and manner they understand – can be determined from the degree to which: 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 their rights, promptly and in a way and manner understood by the arrested person; information is available in accessible formats for persons with disabilities and/or sign language interpreters are available to police; and complaints made against the police 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.

The Constitution compels police officers to inform every arrested person of the reason for their arrest, and any charges brought against them, together with their constitutional rights, in a language that the arrested person understands; this is supported by a similar provision in the SSOs. The law clearly describes the rights and entitlements of the arrested person, which include the right to be informed promptly, in a language the person understands, of the reason for the arrest, their right to remain silent and the implications of not remaining silent. The Constitution also guarantees an arrested person the right to a fair trial, which includes the right to be informed of the charges levelled against them with adequate details to answer. The obligation on the NPS to protect the rights of an arrested person further has its roots in the regional and international human rights instruments which Kenya has ratified, such as the ACHPR and ICCPR.

Furthermore, the Constitution reserves sufficient protections for persons with disabilities, which includes the right of reasonable access to information and the right to use sign language, braille and other appropriate means of communication. The Persons with Disabilities Act further provides a legislative framework that reinforces protections guaranteed by the Constitution, and includes a provision requiring the Attorney General in consultation with the National Council for Persons with Disabilities and the Law Society of Kenya to make regulations providing for free legal services for persons with disabilities, including in respect of matters affecting the violation of their rights or the deprivation of their liberties.⁵² Additionally, Kenya has ratified the Convention on the Rights of Persons with Disabilities (CRPD), which imposes treaty obligations on Kenya to promote the rights and freedoms of persons with disabilities without any discrimination.

There is, however, poor application of the rights of persons with disabilities to access information and language interpreters. In a status report on the implementation of the rights of persons with disabilities in Kenya, the KNCHR notes that persons with disabilities continue to face challenges when seeking justice. The report also underlines that some police officers have not received training on equality and disability awareness, making them less capable of responding effectively to the needs of the disabled. Furthermore, the report noted that there are no appropriate services to help facilitate communication between the police and persons with intellectual disabilities, hearing impairment and mental health conditions during police investigations and interviews.⁵³

Access to communication and interpretation services has also been cited as a further challenge affecting the full and effective exercise of the rights of the disabled. In a study on pre-trial detention for persons with disabilities in correctional institutions, respondents noted the absence of sign language interpreters in the context of judicial proceedings. An informant in the study described the case of a deaf inmate whose conviction for rape was read out but he could not comprehend it because interpretation was not provided.⁵⁴

52 Section 38 of the Persons with Disabilities Act of 2003.

53 KNCHR, *From Norm to Practice: A Status Report on Implementation of the Rights of Persons with Disabilities in Kenya*, 2014, p. 36.

54 NGEC and APCOF, *Pretrial Detention for Persons with Disabilities in Correctional Institutions*, 2017, p. 23.

The Association of Persons with Disability of Kenya has also urged the police to hire expert sign language interpreters or to train police officers to provide sign language, which underscores the absence of sufficient sign language interpreters within the NPS to support the provision of services.⁵⁵

While the law sets guidelines and avenues for lodging complaints against the NPS, no available data was found on the number of complaints made against the police for failure to provide information on the arrest and charge of accused persons, and the outcome of these complaints. Available information reveals gaps in terms of compliance with the requirement to provide information on the arrest and charge of accused persons. In 2019, the U.S. Department of State report on human rights practices in Kenya noted that police officers did not always promptly inform persons of the charges against them⁵⁶. IPOA investigations also reveal failure by police officers to promptly inform arrested persons of the reasons for their arrest.⁵⁷

2.3 The police act in a manner that upholds the presumption of the 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 the accused person's innocence until proven guilty in accordance with the law can be examined from the scope of legal guarantee of the presumption of innocence; whether 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 and other law enforcement officials should treat information of a confidential nature; and whether 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.

The Constitution guarantees every accused person the right to be presumed innocent until proven guilty. The NPS Act 2011 and the SSOs further safeguard the exercise of this right – both require police officers, in performing their policing duties and responsibilities, to respect and uphold the rights and freedom set aside by the Constitution for accused persons. Kenya's international and regional legal obligations also mandate the promotion and protection of this right, such as obligations emanating from international legal instruments such as the ACHPR and the ICCPR, to both of which Kenya is a state party.

In addition, the Constitution, the NPS Act 2011 and the SSOs all contain clear and express provisions that protect the right of the accused person to remain silent, and not be coerced to confess guilt or offer incriminating evidence against themselves. While the Constitution sets the basis for the exercise of these rights, the SSOs operationalise them under rules of arrest and detention, in Chapter 15. Kenya is also a signatory to the ICCPR and the ACHPR – both prescribe standards that must be complied with to ensure a fair admission of evidence at a criminal trial.

No data was available to establish the number and nature of complaints made against the NPS for violations of procedural rights related to the presumption of innocence. This information could have been used to assess the level of observance of procedural justice in the enforcement of laws, which is an important element of the right to a fair trial. Available details raise concerns regarding institutional and personal efforts to comply with the principle of presumption of innocence. Despite robust constitutional, legislative and operational frameworks that guarantee the right to be presumed innocent, allegations remain of police killings of suspected criminals, particularly in the contexts of the war on terrorism and the enforcement of laws in urban informal settlements.⁵⁸

55 <https://www.the-star.co.ke/counties/eastern/2019-03-14-hire-sign-language-interpreters-police-told/>.

56 U.S. Department of State. 2019 Country Reports on Human Rights Practices: Kenya, p. 12.

57 IPOA Monitoring report on police conduct during public protests and gatherings, 2017, p. 19.

58 <https://www.voanews.com/africa/rights-groups-demand-end-kenyan-police-extrajudicial-killings>.

The NPS Act 2011 and the SSOs also regulate the handling and release of confidential information by police officers. The Act sets out the foundational principle for the protection and discharge of confidential information, while the SSOs provide clear and detailed standards that operationalise the provision of the Act, and guide police officers in the handling and treatment of confidential information.⁵⁹

The NPS Act 2011 and the SSOs further prohibit the disclosure of confidential information, except in certain circumstances. The Act provides that operational information in the control of police officers should be kept confidential, unless the performance of duty or considerations of justice permit its release. The Act further make it an offence against the NPS to disclose information regarding any investigation or police matter without proper authority.⁶⁰

2.4 The police 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 established 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; 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 whether suspects are brought in person before a competent authority or judicial officer within the official custody time limits.

The Constitution, the SSOs and the NPS Act 2011 lay out a clear framework for police custody time limits, by setting the maximum duration of detention in police custody before the duty to bring arrested persons before a court sets in. They enjoin police officers to bring arrested persons before a court as soon as reasonably possible following their arrest, but not longer than 24 hours from the time of their arrest, or, if the 24 hours lapse outside ordinary court hours or on a day that is not an ordinary court day, then before the end of the next court day. This requirement complies with regional and international human rights standards, which generally prescribe a time limit of not more than 48 hours.

While the law establishes and sets custody time limits, and SSOs provide operational guidelines to police officers, there are concerns about non-adherence to custody time limits by some police officers. The NCAJ in an audit of the criminal justice system established that 12% of arrested persons were kept in police detention for a period exceeding 24 hours, while 5% spent more than five days in police detention before they were presented in court.⁶¹ In addition, an IPOA annual performance report raised further concerns about the level of compliance with restrictions regarding custody time limit. Between January and June 2018, IPOA registered that 21% of police custody facilities inspected were found to be holding detainees for longer than the stipulated period of 24 hours.⁶²

Legal standards also instruct all police stations and other places of detention to maintain an arrest and custody register. Schedule five of the NPS Act 2011 requires police officers that are in charge of police stations and other places of deprivation of liberty to maintain the register and ensure the following information in respect of the detained person is recorded:

- Name of the arrested person;
- Reasons for the arrest and detention;
- Date and time of the arrest and detention;

⁵⁹ Chapter 30 section 65 of the National Police Service Standing Orders, 2017.

⁶⁰ Section 49(9) of the Act, read with the Eighth Schedule.

⁶¹ Supra n. 33, p. 93.

⁶² IPOA Annual Performance Report Jan.-Jun. 2018, p. 25.

- Date and time of first appearance before a court;
- Identity of the arresting officer;
- Date and time for interrogations and identity of interrogators; and
- Date and time of any transfer of the detainee to another place of detention.

The Act further obligates officers in charge of police stations and other police detention facilities to appoint a police officer and assign him the duty of monitoring the welfare of detainees, and ensuring that the register is appropriately updated. The SSOs also emphasise the need for maintaining an arrest and custody register, and provide operational guidance to police officers on how to maintain a custody register as part of the effective management of the police station.

No precise information was, however, available to support analysis of the extent to which suspects are brought before a competent authority or judicial officer within the official custody limit. The law has established a framework for inspection of police stations and posts by oversight and accountability institutions. In fulfilment of this obligation, between January and June 2018, IPOA conducted 155 inspections, including 89 in police stations, 20 in police posts, 17 in patrol bases and 29 in AP camps. In its recommendations, IPOA raised human rights concerns regarding non-compliance with the 24-hour police custody time limits, and asked station commanders to ensure that detainees are produced before a judicial officer on time. IPOA also noted the need for the Inspector General to allocate station commanders adequate resources to facilitate the production of detainees in court within the 24 hours prescribed by the law.⁶³ Although the IAU annual performance reports do not contain specific information on the number of complaints raised against the NPS for failure to comply with the prescribed 24-hour police custody time limit, they highlight other relevant complaints such as obstruction of justice and police abuse of power.

2.5 The police 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 determined by assessing whether: the law provides that police custody is a measure of last resort and provides for alternatives to detention, including court summons, bail and bond; the law provides that police 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; and police are trained on decision-making for the issuance of bail or bond to suspects; 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.

The Constitution, the CPC, the Children Act, the NPS Act 2011 and the SSOs regulate the administration of the right to bail or bond, and the need for keeping arrested persons in police custody. The Constitution grants every arrested person the right to be released on bail or bond on reasonable conditions pending the trial, unless there are compelling reasons to justify their continued detention. The Constitution further augments the right to be released on bail or bond by prohibiting the remand in custody of any person, if the offence for which s/he has been arrested is punishable by a fine only or by imprisonment for not longer than six months.⁶⁴

The CPC also authorises the officer in charge of a police station or a court to grant bail, or release on executing a bond without sureties, to any person accused of an offence, other than the offences of murder, treason, robbery with violence, attempted robbery with violence and drug-related offences. The Act further provides for bail to be fixed having regard to the circumstances of the case, but should not be excessive.⁶⁵ In addition,

⁶³ Ibid., p. 12.

⁶⁴ Article 49 of the Constitution.

⁶⁵ Section 123 of the Criminal Procedure Code.

the Children Act entitles courts to order the release of a child on bail or bond pending their appearance before the Children's Court.⁶⁶

The SSOs contain a set of operational instructions to police officers concerning the release of accused persons on bail or bond, the procedure that should guide the process and the responsibilities of police officers. As noted, the Constitution sets the basic standards that direct police officers in making the decision to grant or deny bail or bond. It mandates police officers to admit arrested persons to bail or release them on bond, unless there are compelling reasons that support their retention in custody.

The SSOs operationalise this constitutional guarantee and set out factors that should guide the NPS in relation to the decision to grant or deny bail, including the likelihood that the accused will abscond, whether they will interfere with witnesses or investigations, the likelihood that they will commit further offence while on release, whether continued detention is necessary for the accused's own protection, and considerations of the security of the suspect or accused persons.⁶⁷

The study was not successful in obtaining the NPS training curriculum to assess whether police officers receive training on making decisions regarding the issuance of bail or bond. However, the NPS, in assessing the decision whether to grant or deny bail or bond, is guided by a set of bail and policy guidelines, formulated by a task force appointed by the Chief Justice. The objective of the guidelines is to guide police and judicial officers in the enforcement of the laws that regulate the administration of bail and bond; in particular, to ensure that the police decision-making process in the issuance or denial of bail and bond is consistent with the values enshrined in the Constitution.⁶⁸

The study did not succeed in finding relevant data disclosing the number of complaints made against the police for denial of bail or bond. Generally, available research reveals concerns about disparities in the administration of bail and bond, and a lack of consistency and common standards in the decision to grant or deny bail by relevant duty bearers.⁶⁹ Further concerns highlight the absence of fairness in police decision-making on bail and bond, including concerns around the police practice of not giving bail and bond on reasonable terms, failure to inform accused persons of their right to bail and bond, and regular detention of persons accused of petty offences. Additionally, the dispensation of bail and bond in traffic-related offences is regarded as problematic. Police decision-making in traffic offences is reportedly arbitrary, with the amount of bail being left at the discretion of the Divisional Traffic Officers.⁷⁰

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 and detention is deemed unlawful by the courts

The extent to which 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 and detention is deemed unlawful by the courts can be assessed by exploring: whether the law guarantees the right to challenge the lawfulness of detention and the right to compensation if an arrest or detention is unlawful; whether suspects are aware of their right to challenge the lawfulness of their detention in court; and the percentage of claims for compensation or other forms of redress awarded and provided.

Articles 22 and 23 of the Constitution guarantee everyone the right to institute court proceedings and seek redress where constitutionally protected rights and freedoms have been denied or infringed. Article 23 vests the High Court with jurisdiction to hear and determine applications for redress of violations of constitutional rights and freedoms, and empowers courts, where violation has been proved, to grant appropriate relief,

66 Section 185(4) of the Children Act.

67 Chapter 15 section 9 of the National Police Service Standing Orders, 2017.

68 NCAJ, Bail and Bond Policy Guidelines, March 2015, p. 7.

69 Ibid., p. 5.

70 Ibid., p. 12.

including an order for compensation. The right to challenge the lawfulness of detention stems from the protection offered by Article 29 of the Constitution, which protects the right of everyone to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily and the right not to be detained without trial, among others. The right of accused persons to promptly challenge the lawfulness of their arrest before a judicial officer is also protected by the ACHPR, as interpreted in the Luanda Guidelines.

No relevant data was available to the study to assess the extent to which suspects are aware of their right to challenge the lawfulness of their detention in court. However, while constitutional provisions, statutory laws and SSOs offer clear protections and safeguards to suspects, available information raises questions about the level of awareness of the right to challenge the lawfulness of detention, and other constitutional rights reserved for suspects in general. IPOA annual performance reports reveal very low levels of institutional efforts to inform detainees of their rights. For the period between January and June 2018, in which it conducted 73 inspections of police facilities, for instance, IPOA notes that only 5% of detention facilities inspected had the rights of detainees displayed in conspicuous places close to the cells.⁷¹ Similarly, IPOA reports that only 7% of facilities inspected between July and December 2019 had the rights of detainees displayed near the cells.⁷²

There was also no accessible data available to the study that specified the number of civil cases instituted against the police for unlawful arrest and detention. The Constitution empowers everyone with the right to institute legal proceedings and claim redress for violations of fundamental human rights and freedoms. Media reports and reports by civil society organisations document numerous cases in which the NPS is being sued for wrongful conduct and violations of constitutional rights and protections. In December 2018, for instance, a court ordered six police officers to pay four million shillings to a lawyer who was unlawfully arrested and detained, and 3.8 million shillings to 19 others who were arbitrarily arrested and detained in 2016. Further, a report by Amnesty International Kenya details a recent class suit initiated by four rights groups against the NPS for widespread violations of human rights in the enforcement of measures adopted to combat the novel coronavirus.⁷³

2.7 Police 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, as required, can be measured by examining the degree to which 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 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.

The Constitution safeguards the right of every accused person to legal services and representation. Article 50 guarantees every accused person the right to a fair trial, which includes the right to choose and be represented by an advocate, and to be informed of this right promptly. The article further provides for an advocate to be assigned to the accused person by the state, at its expense, if substantial injustice would otherwise result, and to be informed of this right promptly. The SSOs also contain guidelines that require police officers to protect the right of access to legal services. The right of access to legal services is also enshrined in the ICCPR and the Luanda Guidelines, which contain an expansive set of guidelines on the provision of legal services to accused persons.

In addition, the Constitution sets the minimum standard and requires all accused persons to be granted access to legal services and to be informed of this right promptly. Furthermore, the obligation to provide legal

71 IPOA Annual Performance Report Jan.-Jun. 2018, p. 20.

72 IPOA Performance Report Jul.-Dec. 2019, p. 27.

73 <https://www.amnestykenya.org/class-suit-police-brutality/>.

assistance is also embodied in the Legal Aid Act 2016, which provides a framework for the provision of legal aid services to indigent persons. It establishes the National Legal aid Service and authorises it to, among other things, facilitate the representation of persons granted legal aid under the Act and assign legal aid providers to persons granted legal aid.

Section 41 empowers any person who wishes to receive legal aid to apply to the National Legal aid Service. Section 42 places specific obligations on the officer-in-charge of a prison, police station, remand home for children or other place of lawful custody to ensure, inter alia, that: every person held in custody is informed, in language that the person understands, of the availability of legal aid upon admission to custody and is asked whether he or she desires to seek legal aid; maintain a register which contains the name of every person held there and their response when asked if he or she desires to seek legal aid. The section also makes it an offence for any person to willfully obstruct a person held in lawful custody from applying for legal aid.

The Constitution further makes provision for accused persons to be provided with adequate time and facilities to prepare their defence, and to be informed in advance of the evidence the state plans to rely on and to have reasonable access to that evidence⁷⁴ The SSOs operationalise this provision and offer police officers specific guidance in relation to legal assistance, including the requirement to provide accused persons with facilities and means to communicate with legal service providers and ensuring the privacy and confidentiality of communication is respected. Furthermore, while the SSOs permit police officers to conduct investigative interviews in the absence of a legal representative, they require them to immediately cease the interview and allow the accused access to legal services when the accused requests it.⁷⁵ Moreover, as noted above, these requirements reflect the more detailed interpretation of the right to legal assistance contained in the Luanda Guidelines.

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

The extent to which the police ensure that arrested and detained persons are treated humanely and kept under humane conditions can be determined by assessing whether the law provides minimum standards for conditions of detention in police custody 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 Rule; if 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 mechanisms available to detainees; the percentage of police and where applicable other law enforcement agencies' budgets allocated to the upkeep and maintenance of detention facilities; and 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, expressed as the proportion of complaints redressed.

The NPS Act 2011 and SSOs specify standards that conditions of detention in police custody must conform with, which are generally consistent with international standards. The Act calls for all police custody facilities to have hygienic conditions suitable for human habitation; adequate light, toilet and washing facilities and outdoor areas; men and women to be held separately; juveniles and children to be kept separately from adults; and pre-trial detainees to be separated from convicted offenders. The SSOs also contain operational directions that regulate communication and visits by members of the accused person's family, the cleanliness of cells and the feeding of detainees, and require, if possible, detainees to be fed in accordance with their national, religious or tribal customs. The SSOs further oblige the officer in charge of the police station to ensure there is a supply of water, mattresses, blankets, towels, bedsheets, toilet paper and drinking water. These provisions comply with the standards set in the Luanda Guidelines.

⁷⁴ Article 50(2) of the Constitution.

⁷⁵ Chapter 22 section 3 of the National Police Service Standing Orders, 2017.

The law also provides for oversight mechanisms over the work of the NPS. It provides oversight and accountability structures with the requisite legal mandate to monitor police custody facilities, and establishes internal and external complaints mechanisms. These include IPOA, KNCHR and the IAU. IPOA was established in 2011 by a statutory law that regulates its mandate and powers, and its objectives include to hold the police accountable to the public in the performance of their functions, give effect to the constitutional provision that requires police officers to act in a professional manner and promote and practise transparency and accountability, and ensure independent oversight over the police's handling of complaints. To achieve these aims, IPOA, among other activities, conducts inspection of police premises, including detention facilities under the control of the police.

The KNCHR is created by the Constitution and operationalised through an Act of parliament. As an independent national human rights institution, it is empowered to, among other things, monitor, investigate and report on compliance with human rights standards in all spheres of the country, including observance of human rights principles by the national security organs. In the execution of its mandate, the body is empowered to investigate any complaints of human rights violations, interview any persons, and issue summons where it deems necessary.⁷⁶ Although the law does not explicitly mandate the Commission to monitor places of custody, the KNCHR conducts visits to places of detention.

Furthermore, the NPS Act 2011 established the IAU to receive and investigate complaints against the police, promote uniform standards of discipline and order within the police and keep a record of the facts of any investigation or complaints made to it.⁷⁷ The Act also mandates the IAU to investigate misconduct and hear complaints from: members of the NPS or members of the public; at the direction of a senior officer; on its own initiative; or on the direction of the Inspector-General; or at the request of IPOA. It may recommend the following disciplinary actions to the National Police Service Commission: the interdiction of an officer; the suspension of an officer; the administration of a severe reprimand or a reprimand to control or influence the pay, allowances or conditions of service of an officer; or any other lawful action.

Kenya has, however, not ratified the Optional Protocol to the Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (the OPCAT), which places an obligation on State Parties to establish and maintain a national preventive mechanism to ensure regular and consistent monitoring of all places of deprivation of liberty.

The NPS Act 2011 also mandates the IG to ensure that all police stations and posts are allocated sufficient funds to run their activities. No information was available to the study regarding the percentage of the NPS budget that is earmarked for the upkeep and maintenance of police detention facilities. However, in the second half of 2018, IPOA observed that 50% of all detention facilities it inspected had inadequate resources allocated to them, and urged the IG and the DIGs to ensure adequate and fair distribution of resources to all police stations to facilitate better policing practices.⁷⁸ This recommendation is further reflected in IPOA's performance report for the reporting period July to December 2019.⁷⁹

While legal provisions regarding conditions of police detention offer enough protection against exposure to inhumane conditions, reports elaborate that conditions of detention in the NPS custody facilities are generally inconsistent with international standards. IPOA performance reports demonstrate that physical conditions of detention in many detention facilities are dirty, unhygienic, and have inadequate lighting, toilets, bedding, washing and outdoor areas. In its July to December 2019 performance report, IPOA records that none of the facilities it inspected provided bedding in the cells, only 24% had toilets within the cells while 40% had bucket toilets, only 7% had an outdoor area, 10% had a wash area, 37% had adequate artificial lighting and only 54% had adequate ventilation in the cells.⁸⁰

These findings are consistent with its observations in the second half of 2018, when it recorded that 59% of all detention facilities it inspected had dirty and unhygienic conditions, while 88% did not provide detainees with bedding.⁸¹ While IPOA made specific recommendations to relevant authorities during this reporting period to improve conditions of detention, there seems to be no uptake of these recommendations, as evidenced by information on the status of previous recommendations in its subsequent reports.

76 Article 59 of the Constitution; section 26 of the Kenya National Commission on Human Rights Act 14 of 2011.

77 Section 87 of the National Police Service Act.

78 IPOA Performance Report Jan.-Jun. 2018, p. 12.

79 IPOA Performance Report Jul.-Dec. 2019, p. 47.

80 Ibid., p. 26.

81 IPOA Performance Report Jan.-Jun. 2018, pp. 11, 12.

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 examined from the extent to which: values are incorporated into police service and other law enforcement agencies' core documents, such as mission statements, codes of conduct and disciplinary codes; police and where applicable other law enforcement officials 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; police and where applicable other law enforcement officials are subject to regular performance monitoring and review in accordance with policy; a clear disciplinary procedure exists in law and practice; 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; 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; 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 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).

The Constitution establishes values and standards that should guide policing activities. The NPS Act 2011, the SSOs, mission and vision statements, disciplinary codes and procedures incorporate these values. The mission of the NPS aims to provide professional and people-centred policing services through community partnerships and upholding the rule of law for a safe and secure society. Key values that shape this mission include justice, integrity, equity, participation, accountability, civility and openness. The SSOs also set forth basic institutional procedures regarding disciplinary proceedings against police officers, and contain provisions that regulate aspects such as offences against the service, penalties for disciplinary offences, the handling of complaints against police officers, and the handling of investigations and the formation of a National Police Service Disciplinary Committee. The SSOs further subject all disciplinary processes to Article 47 of the Constitution, which prescribes lawful, expeditious, reasonable and procedurally fair administrative actions. In addition, the SSOs require police officers at all times, whether on duty or off duty, to conduct themselves with integrity and decorum, and in accordance with the law.⁸² In addition, the IAU seeks to promote professionalism and accountability in the NPS, conduct thorough, timely and impartial investigations of alleged police misconduct and ensure Service with Integrity.⁸³

The law further requires the NPS members to take an oath of office. Section 73 of the NPS Act 2011 obliges police officers, at the time of their enlistment, to take and sign an oath or affirmation which contains allegiance to the Constitution and the law. It requires this oath or affirmation, which it sets out in the Fourth Schedule of the Act, to be administered either in English or Swahili, and in such a way that the police officer regards as binding on his conscience. Section 19 of the Act further requires the IG and DIGs to take an oath or affirmation before the Chief Justice. The SSOs also regulate the taking and administration of an oath and affirmation by police officers.⁸⁴ With regard to reinforcement of the oath or affirmation, the SSOs authorise county and formation commanders to ensure that police officers under their command are provided with lectures about all aspects of their duties, including lectures on the provisions of the SSOs.⁸⁵

The SSOs further contain provisions that provide operational guidance to the NPS, which support the imperative of providing policing services equitably and diligently. They support the adoption of positive measures such as regular and mandatory performance appraisal systems, and require promotion procedures to consider the performance appraisals of police officers. They also prescribe the merit-based promotion of police officers, and require disciplinary proceedings to be informed by the Constitution.

In addition, Article 246 of the Constitution establishes the NPSC, which was operationalised with the enactment of the National Police Service Commission Act. The Act regulates the powers and functions of the Commission, including the monitoring and evaluation of the performance of police officers.⁸⁶ The NPSC also has a career progression guidelines for the NPS Uniformed Personnel, which is to be administered by the IG together with the NPSC.

The Guidelines aims to, inter alia, establish standards for recruitment, training and advancement within the career structure on the basis of professional qualifications, knowledge of the job, experience, competence, merit and ability as reflected in work performance and results, and ensure appropriate career planning and succession management. The SSOs also require the Commission and the NPS to establish a performance appraisal system that is regular and mandatory.

Moreover, section 88 of the NPS Act 2011 institutes a framework that governs disciplinary offences against the Service. It directs all disciplinary proceedings to be conducted in line with the Constitution, and elaborates actions that constitute offences, including unlawfully striking or using or threatening violence against any police officer or other persons, causing disturbance in any police premises, sleeping on duty, drunkenness on duty, absence without leave and resisting lawful arrest, among others. The Act also sets out penalties for disciplinary offences: suspension, reprimand, reduction in rank, a fine, reduction in salaries for a limited period and dismissal. The SSOs also contain provisions that control disciplinary proceedings. They set forth basic institutional procedures regarding disciplinary proceedings

82 Chapter 45 section 1 of the National Police Service Standing Orders, 2017.

83 See the Internal Affairs Unit mission and vision statement.

84 Chapter 60 section 22 of the Standing Orders.

85 Chapter 71 section 5 of the Standing Orders.

86 Section 10 of the National Police Service Commission Act.

against police officers, and provide guidelines regarding the conduct of disciplinary processes, including the commencement of the proceedings; investigations; the formation of a Disciplinary Committee and Subordinate Disciplinary Committee and a County Disciplinary Appeals Board; the time within which disciplinary proceedings are to be conducted; trial in absentia; and provisions on review and appeal procedures. Disciplinary procedures are required following complaints from a member of the public, the Service or a state organ, or other anonymous statements.

As regards training police officers on the types of actions that constitute misconduct, section 76 of the NPS Act 2011 requires the NPSC to develop a training policy, approve the curriculum and oversee its implementation. The SSOs require County Formation Commanders to ensure that police officers under their command and control are provided with frequent lectures on a broad range of topics concerning specific aspects of their mandates, such as the provision of the SSOs, applicable legislation, particularly their amendments, and human rights standards.

The SSOs also regulate police participation in political activities in the country. They prohibit all police officers, in the execution of their duties, from acting as an agent of a political party or furthering the interests of any political party, declaring support for or opposition to any political party or candidate in an election, and engaging in a political activity that may compromise the political neutrality of their position.⁸⁷

The law further sets a clear distinction between the executive direction and policy role and the operational independence of the police and other law enforcement agencies. Article 245 of the Constitution establishes the office of the IG, and requires him/her to exercise independent command and direction over the NPS. The president with the approval of parliament appoints the IG. The NPS Act 2011 sets out the procedure for the appointment of the IG, and requires the NPSC to shortlist, publicly interview candidates and forward the names of at least three candidates to the president for appointment. The Act further requires the president to submit the name of the nominee to parliament, which is entitled to vet and consider the nominee, and may reject or approve him/her. Additionally, the Act provides for the specific functions of the IG, which include the implementation of policy direction, auditing of police operations and functioning, coordination of all police operations and advising the government on policing matters and services.⁸⁸

Operationally, the NPS Act 2011 mandates the National Assembly to allocate adequate funds to the NPS to facilitate the exercise of its functions. It also envisages funding that is made available from other sources. The NPS acquires its national budget through the Ministry of Interior and Coordination of National Government. An assessment of the total allocation of to the Ministry indicates that the trend has generally been upward. Between financial years 2016/2017 and 2020/2021, for instance, its budgetary allocation increased from 126 billion shillings to 134 billion shillings. Disaggregated data shows that in 2019/2020, at least 104.2 billion was set aside for the NPS functions under the Ministry of Interior, and in the financial year 2020/2021, 96.3 billion shillings was allocated to the NPS. Analysis further indicates that the majority of these funds are spent on recurrent expenditures, while very little is spent on developmental policing functions. In the 2020/2021 financial year, highly prioritised programmes include the National Secure Communication and Surveillance System (1.50 billion shillings), Police Modernization Programme (1.00 billion shillings) and Construction and Modernization of National Forensic Facilities (0.34 billion shillings). In the 2019/2020 financial year, the prioritised programmes included Police Modernization Programme (2.55 billion shillings), National Secure Communication and Surveillance System (1.55 billion shillings) and Cyber Crime (1.00 billion shillings).

IPOA annual performance reports for the reporting periods of 2018 and 2019, however, raise concerns about the adequacy of the budget in funding policing activities at station level. The reports call on the IG to ensure adequate and fair distribution of resources and finance to all police stations to fund policing functions and equipment, such as stationery, to ensure efficient service delivery and obviate the need for police officers to purchase stationery using their own funds.⁸⁹ The IAU also reports challenges regarding limited number of manpower, inadequate number of vehicles allocated to the Unit to execute its operations and insufficient supply of fuel for regional IAU offices.⁹⁰

87 Chapter 45 section 1 of the National Police Service Standing Orders, 2017.

88 Section 10 of the National Police Service Act.

89 IPOA Performance Report Jul.-Dec. 2019, p. 47.

90 The Internal Affairs Unit Annual Performance Report 2020, pp. 32 and 33.

3.2 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 determined from the extent to which: 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 officers 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; percentage of recruits and police and other law enforcement officials 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 theory and practice; police and where applicable other law enforcement budgets make provision for sufficient training on the use of force; 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; and 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.

The Sixth Schedule of the NPS Act 2011 articulates conditions on the use of force. It requires police officers to apply non-violent means before resorting to the use of force. It stipulates that force may only be used when other means are ineffective or without any promise of achieving the intended result. Where the use of force is necessary, the Act instructs the police to apply it only to the extent that it is necessary, and that it must be proportional to the objectives sought, the seriousness of the offence and the resistance posed by the person against whom it is applied. The Act also regulates instances where the use of force results in injuries, and mandates police officers present to provide medical assistance to the injured and notify their relatives, and criminalises failure to administer medical assistance, unless the officers have good reasons to justify failure to do. In addition, the Act necessitates the reporting of any use of force to superior officers, and mandates police officers to report any use of force that leads to death or serious injury to the IPOA; failure to make the report is a disciplinary offence.⁹¹ The SSOs also regulate the lawful use of force by police officers. They provide clear guidelines on the circumstances under which force may be applied, including to protect life and property, to protect the officers or others from threats of death or serious bodily injury and to disperse a riotous mob who are committing or attempting to commit a serious offence against a person or property.⁹²

The Sixth Schedule of the NPS Act 2011 further explicitly states that following the obedience of a superior officer is not an excuse for unlawful use of force. The Act also cautions superior officers not to penalise refusal to carry out orders that include unlawful use of force, or treat it as a disciplinary offence. In addition, it is a disciplinary offence, which may escalate to a criminal offence, to issue orders that would lead to unlawful use of force.

As regards the use of firearms, the Sixth Schedule sets out conditions on their use, and requires police officers to use firearms when less extreme means are inadequate and for the following purposes:

- Saving or protecting the life of the officer or another person;
- In self-defence or in defence of another person against imminent threat of life or serious injury;
- Protection of life and property through justifiable use of force;
- Preventing a person charged with a felony from escaping lawful custody; and
- Preventing a person who attempts to rescue or rescues a person charged with a felony from escaping lawful custody.⁹³

91 Sixth Schedule of the National Police Service Act.

92 Chapter 47 section 1 of the National Police Services Standing Orders, 2017.

93 The last three instances were introduced in 2014 by the National Police Service Amendment Act 2014. See Section 54.

The last three circumstances are inconsistent with international human rights norms and values, particularly as enshrined in the UN Basic Principles on the Use of Force and Firearms by Law enforcement Officials.⁹⁴

In the context of a legal framework that prohibits the arbitrary and unlawful use of force, reports indicate that very low numbers of police officers have been prosecuted for excessive and unlawful use of force. In its February 2020 report to the Committee Against Torture on the review of Kenya's third periodic report on the implementation of CAT, the KNCHR observed that during the reporting period, only six police officers were convicted for excessive use of force and extrajudicial killings, despite 103 files being investigated and forwarded to the Office of the Director of Public Prosecutions. The Commission also registered its concerns about the low rate of prosecution of police officers for excessive use of force and extrajudicial killings, as compared to the number of complaints lodged.⁹⁵

Available information also shows the prevalence of policing practice and operational tactics that rely on excessive and unlawful use of force to implement laws. In a report by IMLU to the African Commission on Human and Peoples' Rights, they stress that police use of excessive force and extrajudicial execution is a deep-rooted and systemic challenge. Between 2013 and 2018, IMLU reported 792 cases, the majority of them being extrajudicial execution through shootings, strangulations and drowning.⁹⁶ In addition, between 2009 and 2013, IMLU analysed a total of 1,873 cases resulting from gunshot wounds and found that 67% of these deaths had occurred in the course of law enforcement interventions. The actual number of deaths could be higher as it was further established that the shootings were poorly accounted for. IMLU also found that circumstances of police involvement were unclear or absent in over 60% of fatal shootings, and that there were also serious gaps in documentation of critical forensic findings at autopsy.⁹⁷ A further challenge with excessive use of force within the NPS has emerged from the policing approach adopted to enforce a public order that introduced curfew, declared to contain the spread of the coronavirus pandemic. Amnesty International has reported excessive use of force, violence and brutality by police officers in the enforcement of the curfew, sometimes hours before the actual time of the curfew. The report notes that there have been numerous instances of brutal, disproportionate and unnecessary use of force, with members of the public being beaten, shot at and teargassed, leading to serious injuries and death.⁹⁸

IMLU has also documented instances of arbitrary, indiscriminate and abusive use of force by the police in the implementation of the curfew, with police using weapons such as whips, batons, teargas and live bullets on the public.⁹⁹ Some of the circumstances cited as instigating police use of arbitrary and excessive force include lack of knowledge and training on the use of force and firearms, as many of the officers implicated are young and inexperienced; lack of knowledge on policing standards and Standing Orders; and lack of incentives to do a professional job, as police officers are reported to have low morale stemming from deplorable living standards in camps, although there are ongoing commitments to address this challenge.¹⁰⁰

With regard to training of police officers on the use of force, there is no information that illustrates the percentage of recruits and police officers that receive training and retraining on an annual basis. The Sixth Schedule of the NPS Act 2011 requires the cabinet member responsible for internal security and the IG to make regulations on the use of force, which should, among other things, cover the training requirements on lawful means of using force. The SSOs require all officers of and above the rank of inspectors to be offered publications giving instructions on the use of force in civil disturbance; all police officers should receive pamphlets, riot drill and training; and all recruits should be offered police manuals.¹⁰¹ The SO further instructs county and formation commanders to ensure that police officers in their command receive frequent lectures on topics such as peaceful resolution of conflicts and human rights.¹⁰² Available budgetary estimates only indicate monies set aside for police training colleges and training in general, but no information that disaggregates how the NPS spends these funds was available for reviewing.

94 Basic Principle 9.

95 KNCHR, Report to the Committee Against Torture on the Review of Kenya's Third Periodic Report, 2020, pp. 12, 13.

96 <https://www.imlu.org/index.php/shortcode/reports/typography/send/3-reports/70-imlu-statement-to-the-chairperson-of-the-working-group-on-death-penalty-and-extrajudicial-summary-or-arbitrary-killings-in-africa>.

97 IMLU, Guns: Our Security, Our Dilemma! Enhancing Accountability for Police Use of Firearms, p. 4.

98 <https://www.amnestykenya.org/class-suit-police-brutality/>.

99 The Independent Medico Legal Unit, A Status Report on the Situation of Human Rights Protection in the Measures to Combat Covid-19 Pandemic, 2020, p. 6.

100 T Probert, B Kimari and M Ruteere, Strengthening Policing Oversight and Investigations in Kenya: A Study of IPOA Investigations into Deaths Resulting from Police Action, 2020, pp. 11, 12.

101 Chapter 64 section 7 of the National Police Service Standing Orders, 2017.

102 Chapter 71 section 5 of the National Police Service Standing Orders, 2017.

The NPS Act 2011 also establishes accountability mechanisms and mandates police officers or their superiors to report all cases of use of force that result in death or serious injury or other grave implications to IPOA for investigation. The section also instructs police officers that make the report to IPOA to secure the scene of the conduct for purposes of investigation and to inform the victim's next of kin of the death or injury as soon as possible. Any failure to report the incident is a disciplinary offence. It further permits the IG to conduct an investigation into the case. Additionally, it obliges superior officers to prevent the use of unlawful force, and when such unlawful use of force occurs, to ensure they report it to IPOA. The SSOs also control the use of force and set similar conditions and requirements as the Act, prohibiting police officers from tampering with or damaging any evidence at the scene of the act that resulted in death or serious injury.¹⁰³ Further, the NPS has an internal oversight and accountability mechanism, the IAU which, among other things, receives and investigates complaints against the police and promote uniform standards of discipline and good order within the NPS.

In the 2018 reporting period, IPOA received 412 cases of deaths from police shootings, injuries from police action and deaths in police custody. In addition, 419 cases of physical assault and 33 cases of sexual assault by police officers were reported to IPOA during the same period.¹⁰⁴ A report by the IAU also highlights three cases of deaths in police custody and 25 cases of assaults in the same period.¹⁰⁵ In the same year, the NPS reported that there were 88,268 registered cases, including 2,856 cases of homicide and 2,935 of robbery. The total number of police officers that died in the line of duty in the same period was 65.¹⁰⁶ In 2020, the IAU reported 22 cases of physical assault and 6 cases of deaths as a result of police action.

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 exploring whether all persons are received and treated fairly and are not subject to discrimination, harassment or arbitrary arrest.

Although the legal and policy frameworks that dictate the conduct of the NPS are consistent with international standards, reports illustrate the prevalence of a police operational culture that is not compliant with fundamental human rights and freedoms of all. A report by Amnesty International Kenya on police reform notes that there are numerous reports of police officers targeting members of particular communities in their enforcement of the law, including discriminatory policing, detention and harassment of members of a minority community across the country.¹⁰⁷

Oversight and accountability reports by IPOA and IAU also reveal the existence of challenges in the manner in which police officers treat members of the public, particularly in the context of police harassment. Between 2018 and 2019, IPOA registered 676 cases of police harassment, while IAU reported 523 cases in the same period.¹⁰⁸

Reports further underline police abuse of the broad discretion granted by the law to execute arrests without a warrant and detain people, particularly the arbitrary arrest of poor young men, who in many cases are accused of more serious crimes than they actually committed.¹⁰⁹

103 Chapter 47 section 9 & 11 of the Standing Orders.

104 IPOA performance report, Jan.-June 2018, p 16; and performance report Jul.-Dec. 2018, p. 14.

105 National Police Service Internal Affairs Unit, Annual Report 2018, p. 17.

106 NPS Annual Crime Report, 2018, pp. 1, 7 and 14.

107 Amnesty International Kenya, Police Reform in Kenya: A Drop in the Ocean, p. 20.

108 IPOA Performance Reports 2018 and 2019; National Police Service Internal Unit, Annual Report 2018 and 2019.

109 U.S. Department of State. 2018 Country Reports on Human Rights Practices: Kenya. pp. 4, 11.

3.4 The police will act in a manner that upholds the absolute prohibition of torture and other cruel, inhumane or degrading treatment or punishment. The police will not inflict, instigate or tolerate any act of torture or other cruel, inhumane 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 of torture and other cruel, inhumane or degrading treatment or punishment can be determined from the extent to which the police do not inflict, instigate or tolerate any act of torture or other cruel, inhumane or degrading treatment or punishment. No circumstances will override this prohibition, including threats of war, political instability or periods of emergency. This can be evaluated by exploring whether: 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; police policies and codes of conduct define torture and outline detailed steps the police and other law enforcement officials 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; 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 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 and the 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.

Article 28 of the Constitution safeguards everyone's inherent dignity and the right to have their dignity respected and protected, which includes the right not to be subjected to torture in any manner, including physical or psychological torture. This provision has been supplemented by the adoption of the Prevention of Torture Act. Sections 4 to 8 of the Act define torture – in accordance with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) – and criminalise torture and other cruel, inhuman or degrading treatment or punishment. The Act also gives effect to Kenya's obligations under CAT, the ICCPR and the ACHPR, all of which prohibit torture and other forms of ill-treatment in absolute terms.

Further, the NPS Act 2011 defines and prohibits torture and cruel treatment. The Act makes it unlawful for a police officer to subject anyone to torture or other cruel, inhuman or degrading treatment or punishment, and also provides for the punishment of acts of torture and other ill-treatment, and sets the period of imprisonment to a maximum of 25 years for torture, and 15 years for subjecting anyone to cruel, inhuman and degrading treatment.¹¹⁰ The SSOs also set forth procedures for inquiring into claims of ill-treatment, and require any allegations of ill-treatment to be the subject of immediate inquiry and judicial proceedings, where this is necessary.¹¹¹

¹¹⁰ Section 95 of the National Police Service Act.

¹¹¹ Chapter 15 section 29 of the National Police Services Standing Orders, 2017.

In addition, section 5 of the Prevention of Torture Act clearly stresses that an order from a superior officer or any public authority cannot be invoked to justify acts of torture or cruel, inhuman or degrading treatment or punishment. This provision is also consistent with the provisions of CAT. The Act further provides that no individual can be held liable to either disciplinary action or judicial proceedings only for failure to obey an order from a superior officer or a public official to commit, aid or abet torture or other cruel, inhuman or degrading treatment or punishment.

Section 9 of the Act also prohibits the admission into evidence of any information, confession or admission that has been obtained from anyone by means of torture, inhuman and degrading treatment or punishment, except against the person accused of the crime, as evidence that the statement was obtained through torture and other ill-treatment. The Act also criminalises the intentional use of information that has been obtained by means of torture or other ill-treatment, and prescribes a fine or a period of imprisonment or both.¹¹² Moreover, the Constitution prohibits the admission into evidence of any evidentiary material that has been obtained in a manner that violates the Bill of Rights, if such admission will render the trial unfair, or be detrimental to the administration of justice.¹¹³

With regard to the prohibition of the use of violence or intimidation during interrogations or interviews, chapter 22 of the SSOs compels police officers to act fairly and impartially, and extends protections regarding key elements of interviews, such as respect for the constitutional right to remain silent, confidentiality of information, and duration of the interview, and requires the duration of the interview to be cognisant of fatigue, psychological trauma, medical needs, and fundamental rights of the interviewee. It also sets a clear requirement to inform the suspect of the right to remain silent and consequences of not remaining silent. It further requires the NPS to develop operational manuals to provide guidance to police officers on the recording of interviews with suspects, witnesses and victims. The SSOs further set the basic standard that should guide the contents of the manuals, by pointing out that the manuals should provide for the storage, transcription and retention of electronically recorded information, to promote the integrity of the evidence, and oblige police officers to release interview records and reports, or exhibit them in line with the relevant laws and the Service Administrative Orders, as contained in chapter 64 of the orders.¹¹⁴

The Constitution, the NPS Act 2011 and the SSOs also guarantee every arrested person the right to communicate with an advocate and the right to remain silent, and chapter 22 of the SSOs mandates police officers to ensure that confessions are taken by officers of or above the rank of Chief Inspectors, in the presence of a person of the interviewee's choice or a magistrate. It also instructs the police to cease interviews and allow the suspect access to an advocate in cases where they demand to exercise this right.¹¹⁵ Significantly, the NPS Act 2011 and the SSOs reserve the right for detained persons to have access to medical assistance. In the context of interviews, the SSOs do not offer clear guidance on whether interviewees have the right to a medical examination. They only require police officers to consider the fundamental rights of the interviewees.¹¹⁶

In addition, the Evidence (Out of Court Confessions) Rules 2009 regulates the taking of confessions outside of courts, and offers clear guidance to police officers on the taking, certification and recording of confessions, and embodies the rights of the accused persons, among other things. As regards the prohibition of torture, the rules prohibit the recording officer from recording a confession from any accused person who complains to him of being a victim of torture or whose physical appearance shows signs of physical injuries including open wounds, body swelling, or shows extraordinary fatigue or any other indicators that would suggest that the accused person has been tortured.

Despite the presence of legal and policy guidelines that protect and prevent the occurrence of torture and other ill-treatment, reports elaborate the existence of numerous complaints of ill-treatment against the police. The United Nations Human Rights Committee, in observations made in April 2021, expressed concerns about reports of torture and ill treatment, including in the context of policing activities and places of detention.¹¹⁷ In the context of the 2017 general elections, the KNCHR documented over 100 cases of injuries following the elections, including numerous attacks by law enforcement officials in

112 Section 9(1)(2) and (3) of the Prevention of Torture Act of 2017.

113 Article 50(4) of the Constitution.

114 Chapter 22 sections 1 and 4 of the National Police Service Standing Orders, 2017.

115 Chapter 22 section 3 of the National Police Service Standing Orders, 2017.

116 Ibid.

117 Human Rights Committee: Concluding Observation on the fourth periodic report of Kenya, 2021. CCPR/C/KEN/CO/4. p. 7.

private places of residence and places of business.¹¹⁸ IPOA performance and Board end-term reports also illustrate the prevalence of ill-treatment by police officers. The nature of complaints registered by IPOA ranges from shooting causing injuries, enforced disappearance, police assault, arbitrary arrests, unlawful detention, deaths in custody, death from police shooting, to sexually related offences, threats to life, harassment, police misconduct and intimidation, amongst others.¹¹⁹ The IAU reports also reinforces concern about ill-treatment by the NPS. The Unit annual reports highlight complaints of ill-treatment by police officers, including incidents of torture and cruel, inhuman or degrading treatment or punishment, excessive use of force, threats to life, physical assaults and harassment and intimidation by the police, among others complaints.¹²⁰ In addition, a report by the KNCHR on investigations of human rights abuses in counterterrorism operations, reveals widespread and systemic violations of human rights, including torture in detention by beatings, waterboarding, electric shocks, genital mutilation, exposure to extreme cold or heat, hanging on trees and exposure to stinging by ants.¹²¹ Furthermore, following the 2017 national elections, IMLU recorded 64 cases of excessive use of force by the police, including 28 cases of torture and beatings.¹²²

However, while IPOA and the IAU record and report complaints of misconduct against the police, the complaints-processing procedures do not specify the nature of complaints that have been recommended for investigation and prosecution. IPOA reports only indicate the total number of all complaints referred for investigation, without highlighting the type of offence. Available reports demonstrate a low rate of prosecution of police officers for torture and other ill-treatment. The KNCHR report to the Committee Against Torture notes that only four police officers have been charged with the offence of cruel, inhuman and degrading treatment, in terms of section 95 of the National Police Service Act. The report further reveals that there are no known reported cases of cruel, inhuman and degrading treatment that have been prosecuted under the Prevention of Torture Act of 2017.¹²³ Although the Prevention of Torture Act came into effect in 2017, its implementation remains weak. This is partly because the Act places the political responsibility of ensuring its implementation on the Cabinet Secretary responsible for matters relating to justice, a ministry that is not fully functional.

Other findings and conclusions also point out that allegations of police killings are rarely investigated conclusively, and perpetrators are rarely tried and convicted for their crimes, including where unlawful and unreasonable force has been used.¹²⁴

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

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

The fulfilment of this Standard can be established by assessing whether 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.

While legal and regulatory frameworks require the NPS to keep detainees separately, according to their status, including the separate detention of men and women, intersex persons, children and adults, and pre-trial detainees from convicted offenders, inspection reports illustrate failure by some police stations

118 KNCHR, *Still a Mirage: A Human Rights Account of the 2017 Presidential Elections*, pp. 172-216.

119 IPOA Annual Performance Reports, 2018 and 2019.

120 The Internal Affairs Unit Annual Performance Report 2020, p.22.

121 KNCHR, *The Error of Fighting Terror with Terror*. Preliminary report of KNCHR investigations on human rights abuses in the ongoing crackdown against terrorism, 2015, p. 6.

122 Statement by IMLU to 62nd Ordinary Session of the African Commission on Human and Peoples' Rights, p. 1.

123 KNCHR, *Report to the Committee against Torture on the Review of Kenya's Third Periodic Report*, 2020, p. 10.

124 IMLU, *Alternative Report in Response to Second Periodic Report by Kenya to the CAT*, 2013, p. 24.

to observe this requirement. In its inspection of police custody facilities, IPOA consistently points out challenges concerning separation of detainees according to their status. In its June to December 2019 performance report, for instance, IPOA reports that out of 42 KPS detention facilities inspected, 69% had male cells, while only 62% had female cells; 2% had separate cells for male juveniles and none had separate cells for female juveniles. Additionally, in its performance reports of the last two years, IPOA has repeatedly made recommendations to the Inspector General and the cabinet member responsible for policing to set aside an adequate budget for the establishment of modern police stations, which will allow the separate detention of males, females and juveniles.

The audit study on Kenya's criminal justice system conducted by NCAJ also revealed a lack of compliance with the legal requirement to hold detainees according to their status. The report documents that, as a result of a lack of female staff at some police stations, female detainees are not always supervised by female police officers, which means that male officers enter female cells without being escorted by female officers. The report further found that some police stations cannot separate children from adults due to inadequate facilities, while others detain children and women together. In addition, while some police stations kept male and female detainees separately, they reported that this was not possible when transporting them to court or hospital. Similarly, the study established that while some police stations detained children and adults separately, they are mixed with adults during transportation to courts and hospitals.¹²⁵

3.5.2 The police will provide all persons deprived of their liberty with adequate food and clothing, unless the detained person elects to provide their own

Compliance with this standard can be determined by examining: whether the police and where applicable other law enforcement officials provide detainees under their care with adequate food and water, and clothing, where necessary; the 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.

Reports generally highlight the presence of good practices regarding the provision of food and water, in some cases with up to 65% of police stations inspected by IPOA reporting that detainees receive three meals per day, and as many as 90% of the facilities indicating that detainees are provided with clean drinking water.¹²⁶ However, the IPOA performance report for the period June to December 2019 found that out of 42 KPS facilities inspected, only 43% provided detainees with three meals every day, and 74% with clean drinking water; with only 43% of detainees acknowledging that the meals provided were sufficient.¹²⁷

Moreover, the audit of criminal justice report by NCAJ also stresses that meals provided at police stations are basic and may only be suitable for not longer than one or two days. This may pose challenges to the rights of detainees when they are kept in custody for a longer period than the 24 hours anticipated by the law.¹²⁸ The report further clarifies that police officers do not offer clothes to detainees, and if the detainees' clothing is no longer appropriate or has been taken in as evidence, alternative clothing will have to be provided by their relatives.¹²⁹

Precise information regarding the number of complaints made against the NPS for conditions of detention that are inhumane or inconsistent with the right to dignity of detainees was not available to this study. However, IPOA inspection findings contain data that translate its observations into a general percentage, in some cases presenting this outcome by offering the status of detention facilities at initial visits and their status at follow-up inspections, to assess any improvements or decline in conditions. In its report of July to December 2019, IPOA compares the initial and follow-up status of some detention

125 National Council on the Administration of Justice, Criminal Justice System in Kenya: An Audit, 2016, pp. 285–287.

126 IPOA Performance Report Jan.–Jun. 2018, p. 21.

127 IPOA Performance Report Jun.–Dec. 2019, p. 26.

128 National Council on the Administration of Justice, Criminal Justice System in Kenya: An Audit, 2016, p. 290.

129 Ibid., p. 280.

facilities, and notes improvements. It reports that while 66% of the detention facilities it inspected were in good hygienic conditions at the time of their initial inspection, this number increased to 81% at follow-up inspections. Similarly, 33% of police stations had adequate artificial lighting at initial inspection and 53% at follow-up inspection. Cleanliness of toilets and wash areas was 55% and 53%, respectively, at initial and follow-up visits, with provision of bedding at 25% and 11% respectively.¹³⁰

3.5.3 Facilitate assistance from medical practitioners

The accomplishment of this Standard can be deduced from the number of detainees seeking medical attention, and the percentage who received healthcare while in custody, including the nature of the care and the time taken between complaint and receipt of services; and whether the law provides for physical and mental health assessment screenings and a process for the diversion of persons to mental healthcare facilities if required.

Legal frameworks establish the obligation to provide detainees with medical assistance. The SSOs also place an obligation on officers in charge of police stations to inspect the cells every day and ascertain if they are clean or whether detainees have any complaints, and if detainees appear to be ill or injured or complain of illness, guidelines require medical attention to be sought immediately.¹³¹

No data was available to the study to quantify the number of detainees that seek medical attention, and the percentage that receive it. IPOA reports indicate the number of police detention facilities that provide medical care to detainees, without demonstrating the number of detainees that have sought and received medical attention in any specific reporting period. However, the NCAJ audit report found that in police detention facilities inspected, all but one reported that when detainees show signs of injury or ill health, or complain about illness, they are taken to a hospital or clinic without delay.¹³²

Moreover, section 162 of the CPC regulates the treatment of persons with mental illness, and sets out the procedure for assessing and dealing with such persons, including detention in a mental health hospital or other suitable place of custody. The SSOs further regulate the detention of mental health patients, and provide mechanisms for guarding them in detention, including searching them, inspecting cells before their placement, recording their information in the occurrence book and placing them in a cell of their own, among other things.¹³³

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.

Compliance with this Standard can be analysed by examining whether the law provides for the right of access by detainees to family members, or another person of their choice; and 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.

The NPS Act 2011 and the SSOs guarantee the right of detainees to communicate with and receive visits from family members, which is limited only by reasonable conditions and restrictions, such as those occasioned by the exceptional needs of the investigations. The law also grants all detained persons the right to inform family members of the arrest and detention and the place of detention.¹³⁴

130 IPOA Annual Performance Report Jul.–Dec. 2019, pp. 32, 33.

131 Chapter 15 section 14 of the National Police Service Standing Orders, 2017.

132 National Council on the Administration of Justice. Criminal Justice System in Kenya: An Audit, 2016, p. 281.

133 Chapter 15 section 35 of the National Police Service Standing Orders, 2017.

134 Fifth Schedule of the National Police Service Act.

There is no information that illustrates the extent to which visitation to detainees in police custody is recorded, and whether explanations are noted for any limitations on the right. However, the audit study by the NCAJ found that in most cases the police keep records diligently. This practice is also highlighted by IPOA in its inspection of cell registers, which indicates good record management in the keeping of some registers, such as the occurrence book, but gaps in the keeping of others, such as the detainees' property register.¹³⁵

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

The extent to which the police 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 can be determined by exploring the 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.

The law and SSOs provide a framework for the safeguard of the rights of accused persons, including the right of access to an advocate. In addition, the Legal Aid Act, 2016 offers legal aid services and provides a legal aid scheme to assist indigent persons in the country to access legal aid. No data that demonstrates the number of complaints made against the police for denial of access to a lawyer was available to the study. However, the KNCHR report to the Committee on the Prevention of Torture indicates that the protections afforded by the law to persons deprived of liberty are not upheld in practice, and notes that it has documented failure by police officers to respect the rights of an arrested person from the time of arrest.¹³⁶ Moreover, in a preliminary report of investigations on human rights abuses in crackdowns against terrorism, the KNCHR reported widespread violations of the rights of freedoms of arrested persons by police officers, including being held incommunicado without access to means of communication with legal representatives.¹³⁷

135 IPOA Annual Performance Report Jul.–Dec. 2019, p. 33.

136 KNCHR: Report to the Committee Against Torture on the review of Kenya's third periodic report, p. 20.

137 KNCHR, The Error of Fighting Terror with Terror. Preliminary report of KNCHR investigations on human rights abuses in the ongoing crackdown against terrorism, 2015, p. 36.

3.6 The police will act in a manner that adheres to the absolute prohibition against extrajudicial executions and the government will enact legislation to ensure that such actions are investigated and prosecuted as a matter of priority and as a punishable criminal offence under the law. Police will not derogate from this principle on account of war, armed conflict or other emergencies

The extent to which the police will act in a manner that adheres to the absolute prohibition against extrajudicial executions and the government will enact legislation to ensure that such actions are investigated and prosecuted as a matter of priority and as a punishable criminal offence under the law, and that police will not derogate from this principle on account of war, armed conflict or other emergencies, can be assessed by determining 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 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; 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; and the 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.

The SSOs lay down the procedure for the transfer of detainees. To enable the transfer of persons required at another police station, they require an apprehension report to be submitted to a magistrate and an application made to have the person remanded, to enable them to be transferred to the station where they are wanted.¹³⁸ The SSOs further prohibit the movement of detainees without the permission of the officer in charge of the police station, and require all movements of detainees to be recorded in the cells register and occurrence book.¹³⁹

Legal and policy instruments further protect the right of arrested persons to communicate with legal representatives, family members and others whose assistance is necessary. This protection is also embodied in the Persons Deprived of Liberty Act, which criminalises the deprivation of any rights it guarantees to arrested persons, including the right to communicate, and prescribes a fine or imprisonment or both for any infringement.¹⁴⁰

The law also places an obligation on IPOA to investigate any complaints regarding disciplinary or criminal offences by any member of the NPS. Section 24 of the IPOA Act further creates a mechanism for lodging complaints with the body, by providing that a person wishing to lodge a complaint against the police may do so orally or in writing or through other appropriate formats. Section 88 of the NPS Act 2011 also requires the IAU, which has its own reporting channels, to receive and investigate complaints against the police. Between 2018 and 2019, IPOA reported 357 cases of death in police custody or as a result of police action. In 2018, the IAU reported 3 cases of deaths in police custody and, in 2020, it documented 6 complaints of death as a result of police actions.

Additionally, reports by civil society organisations detail numerous cases of death as a result of police actions. A report prepared by IMLU on deaths by police officers from January to December 2017 notes that between 2013 and 2017, there were 764 extrajudicial executions, of which 572 were summary

¹³⁸ Chapter 15 section 2 of the National Police Service Standing Orders, 2017.

¹³⁹ Chapter 15 section 15 of the National Police Service Standing Orders, 2017.

¹⁴⁰ Section 31 of the Persons Deprived of Liberty Act.

executions and 92 were people killed in unclear circumstances. The report further points out that in 2017 alone, 152 people were killed by the police.¹⁴¹ Despite high numbers of documented cases of extrajudicial executions, reports illustrate limited progress in the investigation and prosecution of the widespread extrajudicial killings by the police reported since 2007.¹⁴² In this regard, reports indicate that the National Coroners Service Act, 2017 is yet to be implemented. The Act establishes the National Coroners Services, and seeks to, among other things, provide for the mandatory requirement to report reportable deaths; establish the procedures for investigations by coroners of reportable deaths; and provide for the complementary role of forensic medical science services to the police in handling investigations involving decedent bodies and scene management.

Available reports emphasise that limited progress in the operationalisation of the Act is partly attributable to the absence of a Cabinet Secretary responsible for Justice, which the Act identifies as the political head of the implementation process.¹⁴³ In a study conducted to assess challenges faced by IPOA in investigating death as a result of police action, respondents reported a number of factors that promote police killings, including lack of training and knowledge of policing standards, lack of incentives, mental illness and psychological distress suffered by some police officers, poor quality of investigations conducted by the police, and poor evaluation measures for police performance, in terms of which police officers are presumed to have performed well by arresting and even killing suspected criminals.¹⁴⁴

No information was available to the study regarding the number and nature of complaints of death as a result of police action or deaths in custody, made by police officers against their colleagues. IPOA reports relay only the general source of all complaints received, which includes complaints from police officers, without specifying the sources of the complaints for each offence. Further, IPOA reports provide the general number of cases investigated and referred to the prosecuting authority, without pointing out the nature of the offence successfully investigated and submitted for prosecution. As at December 2019, IPOA had forwarded a total of 220 cases to the Office of the Director of Public Prosecution for further action, while 23 police officers had been charged with murder, two with manslaughter, and one with causing death by dangerous driving. Furthermore, there were 17 cases of inquest before the courts, occasioned by police actions. The KNCHR reports that so far only six police officers have been convicted for extrajudicial killing and excessive use of force.

141 IMLU, Death by Police Officers from January to December 2017.

142 KNCHR: Report to the Committee Against Torture on the Review of Kenya's third periodic report, 2020, p. 13.

143 D Ochami "National Coroners Service Act yet to be implemented three years after enactment". The Standard. December 6 2020. Available at <https://www.standardmedia.co.ke/kenya/article/2001396413/chief-coroner-yet-to-be-named-three-years-on-over-legal-gaps>.

144 T Probert, B Kimari and M Ruteere: Strengthening Policing Oversight and Investigations in Kenya: A study of IPOA investigations into deaths resulting from police action, 2020, pp. 10-12.

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 organisations 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. They will make known and provide victims with assistance, including psychological, medical and social services. The police organisations will ensure that officers receive training to sensitise them to the diverse needs of victims. This can be ascertained by assessing whether: the 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; victims receive prompt and courteous assistance from the police and other law enforcement officials, 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; and 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 SSOs and the Victim Protection Act regulate the treatment, handling and obtaining of information from victims with special needs. The SSOs require police officers to be given regular lectures, at least once a week, on various aspects, including care of special victims. They also contain guidelines that instruct police officers on how to deal with witnesses and victims of offences in general, and the interviewing of victims of sexual and gender-based violence and children. They set clear requirements to obtain information in a professional way, including the need to conduct the interview in a friendly and private environment, obtaining the victim's consent, providing support to victims, and ensuring that the interview is conducted in the presence of an appropriate adult, where the victim is a child. The SSOs further require police officers and the Directorate of Criminal Investigations at police stations to jointly administer a facility that registers the victims of crimes and violence, establishes support schemes for the victims, and encourages victims to seek support through the scheme.

The Victim Protection Act provides for the rights, protection and support of victims of crime, including through the provision of information and support services. Section 6 provides for the preliminary assessment of victims. It stipulates that any person charged with the duty of assisting victims shall undertake a preliminary assessment of every victim and file a report on the victim, within twenty four hours of report of the offence.¹⁴⁵

While existing legal frameworks provide sufficient safeguards to promote the provision of critical services to victims of crime, available reports indicate challenges regarding the provision of assistance to victims by the police.¹⁴⁶

Reports by civil society organisations also detail how members of a particular ethnic minority group continue to face heightened risk of ill-treatment, harassment and extortion, and arrest without charges in major security operations by police officers, which raises concerns about discrimination.¹⁴⁷

¹⁴⁵ Sections 3 and 6(1) of the Victim Protection Act 17 of 2014.

¹⁴⁶ Peter Kiama et al., *Violence amongst the Urban Poor in Nairobi*, 2016, pp. 18-24.

¹⁴⁷ Amnesty International Kenya, *Police Reform in Kenya: A Drop in the Ocean*, p. 20.

Available surveys further indicate that victims are adequately informed and notified only when the suspect is arrested and they are to appear as witnesses. A study conducted to assess the perception of informational justice in Kenya found that most victims of crime felt that they received sufficient information regarding the arrest of the suspect, and when they were expected to appear in court as prosecution witnesses. However, most victims reported that they were not adequately informed about the overall progress of investigations, the time and place of court proceedings and the release of the suspects. This raises concerns that authorities only keep the victims adequately informed as they prepare to use their evidence in courts.¹⁴⁸

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

The extent to which 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. This can be observed from evaluating whether: 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; 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; police and where applicable other law enforcement officials' basic and in-service training incorporates elements of sensitivity training, equality and managing diversity; 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 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.

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While the Constitution embodies values that promote equality and non-discrimination, Kenya has not adopted a comprehensive legislative instrument that prohibits discrimination. The law establishes the IAU and the IPOA to investigate and report complaints against the NPS, including allegations of discrimination. The IAU was established by section 87 of the NPS Act to receive and investigate complaints against the police. In performing its statutory obligations, the IAU receives complaints from the public, police officers and other agencies, among others. Between 2013 and 2020, the IAU received 10,089 complaints.

The IPOA is established through the Independent Policing Oversight Authority Act to provide for civilian oversight over policing, through receiving and investigating any complaints regarding disciplinary or criminal offences committed by any member of the police, among other things.

While the law offers protection against discrimination and unequal treatment, annual reports by the IAU and the IPOA reveal numerous complaints of police inaction, negligence, harassment, wrongful arrest and detention. In 2019, IPOA registered 1,054 cases of police inaction and negligence, 306 incidents of harassment and 154 cases of wrongful arrest and detention. In addition, between 2019 and 2020, the IAU reported 923 cases of police inaction, 398 incidents of police harassment, and 30 cases of police negligence.¹⁴⁹ Other reported complaints include malicious prosecution, unethical police practice and assault. Although it is difficult to establish what motivates police inaction, negligence, harassment or unlawful arrests and detention, reports by human rights groups highlight numerous incidents in which

148 K Mwai and O Mogambi, *Victim Willingness to Engage with the Kenya Criminal Justice System: Does Informational Justice Matter?* 2016, pp. 60, 61.

149 See IPOA performance reports for Jan.- June, p. 14; and Jul.-Dec. 2019, pp. 15-16; and IAU performance report for the year 2019, p. 17, and 2020, p. 22.

members of specific ethnic minority groups have been rounded up and detained for long periods, particularly in the context of the crackdown against terrorism.¹⁵⁰

As regards training of the NPS on sensitivity and equality, the SSOs require police officers to be provided with frequent lectures, including on principles of human rights. No information was available to the study regarding the NPS training curriculum. However, reports by oversight bodies underline the lack of skills by some police officers in dealing with vulnerable groups. IPOA thematic inspection reports note this lack of critical training, including a lack of training on how to handle people with disabilities, gender disparity and matters pertaining to children. IPOA has also pointed out the profiling of immigrants due to a lack of training, and defilement cases against vulnerable groups such as children.¹⁵¹

The SSOs make reference to the Director of Gender, Child Abuse and Protection, and outline her duties and responsibilities, which include policy formulation on gender issues and dissemination of information on gender, child abuse and rights.¹⁵² The SSOs further require recruitment and appointments to be based on principles of accountability, transparency, fair competition and merit, adequate and equal opportunities for appointment, training and advancement for women, men and members of all ethnic groups. They note that all promotions must be based on merit, and that all police officers must be afforded equal opportunities for promotion. Furthermore, to ensure its staffing component is reflective of the diversity of the people of Kenya, section 5 of the NPS Act 2011 provides specific guidance to the NPS regarding the composition of the Service. However, a study by the KNCHR on the monitoring of the recruitment of police constables to the NPS found non-compliance with laws and regulations, including failure to comply with advertisement and shortlisting requirements, allegations of corruption and political interference, and failure to promote gender equality.¹⁵³

150 Amnesty International Kenya, *Police Reform in Kenya: A Drop in the Ocean*, p. 20.

151 IPOA Annual Performance Report Jul.–Dec. 2019, pp. 36–38.

152 Chapter 8 section 11 of the National Police Service Standing Orders, 2017.

153 KNCHR, *Disservice to the Service. Report of the monitoring of the 2016 recruitment of police constables to the National Police Service*, 2016, pp. 7, 15, 22 and 23.

3.9 The police will act in manner that recognises the right of all persons to peaceful assembly, without restriction, insofar as this is consistent with the rule of law, democracy, public peace, 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 manner that recognises the right of all persons to peaceful assembly, without restriction, insofar as this is consistent with the rule of law, democracy, public peace, 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. This can be ascertained from the extent to which: the right to freedom of assembly is recognised in the law; 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 include: the principle of legality, legitimate interest, proportionality, necessity, non-discrimination and equality before the law; 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; 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: (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 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; for each assembly, there is a clear, transparent and single command structure; and 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.

Section 37 of the Constitution protects the right of everyone to assemble, demonstrate, picket and petition. The obligation to respect and promote the right to freedom of assembly also stems from Kenya's ratification of the ICCPR and the ACHPR, as interpreted by the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa (Guidelines for Policing of Assemblies in Africa). The SSOs also mandate police officers to ensure the protection of the rights and fundamental freedoms of expression, association and assembly, demonstration, picketing and petition.¹⁵⁴ In addition, the IG has reviewed public order policing to ensure the maintenance of public order and the policing of assemblies and protests comply with constitutional values.

The domestic legal framework applicable to the freedom to assemble with others is contained in a number of legislative instruments. Section 5 of the Public Order Act regulates the organisation of gatherings, and applies restrictions. The Act does not embody clear guidelines that comply with international human rights standards for the exercise, conduct, restriction or limitation of assemblies and gatherings, as is extensively set out in the Guidelines for Policing of Assemblies in Africa, and contains a limited provision on the use of force.¹⁵⁵

154 Chapter 58 sections 1-4 of the National Police Service Standing Orders, 2017.

155 Sections 5 and 14 of the Public Order Act.

The Penal Code also contains restrictions on the right to freedom of assembly. It defines and prohibits unlawful assemblies, and prescribes the imposition of imprisonment for participating in unlawful assemblies.¹⁵⁶

Despite the constitutional guarantees of the right of assembly, reports indicate that the NPS does not have a comprehensive public order management policy. In a report on police conduct during public protests and gatherings, IPOA notes the impact of the absence of public order management policy, and recommends the adoption of a framework to guide assemblies and gatherings. It observes that:

With no proper policing policy around policing and public order management, where management of right to assembly, demonstration, picketing, or presentation petitions to public authorities' fall, the demonstrations and those organizing them, together with the police, fall victims. The Service should take keen interest to ensure that a policy is developed to guide public order management with respect to the rights of everyone, including businesses. The policy should focus on preparedness, engagements and role of communities, planning, identifications, intelligence gathering, and training even with external assistance, deployment, response among other areas.¹⁵⁷

It was not possible to ascertain whether NPS members involved in the facilitation of assemblies receive effective and rights-centred training on the management of assemblies, as this information was not available to the study. However, the report and findings by IPOA on police conduct in public protests further acknowledge the lack of proper and effective training, and recommend the NPS to:

Urgently establish a comprehensive training on public order management with reference to other international standards as comparatively expressed in Part 7 of this report. This training could seek for external assistance from USA, Sweden and UK, countries that are already involved in the Police Reform Program under the Ministry of Interior and Coordination of National Government. This training should be inculcated in the training curriculum using modern methods and best practices from other countries. The training on this area should take into consideration psychological, social and cognitive skills, where establishing a sense of trust in the public, developing a sense of identity in society, and helping the next generation prepare for the future, should be taken seriously in the service.¹⁵⁸

The Sixth Schedule of the NPS Act 2011 describes the requirements and conditions for using force and firearms, and sets guidelines regarding the use of force. However, reports emphasise that police officers continue to use arbitrary and excessive force and violence, and in many instances firearms, to carry out their duty to manage assemblies and gatherings, which in some cases includes peaceful and lawful gatherings. In its Concluding Observations on the fourth periodic report of Kenya, for instance, the Human Rights Committee expressed concerns about continued use of excessive force to disperse protests, and about reports of arbitrary detention and arrest of human rights defenders for exercising their right to peaceful assembly.¹⁵⁹ In 2017, police officers were accused of unlawful and excessive use of force in response to protests after the announcement of the national election results. The KNHCR documented excessive use of force by police officers in the management of demonstrations and gatherings, including the use of teargas, truncheons and live ammunition, resulting in the deaths of protesters and bystanders. There were also reports that police officers executed other protesters in cold blood and left several others with numerous injuries.¹⁶⁰ This is contrary to the requirements of the NPS Act 2011, which envisages the use of force and firearms as an exceptional measure. Furthermore, the Act also requires all police officers in uniform to affix a nametag or identifiable service number on a clearly visible part of the uniform at all times. The SSOs also direct police officers in uniform to wear a nametag, badge or identifiable service number. IPOA monitoring of police conduct, however, further established that many police officers involved in managing gatherings could not be successfully identified because they did not have any conspicuously displayed means of identification, including nametags or identifiable service numbers on a visible part of their uniforms.¹⁶¹ Failure by police officers to display identification during the management and facilitation of public assemblies undermines efforts to promote individual accountability and discipline within the police.

156 Sections 78 and 79 of the Penal Code.

157 IPOA, Monitoring Report on Police Conduct during Public Protests and Gatherings, 2017, p. 25.

158 Ibid., p. 27.

159 Human Rights Committee: Concluding Observation on the fourth periodic report of Kenya, 2021. CCPR/C/KEN/CO/4, p. 10.

160 KNCHR Still a Mirage: A Human Rights Account of the 2017 Presidential Elections, pp. 172–216. See also Human Rights Watch Kill those criminals: Security forces Violations in Kenya's August 2017 Elections. Available at: <https://www.hrw.org/report/2017/10/15/kill-those-criminals/security-forces-violations-kenyas-august-2017-elections>.

161 IPOA monitoring report on police conduct during public protests and gatherings, 2017, p. 18.

In addition, the SSOs place a duty on police commanders leading the management of the gathering to ensure that police officers under their command behave in accordance with the principles enshrined in the SSOs, and require them to organise a debriefing exercise after every public event to identify any deficiencies in planning and lessons drawn from it. However, IPOA findings on monitoring police conduct during public protests further underline that police officers have been found to act unprofessionally, largely because of poor communication and coordination, and conclude that the deployment of officers from different units within the NPS without proper briefing and training undermines the effective and efficient command, control and coordination of assemblies and gatherings.¹⁶²

As part of executing its mandate, and to promote accountability in the provision of policing services, IPOA investigates incidents of the use of force that result in deaths or serious injuries, and can do this after official notification by the police, as a result of complaints by members of the public or on its own motion.

The law empowers IPOA to, among other things, investigate any complaints related to disciplinary or criminal acts committed by any member of the NPS, including during the facilitation of assemblies, on its own motion or on receipt of a complaint, and make recommendations to the relevant authorities, including the national prosecuting authority. Although IPOA has reported non-cooperation by some members of the police as a challenge to the effective and efficient execution of its mandate, since its inception it has consistently received, recorded and referred complaints to the relevant state authorities, as required by the law.

¹⁶² Ibid., pp. 18, 19.

COMMON STANDARD 4: THE POLICE WILL ACCOUNT FOR VIOLATIONS BY OFFICERS OF CITIZENS' HUMAN RIGHTS

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 assessed from the number and type of reported complaints of human rights violations by the police and where applicable other law enforcement officials; 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 officials; 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 law provides for the existence of an internal disciplinary mechanism and an external, independent oversight authority, which are the IAU and IPOA. IPOA and the IAU have consistently reported complaints of human rights violations against service members. As at December 2019, IPOA had reported a total of 15,196 complaints, while the IAU registered 10,089 between 2013 and 2020.¹⁶³ The nature of complaints includes death from police action, wrongful arrest and detention, death in police custody, enforced disappearance, unlawful discharge of a firearm, police inaction, harassment, obstruction of justice, assault, bribery and corruption and abuse of power.¹⁶⁴

IPOA operational statistics since its inception to December 2019, and information available on the complaint management system, indicate the number of complaints received and how they were processed, without demonstrating the nature of sanctions imposed on police officers, following successful investigations and

¹⁶³ IPOA performance report Jul.-Dec. 2019, p. 49, and IAU performance report 2020, p. 14.

¹⁶⁴ See for instance IPOA performance report Jan.-June 2019, p. 14; IPOA performance report Jul.-Dec. 2019, pp. 15-16; and IAU performance report 2019, p. 17.

prosecutions. As at December 2019, a total of 5,940 cases had been opened for investigation, while completed investigations stood at 1,889. The number of files closed after preliminary investigations and legal review were 926, and 220 cases were referred for prosecution. There were 75 cases before the courts, and six convictions.¹⁶⁵

IAU annual reports, on the other hand, provide only the number of complaints received by the unit annually, and how they were processed. The 2019 report notes that the unit received a total of 1,139 complaints. All complaints were processed, with 402 files referred to other agencies, 317 cases resolved, 301 recommended for preliminary inquiries, and 119 recommended for investigation. In addition, sanctions imposed in 15 cases reveal that the nature of sanctions imposed range from administrative actions to referral to the IGP for further actions.

In 2020, the unit received a total of 1,043 complaints. Out of this, 777 were assigned to complaints management section for action while 266 were assigned to investigation section for investigations. Of the 777 that were assigned to complaints management section, 244 were resolved while 533 are still pending action by the concerned commanders. And out of the 266 complaints assigned to the investigation section, 85 were investigated and finalised while 181 are still pending investigation.

As an internal control mechanism, the IAU plays a key role in the promotion of accountable and transparent policing practices. As such, it is important that some of the challenges and concerns that impede its full and effective functioning be addressed to strengthen its capacity and engender sustainable impact on policing and public security.

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 the ethnic, gender, language and religious composition reflective of the population it serves

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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. Recruitment will ensure that the police organisations are representative of the community as a whole, with ethnic, gender, language and religious composition reflective of the population it serves. This can be determined by ascertaining 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 5 of the NPS Act 2011 requires the composition of the NPS to, as far as as reasonably possible, uphold the principle that not more than two-thirds of the appointments shall be of the same gender; and reflect the regional and ethnic diversity of the people of Kenya. In addition, the NPS has adopted a policy instrument on gender, that seeks to give effect to the provision of the NPS Act 2011 and promote gender equality and equitable representation of women in the Service.

Article 246(3) of the Constitution spells out the mandate of the NPSC as including the recruitment and appointment of persons to hold or act in offices in the service, confirming appointments, and determining promotions and transfers within the NPS. To facilitate the effective execution of its mandate, the NPSC has adopted Recruitment and Appointment Regulations 2015. The SSOs describe operational requirements that direct the screening and selection of candidates for the NPS. It requires the NPSC to be responsible for the

165 IPOA performance report Jul.-Dec. 2019, pp. 49-50.

recruitment and enlistment of candidates and sets specific conditions for candidates, including personal interviews with the Commission, possession of appropriate academic qualifications, be physically and mentally fit, have no criminal record or pending criminal charges, invitation for physical aptitude and medical assessment as well as verification of documents presented. The SSOs further require the NPSC to ensure an ethnic, gender and regional balance in shortlisting candidates, and give due regard and opportunities to persons with disabilities, where this is appropriate and practicable.¹⁶⁶

The report by KNCHR on the monitoring of recruitment, however, raises a number of concerns about the screening and enlistment process, including the overreliance on physical aptitude at the expense of other key aptitudes, premature elimination of candidates during medical examination, poor conditions under which medical tests are carried out, late closure of recruitment stations, and failure to announce the number of recruits to be picked from each centre, which the Commission observed creates the possibility of manipulating the procedure to recruit outside of the process.¹⁶⁷

The SSOs also outline clear conditions that apply to promotions, and mandate the NPSC to determine all promotions following recommendations by the IG in consultation with the Service Board. Chapter 8 of the SSOs describes ranks, duties and responsibilities of police officers. It sets out the ranking structure of the NPS, and the job description of the various directors and commandants of the formations and units. Significantly, SSOs place a duty on all police officers to undertake the duties and responsibilities assigned to a police officer by the NPS Act 2011, despite the description it set forth.

Additionally, the SSOs require promotions to be based on merit, and all police officers to be given equal opportunities for promotion. Media reports, however, describe allegations of discrimination and favouritism in the promotion process, including the application of different criteria in the management of promotion of the APS and KPS.¹⁶⁸ In addition, in its 2019 performance report, IPOA urges the NPS to ensure fairness in promotions and transfers.¹⁶⁹

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

Understanding the role of the police in being able to protect life, liberty and security of the person comprises three indicators. The indicators seek to assess whether police actions are based on rule of law and human rights; whether the police have a clear structure to implement their mandate; and whether the police and the public perceive the role of the police as protecting fundamental rights and freedoms, life, liberty, security and property of the person.

Information regarding the training of NPS members on their rights and obligations was not available to the study. The NPS Act 2011 details the rights and obligations of police officers. Relevant legal frameworks and policy instruments contain protections and guarantees that are consistent with international standards. However, reports illustrate a policing practice and approach that undermines fundamental human rights and freedoms, particularly embodied in excessive and arbitrary use of force and firearms. IPOA has raised concerns about the adequacy of the training that police officers receive at training colleges on the use of firearms, observing that:

The direction-less shootings by police officers, even to children such as Jeremy, are pointers that training on use of firearms in the training colleges are unsatisfactory and officers need continuous refresher courses, especially those being deployed on public order management issues, not the paramilitary tactics that have been historically witnessed.¹⁷⁰

166 Chapter 60 sections 4 and 6 of the National Police Service Standing Orders, 2017.

167 KNCHR 'Disservice to the Service' Report of the monitoring of the 2016 recruitment of police constables to the National Police Service, 2016, pp. 14, 19 and 24

168 V Achuka and A Chepkoech, Promotion interviews for police start amid favouritism claims, 26 September 2020, <https://nation.africa/kenya/news/promotion-interviews-police-favouritism-2372396>. See also <https://www.standardmedia.co.ke/kenya/article/2001322543/officers-grumble-over-promotion-procedure>.

169 IPOA Annual Performance Report Jan.-Jun. 2019, p. 30.

170 IPOA monitoring report on police conduct during public protests and gatherings, 2017, p. 17.

In addition, a report by Amnesty International Kenya indicates that in March 2020 the IG issued 11 guidelines, which were guided by those issued by the Chief Justice as the Chair of the NCAJ and consistent with constitutional protections, to commanding officers to enforce a curfew order adopted to prevent the spread of COVID-19. While the guidelines obliged police officers to identify themselves and enforce the curfew by stopping, searching and detaining vehicles, individuals and premises, and to use proportionate force where this was necessary, they did not make any reference to the protection of the rights and freedoms of people in the enforcement of the curfew. The report further observes that the guidelines failed to offer any guidance on non-violent measures to enforce the curfew, or outline distance-conscious policing practices to protect both the public and police officers.¹⁷¹

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. The state is 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 the police will not only refrain from engaging in acts of corruption and abuse of power, but will rigorously oppose and combat all such actions. The state is 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. This can be established by examining 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; whether there is a law that prohibits or regulates outside business, financial and commercial interests; and whether corruption is a serious disciplinary and criminal offence.

No data was available to the study to assess whether the remuneration of NPS members is sufficient to maintain a reasonable standard of living. However, reports demonstrate that police officers experience low morale due to poor living conditions, which negatively affects the professional execution of their mandate. IPOA has also highlighted the challenges of poor living conditions. In one inspection report, it notes that 61% of KPS and 45% of AP officers live in houses that are in a deplorable condition and in need of maintenance or construction of new structures.¹⁷² IPOA reports also stress that police officers complain of non-payment of hardship and transfer allowances, as required by the law. In 2018, the NPS issued a policy framework and strategy which is aimed at, inter alia, the provision of decent and affordable housing for police officers, which proposed a new policy on house allowance for officers of all ranks.

The policy framework categorises police house allowance into three categories, namely Nairobi County, 5 Counties Cluster (Mombasa, Kisumu, Nakuru, Meru and Uasin Gishu) and all other Counties, and proposes to offer a monthly allowance of 18,124 for police constables in Nairobi; 13,124 for police constables in the 5 Counties cluster, and 8,124 for police constables in all other Counties.

With regard to corruption, the Eighth Schedule of the NPS Act 2011 sets out offences against the Service, which includes committing an act that amounts to corruption as defined under any law in force in the country.

171 Amnesty International Kenya, Human Rights-Based Covid-19 Policing Guidelines for the NPS, <https://www.amnestykenya.org/human-rights-based-covid-19-policing-guidelines-for-the-nps/>.

172 IPOA Performance Report Jan.-Jun. 2018, p. 12.

The IAU reports that between 2018 and 2020, it received 186 cases of corruption, bribery and extortion. Notably, however, in 2020 the IAU piloted an anonymous reporting information system, and received a total of 175 cases of corruption through this channel.¹⁷³

The law also governs the involvement of NPS members in outside business. Section 71 of the NPS Act 2011 regulates the taking up of other employment by police officers, and prohibits the police from engaging in any trade, business or employment if the business is in a conflict of interests with the performance of their policing duties and functions. The Act also requires police officers who intend to engage in any other form of employment to apply to the NPSC for approval.

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

The extent to which there is compliance with this Standard is evinced in the extent to which: there is partnership between the police and other law enforcement agencies and relevant role players; police and where applicable other law enforcement collaborations result in improvement to access to justice; and there are structures such as community police forums.

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The NPS Strategic Plan for the period 2013/14–2017/18 highlights the significance of engaging in strategic partnerships and cooperation with other critical role players both within and outside the criminal justice system, including the public, government institutions, other law enforcement agencies, and media civil society organisations and development partners.¹⁷⁴

Available reports and information point out benefits of the collaboration and cooperation, which has strengthened access to justice. Reports show that the NPS has particularly benefited from training offered by stakeholders in the criminal justice system on compliance with human rights standards and principles in the performance of their duties.

Section 244 of the Constitution also mandates the NPS to foster and promote relationships with the broader society. In addition, the NPS Act 2011 requires the police to liaise with the community through community policing initiatives with a view to establishing and maintaining a partnership between the community and the Service, promote communication between the community and the Service, and promote cooperation between police officers and the community in fulfilling the needs of the community regarding policing, among other things. The Act further provides for the establishment of area community policing committees and other structures, and regulates their functions. To implement these provisions, the IG issued a Community Policing Information Booklet, which has been instrumental in guiding ward commanders/station commanders on how to establish community policing committees and forums at station level. Furthermore, a unique model of community policing known as Nyumba Kumi, implemented under the National Government Administration, is aimed at bringing together citizens in clusters defined by physical locations, felt needs and pursuit of common ideals of safe, sustainable and prosperous neighbourhoods. The Information Booklet has now provided a clear link between the CP model and the Nyumba Kumi model, to avoid duplicity, with the latter being the lowest unit of community policing.¹⁷⁵ IPOA has, however, variously recommended the NPS to develop and implement creative ways of involving the community in policing. Respondents in other research reports claim youth killings by police officers in informal settlements are exacerbated by poor police–community relations.¹⁷⁶

173 IAU performance report 2019, pp. 17 and 22; and IAU performance report 2018, p. 17.

174 NPS Strategic Plan 2013/14–2017/18, pp. 18, 37.

175 National Police Service, Community Policing Information Booklet, 2017, p. 5.

176 T Probert, B Kimari and M Ruteere, 'Strengthening Policing Oversight and Investigations in Kenya: A study of IPOA investigations into deaths resulting from police action', 2020, p. 10.

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.

The extent to which there is compliance with this standard can be seen in the degree to which: police and where applicable other law enforcement agencies in the region co-operate on bilateral projects; joint training between police and where applicable other law enforcement agencies in the region takes place.

The NPS Act 2011 establishes a framework for reciprocal arrangements with police organisations of other countries and allows for extraterritorial exercise of policing power in emergency situations. Sections 108 and 109 make provision for the NPS and police officers of any country duly classified as a 'reciprocating country' to assist each other in the provision of policing services in conditions of temporary emergencies, subject to application by the government of the requesting party. Significantly, the Act can be further enriched by making provision for cooperation and assistance in regional peace keeping and peace support operations, to promote comprehensive and integrated regional approach to peace keeping and support operations.

The foundation for the issuance of mutual assistance and cooperation is also set out in other legally binding regional policing laws, particularly the Model Police Law for Africa, which was adopted by the Pan African Parliament in 2019 to, among other things, promote policing practices that comply with regional and international human rights laws. It empowers the head of the police to request or provide advice or assistance, on a temporary basis, to an international or regional policing organisation or to a police service in a foreign country for purposes of, inter alia, obtaining evidence to assist in criminal investigations.¹⁷⁷

The study did not succeed in obtaining relevant information to fully assess the extent to which the NPS takes part in regional or international cooperation and support in the execution of policing functions and powers. Cooperation between police organisations is key to addressing common challenges, strengthening crime prevention and investigation efforts and learning from emerging regional and international best practices, among other things.

177 Pan African Parliament, Model Police Law For Africa, 2019. p 50

PRELIMINARY OBSERVATIONS

Police reform efforts in Kenya have a long history that dates back to early 2000. Following the 2007/08 post-election violence, and the subsequent comprehensive police reforms, the NPS has made significant legislative, policy and institutional progress towards achieving a professional police service. Using available information, this study sought to ascertain the extent to which the NPS is implementing the Common Standards for Policing in Eastern Africa at the legal, policy and operational levels. The utility of this study resides in the provision of data-based outcomes and findings that will shape efforts and interventions aimed at strengthening existing commitments to promote a professional police service. The following considerations are offered as an initial reflection on strengthening existing reform agendas.

Observation 1: Cooperation with IPOA

The Independent Police Oversight Authority, in the exercise of its mandate, makes recommendation to the NPS aimed at professionalising the Service, but also relies on the NPS for official notifications to initiate investigations. However, it emerged from the study that IPOA is facing challenges of non-cooperation from the NPS, which has resulted in delays in inspections, monitoring and investigations. IPOA has also observed failure by police officers to inform it of deaths in police custody or as a result of police actions or other serious injuries, as required by the law. To ensure the effective execution of the mandate of IPOA, police officers must be sensitised about the significance of IPOA's work, and mandated to cooperate with the oversight body and report all incidents of death in police custody or as a result of police actions. This can be achieved through the adoption of regulations designed to foster cooperation between the two institutions.

Observation 2: Provision of human rights training to all NPS officers

Kenya has ratified most key regional and international human rights instruments on the rights of minority groups, which is supplemented by protections enshrined in the domestic legal framework. There is a need to operationalise these norms and values through training. Presently, as indicated by the study, some police officers lack the necessary training to provide equitable non-discriminatory policing services. Specialised training on human rights, based on the EAC/EAPCCO training manual, should be incorporated into curricula of all basic and in-service training. Police officials should receive refresher human rights training at least every

two years. Data needs to be maintained on the human rights training offered to police officers during their recruitment training as well as in-service in order to more coherently manage this important component of the Common Standards.

Observation 3: Development and implementation of alternatives to arrest

One of the key findings of the study is that, while the Constitution sets the foundation for the use of non-custodial measures, particularly with regard to minor offences, there are still numerous cases of arbitrary arrests and detention, including arrests for minor offences. The NPS should adopt policies and plans that promote the use of alternatives to arrest, such as alternative dispute resolution mechanisms, including negotiation, mediation and arbitration. This mechanism should envision the use of arrest as an exceptional measure of last resort. This will give effect to regional instruments, such as the Principles on the Decriminalisation of Petty Offences in Africa and Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa.

Observation 4: Adoption of measures to notify arrested and detained persons of their rights

Arrested and detained persons are a vulnerable group whose rights and freedoms need to be highlighted to them with sufficient detail, to guarantee them effective enjoyment of the protections. The NPS should ensure that at the time of the arrest, all persons are informed of their constitutional rights orally, and in a language understood by the arrested persons, and that police custody facilities display the rights of detainees in a conspicuous place. It has emerged from the study that in its performance report IPOA notes that only 5% of detention facilities it inspected had the rights of detainees displayed in conspicuous places close to the cells.

Observation 5: Maintenance of detention facilities

As noted in the study, the physical conditions in many police custody facilities do not meet international standards and lack basic necessities, thereby failing to guarantee the right of detainees in police custody to their inherent dignity, and to be protected from inhumane or degrading treatment or punishment. The IG should ensure that adequate and sustained resources are provided to police stations to maintain applicable international standards, including the separation of different categories of detainees according to their status.

Observation 6: Adoption of regulation on the use of force

The Sixth Schedule of the NPS Act 2011 regulates the use of force by the NPS. This schedule is not comprehensive, which results in omission of a detailed analysis of the general principles applicable to the use of force in all circumstances – namely, precaution, non-discrimination, necessity and proportionality. The NPS should adopt regulations on the use of force, in accordance with General Comment No. 3 on the African Charter on Human and Peoples' Rights 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 7: Oversight of places of detention

As indicated in the study, Kenya has yet to ratify the Optional Protocol to the Convention Against Torture and Other Cruel, inhumane or Degrading Treatment or Punishment, which places an obligation on Member States to institute and maintain a National Preventive Mechanism to ensure regular and independent monitoring of all places of deprivation of liberty. OPCAT, as supplementary instrument to UNCAT, is oriented towards the protection of human rights of persons deprived of liberty by establishing a dual system of regular visits to all places of deprivation of liberty, by national and international bodies, with the aim of preventing torture and other ill-treatment. In the interim, the NPS should continue to provide oversight bodies such as IPOA and the KNCHR full access to detention facilities for the purpose of independent inspection and monitoring.

Observation 8: Strengthening efforts to implement policy on gender

As demonstrated in the study, there is sufficient legal and policy framework that promotes gender equality and equitable representation in the selection and appointment of NPS members. However, in a monitoring report on the recruitment of police constables into the NPS, the KNCHR expressed concerns

about the inadequacy of measures adopted to promote gender parity within the NPS. It noted that at the commencement of the exercise, some police stations did not comply with the legal requirement that no more than two-thirds of members of elective or appointive bodies shall be of the same gender. This is contrary to Article 27 of the Constitution, which stipulates that women and men have the right to equal treatment, including the right to equal opportunities. In addition, the article further requires the state to take measures to implement the not more than two-thirds gender rule, a principle reinforced by the NPS Act 2011 and the NPSC recruitment and appointment regulations. To rectify this, and promote equal participation and opportunities, transparency and gender equality, the NPS and the NPSC should work to understand the obstacles to gender parity in the Service and promote the effective implementation of the Constitution, the NPS policy on gender and section 5 of the NPS Act 2011.

Observation 9: Implementation of public order policing policy

Another key finding of the study is based on observations of the Human Rights Committee and IPOA monitoring report on police conduct during protests and gatherings that highlighted police use of excessive and unnecessary force to manage public gatherings and assemblies. There is need to promote increased and sustained implementation of public order policing policies to ensure that assemblies and gatherings are managed in a professional manner that is compliant with the values embodied in the Constitution and other regional and international human rights instruments. This includes the ACHPR Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, the EAPCCO SOP on public order policing and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement.

Observation 10: Adoption of a crime prevention policy

The NPS annual crime reports highlight high levels of crime, which naturally results in a general lack of safety within the public. The various determinants of crime call for the adoption of strategies that address the root causes of crimes in an effective and sustainable manner. The NPS should consider the adoption of a crime prevention policy that is informed by internationally proven theories of crime prevention, such as the public health approach to crime and violence, to address the underlying factors that initiate the commission of crime.

Observation 11: Greater dissemination of community policing information booklet

The significance of fostering good community–police relations is internationally recognised as indispensable to the promotion of effective policing and sustainable prevention of crime and violence. An enhanced community–police relationship also serves to strengthen public trust and confidence in the police, and promote greater police accountability. The development and issuance of the community policing information booklet by the NPS supports these observations. As the study points out, however, IPOA has made various recommendations to the NPS to establish ways of involving the community in policing. The study has also highlighted concerns that the killing of youth by police officers in low-income areas is heightened by poor community–police relations. To promote an effective relationship between police officers and the community they serve, the NPS should intensify efforts to disseminate the booklet to police officers to serve as a guiding tool in their engagement with the communities they serve.

Observation 12: Implementation of the policy framework and strategy for the provision of decent and affordable housing to NPS members, and facilitation of payment of allowances

The need to provide police officers with reasonable living conditions, including benefits and remuneration, and to treat them in a manner that protects and promotes their constitutional rights is key to the establishment of a professional and dedicated police service. This report has pointed out the extent to which IPOA has reported receiving complaints from some police officers of non-payment of allowances and other incentives, including hardship and transfer allowances. This can impact the morale of police officers, and the quality of policing services they offer. While acknowledging ongoing efforts and development to address the living conditions of police officers, as evidenced in the adoption of the policy framework and strategy for the provision of decent and affordable housing to NPS members, the NPS needs to ensure budgetary allocations are sufficient to support the sustained implementation of the

policy framework and guarantee the right of police officers to receive benefits and allowances that have accrued to them in a timely, consistent and fair manner, and ensure fairness in recruitment processes, promotions and transfers.

Observation 13: Conduct of perception surveys within the NPS

The existence of perception surveys within police organisations is a powerful tool in assessing, among other things, the extent to which individual police officers perceive their role in society, and the extent to which they conceive their role as promoting rights-based and problem-oriented policing services. They also serve to estimate the needs and aspirations of police officers. The study has elaborated the difficulty of conducting police perception surveys within the NPS. The absence of this information poses a challenge to efforts aimed at ascertaining the extent to which police officers have, inter alia, internalised human rights standards that have been enshrined in the legal 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 NPS to conduct more internal surveys to evaluate police officers, and facilitate the ascertainment of good practices and areas of potential intervention.

Observation 14: Strengthening the capacity of the IAU to execute its mandate

The effective functioning of police accountability systems is reliant on the existence of internal police control mechanisms that can exercise its powers and functions without operational challenges. The IAU, in its 2020 annual performance report, for instance, emphasises the existence of a number of challenges that impede the effective execution of its mandate. This include inadequate number of vehicles for its mobility and operations, limited manpower.

The NPS should adopt concrete measures to address these concerns to allow the unit to discharge its obligations and responsibilities effectively.

Observation 15: Implementation of the National Coroners Service Act, 2017 and the Prevention of Torture Act, 2017.

As the study has highlighted, these two key legislative instruments are yet to be operationalised, despite having come into effect in 2017. The study has further established that non-implementation can be ascribed partly to the fact that the two legislations place the political authority of leading their implementation with the Cabinet Secretary responsible for matters relating to justice, whose office is, presently, is unoccupied. This has had a negative impact on the speedy and effective investigation of unnatural deaths, and the prevention of torture and other ill-treatment.

There is need for an amendment to these two Acts, and adaptation of the interpretation of the words 'Cabinet Secretary' to alternative norms of statutory interpretation, to allow for easy administration of the Acts by another Ministry.

Observation 16: Fostering of mutual regional cooperation and assistance

As the study has reflected, the NPS Act 2011 envisages the development of reciprocal arrangements with policing organisations of other countries only under conditions of temporary emergencies. To benefit from existing regional best practices, and intensify interventions aimed at preventing and combatting cross-border crimes, the NPS should strengthen its institutional framework to promote sustained regional, subregional and international policing and cross-border crime prevention cooperation efforts, enhance information and evidence sharing and participate in joint programmes and training initiatives.

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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.

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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
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.

INDICATOR	MEASURE	MEANS OF VERIFICATION
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.



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.

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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
3.9.1 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.
3.9.2 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"> (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. 	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.
3.9.3 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.	Memorandum of understanding, press, meeting reports, policy documents.
	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.	Memorandum of understanding, press, meeting reports, policy documents.
	4.5.3.b Community Police Forums are seen as functional and valuable.	Perception surveys, minutes of community forum meetings.

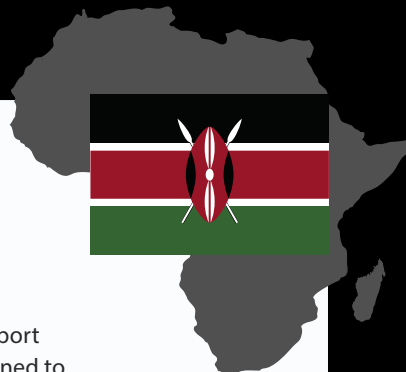


4.6 States must promote bilateral, regional, multilateral and global law enforcement and crime prevention cooperation and assistance. To further this aim, states should take measures to prevent crime at a domestic level, strengthen information sharing and facilitate technical assistance, including exchange 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 PRWP-K

The Police Reform Working Group-Kenya (PRWG-K) brings together 20 like-minded organisations which strive to have a reformed police service in the country. They include: Independent Medico-Legal Unit (IMLU); Amnesty International-Kenya; The International Centre for Transitional Justice (ICTJ); International Commission of Jurists Kenya (ICJ-K); Kenya Human Rights Commission (KHRC); Katiba Institute; International Justice Mission (IJM); Constitution and Reform Education Consortium (CRECO); Usalama Forum; Transparency International Kenya; Wangu Kanja Foundation; Women Empowerment Link (WEL); Shield for Justice; Haki Africa; Kariobangi Paralegal Network; Kenya Peace and Justice; UN Women; Peace Brigades Kenya; Defenders Coalition; and Social Welfare Development Kenya (SOWED Kenya). The group's purpose is to ensure a participatory security reform process that can be trusted by both the police and the public, and which is guided by four pillars: quality service, accountability, public participation, police welfare, and capacity.

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.

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