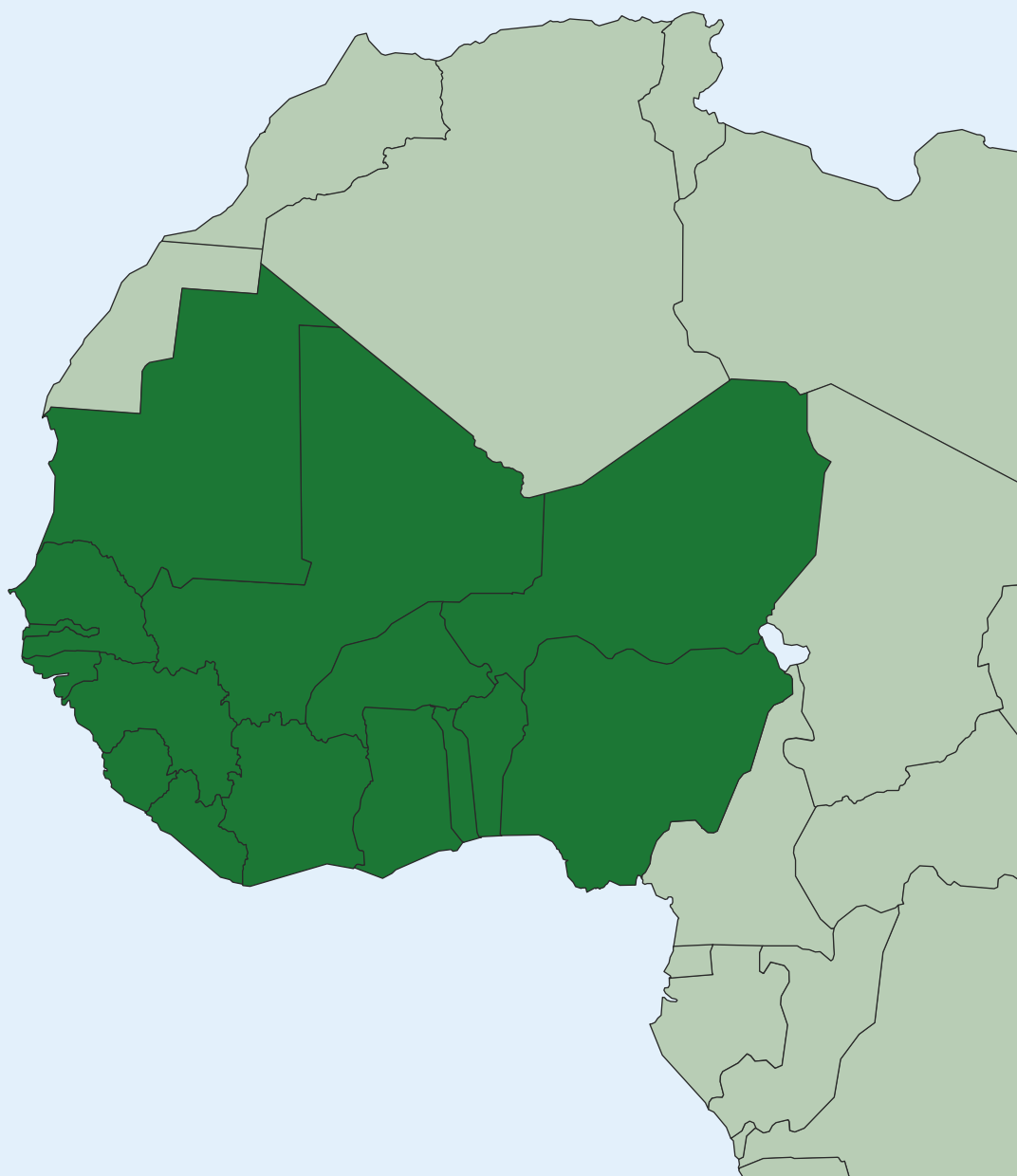


SCOPING THE POTENTIAL FOR COMMON STANDARDS FOR POLICING IN: WEST AFRICA



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ABBREVIATIONS AND ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
APCOF	African Policing Civilian Oversight Forum
ASEAN	Association of Southeast Asian Nations
AU	African Union
CAC	Convention against Corruption
CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
EAC	East African Community
EAPCCO	East African Police Chiefs Cooperation Organisation
ECOWAS	Economic Community of West African States
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
RWI	Raoul Wallenberg Institute of Human Rights and Humanitarian Law
SADC	Southern African Development Community
SARPPCO	Southern African Regional Police Chiefs Cooperation Organization
SSRG	security-sector reform and governance
UN	United Nations
UNCAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UNHCR	United Nations High Commissioner for Refugees

UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UNSR	United Nations Special Representative
WAPCCO	West African Police Chiefs Committee

INTRODUCTION

The Economic Community of West African States (ECOWAS)¹ promotes a shared vision of equitable and broad-based growth, sustainable development, and poverty eradication across its member states.² ECOWAS recognises that effective security-sector reform and governance (SSRG) is integral to achieving this vision, as it promotes the foundational elements for sustainable development and growth: democratic governance, human rights, security, peace, and stability within the region.³ Normative guidance on promoting SSRG has emerged through the Protocol on Democracy and Good Governance⁴ and the Policy Framework for Security Sector Reform and Governance.⁵ Within that framework, strengthening policing governance at the national level, and police cooperation across the region, has been identified as a key element to support the broader ECOWAS peace and security agenda. To strengthen policing governance and cooperation, there may therefore be further normative value in the development by ECOWAS of specific guidance for member states on how to effectively achieve rights-based and democratic policing.

This paper examines the transformative potential of establishing common policing standards as the tool through which the achievement of rights-based and democratic policing by member states can be promoted by ECOWAS in support of achieving its overarching objectives of peace, stability and sustainable development. It reflects on the unique context for policing governance and cooperation within the region, to which the common standards must be responsive, and identifies the possible sources of the region's shared policing values. The paper concludes with recommendations for the potential content of a common standard for policing in ECOWAS, as a basis for further dialogue and engagement.

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- 1 The 15 member states are Benin, Burkina Faso, Cabo Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.
 - 2 ECOWAS, Vision 2020; available at <https://www.ecowas.int/about-ecowas/vision-2020/> (accessed on 7 February 2022).
 - 3 ECOWAS, Policy Framework for Security Sector Reform and Governance; available at <https://ecowas.int/wp-content/uploads/2022/08/ecowas-policy-framework-on-ssrg-english-adopted-1.pdf> (accessed on 9 February 2022).
 - 4 ECOWAS, Protocol on Democracy and Good Governance, Articles 1, 19, 20-21 and 28; available at http://www.internationaldemocracywatch.org/attachments/350_ECOWAS%20Protocol%20on%20Democracy%20and%20Good%20Governance.pdf (accessed on 14 March 2022).
 - 5 ECOWAS, Policy Framework for Security Sector Reform and Governance; available at <https://www.ecowas.int/wp-content/uploads/2018/08/ecowas-policy-framework-on-ssrg-english-adopted.pdf> (accessed on 2 February 2022).

METHODOLOGY

This study forms part of a broader programme of work by the African Policing Civilian Oversight Forum (APCOF) and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) which aims to promote rights-based policing standards at the African regional level. This includes promoting the implementation of the Common Standards for Policing in East Africa with the East African Community (EAC) and the East African Police Chiefs Cooperation Organisation (EAPCCO).⁶ Separately, APCOF has previously supported the development and implementation of a Code of Conduct for Police in the Southern African Development Community (SADC) with the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO).⁷ This experience has informed APCOF and the RWI's approach to this scoping study. APCOF's experience in assisting the African Commission on Human and Peoples' Rights to develop and implement regional human rights standards⁸ has also shaped this exercise, and so has its technical support for the African Union (AU) in the development of an Operational Guidance Note on Codes of Conduct for Security Sector Institutions as part of efforts to implement the AU's Policy Framework on SSRG. The insights gained from this work are reflected in the methodology adopted, and in the analysis of the legal framework.

This study was conducted through a desk review of the legal standards, policies and guidance that apply in the ECOWAS region at the international, regional and national levels. Of particular importance is the Policy Framework for Security Sector Reform and Governance (SSRG Policy). An analysis of this policy reveals that ECOWAS has already made significant commitments to, and investments in, establishing a strategic framework for effective security governance within the region. The present report explores how a common standard for policing in the region can provide an additional tool for the region to support improved policing governance and cooperation as part of the broader ECOWAS objective of supporting effective security governance for sustained peace and security.

In identifying common standards as a potential normative tool, the study then seeks to define the sources of law to inform these standards, drawn from international and regional law, and principles of democratic policing. In

6 APCOF (2010), *Common Standards for Policing in the East African Region*; available at <http://apcof.org/wp-content/uploads/commonstandardsforpolicingineastafrica3rdedition.pdf>.

7 See SARPCCO, 'Achievements: An Overview'; available at <https://sarppco.com/achievements-an-overview/>.

8 APCOF's technical support for the ACHPR has extended to the development of the following soft-law standards: *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa* (2014), available at <https://www.achpr.org/legalinstruments/detail?id=12>; *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa* (2015), available at <https://www.achpr.org/legalinstruments/detail?id=65>; and *Principles on the Decriminalisation of Petty Offences in Africa* (2017), available at <https://www.achpr.org/legalinstruments/detail?id=2>.

particular, it considers the application of AU and ECOWAS standards, which represent the legal and political commitments already made by member states through their memberships of these cooperative mechanisms, and the ratification by states of relevant human rights treaties. The study then distils the specific attributes required of the region's police organisations to support effective governance and cooperation that can be drawn from these standards, and how they can be translated into regionally-specific operational guidance for ECOWAS states.

THE VALUE-ADD OF A COMMON STANDARD FOR POLICING TO THE ECOWAS SHARED VISION

Supporting the ECOWAS security and development agenda

Over the past few decades, the ECOWAS region has undergone rapid democratisation and economic growth. This, together with globalisation and migration, has resulted in a diverse and complex region. The region comprises 15 states bordering the north of the Sahara and the North Africa states. To the east is Central Africa, and to the south and west is a long sea border from the Gulf of Guinea to the North Atlantic. The northern border forms one of the main migratory routes via the Mediterranean to Europe. While this geographical placement provides the potential for dynamic trade and commerce, it has also been exploited by organised criminal elements, including smugglers and human traffickers. ECOWAS has recognised these challenges and has expressed its concern over emerging threats such as armed conflicts, the militarisation of politics, increased human trafficking, rising terrorism, maritime insecurity, and the circulation of arms. In order to address these challenges, ECOWAS has taken steps, through its SSRG framework, to consolidate regional cooperation in order to strengthen security and governance. Furthermore, in spite of experiencing periods of significant political instability and coups d'état, many ECOWAS states have managed to achieve significant progress towards democratisation and good governance.

More recently, the changing nature of conflicts and the rise in new cyber threats have also led to the call to professionalise and modernise security systems. For example, many of the conflicts in the region have taken on an increasingly fluid and transnational dimension, with conflict spilling across borders into neighbouring states.⁹ Criminal groups have also increased their presence in the region.¹⁰ This emphasises the need to strengthen the capacity of law enforcement officials to manage border control, information exchange and political violence. It also underscores the need to emphasise the role of police officials in border management, as such officials are more effectively able to engage with border communities than military personnel.¹¹

Over the same period, ECOWAS has made significant progress towards economic integration. For example, ECOWAS is the only region on the continent where a large number of countries share the same currency. The 1979 Protocol

9 M Herbert (2020) 'Securing and stabilising borders and North and West Africa'; available at https://issafrica.s3.amazonaws.com/site/uploads/pb155_2.pdf (accessed on 2 December 2021).

10 See Council on Foreign Relations (2021), 'Coups are back in West Africa'; available at <https://www.cfr.org/blog/coups-are-back-west-africa> (accessed on 4 February 2022.)

11 See M Herbert (2020) 'Securing and stabilising borders and North and West Africa'; available at https://issafrica.s3.amazonaws.com/site/uploads/pb155_2.pdf (accessed on 2 December 2021).

on Free Movement also enables all ECOWAS citizens to enjoy the right to freely move and live across all ECOWAS countries. This aligns with the Region's Vision for 2020, which imagines 'a space where people can move freely, ply their business and live in dignity and peace under the rule of law and good governance'. The SSRG Policy builds on these principles as well as the 2008 Conflict Prevention Framework and the 2013 Counter-terrorism Strategy and Implementation Plan. One of the goals mentioned in the SSRG Policy is to provide guidance on cooperation between and among ECOWAS states. These measures are essential given the rise in violent extremism and the multiplicity of terrorist groups operating in West Africa. Such challenges further underscore the need for enhanced cross-border cooperation between law enforcement agencies. Establishing common standards on policing is therefore a key tool for supporting existing efforts within the ECOWAS SSRG framework in order to positively address border control, information-sharing, and technological shortcomings and respond to the link between cross-border terrorism and transnational organised crime.

Given this context, ECOWAS has recognised that security reform should be part of a broader agenda focused on promoting regional cooperation, human rights, the rule of law, peacekeeping, and the exchange of data, knowledge and learning. Accordingly, ECOWAS created the West African Police Chiefs Committee (WAPCCO) in 2003 as a specialist unit within the regional-security division.¹² WAPCCO is mandated to improve cooperation between the region's police organisations, facilitate cross-border crime prevention, and make recommendations to ECOWAS on security-related decisions. It comprises units specialising in operations, training, and harmonisation of legislation. The security division also houses a SSRG Policy Unit which provides a regional platform for learning and advocacy regarding human rights, the rule of law, and sustainable development.¹³

Accordingly, ECOWAS has made significant strides in terms of fostering cooperation within the region and in establishing WAPCCO. While regional police cooperation has not yet been underpinned by a set of common principles or standards, the WAPCCO Constitution lays the foundation for this development. This is done through emphasising cooperation, articulating respect for human rights, recognising rules on international police cooperation and prohibiting discrimination. Article 23 of the ECOWAS Protocol on Democracy and Good Governance also recognises the integral link between democracy and human rights-based policing through mandating human rights training for police officials. The SSRG Policy has furthermore established a framework of objectives which include:

- Eliminating threats to safety, life, livelihoods and property; Improving the capacity of security institutions so as to be democratic, efficient, responsible, and responsive to human rights and the rule of law; and
- Solidifying the principles of accountability, transparency and participatory security.

Given this existing cooperative foundation, as well as the need to further protect human rights in the context of policing, a framework of common policing standards is a way for ECOWAS to provide specific operational guidance to member states on how to promote effective policing governance and coordination, as a means of achieving broader goals of regional peace, security, and sustainable development through measures that include SSRG.

Implementation of the ECOWAS SSRG, and its needs assessment

The establishment by ECOWAS of a common standard for policing in the region can provide a ready template against which evidence-based needs assessments for SSRG in the law enforcement sphere can be made, and progress towards effective policing governance and cooperation can be measured. This is significant, as the ECOWAS policy framework for SSRG identifies as an essential feature 'periodic security sector review and needs assessment',¹⁴ which can be used to inform responsive SSRG interventions. A regional common standard for policing can therefore provide specific operational guidance for states on how to operationalise the broad objectives of good policing governance, accountability, democratic governance, the rule of law and human rights, embedded within the SSRG, in a way that promotes legislative, policy and operational reform.

The promotion of a regional common standard to enable a review and needs assessment is a significant value-add

¹² WAPCCO is made up of the police chiefs of the 15 ECOWAS countries as well as the police chief of Mauritania.

¹³ See ECOWAS (2018), Policy Framework for Security Sector Reform and Governance; available at <https://www.ecowas.int/wp-content/uploads/2018/08/ecowas-policy-framework-on-ssrg-english-adopted.pdf> (accessed on 1 February 2022).

¹⁴ ECOWAS, Policy Framework for Security Sector Reform and Governance, Section III: The Essential Features of the ECOWAS SSRG, p. 13; available at <https://www.ecowas.int/wp-content/uploads/2018/08/ecowas-policy-framework-on-ssrg-english-adopted.pdf> (accessed on 9 February 2022).

for a region where, despite the significant investment by ECOWAS in promoting SSRG, and the existence in many countries of constitutional provisions for rights-based policing,¹⁵ there remains a deficit across the region of legislative and operational frameworks to support effective, rights-based and democratic policing governance.

For example, independent police oversight is recognised at the continental level as a fundamental building block in moving towards democratic policing.¹⁶ However, across the region, there are only a few examples of independent police oversight mechanisms. Effective oversight is increasingly being recognised as a core component of the right to life and freedom from torture and other cruel, inhuman or degrading treatment or punishment. ECOWAS has recognised this, and has described the establishment of democratic control and oversight institutions as one of the essential features of its SSRG policy. In accordance with this policy, there is a need to strengthen accountability mechanisms within the region, particularly when it comes to the use of force.¹⁷ This can be done through improved legal and institutional controls that are able to prevent police violations of the right to life, and to prevent torture and other cruel, inhuman or degrading treatment or punishment.¹⁸ When properly implemented, common policing standards that are premised on human rights, can provide guidance for ECOWAS states on the operationalisation of effective police oversight. In this way, the common standards can give effect to this key SSRG aspiration.

Accordingly, while significant investment has been made across the region in SSRG, strategic steps need to be taken to ensure a return on this investment so that the measures translate into legal and operational frameworks that reflect the core values and features of democratic policing. Addressing this through a common standard could impact the effectiveness of interventions aimed at promoting democratic policing practices by providing specific operational guidance for member states on how to achieve this. Similarly, a common standard in this context has the potential to support efforts at the policy and operational level to improve policing responsiveness, effectiveness, and community trust. Within a democratic policing framework, the following principles should be clearly provided for in the frameworks that govern policing, and would underpin the development of the common standards for policing in the region:

- Respect for the protection and promotion of human rights;
- Accountability to the law rather than government – and this in addition to regular scrutiny through both internal and external mechanisms of accountability;
- Transparency in areas of operations, budget and policy;
- Professionalism through high standards of conduct and professional service;
- Representation, in that police organisations should be representative of the communities they serve; and
- Responsiveness to vulnerable groups – which includes the operational capacity to prioritise the needs of individuals and groups (including the marginalised and vulnerable).¹⁹

Establishing common standards can support the democratisation process through encouraging police personnel to exemplify the principles of accountability, transparency, and respect for human rights and the rule of law. In addition, common standards can ensure that the rights of police officers are respected, while providing a framework for policing that makes provision for: fair conditions of employment and pay; just systems for discipline; skills development and training; and an operating environment that responds to the intrinsic risks associated with law enforcement.²⁰ In terms of establishing responsiveness to vulnerable groups and ensuring greater representation, the common standards can also be utilised to give effect to the aspiration to apply the principles of gender equality and women's empowerment to security-reform processes.²¹

15 For example, torture and other ill-treatment are explicitly prohibited in the constitutions of Benin, Burkina Faso, Cabo Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, and Sierra Leone. In Benin and Mali, torture by a police officer is effectively criminalised.

16 See, for example, ACHPR Resolution 103a on Police Reform, Accountability and Civilian Police Oversight in Africa, ACHPR/Res.103a(XXX)06; available at <https://www.achpr.org/sessions/resolutions?id=111>.

17 These points are drawn from David Bruce (2021), 'The African police accountability agenda in the 2020s: Continuity and disruption'; available at <https://apcof.org/wp-content/uploads/the-african-police-accountability-agenda-in-the-2020s.pdf>.

18 Information taken from individual country analysis at 'The law on police use of force worldwide' (2022); available at www.policinglaw.info (accessed on 4 February 2022).

19 D Bayley (2006), *Changing the guard: Developing democratic police abroad*, Oxford University Press.

20 Melanie Lue Dugmore (2017) 'Substantive areas of police reform – developing a new policing reform agenda', APCOF Policy Paper No. 15, February 2017; available at <http://apcof.org/wp-content/uploads/2017/03/015-substantive-areas-of-police-reform-developing-a-new-policing-reform-agenda.pdf> (accessed on 14 February 2022).

21 ECOWAS, Policy Framework for Security Sector Reform and Governance; available at <https://www.ecowas.int/wp-content/uploads/2018/08/ecowas-policy-framework-on-ssrg-english-adopted.pdf> (accessed on 9 February 2022).

DEVELOPING COMMON STANDARDS FOR POLICING IN WEST AFRICA

The approach

A common set of standards on policing and human rights premised on the framework documents that establish ECOWAS, and define the achievement of its vision and mission, can accordingly include:

- A framework that distils the relevant international and regional standards applicable to the work of the police;
- Expertise to support the police in exercising rights-based democratic policing;
- A platform for advocacy and learning through shared expertise and training; and
- A channel for coordination between policing units and regional bodies – including the AUC and other regional bodies, the United Nations (UN), and international and regional civil society organisations.

As a starting point, the standards could set out, in an easy-to-use and referenced format, the international and regional laws and standards that are applicable to the work of the police in the region. They would cover issues relevant to policing at an institutional and individual level and be framed within the broader paradigm of democratic and rights-based policing. Examples of how rights-based policing is being supported at the national level will also inform the design of the standards. In order to ensure that good practices in the region are promoted within ECOWAS.

This legal component would be supported by practical examples of implementation, promising practices, and progressive developments that provide an insight into the potential of the standards and how they can be used. They can either be framed as 'minimum standards' or 'aspirational best practices' against which legislative and policy reform, cross-border cooperation, and the harmonisation of training and practices across the region can be based. Thus, they would form the basis of an ongoing and evolving initiative that can be followed up by supportive tools and practices.

Sources of law

Member states of ECOWAS have already made important commitments to human rights standards through the ratification of international and regional human rights treaties. Thus, a set of common standards for policing in the region could draw out and amplify these existing commitments.

At the international level, core to the mandate of the police are the rights to life, liberty and security, which are guaranteed under the Universal Declaration of Human Rights. These rights are an accepted part of international customary law and are, therefore, globally applicable. Such core rights are further detailed in the International Covenant on Civil and Political Rights (ICCPR) which states, in under Article 6 and Article 9:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life Everyone has the right to liberty and security of person.²²

The role of the state was further accentuated in the 2018 General Comment on the right to life, which stipulates that states have a heightened duty of care to protect the lives of individuals deprived of their liberty by the state, 'since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their life'.²³ It also elaborates on the use of force, stipulating that it cannot exceed the level of force strictly necessary for responding to the threat.

The ICCPR further includes relevant articles on: freedom from arbitrary arrest, detention and torture, as well as freedom of thought, conscience, religion, opinion, expression, peaceful assembly and association. It recognises that, when absolutely necessary to protect national security, public order or the rights and freedoms of others, the state may place limitations on certain rights such as the right to freedom of expression. However, regardless of the gravity of the emergency, some rights can never be subject to derogation, such as the right to life and freedom from torture.

Freedom from torture and enforced disappearances is further detailed in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and its associated Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), as well as the International Convention for the Protection of all Persons from Enforced Disappearance. Not all states in the region have signed and ratified OPCAT and the latter convention. but, on signature, they remain bound to refrain from acts that would frustrate their purpose and objectives. A full list of state obligations in the region is included in Annexure 1.

The rights under a number of other conventions intersect with the work of the police, particularly in relation to the rights of specific groups. These conventions include the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention against Corruption (CAC).

At the African regional level, the African Charter on Human and Peoples' Rights (the Charter) covers the full range of rights and includes Article 4 on the right to life:

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.²⁴

The rights under Article 4 were elaborated on in 2015 when the ACHPR adopted a General Comment on the right to life, which highlights that 'the right to life should not be interpreted narrowly' and places particular emphasis on a dignified life. The General Comment stresses the need to realise all rights under the Charter in order to secure a dignified life for all and the responsibility of the state to 'develop and implement a legal and practical framework to respect, protect, promote and fulfil the right to life'.²⁵ Similar to the ICCPR, the Charter includes freedom from arbitrary arrest, detention and torture, as well as freedom of thought, conscience, religion, opinion, expression, peaceful assembly and association.

22 Full text available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed on 8 February 2022).

23 United Nations Human Rights Committee General Comment No. 36 (2018) on Article 6 of the ICCPR, on the right to life; available at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf (accessed on 13 February 2022).

24 African Charter on Human and Peoples' Rights (1981), OAU Doc CAB/LEG/67/rev.5; available at <https://www.achpr.org/legalinstruments/detail?id=49> (accessed on 15 February 2022).

25 ACHPR, General Comment on Article 4 of the African Charter on the Right to Life ; available at: <https://policehumanrightsresources.org/content/uploads/2015/01/General-Comment-3-On-The-African-Charter-On-Human-And-Peoples%E2%80%99-Rights.-The-Right-To-Life-Article-4.pdf?x96812> (accessed on 13 February 2022).

The African Charter on the Rights and Welfare of the Child (the Children’s Charter) recognises that ‘the child occupies a unique and privileged position in African society’ and that, as such, children require protection against abuse.²⁶ Another relevant instrument is the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa.

Other international and regional standards with particular relevance to policing

In total, there are over 30 sets of principles and guidelines developed at the international or regional level that have implications for policing. At an international level some of the most recent and relevant instruments include:

- Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013), which includes a particular focus on early access to legal aid;²⁷
- Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) (2015);²⁸ and
- Principles on Effective Interviewing for Investigations and Information Gathering (2021), which provides guidance on obtaining accurate and reliable information while fully respecting human rights (The principles were developed by an Expert Group in response to a call in 2015 from the UN Special Rapporteur on Torture).²⁹

At the regional level some of the most recent and relevant instruments include:

- Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines) (2003);³⁰
- Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines) (2014);³¹
- Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa (2017);³² and
- The Model Police Law for Africa (2019).

These recent guidance documents were developed in response to identified challenges in implementing rights-based policing, as well as clear gaps in the existing normative framework.

The Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems grew out of local practice in order to ensure access to basic legal advice where lawyers were scarce and largely based in capital cities. Projects developed in prisons in Malawi, Kenya and Uganda tested out different approaches so as to build a model where paralegals could provide frontline legal information and advice. Groups from across the continent came together in Malawi in 2004 to adopt a declaration outlining the core principles of good legal practice which was built on and endorsed by the ACHPR and formed the basis of the UN guidelines – thus showing how actions at a local level can inspire and inform international standards.³³

26 See https://www.achpr.org/public/Document/file/English/achpr_instr_charterchild_eng.pdf.

27 See UNODC, UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems; available at <https://policehumanrightsresources.org/content/uploads/2016/10/Principles-and-Guidelines-on-Access-to-Legal-Aid-in-Criminal-Justice-Systems.pdf?x74788> (accessed on 14 February 2022).

28 See UN Economic and Social Council, UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules); available at <https://policehumanrightsresources.org/content/uploads/1955/01/Standard-Minimum-Rules-for-the-Treatment-of-Prisoners-Mandela-Rules.pdf?x74788> (accessed on 14 February 2022).

29 See Anti-torture Initiative, Principles on Effective Interviewing for Investigations and Information Gathering; available at <https://interviewingprinciples.com/> (accessed on 14 February 2022).

30 ACHPR, Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines), ACHPR, 32nd Session, 17–23 October 2002: Banjul; available at https://policehumanrightsresources.org/content/uploads/2016/05/Robben_Island_guidelines_eng.pdf?x74788 (accessed on 12 February 2022).

31 See ACHPR, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines) Toolkit; available at https://www.achpr.org/public/Document/file/English/conditions_of_arrest_police_custody_toolkit.pdf (accessed on 14 February 2022).

32 See ACHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa; available at https://policehumanrightsresources.org/content/uploads/2017/11/achpr_guidelines_on_policing_assemblies_eng_fre_por_ara.pdf?x74788 (accessed on 12 February 2022).

33 K McCourt (2021), ‘How Malawi put access to justice on the UN’s agenda’; available at <https://www.justiceinitiative.org/voices/how-malawi-put-access-justice-un-s-agenda> (accessed on 12 February 2022).

The Luanda Guidelines recognise that arrest and police custody form the entry point to the criminal justice system, and that violations and poor practice at that stage are maintained and magnified as cases proceed through the system. Thus, addressing the challenges and bottlenecks at the entry point is critically important for those initial stages, but is also an investment for the entire system. The Guidelines provide an authoritative interpretation of the African Charter and offer specific detail on the measures state parties need to take to uphold, protect and promote the rights of people subject to arrest, police custody and pre-trial detention. The guidelines contain eight key sections covering the framework for arrest and custody, important safeguards, measures to ensure transparency and accountability, and ways to improve coordination between criminal justice institutions. Thus, they fit within the broader architecture of criminal justice systems and provide an important framework for accountability and oversight.³⁴

The Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa emerged out of a significant rise in the number of people taking to the streets to assert their rights, as well as a greater focus on the standards to protect the right to peaceful assembly. Human rights defenders were often targeted by the police, and, as a result, the ACHPR Special Rapporteur on Human Rights Defenders in Africa, in collaboration with the Commission as a whole, spearheaded a process to develop guidelines on the policing of assemblies. The Guidelines examine the organisational and operational requirements in respect of the police, and then go through each stage of a protest from planning to the protest itself and after the protest. As with all recent ACHPR guidelines, the Guidelines include a section on implementation, training and reporting.

The Model Law on Policing serves as a normative contribution to improving policing in Africa. The framework seeks to ensure that police organisations effectively champion the human rights principles enshrined in binding international and regional law, including the Charter of the Organisation of African Unity (OAU) and the African Charter on Human and Peoples' Rights and their interpretive and subordinate instruments. The Model Law also seeks to give effect to the vision of rights-based policing, whereby all people in Africa are treated with dignity and respect and are able to enjoy safety and security in all areas of life. This law is premised on the principles of accountability, transparency and equality, and aims to foster a vision of policing that is demilitarised and community-based.

All recent guidance has been developed in close collaboration with police chiefs and experts across the region, drawing on experience and practice and supported through toolkits and other reference materials. The different standards are instructive in their applicability to cross-border policing in the region as well as in the process and utility of developing practice-oriented guidance.

Standards that relate specifically to issues relevant to cross-border policing cooperation, as well as ECOWAS-identified areas of security concern

In addition to the general guidance available at international and regional law on the implementation of rights-based and accountable policing, there are other sources of law to guide policing responses to critical issues that have a particular impact on police cooperation and the management of cross-border crime and security. These issues include trafficking in persons, migration, and counter-terrorism. The emerging normative standards relating to the policing of these spheres can be given specific operational consideration in a common standard for policing in ECOWAS.

On the issue of human rights standards relating to trafficking in persons, many of the above conventions are relevant to combating trafficking in persons when used alongside the targeted conventions, namely the UN Convention against Transnational Organized Crime³⁵ and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children,³⁶ which address the prevention and prosecution of human trafficking, as well as assistance to victims. The Refugee Convention also includes the Protocol Relating to the Status of

34 See a fact-sheet on the guidelines at https://www.unodc.org/documents/congress/background-information/NGO/Open_society_foundation/The_Luanda_Guidelines.pdf.

35 UN Convention against Transnational Organized Crime, adopted by the General Assembly, 8 January 2001, A/RES/55/25; available at <https://www.refworld.org/docid/3b00f55b0.html> (accessed on 11 February 2022).

36 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 of 15 November 2000; available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx> (accessed on 13 February 2022).

Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked. A number of standards and guidelines have also been developed, namely:

- Recommended Principles and Guidelines on Human Rights and Human Trafficking;³⁷
- Toolkit to Combat Trafficking in Persons issued by the United Nations Office on Drugs and Crime (UNODC);³⁸
- Guidelines on the Protection of Child Victims of Trafficking issued by the United Nations Children’s Fund (UNICEF); and
- Guidelines on international protection related to the above protocol on trafficking issued by the Office of the United Nations High Commissioner for Refugees (UNHCR).

Lessons can also be drawn from regional developments in the European Union (EU) and countries falling under the Association of Southeast Asian Nations (ASEAN).³⁹ The standards also draw out and address the difference between trafficking and smuggling, noting that smuggling is always a cross-border crime that generally requires the consent of the person.⁴⁰

With regard to the human rights standards relating to migration, the 1951 Convention Relating to the Status of Refugees (the 1951 Refugee Convention) and its 1967 Protocol are the core components of the international refugee-protection system. They work in conjunction with international human rights and humanitarian law and are complemented by regional treaties and declarations. The core tenet of the refugee-protection system is the principle of *non-refoulement*, which provides a guarantee that no one should be returned to a country if there are reasonable grounds to believe they will be subjected to persecution.

In 1969, the OAU adopted the Convention Governing the Specific Aspects of Refugee Problems in Africa. The Convention replicates the definition of a refugee from the 1951 Convention but also expands it to include any person compelled to leave his or her country because of ‘external aggression, occupation, foreign domination or events seriously disturbing public order’.⁴¹

The UNHCR, the specialised UN agency working on refugee protection, has developed a body of guidance on different areas of refugee protection and, through its Executive Committee (known as ExCom), meets with member states to agree to conclusions that form an essential part of the refugee-protection framework. Guides include the UNHCR’s Protection Manual and guides that focus on ‘entry systems’ at borders as well as ensuring security in situations where security is potentially compromised, for example in relation to the spread of conflicts and the presence of armed groups.⁴²

The international and legal standards on non-discrimination are particularly relevant, that is, both the CERD and the standards included in the African Charter on Human and Peoples’ Rights.

The ACHPR has adopted several resolutions on migration – in 2018 it reiterated its views on the rights of migrants through its resolution on mixed migratory flows, the challenges of protecting migrants, and the prohibition of trafficking in persons. A further resolution was adopted in 2021 on missing migrants and refugees in Africa and the impact on families.⁴³

Finally, the UN has developed a body of guidance on human rights and counter-terrorism, particularly through the mandate of the UN Special Rapporteur on Promotion and Protection of Human Rights and Fundamental Freedoms

37 Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking; available at <https://www.ohchr.org/documents/publications/traffickingen.pdf>. See, also, https://www.ohchr.org/Documents/Publications/FS36_en.pdf (accessed on 14 February 2022).

38 UNODC (2006), Toolkit to Combat Trafficking in Persons, Global Programme against Trafficking in Human Beings, New York: United Nations; available at <https://www.unodc.org/documents/human-trafficking/HT-toolkit-en.pdf> (accessed on 16 February 2022).

39 See EU (2011), Directive on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and ASEAN Handbook on International Legal Cooperation on Trafficking in Persons Cases.

40 See UNODC, ‘Differences and commonalities’; available at <https://www.unodc.org/e4j/en/tip-and-som/module-11/key-issues/differences-and-commonalities.html> (accessed on 14 February 2022).

41 See Refworld (1969), Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU); available at <https://www.refworld.org/docid/3ae6b36018.html> (accessed on 11 February 2022).

42 See, for example, OAU Convention Governing the Specific Aspects of Refugee Problems in Africa; available at <https://www.refworld.org/docid/3ae6b36018.html> and <https://www.refworld.org/pdfid/4f6313032.pdf> (accessed on 15 February 2022).

43 See ACHPR (2021), Resolution on Missing Migrants and Refugees in Africa and the Impact on Their Families, ACHPR/Res. 486 (EXT.OS/XXXIII); available at <https://www.achpr.org/sessions/resolutions?id=517> (accessed on 11 February 2022).

while Countering Terrorism.⁴⁴ States have an obligation to take positive measures to protect individuals and bring perpetrators to justice. However, these actions should be guided by principles on human rights and should be compliant with international and regional standards.

In 2015, the ACHPR adopted Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa,⁴⁵ which set out six obligations to refrain from, prevent and protect citizens from terrorism. African states are further obliged to ensure accountability, to provide an effective remedy, and to provide reparation. The principles go on to provide guidance on emergency measures, the use of force, and cooperation. The guidelines specifically stipulate that there should be ongoing cooperation with the African Centre for the Study and Research on Terrorism.⁴⁶

Human rights standards apply at all times, including during states of emergency, as set out in terms of international law⁴⁷ and elaborated on in UN General Comment 29 on States of Emergency. Under this General Comment, states are required to ensure that any infringements of rights should be provided for by law, should be absolutely necessary, should be proportionate and should be non-discriminatory. They should also only allow for derogations for a determined period of time.⁴⁸ The African Charter on Human and Peoples' Rights does not expressly allow for derogation, further emphasising that any limitation should be prescribed by law, should be strictly proportionate and should be necessary to address a legitimate need as set forth in the Charter.

Standards drawn from good practice for democratic policing identified in ECOWAS member states

12

The development of common standards can also draw on the shared values and principles articulated within West African states. Most of the rights recognised in terms of the international legal framework set out in the previous sections have already been recognised domestically by West African states, including rights that have implications for policing. Examples of these rights include the right to life, security and freedom from arbitrary detention, freedom from torture and other ill-treatment, and freedom of assembly.⁴⁹ For example, the constitutions of Benin,⁵⁰ Burkina Faso, Cabo Verde, The Gambia, Ghana, Guinea, Guinea-Bissau, the Ivory Coast, Liberia, Mali, Niger, Nigeria and Sierra Leone, recognise freedom from torture and/or other ill-treatment.

While there are key differences between the West African states, the majority of the states recognise the importance of rights-based policing, either through their constitutions, their human rights commissions or through codes of conduct. A framework of common standards can therefore draw on these themes of accountability, professionalism and respect for human rights. Common standards can also serve as a regional platform for advocacy, training and learning with regard to existing best practices pertaining to democratic policing.

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- 44 See Office of the High Commissioner for Human Rights, Fact-Sheet 32, available at <https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>; and the work of the United Nations Special Representative (UNSR), available at <https://www.ohchr.org/en/issues/terrorism/pages/srterrorismindex.aspx> (accessed on 11 February 2022).
- 45 See ACHPR, Principles and Guidelines on Human and People's Rights while Countering Terrorism in Africa; available at https://policehumanrightsresources.org/content/uploads/2018/08/principles_and_guidelines_on_human_and_peoples_rights_while_countering_terrorism_in_africa.pdf?x74788 (accessed on 12 February 2022).
- 46 See African Centre for the Study and Research on Terrorism, <https://caert.org.dz/3389-2/> (accessed on 15 February 2022).
- 47 Office of the High Commissioner on Human Rights (2020), 'COVID-19 Guidance Note 2020'; available at https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf.
- 48 General Comment No. 29, States of Emergency (Article 4): International Covenant on Civil and Political Rights; available at <https://digitallibrary.un.org/record/451555?ln=en>.
- 49 Footnote to general information at <https://www.policinglaw.info>.
- 50 Article 18, Constitution of Benin, 1990; Article 28, Constituicao da Republica de Cabo Verde, 2010; section 21, Constitution of the Republic of The Gambia, 1997; Article 15, Constitution of Ghana, 1992; Article 37, National Constitution of Guinea-Bissau, 1997; Article 4, Constitution of the Ivory Coast, 2016; Article 3, La Constitution du Mali - see Article 14, Constitution of Niger, 2010; section 34(1)(a), Constitution of Nigeria, 1999; section 20(1), The Constitution of Sierra Leone, 1991 - all available at <https://www.policinginfo.info>.

PROVISIONAL OUTLINE OF A SET OF STANDARDS

A future set of standards would be premised on the recognition that respect for human rights and the rule of law, if upheld, creates an environment for policing that is governed by rules that:

- Protect and promote human dignity;
- Are fair and equally applied, without discrimination, arbitrariness and oppression; and
- Are subject to effective oversight to ensure that the rule of law is upheld.

As outlined above, a set of standards can cover a range of issues – from the role of the police in protecting life, ensuring public safety and upholding the rule of law to the actions of the police and the organisation of police forces.

Drawing on the experience of other guidance documents, the section below sets out a preliminary outline of what a set of common standards for cross-border policing in the ECOWAS region could look like. This could form a starting point for a range of consultative discussions with experts and practitioners in the region.

The principles under each standard would be outlined, supported by the relevant international and regional standards.

Part one

Standard 1: Objectives of the standards

To provide ECOWAS members with a set of standards that guide and facilitate the work of the police in the region, based on existing international and regional human rights standards (This section would elaborate on the overarching objectives while linking to the objectives set out in the SSRG Policy)

Standard 2: Guiding principles

This section would set out the principles that underpin the development of the standards. These principles will be drawn from the international and regional human rights framework set out in this scoping study and will include the requirement that states take special measures to protect persons at particular risk. The section will also be shaped by the human rights principles applicable to cross-border policing challenges, including trafficking, terrorism and migration.

Part two

The following is a very brief insight into what each of the subsequent standards would cover, which would naturally be elaborated on in more detail.

Standard 3: The right to life

The police have an obligation to ensure the rights to life, liberty, and security of the person, which rights are at the core of the international human rights framework and are as set out through policy and operational measures to ensure the protection and promotion of such rights. This section will also include details on the use of force and firearms.

Standard 4: Policing according to the rule of law

A range of police functions are critical to ensure that there is rule of law – from guarding against arbitrary arrest to ensuring the presumption of innocence and that all persons are treated humanely.

Standard 5: Equality and non-discrimination

All police action should be conducted so as to ensure equality before the law and that all individuals are treated fairly and without discrimination. This section will also deal with issues of substantive equality and the provision of special measures to ensure that all persons have equal access to policing services and to the protection of the law as suspects or detainees.

Standard 6: Police actions

The actions of the police span a range of areas but are predominant along all parts of the criminal justice chain – from actions and community engagement that aim to prevent crime and build trust among communities, to investigations, arrest and detention, and to subsequent steps in support of the work of other actors in the system. Alongside the procedural aspects, particular rights issues arise around matters such as the prevention of torture and the conditions of detention.

Standard 7: Specific actions

Other areas where the police have a specific role include the policing of assemblies and ensuring security at large events, as well as their role in relation to crime and violence prevention, the management of migration, trafficking in persons, and countering terrorism.

Part three

Standard 8: Organisation

This section will deal with issues around the organisation of the police, including: how to ensure effective oversight; recruitment; training; terms and conditions of employment; community engagement; as well as the development of partnerships both within the justice system and with regional and global actors. The section can also give effect to the SSRG aspiration to infuse security-reform processes and organisations with the principles of gender equality and women empowerment.

Standard 9: Accountability and oversight

This section will deal with issues related to the democratic control of police organisations and personnel through effective mechanisms in respect of internal and external accountability.

Part four

Standard 10: Regional cooperation

This section will deal with engagement by member states in activities at the ECOWAS level.

CONCLUSION

ECOWAS has already made significant strides towards establishing regional cooperation and in reforming security and governance. Building on the substantial policy framework that already exists, this paper explored how this framework can be complemented through the development of specific operational guidance for member states on how to transform broad development and security objectives into more effective policing governance, accountability, and cooperation. In developing a common standard for policing in the region, ECOWAS could support the implementation of its existing SSRG framework, and support its call for a regular review by member states of their security-sector institutions to ensure that SSRG processes are evidence-based and effective. The standards can be drawn from existing international, regional and national human rights standards, while reflecting the specific policing themes, challenges and values of the West Africa region. In seeking to give effect to the ECOWAS vision of a prosperous region based on good governance, the provisional outline for common standards in this paper can be utilised to initiate a dialogic consultation process with experts and practitioners in the region.

ANNEXURE 1: TABLE OF RATIFICATIONS BY ECOWAS MEMBER STATES

ECOWAS MEMBER STATES: Benin (BEN), Burkina Faso (BFA), Cabo Verde (CPV), Cote d'Ivoire (CIV), The Gambia (GMB), Ghana (GHA), Guinea (GIN), Guinea-Bissau (GNB), Liberia (LBR), Mali (MLI), Niger (NER), Nigeria (NGA), Senegal (SEN), Sierra Leone (SLE), and Togo (TGO).

R – Ratified S – Signed

COUNTRY	BEN	BFA	CPV	CIV	GMB	GHA	GIN	GNB	LBR	MLI	NER	NGA	SEN	SLE	TGO
INTERNATIONAL CONVENTION															
International Covenant on Civil and Political Rights (ICCPR)	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
<i>Optional Protocol aiming at the abolition of the death penalty</i>	R		R		R			R	R						R
International Covenant on Economic, Social and Cultural Rights (ICESCR)	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
<i>Optional Protocol to the Convention against Torture (OPCAT)</i>	R	R	R			R			R	R	R	R	R		R
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
UN Convention on the Rights of Child (CRC)	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
<i>Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography</i>	R	R	R	R	R		R	R		R	R	R	R	R	R
<i>Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict</i>	R	R	R	R	R	R	R	R		R	R	R	R	R	R
Convention on the Elimination of All Forms of Racial Discrimination (CERD)	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
Convention for the Protection of All Persons from Enforced Disappearance	R	R			R					R	R	R	R		R
Convention on the Protection of the Rights of All Migrant Workers and Their Families	R	R	R		R	R	R	R		R	R	R	R		R
Convention on the Rights of Persons with Disabilities (CRPD)	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
REGIONAL															
African Charter on Human and Peoples' Rights	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)	R	R	R	R	R	R	R	R	R	R	R	S	R	R	R
African Charter on the Rights and Welfare of the Child	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R

Summary: Most countries in the region have signed the core international and regional human rights treaties. There are, however, gaps regarding the Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Protection of the Rights of All Migrant Workers and Their Families, as well as gaps related to the optional protocols on the death penalty, torture, the sale of children, child prostitution and child pornography, and children in armed conflict.



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.

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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