



# **POLICING IN AFRICA:** WHAT PROSPECTS DOES A MODEL POLICE LAW FOR AFRICA HOLD?

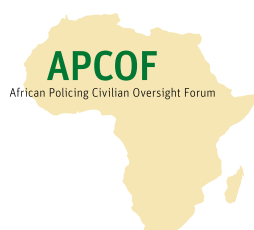
REPORT OF A WEBINAR HELD ON 22 APRIL 2021





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# Model Police Law for Africa

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On 13 October 2019 the Pan African Parliament adopted a Model Police Law for Africa. The initiative was driven by a vision of parliamentarians to add their voice to a growing body of work generated by the organs of the African Union and their partners to shape the future of policing in Africa. Central among these efforts is growing the body of soft law developed through the African Commission on Human and Peoples' Rights and specifically its Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa to set out standards for policing that align with the African Charter. Another is the 2013 African Union Policy Framework on Security Sector Reform, which includes provisions on democratic control of law enforcement, and adherence to human rights and the rule of law by police institutions.

The Model Police Law for Africa sets the vision for policing based on the notion that all people in Africa enjoy policing services that are committed to ensuring their safety and security, and upholding and protecting their rights. To promote legitimacy of policing services, and to encourage trust between police and the community, this vision emphasises the need to establish professional, well-resourced and highly skilled services that strive to protect and facilitate the full participation of all people in all areas of social, economic, cultural, and political life, underpinned by an approach that is demilitarised, community centered, rights based and accountable. The Model Law proposes a strong legislative framework that reflects these normative international standards for rights based democratic policing, and forms the backbone of efforts to address the complex issues faced by police organisations in their engagement with the State, community and oversight actors.



# 1. Introduction

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In her introduction, **Ms Annelize van Wyk**, a trustee of APCOF and facilitator of the event, said that the Model Police Law for Africa was an effective contribution towards supporting legislative reform and the review of existing legislation that governs the mandate, organisational structure and performance of law-enforcement agencies across the AU Member States. It sets an agreed organisational and behavioural standard for African law enforcement agencies, consistent with the AU normative framework. The contribution of such a resource for the policing sector is particularly important for initiatives taken in AU Member States where traditions of democracy, human rights and the rule of law are under threat or are weak, absent or emerging.

A Model Police Law for Africa provides law- and policy-makers and their stakeholders with a template for a national application that takes into account the normative human rights framework of the AU and principles of democratic governance. The Model Law also has important value as an advocacy tool to encourage the adoption of national legislation where police reform is pending or stalled, to promote public debate on police reform and accountability, and to provide a ready and evidence-based template to review and update legislation.

## 2. The role of the Pan African Parliament and the need for a Model Police Law for Africa



**Hon. Meryem Ouhssata**, acting chair and rapporteur of the PAP Committee on Justice and Human Rights, opened the event. On 13 October 2019, the PAP adopted a Model Police Law for Africa. The initiative was driven by a vision of parliamentarians to add their voice to a growing body of work generated, by the organs of the AU and their partners, to shape the future of policing in Africa.

Central among these efforts is the soft law developed through the ACHPR and specifically its special rapporteur on Prisons, Conditions of Detention and Policing in Africa setting out the principles and procedures required from the police, for States to meet their obligations under the African Charter. Another is the 2013 African Union Policy Framework on Security Sector Reform (SSR).

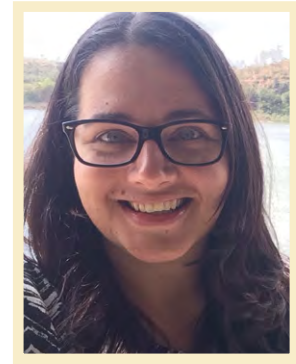
The Model Police Law for Africa sets the vision for policing in Africa based on the notion that all people in Africa enjoy policing services that command respect and are committed to ensuring that all people feel safe and secure. To build legitimacy and trust with the community, this vision for policing emphasises the need to establish professional, well-resourced and highly skilled services that strive to protect and facilitate the full participation of all people in all areas of social, economic, cultural and political life, underpinned by an approach that is demilitarised, community centred, rights-based and accountable.

A strong legislative framework that reflects normative international standards for a rights-based democratic policing approach, and that establishes clear principles and formal guidelines for the mandate, structure, operations and performance of law enforcement agencies, forms the backbone of efforts to address the complex issues faced by police organisations in their engagement with the State, the community and oversight actors. If this framework reflects normative continental and international standards for a rights-based democratic policing approach, and establishes clear principles and formal guidelines for the mandate, structure, operations and performance of the police, it has the potential to set a strong counterpoint to the challenges facing policing. These range from the political appetite for tough policing responses to weak systems of accountability, from unequal and discriminatory application to the increasing pluralisation and looming militarisation of policing, and the shrinking reach of formal policing into the peripheries.

In conclusion, Hon. Ouhssata welcomed the webinar attendees and mentioned that she looked forward to receiving the input of her colleagues across the continent.



### 3. Content of the Model Police Law for Africa



**Ms Louise Edwards**, research and programmes director of APCOF, set out the process and content that informed the development of the Model Law.

Meetings of the Committee on Justice and Human Rights were first held on 29 February 2016 and 13 July 2016 where a decision was made by the Committee to develop a Model Police Law for Africa. On 13–14 September 2016, the PAP Committee on Justice and Human Rights hosted an initial scoping meeting with organs of the AU and international experts in policing to discuss the rationale, scope and content for developing a Model Police Law for Africa. A zero draft document of the Model Law was presented on 1 March 2017. This was followed by a workshop on 4 and 5 May 2017 at which the text was discussed, clause-by-clause amendments were made and an additional schedule on mutual legal assistance was included. On 19 and 20 October 2018, the Model Law was debated by internal and external stakeholders at a session held on the margins of the PAP plenary in Kigali, Rwanda, before being finalised and prepared for eventual debate and adoption by the PAP on 13 October 2019.

The normative framework for law enforcement agencies is based on the AU Policy Framework on SSR and the documents referred to therein, such as the African Charter on Human and Peoples' Rights, the International Bill of Rights and other international legal norms that apply to the formation, conduct and control of law enforcement agencies and their personnel. In summary, the content of a Model Law reflects these normative standards, which can be divided into three underlying principles:

1. democratic control and accountability;
2. adherence to the rule of law; and
3. application of human rights standards.

Democratic control and accountability of law enforcement agencies is premised on democratisation and requires the establishment of a diversified range of oversight mechanisms for security sector institutions. In that way, no one arm of government is solely responsible for the control and oversight of law enforcement agencies. Democratic control is the cornerstone of modern security sector reform efforts and is central to the AU Policy Framework on SSR.

Significant efforts have been made at regional and international levels to articulate a normative framework for the democratic control of law enforcement agencies. Historically, policing in Africa has been associated with a 'regime' style of policing. That is, law enforcement that gives operational priority to protecting the interests of the State, rather than law enforcement agencies that are structurally responsive to the security and safety needs of diverse groups. The shift towards constitutional democracy across Africa has brought with it the need to align the role of law enforcement with the principles of democratic governance.

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ENFORCEMENT  
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EQUALLY  
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THAT ARE  
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INTERNATIONAL  
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OBLIGATIONS.

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A Model Police Law for Africa therefore reflects the components of democratic control of law enforcement agencies, which have been endorsed by the AU Policy Framework on SSR through the Operational Guidance Note on the Development of Codes of Conduct for African Security Sector Institutions. These are:

- Top operational priority to responding to the security needs of individuals and groups (including marginalised and vulnerable individuals and groups).
- Adherence to the rule of law and law enforcement frameworks that are consistent with the regional and international normative frameworks for policing and other law enforcement and that are subject to internal and external control.
- Independent accountability to all branches of the government and to civil society.
- Being representative of the community both in terms of composition and values.
- Protecting and supporting democratic political life and human rights.
- Transparent operation, for example, in relation to budget and policy matters – subject to regular scrutiny from internal and external monitors.
- Adherence to high standards of professional conduct and service, and being subject to fair and transparent systems of discipline.
- Promoting the rights of law enforcement personnel as citizens and members of the communities, including in relation to their rights in a democratic society, conditions of work and pay, disciplinary procedures that accord with natural justice and procedural fairness, training to support the development of professional skills, and non-discrimination.

The rule of law describes the idea of the State and its institutions as being subject and accountable to the law. To promote the rule of law, law enforcement agencies must be subject to publicly promulgated, equally enforced and independently adjudicated laws that are consistent with AU Member States' regional and international human rights obligations. The rule of law also provides an enabling environment for democratic oversight of law enforcement agencies, and agencies that are dynamic and responsive to the safety and security needs of the communities they serve.

As with the principles of democratic accountability, fundamental principles that support the rule of law have been endorsed by the AU Policy Framework on SSR through the Operational Guidance Note on the Development of Codes of Conduct for African Security Sector Institutions. Those relevant to the Model Police Law for Africa are:

- Legal frameworks that are clear and consistent and that adhere to the AU human rights framework, and other international treaties or norms that are fairly and transparently implemented.

- Subject to accountability mechanisms in relation to the democratic control of law enforcement agencies, which promote principles of accountability and redress.
- Law enforcement agencies that are sufficiently trained, financed and supported to provide service delivery in accordance with their lawful mandate.

The AU Policy Framework on SSR, the ACHPR Luanda Guidelines and the various standards established by regional economic communities (RECs) all make direct reference to the application of international human rights law as forming core African principles of SSR and law enforcement.

The normative framework for human rights is found in the Constitutive Act of the AU, which calls on AU Member States to promote and protect the human rights and freedoms set out in the African Charter on Human and Peoples' Rights and the International Bill of Rights (which is comprised of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights), in addition to other binding treaties (such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) and relevant customary international law.

The binding framework is further supported by non-binding 'soft law', in which details on the binding norms are provided. For example, the ACHPR has adopted the Luanda Guidelines to give an authoritative interpretation of Charter rights in relation to arrest and detention, and the Robben Island Guidelines, which provide detail on the measures that AU Member States must take to give effect to their obligations under the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

On a practical level, most limitations of power over the police, as well as positive obligations to achieve certain service delivery and behaviour standards, have their foundation in international law. There is also significant support for the notion that a rights-based approach to law enforcement enhances security, builds community trust and confidence, and can promote efficiency in law enforcement operations.

Based on the normative framework, a Model Police Law for Africa includes the provision of the following minimum standards, which have been endorsed by the AU Commission through the Operational Guidance Note on the Development of Codes of Conduct for African Security Sector Institutions, and are reflected in the work of the ACHPR and RECs in the policing environment:

- Adherence to the rule of law as an essential element of promotion of human security, fundamental human rights and peace.
- Prohibitions against arbitrary arrest and detention, and adherence to the agreed procedural safeguards for persons deprived of their liberty.
- Discharge of duties assigned by law in an equitable, diligent and professional manner.
- Prohibitions against discrimination, except where special measures are required to protect the rights of vulnerable and marginalised groups – including women, juveniles, the sick, the elderly, persons with disabilities, ethnic, racial or religious minorities, and non-citizens.
- Use of force that is reasonable, proportional and necessary under the circumstances.

- Absolute prohibitions against torture, extrajudicial executions and enforced disappearances (and requirement that procedural safeguards against these practices are established and followed).
- Respect for 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.
- Treating victims with compassion and dignity, which includes facilitating access to prompt, fair and inclusive mechanisms for redress that respect the right to privacy.
- Accountability for violations of human rights, including internal and external controls, such as civilian oversight mechanisms, parliamentary oversight, and a role for national human rights institutions and civil society.
- Comprehensive and ongoing training for security sector personnel, including training in relation to the prohibition against torture, appropriate use of force and firearms, sensitisation to the needs of victims, women, juveniles and non-nationals, rights-based investigation practices, ethics and legal conduct, policing in democracies, arrest and detention, and human rights in the context of states of emergency, armed conflict and civil disorder.

## 4. Strengthening human rights protections in Africa – synergies between the Model Police Law for Africa and the African Charter for Human and Peoples’ Rights



**Commissioner Theresa Manuela**, special rapporteur on Prisons, Conditions of Detention and Policing in Africa of the ACHPR introduced herself and indicated that she made the input under article 45 (1) c of the African Charter, which calls on the Commission to cooperate with other African or international institutions dedicated to the promotion and protection of human and peoples’ rights. In this regard she particularly welcomed the efforts by the PAP to develop a Model Police Law for Africa.

The mandate of the Special Rapporteur on Prisons and Conditions of Detention in Africa was created during the 20th Ordinary Session of the Commission in 1996 and is therefore one of the oldest Special Mechanisms, indicating the importance the Commission attached to this area in the promotion and protection of human rights on the continent. During the 18th Extraordinary Session of the Commission in 2015, by Resolution No. 306, the Commission extended the mandate of the Special Rapporteur on Prisons and Conditions of Detention in Africa, to include policing.

The ACHPR recognises the fundamental role of police forces on the continent and articulated this in several resolutions that confirm the importance of the balance that must exist in the exercise of its functions and of upholding the various rights contained in regional and international instruments to which States are signatory parties.

Several guidelines, comments and treaties have been developed at regional and international level to illustrate these responsibilities and include:

- The Guidelines on Arrest, Conditions of Police Custody and Pre-Trial Detention in Africa, The Luanda Guidelines – 2014;
- The Guidelines for Policing of Assemblies by Law Enforcement Officials in Africa – 2017;
- Principles on the Decriminalisation of Petty Crimes – 2018;
- General Comment on the Right to Life – Article 4 of the African Charter;
- The UN Code of Conduct for Officials Charged with Enforcing the Law – 1979;
- The guidelines for the application of the aforementioned 1979 Code of Conduct – 1989;
- The Basic Principles on the Use of Force for Law Enforcement Officials – 1990;
- Minimum Rules for the Treatment of Prisoners (Mandela Rules) – from 1955 and updated in 2015; and
- Set of Principles for the Protection of all Persons Subject to Any Form of Detention or Imprisonment – from 1988.

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All of these instruments serve as the basis for developing rights-compliant actions by the defence and security organs responsible for law enforcement.

The ACHPR understands that policing in a human rights manner must be respectful for the dignity of the person, without any discrimination. This underpins the provisions of articles 5 of the African Charter on Human and Peoples' Rights, 1 of the Universal Declaration of Human Rights, and 7 of the Protocol on Civil and Political Rights.

This role depends on, among others:

- Knowledge of the balance that must exist between the role of the police in the maintenance of public order and security, and respect for human rights;
- Training, both initial and continuous, on issues related to the specificity and mastery of the various instruments on human rights that govern the actions of the police;
- Adequate resourcing;
- Supervision and oversight (vertical by internal management and horizontal by external bodies, including civil society) of the performance of police; and
- Accountability for actions that result in the violation of human rights.

The Model Police Law for Africa is commended as part of the AU's provisions to support the realisation of this vision. The aim of the Model Law, stated by the President of the PAP at its adoption is to help inculcate issues related to good governance, human rights and justice into the focus, role, functions, powers and duties of the members of the police on the continent.

In conclusion, Commissioner Manuela said that this Model Law and the promise it held of building stronger relations between the PAP and the ACHPR was of particular importance during the COVID-19 pandemic and as the continent sought to build back better. The ACHPR found itself faced with constant allegations of violations of Charter rights, including the right to life, freedom from torture, inhuman and degrading treatment, the right of association and of liberty, often at the hands of law enforcement officers and public security officers. These challenges were exacerbated by upstream challenges in police law which failed to provide adequate protection and guidance. The PAP Model Law served as an African example to help identify a way forward. The ACHPR reconfirmed its availability to continue to work, together with partners such as the PAP, to achieve policing that has as its core the safety and protection of citizens, with due respect for their human rights.

## 5. The Model Police Law for Africa as a tool for the AU Policy Framework on SSR



**Ag. Director Calixte Aristide Mbari**, Directorate of Governance and Conflict Prevention, said that the AU Commission and its leadership were honoured to be associated with this initiative of the PAP. The Model Law and the role that legislatures play were critical in the development and promotion of responsible policing as a necessity for SSR. The initiative is not only at the heart of the protection of human rights in Africa, in particular collective freedoms, but it also complies with Africa's Agenda 2063, of which Aspiration Three enshrines the promotion and protection of human and peoples' rights on the continent as central to its vision. It is the conviction of the AU that without effective promotion and protection of human and peoples' rights, Africa cannot achieve the noble objective of this Agenda.

There is a clear link between the AU's Policy Framework on SSR, developed in 2013 and the Model Police Law for Africa, adopted by the PAP in 2019, whose objective is to provide an example of a police legislative framework, in accordance with binding regional and international legal obligations. The AU Commission wished to take the opportunity to confirm the efficiency and relevance of the Model Law as an appropriate tool for the implementation of the AU Policy Framework on SSR and extend its sincere congratulations to the PAP for having developed this reference document.

Security reform is a priority that is essential in the context of the achievement of Aspiration Four of Agenda 2063, aiming for an Africa living in peace and security, where the mechanisms of prevention and peaceful resolution of conflicts are operational at all levels, thus silencing all weapons. Poor governance of security constitutes among one of the main root causes of socio-political and armed conflicts in Africa. This has led to the inclusion of provisions relating to SSR in the texts of several peace agreements and political settlements of conflicts concluded at continental level.

To this end, the AU Policy Framework on SSR is a benchmark tool for democratic governance of the security sector. Police reform is one of the important pillars of SSR, and must be based on the principles of accountability, transparency, rule of law and respect for human rights, participation, responsiveness, effectiveness and efficiency. In recent years, it has been observed that police violence and the lack of political neutrality of the defence and security forces in general are often at the heart of the outbreak of many violent political and security crises on the continent, especially during the periods pre- and post-election.

Police reform – like any transformation of national security institutions – is a politically very sensitive area. It is for this reason that the active involvement of legislative institutions in this process of SSR in general, and that of the police in particular, is so important.

The protection of human rights by an efficient and professional police force is based on national legislation in accordance with international standards; and this African Police Model Law is a tool that will be very useful for AU Member States, engaged in national SSR

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processes, particularly in the contexts of conflict prevention, post-conflict reconstruction and development, which suggest the reconstitution of the defence and security forces.

Often SSR is seen as a process reserved exclusively for post-conflict contexts. As much as it is appropriate in the post-conflict context, it is also appropriate and more relevant in the context of conflict prevention. Thus, the Model Law is a tool for all countries and not only those emerging from conflict.

It is more difficult and complex to rebuild and reform a security sector already affected by violent conflict and there are many examples to demonstrate it.

In addition to the collaboration between the AU Commission and the PAP on police or even possibly defence legislation, it is also important to extend this collaboration to parliamentary oversight of the security sector, in accordance with Section D6.2 of the AU Policy Framework on SSR.

This AU Policy Framework on SSR recommends that:

*“in facilitating continental integration processes, the regional organisations concerned, including the Pan-African Parliament and regional Parliaments, where they exist, should provide support to legislative bodies. in the supervision of the security sector, by defining common normative standards, as contained in this guidance framework.*

*In this regard, the regional organisations concerned should strengthen their parliamentary capacities in order to play the monitoring role, in particular with regard to regional peace support operations and associated security mechanisms.”*

In conclusion, Ag. Director Calixte Aristide Mbari commended the PAP for this initiative to support the improvement of police legislation, and recommended developing similar tools applicable to other law enforcement agencies and the military. As such, the Commission will be available to collaborate with the PAP in the implementation of this Model Law within the framework of security sector reform.



## 6. Reflections on the value of the Model Police Law for Africa – a civil society perspective



**Dr Niagalé Bagayoko**, chair of the African Security Sector Network (ASSN), noted the challenges for the ASSN in promoting and disseminating the AU Policy Framework on SSR adopted in 2013. However, since 2017, in collaboration with the AU and with financial support from Oxfam and Cordaid, several training seminars have been organised for benefit from participants from English- and French-speaking countries (Burundi, the Democratic Republic of the Congo [DRC], Niger and South Sudan). The ASSN is proud to have worked to strengthen the capacities of civil society organisations (CSOs) in these countries in terms of skills and expertise in SSR. Several publications have been produced assessing their capacities.

The ASSN continues the capacity-building work of African CSOs in collaboration with other African organisations, currently under the 'Just Future Programme'. This programme, funded by the Dutch government, aims to strengthen the capacities of CSOs in terms of expertise in SSR, but also to enable them to play their advocacy roles on behalf of populations and communities. The ASSN is working as part of this programme to establish a link between the AU and CSOs in Mali, Niger, South Sudan and the DRC, so that they can play a more active role in the security sector. In this regard, the ASSN also participated in the launch the previous week of a report supported by 47 CSOs at national, regional and international levels. This launch was honoured by the presence of the AU High Commissioner for Political Affairs, Peace and Security – indicative of the support.

Despite the difficult political conditions to carry out direct actions in some countries, the ASSN has been able to use the framework offered by the Livingstone Formula (which allows CSOs to express themselves on defence and security issues specific to their national environment). In many African countries, however, it is still challenging for regional and international CSOs to engage in defence and security issues, which are considered to be the sovereign domain of States.

Policing remains an extremely neglected area in the broader SSR process. In the area of crisis management in French-speaking countries, for example, the emphasis is on strengthening military capacities, whereas today, as in the Sahel, DRC or CAR, it is absolutely essential to work to strengthen the entire Criminal Justice Chain. All stakeholders are clear that they will not be able to manage strategic contexts as complex as that of the Sahel by only focusing on reform of the military.

The police, unfortunately, are often used as a repressive instrument against the civil society organisations, which makes the task more difficult. There is also the growing tendency to use restrictions of freedom (curfew, state of emergency in the fight against COVID-19 or terrorism, and internet access) to prevent CSOs from speaking out on matters relating to SSR. The role of parliamentarians in law reform such as proposed in the Model Police Law for Africa is therefore an important development.

In conclusion, Dr Niagalé Bagayoko said it was necessary to professionally develop the capacities of African CSOs to work on issues specific to the reform of the police sector and more broadly to the strengthening of the criminal justice system, and in this the role of parliamentarians would be invaluable.

## 7. Conclusion

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**Hon. Meryem Ouhssata** thanked all presenters and participants.

Police reform and accountability is of growing international concern, and many African states have taken steps to reform legislative frameworks governing policing as part of broader democratisation and SSR efforts.

The Model Police Law for Africa makes a significant normative contribution to improving policing in Africa, and complements other AU and regional efforts to promote safety, security, democratic governance and human rights. A strong legislative framework that reflects normative international standards for a rights-based democratic policing approach and that takes into account cross-border issues, is an important step in SSR – both preventatively and in post-conflict situations. Legislation that establishes clear principles and formal guidelines for the mandate, structure, operations and performance of law enforcement agencies forms the backbone of efforts to address the complex issues faced by police organisations in their engagement with the State, the community and oversight actors.

She welcomed statements made by the AU Commission, the ACHPR and the ASSN and assured them of continued efforts that will be made by the PAP to support their work on the continent. In this regard, the Committee would recommend to the 4th Ordinary Session of the the 5th Parliament that:

- a) the Members of the PAP should assist the Committee of Justice and Human Rights in disseminating the Model Police Law for Africa.
- b) all the relevant organs of the AU must be encouraged to promote the Model Police Law for Africa and use it to promote matters related to policing in Africa.
- c) Member States of the AU should be encouraged to review their legislations for police against the Model Police Law for Africa.

In conclusion, she thanked APCOF for their technical support and that provided by development partners, specifically the Open Society Foundations, The Sigrid Rausing Trust and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), and looked forward to their continued involvement in this initiative.



# Policing in Africa: What prospects does a Model Police Law for Africa hold?

This webinar, co-hosted by the Pan African Parliament (PAP) and the African Policing Civilian Oversight Forum (APCOF), brought together Africa's law makers, practitioners and its human rights overseers to discuss a recently adopted Model Police Law for Africa, and how can this can complement the efforts of the African Commission on Human and People Rights (ACHPR) and the African Union (AU) to building peace and promoting Rule of Law and Human Rights.

