

# COMMON STANDARDS FOR POLICING IN EAST AFRICA



# CHRI

Commonwealth Human Rights Initiative

working for the **practical realisation** of *human rights* in the countries of the Commonwealth



African Policing  
Civilian Oversight Forum

# Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

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# African Policing Civilian Oversight Forum

APCOF is a network of African policing practitioners drawn from state and non-state institutions. It is active in promoting police reform through civilian oversight over policing. It believes that the broad values behind establishment of civilian oversight is to assist in restoring public confidence, develop a culture of human rights, integrity and transparency within the police and promote good working relationship between the police and the community. It achieves its goal through raising awareness and sharing information on police oversight, developing regional policing accountability standards and providing technical assistance to civil society, police and new and emerging oversight bodies in Africa. APCOF was established in 2004 as a coalition of police oversight bodies and practitioners in Africa and is registered as a non-profit company in terms of section 21 of the South African Companies law.

The objectives of APCOF are to:

- Create and sustain public confidence in police.
- Develop a culture of human rights, integrity, transparency and accountability within the police.
- Promote a good working relationships between the police and the community.
- Promote good working conditions in the police.

**The current directors of APCOF:** Florence Simbiri – Jaoko, Prof Etannibi Alemika, Edith Kibalama, Innocent Chukwuma, Parry Osayande, Francois Beukman, Tommy Tshabalala, Ababacar Ndiaye, Amir Suliman, Tito Rutaremara, Prof Elrena vd Spuy, Sean Tait

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# **COMMON STANDARDS FOR POLICING IN EAST AFRICA**

**A joint project of the Commonwealth Human Rights Initiative and the African Policing Civilian Oversight Forum in partnership with the East African Police Chiefs Cooperation Organisation Secretariat**

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## Forewords

I have no doubt that the articulation of common principles of policing in the region as set out in this report will benefit police organisations, political leaders and administrators. Although the police forces of the region share common ideas, both among themselves and with police services worldwide, there are differences in the way their duties are performed due to historical backgrounds. In this instance, as the states of Kenya, Tanzania, Uganda, Rwanda and Burundi move towards integration, there is a need to consolidate common ideas about policing and to agree on common standards to ensure that we police in a better manner to enhance both regional and global police cooperation.

The member states of EAPCCO have made commitments in a number of international agreements, including the Universal Declaration of Human Rights. (In fact, the EAPCCO Constitution specifically refers to the respect of human rights under the Universal Declaration and the INTERPOL Constitution requires any intervention to respect human rights.) In that context, common standards for policing do exist.

The members of EAPCCO have agreed through its training sub-committee and mandated the EAPCCO Secretariat to look into the possibilities of linking the implementation of the EAPCCO objective on harmonisation of the training programmes to this joint project with APCOF and CHRI. The mandate was given at the last EAPCCO meeting in Addis Ababa (which was the 10<sup>th</sup> EAPCCO AGM and 8<sup>th</sup> meeting of Ministers responsible for police matters). The result is a document that clearly sets out the commitments made by our policing organisation and standards that are commonly agreed to between our members in Kenya, Tanzania, Uganda, Rwanda and Burundi for the purpose of easy reference and harmonisation and the promotion of regional police cooperation.

The application of standards has its challenges. Training is both an important tool to make the standards operational and has much to gain from the standards themselves. Although there have been a considerable number of joint trainings for police officers in the region, one can still identify diversity in the quality of police training in the EAPCCO countries. This is an issue that has been mentioned at a number of EAPCCO meetings. Therefore the EAPCCO Secretariat is giving this issue its utmost attention so as to achieve the objectives of the organisation with regards to harmonisation of training programmes in the region. Harmonised training programmes and well-trained police officers will positively impact on community confidence and full respect for human rights, increase the citizenry partnership with police in crime prevention and fighting.

The EAC group of countries are ahead of the rest of the Eastern Africa region because they are in the process of political and economic integration. As I finalise this forwarding page the Heads of State of the five EAC countries are to meet in a couple of days to sign a document to allow the free movement of their citizens. Therefore, for the EAC to

maintain good security and security services to its citizens, it is crucial that the police in Uganda for example, work to the same standards as their counterparts in Burundi, Tanzania, Rwanda or Kenya. We need common standards for policing so that we can provide the best possible service to our regional citizens. However, we hope that this project can eventually be expanded to all the 11 EAPCCO countries, as we have considerable interaction and commonalities to share.

**Awad Dahia, Secretary EAPCCO and  
Head of INTERPOL Regional Bureau, Eastern Africa**

The EAC commends the work done by EAPCCO, APCOF and CHRI to propose a common set of standards for policing in the region. The initiative comes at a time when the Common Market Protocol has been concluded. This paves the way for free movement of all factors of production including persons, labour, capital and goods. This stage proceeds the monetary union and, ultimately, a political federation. Progressive integration requires cooperation and engagement between key institutions of governance, peace and security to lay the institutional and practical foundations for full integration. The police, given their multiplicity of roles, are one of the key stakeholders in this process.

The consultative approach taken with this methodology is an excellent example of what can be achieved through cooperation and dialogue between the region's institutions and civil society stakeholders. While the five partner states are at different levels of compliance with best practice standards for policing, this should strengthen, not diminish, the support for integration. Increased cooperation and information sharing will strengthen the harmonisation of our respective policies, legislation and practices to accord with the highest international standards. This is an initiative which will be very beneficial to the EAC Sectoral Council on Interstate Security.

The EAC has made strides towards setting the framework and benchmarks for achieving good governance, peace and security. For policing, this includes working towards the harmonisation of training and grades to improve responsiveness to security threats and crimes that affect us as a community. This report will be a useful resource for the EAC as we work to deepen integration and harmonisation of the region's policies, legislation and practice, particularly in the areas of good governance, peace and security. It is in all our interests to promote good policing as a feature, strength and achievement of the EAC.

**Hon. Beatrice Birungi Kiraso  
Deputy Secretary General (Political Federation), East African  
Community**



The African Policing Civilian Oversight Forum (APCOF)<sup>1</sup> and the Commonwealth Human Rights Initiative (CHRI)<sup>2</sup> believe that these standards will have utility for police officials and trainers, civil society organisations, government and policy makers as they work to promote good governance in policing at both a domestic and East African Community (EAC) level.

This report aims to support the harmonisation of policing and supplement the ongoing defence and security integration of the EAC. It is also a useful exercise in promoting ongoing regional dialogue. Through this collaborative process, APCOF and CHRI believe that regional networks have been strengthened and that stakeholders, including the police, civil society and the human rights sector, will be encouraged to interact in support of a common framework on policing.

**Sean Tait, Coordinator  
APCOF and**

**Louise Edwards, Programme Officer  
Access to Justice (International Police Reform) Programme, CHRI**





# PART one

background to the  
common standards

“PROMOTING A RIGHTS-BASED APPROACH TO SECURITY”

“Progressive integration [of the EAC] requires cooperation and engagement between key institutions of governance, peace and security to lay the institutional and practical foundations for full integration. The police are one of the key stakeholders in this process.”

## Introduction

Policing that provides safety and security but also upholds and promotes human rights is vital for achieving development goals, including economic growth and democracy.<sup>3</sup> At both an international and regional level, extensive efforts have been made to construct a framework for policing that promotes a rights-based approach to security to encourage and support democratic governance and development. This report reviews the framework as it applies to the five countries of the EAC (Burundi, Kenya, Rwanda, Tanzania and Uganda) in order to understand and articulate the standards that are common to policing across these countries.

Policing is a feature of the integration strategy of the EAC and part of the ongoing debate on strengthening defence and security in the region. However, a unified regional approach to policing remains largely unarticulated.

The mission of the EAC, based on its 1999 Establishment Treaty, is to deepen the economic, political, social and cultural integration of the region in order to improve the quality of life for all citizens. The Treaty provides that one of the ways that this will be achieved is by promoting peace, security and stability.<sup>4</sup> The strategy for achieving these development goals is contained in the EAC Development Strategy 2006-2010, which includes the improvement of policing among its objectives. Proposed activities include the finalisation of a memorandum of understanding for EAC police cooperation, and the harmonisation of police training and grades. Notwithstanding cooperative programmes to address cross-border crimes and to develop protocols, such as that on combating drug trafficking, the Development Strategy notes the need for further efforts to achieve greater harmonisation for policing across the region.<sup>5</sup>

Recently, the EAC has been working on a draft framework for good governance. Four distinct but related areas are identified as forming the pillars of good governance in the region:

- democracy and democratisation;
- anti-corruption and ethics;
- rule of law and access to justice; and
- human rights and equal opportunity.<sup>6</sup>

The EAC acknowledges that it is often the institutions of governance and security in the region, including the police, that undermine the very principles and systems they are meant to uphold and protect.<sup>7</sup> Key tenets of good governance, such as separation of executive, legislative and judicial powers have, at times, been compromised. In turn, the lack of independence of executive bodies such as the police has been at the root of many of the conflicts in the region. The EAC recognises that its success is premised on the extent to which these challenges can be addressed.

EAPCCO acknowledges that the common standards are an important tool to promote and support police cooperation in the region. The member states of EAPCCO have made commitments in a number of international agreements, including the Universal Declaration of Human Rights, which is specifically referred to in the EAPCCO Constitution. In that context, common standards for policing do exist, and EAPCCO believe that compliance with them at the regional level must begin with police training. Currently, there is great diversity in the quality of training in the EAPCCO countries and this issue has been tabled at EAPCCO meetings. Better trained police will defend and uphold human rights which will, in turn, impact on community confidence, build trust and promote partnerships between the different sectors (including health, education, the private sector and community-based organisations) and the police in combating and preventing crime and enhancing community safety.

# A Framework for Understanding Standards Common to Policing in the EAC

The obligations in respect of policing for the countries of the East African Community derive from their membership of the United Nations (UN), African Union (AU), the EAC, the International Criminal Police Organisation (Interpol), and EAPCCO.

The framework is a composite of the international and regional treaties, conventions, declarations, guidelines, basic principles and codes of conduct which are either substantially derived from, or informed by, the UN's International Bill of Rights. It is premised on human rights and the rule of law and, properly implemented, creates an environment for policing that is governed by rules that:

- protect and promote human rights and dignity;
- are fair, just and equally applied to all without discrimination, arbitrariness or oppression; and
- are subject to effective oversight mechanisms to ensure that the rule of law is upheld.<sup>8</sup>

## African Regional Framework

The AU has proposed a framework for rights-based policing that provides regionally contextualised versions of several key UN standards. One of the key principles that underpin the AU is the promotion of peace and security – its founding document makes specific reference to the promotion and protection of the rights contained in the International Bill of Rights.<sup>9</sup> The AU has its own human rights instrument, the African Charter on Human and Peoples' Rights, which reflects the International Bill of Rights. AU states are required to make changes to their laws and policies to give effect to the provisions of the Charter and to promote the implementation of a rights-based framework for achieving national security and conditions favourable to development.<sup>10</sup>

The African Commission on Human and Peoples' Rights was established pursuant to the African Charter on Human and Peoples' Rights.<sup>11</sup> The Commission exists to promote rights and ensure their protection in Africa.<sup>12</sup> It is empowered to consider complaints concerning the abuse of rights from states and individuals. Individual complaints can be heard if the majority of members agree and if the Commission is satisfied that all domestic processes have been exhausted.<sup>13</sup> The practice of the Commission is to attempt to negotiate a settlement to disputes between parties. If, however, it is unable to do so, the Commission will make a final decision, referred to as a recommendation. These are included in the Annual Report to the OAU Assembly Heads of State and Government where, if adopted formally, they become binding on state parties.<sup>14</sup>

The African Court on Human and Peoples' Rights is currently in the process of being merged with the African Court of Justice. In any case, the Court can hear matters from the African Commission on Human and Peoples' Rights and state parties.<sup>15</sup> If a particular state has agreed to an extension of the Court's jurisdiction, then an individual within that state may also have the right to approach the Court directly.<sup>16</sup> The Court hears cases in accordance with the protocol and rules,<sup>17</sup> attempts to reach an amicable settlement between the parties,<sup>18</sup> but also has the power to order appropriate remedies, such as compensation, as well as urgent, interim relief.<sup>19</sup>

Similar to the AU framework, the EAC Treaty requires member states to protect and promote the rule of law, good governance, accountability, transparency, social justice, equal opportunity,

gender equality and the rights contained in the African Charter.<sup>20</sup> Partner states undertake to implement these principles at both a policy and institutional level.<sup>21</sup>

The EAC is currently working on a draft Bill of Rights.<sup>22</sup> In its current form, the Bill recognises the need to strengthen regional cooperation on human rights, which require states to make constitutional and other legislative guarantees that all national organs and agencies, including the police, will uphold, protect and promote.<sup>23</sup> The rights provided in the Bill reflect those in the International Bill of Rights and African Charter, including rights to life, personal liberty, assembly, and freedom from torture and the rights of the child.<sup>24</sup> The Bill promotes the protection of these rights by creating an appeals structure from national courts to the East African Court of Justice and foreshadows the implementation of rights-based legislation by the East African Legislative Assembly.<sup>25</sup>

The EAC Political Secretariat is also in the process of developing a Framework for Good Governance for the EAC. In this context, the definition of good governance that has been adopted by the EAC is 'predictable, open and enlightened policy-making with emphasis on public good, rule of law, transparency and strong civil society participation in public affairs'<sup>26</sup> The current framework includes a chapter on the rule of law and specifically calls for:

- the harmonisation of strategies, policies and programmes to promote respect for the rule of law;
- specific protections in the criminal justice system to safeguard and promote the rights of women, children and marginalised communities;
- the development of a common standard for policing in the EAC;
- the enactment of laws that establish internal and external oversight mechanisms for law enforcement agencies, prison services and the judiciary to ensure impartial application of the rule of law and human rights, and to build capacity for such; and
- development and implementation strategies to promote access to justice.<sup>27</sup>

Aside from the two political unions to which Burundi, Kenya, Rwanda, Tanzania and Uganda commonly belong, there are other common institutions that support the development of a rights-based approach to policing. For instance, the EAPCCO Constitution requires that the implementation of regional cooperation be in a manner that is consistent with human rights.<sup>28</sup>

Similarly, the Common Market for Eastern and Southern Africa (COMESA) Treaty and the Inter Governmental Authority on Development (IGAD) Charter both acknowledge that peace and stability are essential to economic development. Both promote adherence to human rights, the rule of law and democratic governance to achieve peace and stability, and contain monitoring mechanisms and sanctions in the event of non-compliance.<sup>29</sup>

Finally, the Common African Defence and Security Policy (CADSP) recalls the provisions of the African Charter and the UDHR and reaffirms the AU's common vision of a united and strong Africa based on respect for human rights.<sup>30</sup> Promotion and protection of human rights are key elements of CADSP, which recognises that the absence of human rights is a factor in conflicts and tensions that may destabilise Africa.<sup>31</sup>

## **UN Framework**

The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) together constitute the International Bill of Rights. They set out minimum entitlements

and standards that protect individuals from abuse of power by state actors and their general provisions are echoed in regional frameworks such as those for the AU and EAC.

The UDHR enshrines the minimum human rights standards that each member state has a duty to uphold and protect. As an institution of the state, the obligations contained in the UDHR extend to the police and manifest in both the state's obligation to implement a rights-based framework for policing, and to individual officers to abide by these principles in the exercise of their duties. The UDHR guarantees the rights to life, liberty and security of the person which are at the core of policing.<sup>32</sup> These principles form the basis of subsequent international conventions, treaties, declarations, minimum standards and codes of conduct which impact on policing, security and human rights.

The ICCPR expands on the civil and political rights pronounced in the UDHR and provides basic guarantees of life, self-determination, liberty and security, freedom from arbitrary arrest, detention and torture, and freedom of thought, conscience, religion, opinion, expression, peaceful assembly and association.<sup>33</sup> The ICCPR recognises that when it is 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 those to freedom of expression, association, peaceful assembly and privacy. Derogation from these rights must be proportional and necessary for the emergency and the measures must be applied without discrimination. Regardless of the gravity of the emergency, certain rights can never be subject to derogation, such as those to life, freedom from torture, recognition as a person before the law and freedom of thought, conscience and religion.<sup>34</sup>

Economic, social and cultural rights are expanded by ICESCR, which promotes the rights to work, a reasonable standard of living and a cultural life free from discrimination. In the exercise of their duties, police must strive to promote an environment that permits economic, social and cultural rights to flourish. Consideration of a state's compliance with the provisions of ICESCR will take resource and development constraints into account.<sup>35</sup>

When a state signs the International Bill of Rights, it is required to make amendments to domestic laws and practices to ensure consistency between domestic practice and international law. To that effect, the UN has established mechanisms that require states to periodically report on their compliance.

The rights articulated in the International Bill of Rights have been refined and restated in legally binding treaties that place specific legal obligations on the police. A full list is at Appendix A, and includes the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the Convention on the Rights of the Child ('CRC'), the Convention Against Corruption (CAC) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). As with the International Bill of Rights, these conventions have associated mechanisms that require states to periodically report to the UN on their implementation and compliance.

The legal obligations that apply to the police are supported by resolutions and declarations that are intended to provide clarification and guide compliance. These include guidelines on the use of force and firearms, the treatment of persons in detention and protections against extra-judicial executions, enforced disappearances and the protection of minority communities. The most notable of these is the UN Code of Conduct for Law Enforcement Officials (Code of Conduct) which draws on UN-level standards and seeks to promote policing that ensures the safety of citizens, upholds the rule of law, is accountable and protects democratic values.<sup>36</sup>

Legal obligations on states and state actors, such as police, are further supported by complaint mechanisms within the UN. An individual or state party is entitled to bring a complaint alleging



an abuse of their rights to the attention of the UN generally or to the attention of a body operating pursuant to a particular treaty.<sup>37</sup> The Human Rights Committee hears complaints pursuant to the ICCPR.

The Committee on the Elimination of Discrimination Against Women hears complaints pursuant to the Convention on the Elimination of all Forms of Discrimination Against Women. For example, the Human Rights Committee (UNHRC) is the body of experts who monitor the implementation of the ICCPR by state parties. In addition to the monitoring role achieved via reporting by states and “concluding observations” in response by the Committee, the Committee can entertain direct complaints from states as well as individuals.

The power to entertain complaints from individuals is derived from the First Optional Protocol to the ICCPR.<sup>38</sup> A similar situation exists in respect of the Committees established under CERD, the UNCAT and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), whereby an additional treaty or other statement must exist that signifies the state’s recognition of the Committee.

Once an individual has exhausted all available domestic remedies, and sometimes those at a regional level as well, they are entitled to have their complaint heard by the relevant Committee. The Committee then invites the state to respond to the complaint, and the individual is entitled to address that response. Once the Committee determines that the complaint is admissible, it will go on to consider the merits of the complaint. If a complaint is upheld, mechanisms exist to require states to provide a suitable remedy – be it compensation, release from detention, or the like – and report on that to the Committee. If necessary, the Committee works with the state and the complainant to ensure that a suitable remedy is determined and delivered. There are also provisions for the Committee to request urgent, interim action from a state party, usually to prevent irreparable harm, such as a request to stay an execution till the full complaint process can be finalised.<sup>39</sup>

## Methodology

Implementation of this report is through APCOF and CHRI in partnership with EAPCCO and interfacing with the EAC Political Affairs Secretariat. The initiative was funded by the Canadian International Development Research Centre (IDRC).

The report maps out standards common to policing across the EAC and involved a combination of desktop research and consultation with stakeholders. As a starting point, the authors reviewed:

- all international treaties, conventions, protocols, standards, guidelines, codes of conduct and declarations that are common to the five countries of the EAC;<sup>40</sup>
- all regional treaties, conventions, protocols, standards, guidelines, codes of conduct and declarations that are common to the five countries of the EAC; and
- all jurisprudence which was not necessarily binding on the five countries of the EAC but which provides interpretation of those international and regional instruments to which they are signatories.

The desktop research was supported by broad consultation with key stakeholders in the EAC. Specifically, the researchers attended EAC consultations on Human Rights and Security held in Bujumbura, Burundi in October 2008 and a civil society consultation on good governance, also held in Bujumbura, on 19 and 20 August 2009.



The research methodology was developed and refined in two preliminary focus groups. Representatives from the police,<sup>41</sup> government, national human rights institutions and civil society were invited to participate at focus groups in Nairobi and Kampala during December 2008 to test the project's methodology, assumptions and preliminary findings.

The initial focus group meetings were followed by a more comprehensive analysis of the international and regional frameworks from which a draft set of standards emerged. The second series of focus group meetings was then called in Bujumbura, Dar es Salaam, Kampala, Kigali and Nairobi in March and April 2009 to discuss the standards and the framework within which they are presented. At the focus groups, participants were asked to respond to five questions:

- Are these common standards reflective of the reality of policing?
- Is this the right way to frame the common standards?
- Are there any standards missing?
- Any commentary?
- What type of approaches can you suggest for taking these standards forward?

The feedback from the five focus groups was incorporated into the standards and the first complete draft was subject to expert review.





A photograph of a rustic interior, likely a small room or a stall. The walls are made of vertical wooden planks, some of which are dark and weathered. In the foreground, there is a pile of colorful, patterned clothes or fabric on the floor. To the left, a yellow bucket sits on the ground. The lighting is somewhat dim, creating a sense of a simple, lived-in space.

# PART **two**

common standards for  
policing in east africa

“ARTICULATING A UNIFIED, REGIONAL APPROACH TO POLICING”

“The common standards set out below are a composite of the international and regional frameworks for human rights, policing and security, with a particular focus on the instruments of the UN, AU and EAC that are common to the five states of East Africa. In this way, the standards reflect the political and legal commitments to policing already made by the five countries. The utility of this approach is in the articulation of the standards in a single document for use by all stakeholders.”

The common standards set out below are a composite of the international and regional framework for human rights, policing and security, with a particular focus on the instruments of the UN, AU and EAC that are common to the five states of East Africa. In this way, the standards reflect the political and legal commitments to policing already made by the five countries. The utility of this approach is in the articulation of the standards in a single document for use by all stakeholders. The complete list of sources for the standards is at Appendix A.

## 1. Role of the police

The police will:

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

## 2. Policing in Accordance with the Rule of Law

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

## 3. Police Actions

The police will act in a manner that:

- a. Ensures they discharge the duties assigned to them by law equitably, diligently and with a high degree of professional responsibility and will, at all times, strive to maintain a community service focus.
- b. Upholds the right to life, liberty and security of the person by only using force and firearms when strictly necessary and only to the extent required for the fulfilment of their lawful duty.
- c. Ensures all citizens enjoy their fundamental rights and freedoms without discrimination.
- d. Upholds the absolute prohibition on the use of torture and other cruel, inhuman or degrading treatment or punishment. The police will not inflict, instigate or tolerate any act of torture, cruel, inhuman or degrading treatment or punishment. No circumstances will override this prohibition, including threats of war, political instability or periods of emergency.

- e. Ensures all persons deprived of their liberty are treated with humanity and respect for their inherent dignity. They will:
  - i. Consider and treat all persons deprived of their liberty as innocent until proven guilty by a competent judicial authority.
  - ii. Keep persons awaiting trial separate from convicted persons.
  - iii. Provide all persons deprived of their liberty with adequate food and clothing, unless the detained person elects to provide their own.
  - iv. Facilitate assistance from medical practitioners.
  - v. Inform family and friends of the detention and allow detained persons to maintain contact with those persons to the extent that such contact is consistent with the administration of justice, security and the good order of the place of detention.
  - vi. Allow all persons deprived of their liberty to access legal assistance and receive visits from their legal advisors which are within the sight, but not hearing, of officers.
- f. Adheres to the absolute prohibition on extra-judicial executions and the government will legislate to ensure that such actions are investigated and prosecuted as a matter of priority and as punishable criminal offences under law. Police will not derogate from this principle on account of war, armed conflict or other national emergencies.
- g. Ensures victims are treated with compassion and dignity, which includes access to prompt, fair and inclusive mechanisms of redress that respect the privacy of victims. They will make known and provide victims with assistance, including psychological, medical and social services. The police organisation will ensure that officers receive training to sensitise them to the diverse needs of victims.
- h. Does not discriminate against women, juveniles and minority communities. Police who are in frequent contact with suspects, offenders, victims and witnesses from these groups should receive sensitisation training.
- i. recognises the right of all persons to peaceful assembly without restriction insofar as this right is consistent with the rule of law, democracy, public peace and security, and the rights of others. Regarding unlawful but peaceful assemblies, police will avoid the use of force and, if force is necessary, only use force to the minimum extent. In violent assemblies, police will use less dangerous means of crowd control but if force becomes necessary, only use the minimum force necessary.

## 4. Police Organisations

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





A person is lying on the ground in a dark, blue-tinted environment. The person is wearing a patterned shirt and dark pants. The scene is dimly lit, with a strong blue hue. The person's head is on the left, and their body extends towards the right. The ground appears to be a light-colored surface, possibly concrete or sand, which is illuminated from below, creating a bright, horizontal band of light at the bottom of the frame.

# PART three

commentary to the common standards for policing in east africa

“REFORMING POLICING AGAINST THE BACKDROP OF THE INTEGRATION OF THE EAST AFRICAN COMMUNITY”

“Policing that provides safety and security but also upholds and promotes human rights is vital for achieving development goals, including economic growth and democracy. At both an international and regional level, extensive efforts have been made to construct a framework for policing that promotes a rights-based approach to security to promote and support democratic governance and development.”

# 1. Role of the Police

The common standards recognise three distinct but interrelated roles of the police: to protect life, liberty and security; to maintain public safety and social peace; and to promote and uphold the rule of law and human rights.

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

The rights to life, liberty and security of the person are at the core of the international human rights framework and states have undertaken to take legislative, policy and operational measures to ensure their protection and promotion.<sup>42</sup>

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

Second, in the exercise of their functions, police must not themselves adversely affect life, liberty or security without legal justification. Permissible derogation includes lawful arrest or the legitimate and proportional use of force. The framework for the lawful deprivation of life, liberty and security is discussed below in the section 'Policing in accordance with the rule of law'.

## **b. The police will maintain public safety and social peace**

Policing encompasses a multiplicity of functions that incorporates traditional notions of policing, such as detecting and investigating crime and maintaining law and order. A modern police organisation is also expected to prevent crime and proactively maintain public safety and social peace.

Characteristic of the modern, international framework for policing, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials perceives the role of police as encompassing the administration of justice, the protection of the right to life, liberty and security, and identifies their responsibilities as including the maintenance of public safety and social peace.<sup>43</sup>

The UN Guidelines for the Prevention of Crime, which are set out in Part One, establish the conceptual framework for police crime prevention activities in order to address criminal activity, victimisation, community safety and development.<sup>44</sup> The Guidelines define crime prevention as including a number of approaches which promote:

- prevention through social development or social crime prevention: by promoting “well-being [and] pro-social behaviour through social, economic, health and educational measures, with a particular emphasis on children and youth, and focus on the risk and protective factors associated with crime and victimisation”;
- locally-based crime prevention: by building the capacity of community members to address issues such as offending, victimisation and insecurity;
- situational crime prevention: by reducing opportunities for crime to occur; and
- reintegration programmes: by social integration of offenders and other preventative measures.<sup>45</sup>



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

The international framework for policing is premised on the rule of law and respect for, and promotion of, human rights. The International Bill of Rights encourages legislative and policy changes that put human rights at the core of policing. Individual officers are expected to know and adhere to their responsibility to promote and protect rights, and effective training and accountability mechanisms promote and monitor compliance.<sup>46</sup>

The rule of law describes the concept that no person is above the law and that the law of the state applies to every person equally and without discrimination, whether a person is a private citizen or a public official.<sup>47</sup> States are expected to construct and implement rules that are fair and equitable, and individual officers are obliged to implement the law equally and without discrimination.

International law sets out minimum principles for criminal justice which aim to preserve and uphold the rule of law and human rights. In the context of policing, these processes ensure that people enjoy due process. The international and regional frameworks establish minimum standards for due process, which include the right to a fair trial and public hearing by an independent judiciary, the right to the presumption of innocence until proven guilty, provisions for defence, and freedom from arbitrary arrest and detention.<sup>48</sup> These are discussed in the section below.

## **2. Policing in Accordance with the Rule of Law**

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

- i. not arbitrarily arrest or detain and will only deprive persons of their liberty in accordance with the law;
- ii. promptly inform accused persons of the reason for their arrest and any charges brought against them – this must be communicated to the accused person in a way and manner they understand;
- iii. act in a manner that upholds the presumption of an accused person’s innocence until proven guilty in accordance with the law;
- iv. ensure that arrested persons are brought promptly before an authorised and competent judicial authority;
- v. ensure that upon arrest, detention and charge, there is a presumptive right to bail or bond;
- vi. ensure the right of a detained person to challenge the lawfulness of their detention and recognise the enforceable right to compensation if an arrest or detention is deemed unlawful by the courts;
- vii. ensure that arrested and detained persons have access to interpreters and legal assistance, as required; and
- viii. ensure that arrested and detained persons are treated humanely and kept under humane conditions.

Police are one of a number of actors, including the judiciary and legislature, which must work collaboratively towards the administration of justice. Whether an individual is an accused, victim or witness, entry into the criminal justice system usually begins with police intervention and, in

some jurisdictions, extends to police responsibility for criminal prosecutions. While not the sole determinant, the role of police is a critical factor in determining a person's diversion from or access to, and experience within, the criminal justice system.

The international framework for policing acknowledges the key role played by police in the administration of justice. The common standards, which draw on the international framework, speak to those aspects of the administration of justice that are within the ambit of police activities, while also acknowledging that police are part of a multi-institutional justice system that faces challenges in administering justice which are beyond the scope of police action.

To the extent that police action is a relevant factor, the key concept that underpins access to justice against which the performance of the police can be measured is adherence to the rule of law and human rights.

The ICCPR articulates minimum requirements to ensure that due process accords with human rights principles. Those relevant to policing are:

- Arrest and detention:
  - The right to be free from arbitrary arrest and detention, which requires that deprivation of liberty occurs only in accordance with the law.
  - The right of an arrested person to know the reason for their arrest and any charges brought against them.
  - The right of an arrested person to be promptly brought before an authorised judicial authority. While the UNHRC commentary on this section of the ICCPR avoids setting a fixed time period that constitutes "promptness", its decisions on matters brought under this provision indicate that a period of no more than 2 – 3 days detention is consistent with the notion of "promptness".<sup>49</sup>
  - The presumptive right to bail or bond. This right is derived from the principle that a person is innocent until proven guilty in accordance with the law and by a competent judicial authority. The presumption operates to ensure that bail or bond is granted unless there are reasonable grounds for refusal. Relevant considerations for police with authority to make determinations of bail or bond include the seriousness of the offence, whether the arrested person might abscond, offend again, interfere with evidence or hinder police inquiries, the protection or administration of medical care for the arrested person; and the need (or perceived need) of any victim or witness to be protected from physical violence.<sup>50</sup>
  - The right of a detained person to challenge the lawfulness of their detention, and the enforceable right to compensation if their arrest and detention is subsequently deemed unlawful by the courts.<sup>51</sup>
  - The right of a detained person to be treated with humanity and to be kept under humane conditions while in police custody.<sup>52</sup>
  
- In the determination of charges:
  - The right of the accused to be promptly informed, in a way they understand, of any charges brought against them.<sup>53</sup>
  - The presumption of innocence until proven guilty in accordance with the law.
  - The right of all persons to equality before the law and to a fair and public hearing before a competent judicial authority, with access to legal assistance<sup>54</sup> and interpreters<sup>55</sup> as required.
  - Freedom from the compulsion to confess guilt.<sup>56</sup>

The international framework for policing also seeks to protect people from double-jeopardy, in that a person cannot be tried and punished for an action for which they have already been subject to conviction or acquittal by an authorised judicial or administrative authority. In the context of policing, this protection prevents the police from arresting or charging a person for a crime that has already been subject to proper determination, subject to the criminal procedures rules for that state.<sup>57</sup>

Respect for the rule of law and human rights is recognised by the African framework for policing. The AU promotes respect for the rule of law, human rights and democratic governance.<sup>58</sup> The African Charter recognises that every person is equal before the law and entitled to the equal protection of the law<sup>59</sup> and the right of all persons to have their cause heard. This provision echoes the due process provisions contemplated in the international framework and includes:

- in the case of a violation of a recognised right, the right to appeal to national legal institutions;
- the presumption of innocence;
- the right to a defence, including the right to legal counsel;
- the right to a speedy trial by an impartial court; and
- freedom from punishment for an act that did not constitute a criminal act at the time it was committed.<sup>60</sup>

Membership in the EAC is premised on the adherence by states to the principles of good governance, the rule of law, human rights and social justice.<sup>61</sup> Member states undertake to abide by the principles of democracy, rule of law, good governance and human rights and social justice, and have undertaken to adhere to these objectives at both a policy and institutional level.<sup>62</sup>

The CADSP further recognises that an absence of the rule of law is a factor in conflict and tensions that may cause instability within countries and regions in Africa.<sup>63</sup>

In several EAC countries, the role of police in the criminal justice system extends to responsibility for criminal prosecutions. Where police act as prosecutors, the UN Guidelines on the Role of Prosecutors require police to uphold the human rights principles enshrined in the UDHR, including the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal.<sup>64</sup>

The Guidelines provide a framework for the qualification, selection and training of prosecutors, namely:

- prosecutors must have integrity and ability, with appropriate training and appropriate qualifications;
- selection criteria for prosecutors must not be discriminatory; and
- the state must provide appropriate training on the ethical duty of the office, constitutional and statutory protections for the rights of the suspect and victim, and human rights.<sup>65</sup>

The Guidelines also provide that the state must protect prosecutors from harassment, intimidation, improper interference and other hindrances to their ability to perform their professional function.<sup>66</sup>

In the exercise of their functions, prosecutors must:

- abide by the rule of law and promote due process by acting fairly and consistently with the maintenance and protection of human rights;
- Be impartial and avoid discrimination on any grounds;
- protect the public interest, with regard to the position of the suspect(s) and victim(s);

- maintain confidentiality;
- consider alternatives to prosecution where appropriate; and
- consider the views of the victim and adhere to the Declaration of Basic Principles for Justice for Victims of Crime and Abuse of Power.<sup>67</sup>

The Guidelines also promote the establishment of internal and external accountability mechanisms that promote compliance with its provisions.<sup>68</sup>

### 3. Police actions

**a. The police will act in a manner that ensures they discharge the duties assigned to them by law equitably, diligently and with a high degree of professional responsibility and will, at all times, strive to maintain a community service focus. Police must exercise their lawful functions with a high degree of professional responsibility and maintain a focus on community service.<sup>69</sup>**

A high degree of professional responsibility means that police must:

- have access to, and undergo, training;
- maintain confidentiality;
- act in accordance with the rule of law (for example, abide by restrictions on the use of force and deprivation of liberty); and
- protect, uphold and promote fundamental rights and human dignity.

The state must also bring effective accountability mechanisms into action when officers fail to act in accordance with these principles.

The obligation on police to act with a high degree of professional responsibility is captured by the provisions of the UN Code of Conduct for Law Enforcement Officials. The UN Economic and Social Council has established Guidelines for the effective implementation of that Code. These require adherence to the Code of Conduct in national law and compliance in practice that puts human rights at the centre of policing, in a language understood by officers, and a programme of dissemination that ensures all the principles and rights are known to the community.<sup>70</sup> Police must receive initial and ongoing training on the Code of Conduct and general human rights issues.<sup>71</sup> The Guidelines also require effective mechanisms for internal and external accountability, including external complaints mechanisms that are known to the public.<sup>72</sup>

The UN has also established an International Code of Conduct for Public Officials that provides some guidance on the conduct of police in their capacity as public officials. The Guidelines make it clear that a public official's loyalty is to the state and that they must exercise their duties efficiently, effectively and without preferential treatment to, or discrimination against, any group or individual.<sup>73</sup> Public officials are not permitted to use their office for personal gain and must declare any activities that may raise a possible conflict of interest.<sup>74</sup> They are also required to maintain confidentiality and to refrain from engaging in political activities that will "impair public confidence in the impartial performance of their functions and duties".<sup>75</sup>

A key aspect of professional responsibility is the duty of police officers to act in accordance with the right to privacy. Police often collect sensitive information and the international framework makes it clear that any confidential information in the possession of law enforcement officers

must not be disclosed unless there is a legal requirement for disclosure or the administration of justice demands it.<sup>76</sup>

The requirement that police maintain a focus on community service promotes the provision of services to those members of the community who are, for whatever reason, most in need of assistance.<sup>77</sup> Community focus also manifests in the role of police in crime prevention, particularly through community-based policing.<sup>78</sup>

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

The international and regional frameworks for policing recognise the fundamental right to life. In the exercise of their lawful function, police are permitted to use force. In order to promote a balance between the right to life and the lawful use of force, the UN established the Basic Principles on the Use of Force and Firearms (Basic Principles). These aim to guide police organisations on legal and operational frameworks for the use of force and firearms that safeguard the right to life.

### **General Principles**

The UN Basic Principles provide that law enforcement officials may only use force when strictly necessary and only to the extent required to fulfil their lawful duty.<sup>79</sup> Use of force must be exceptional, proportional, necessary in circumstances and limited to the prevention of crime or apprehension of suspects.<sup>80</sup> The use of firearms is an extreme measure and must only be used when a suspected offender offers armed resistance or otherwise jeopardises the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspect.<sup>81</sup>

### **Legislation to Give Effect to the Basic Principles**

Although not itself a legally binding instrument, the Basic Principles promote the enactment of domestic legislation to give effect to its framework.<sup>82</sup> They do not permit derogation from the framework for the use of force and firearms, including during times of political instability or periods of emergency.<sup>83</sup>

Police organisations must keep up to date with the ethical debates on the use of force and firearms and review and regularly update domestic law and policy.<sup>84</sup>

### **When Force or Firearms are Used**

Governments must legislate to criminalise the arbitrary or abusive use of force by law enforcement officials.<sup>85</sup> If superior officers were aware, or should have been aware, that junior officers have arbitrarily used force or firearms and did not take all possible measures to prevent or report those actions, the superior officer will be deemed responsible.<sup>86</sup> Obedience of a superior's orders will not be a defence if the unlawful use of force or firearms results in serious injury or death and the junior officer had a reasonable opportunity to refuse to follow the superior's order.<sup>87</sup> Conversely, any officer who, in compliance with the Code of Conduct and the Basic Principles, refuses to use force or reports the illegitimate use of force should be protected from criminal or other disciplinary sanctions by law enforcement agencies or the government.<sup>88</sup>

The Basic Principles encourage the government and law enforcement agencies to make stress counselling services available to law enforcement officials who are in situations where force or firearms have been used.<sup>89</sup>

If the use of force or firearms results in death or injury, the Basic Principles require that a report be made to a competent administrative or judicial authority as part of institutionalised review procedures. These procedures must also allow for independent administrative or prosecutorial review of reports into the use of force and firearms which occasion serious injury or death.<sup>90</sup> Persons affected by the use of force or firearms (including their legal representatives or dependents, in the case of death), should have access to these review procedures.<sup>91</sup>

## **Use of Force and Human Rights**

The Basic Principles note that as policing is an important social service, principles for the use of force and firearms not only protect society, but promote the welfare, enhanced working conditions and safety of law enforcement officials.<sup>92</sup> Accordingly, the Basic Principles are framed in the context of the international framework for rights-based policing.<sup>93</sup>

## **Permissible Use of Force and Firearms**

The use of force and firearms is only permitted if other means are insufficient to achieve the following objectives:

- self-defence proportionate to the threat faced;
- in the defence of others against the imminent threat of death or serious injury;
- to prevent the commission of a crime that presents a grave threat to life; or
- to overcome the resistance to arrest of a person, or to prevent their escape, if that person's actions represent a grave threat to life.<sup>94</sup>

The use of firearms is expressly limited to the protection of life.<sup>95</sup>

## **Special Provisions on the Use of Firearms**

If the use of firearms is unavoidable, law enforcement officials must:

- exercise restraint;
- use proportionate force;
- act in a manner which minimises damage and risk of injury and death;
- ensure medical assistance is provided as soon as possible; and
- if injury or death occurs, promptly notify next of kin.<sup>96</sup>

Before using firearms, law enforcement officials should identify themselves and give a clear warning of their intention to use firearms, with sufficient time for the subject to observe this warning. However, if observance of this procedure would place law enforcement officials or others in danger of harm, or would be pointless or clearly inappropriate in the circumstances, it may be foregone.<sup>97</sup>

The Basic Principles provide that any domestic laws, guidelines or policies on the use of force by law enforcement personnel should, at a minimum, provide for the following:

- the lawful circumstances in which law enforcement officials are authorised to carry firearms, and the types of firearms and ammunition permitted;

- restrict use of firearms to appropriate circumstances and in a way that will be likely to decrease the risk of unnecessary harm;
- prohibit the use of types of firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- provide for warnings to be given, if appropriate, when firearms are to be discharged; and
- provide for a system of reporting whenever law enforcement officials use firearms.<sup>98</sup>

## Control of Firearms

The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (Nairobi Protocol) sets out procedures for the effective control and accountability of state-owned small arms and light weapons. These measures aim to address the proliferation of small arms and light weapons in the region, which affect armed crime and the rights to life, liberty and security, as well as having a destabilising effect on the region's security.<sup>99</sup>

The Protocol requires the establishment of national inventories of small arms and light weapons held by the police to promote secure storage of these weapons and establish strict accountability and tracing procedures.<sup>100</sup> In order to facilitate effective record keeping, the Protocol also requires state-owned weapons to be identified with a "unique mark". The ability of the police to control the proliferation of weapons should be promoted through training and increased operational capacity.<sup>101</sup>

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

Under the UDHR all persons are entitled to enjoy their fundamental rights and freedoms without discrimination,<sup>102</sup> and enjoy equal recognition and protection by the law without discrimination on any ground.<sup>103</sup>

Accordingly, in the exercise of their lawful function, the police must ensure that they:

- respect and protect human dignity and maintain and uphold the human rights of all people;
- recognise that all persons are equal before the law and are entitled, without discrimination, to equal protection of the law;
- do not unlawfully discriminate on the basis of race, gender, religion, colour, political opinion, national origin, property, birth or other status;
- recognise that it is not unlawful discrimination to enforce certain particular measures designed to address the special status and needs of women, juveniles, the sick, the elderly, persons living with disabilities and others requiring special treatment in accordance with human rights standards; and
- ensure that recruitment and promotion policies of police agencies are free from any form of unlawful discrimination.

Both the international and regional frameworks for policing focus on certain universally recognised categories of discrimination, including race, gender, religion and economic or social status. The

international legal framework regarding policing of minorities, juveniles and women is discussed in Section 3h, below.

The CERD, recalling the provisions of the UDHR, prohibits the police from acts or omissions that constitute any form of discrimination on the basis of race.<sup>104</sup> Police and states must:

- review laws and policies that create or perpetuate racial discrimination and must not permit discrimination and must not permit public authorities or institutions (which includes the police) to promote or incite racial discrimination;
- craft measures to ensure that all persons, regardless of race, enjoy equality before the law, equal treatment in the administration of justice, security of the person and the right to freedom of assembly; and
- provide effective protections and remedies to persons who are subject to racial discrimination in contravention of CERD.<sup>105</sup>

During a time of public emergency, the ICCPR permits derogations from certain fundamental rights and freedoms, however the derogations must be consistent with international law and must not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin.<sup>106</sup>

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

### **General Provisions**

The international and regional frameworks for policing contain an absolute prohibition on the use of torture and other cruel, inhuman or degrading treatment or punishment. Torture, in the context of policing, is any intentional action by, or with the consent of, a public official which causes severe pain or suffering, whether mental or physical, for purposes which include obtaining information or a confession, punishment, intimidation or coercion, or for any purpose based on any form of discrimination.<sup>107</sup> States must establish both legal and operational frameworks that prohibit torture and take positive steps to prevent its use by the police.

In international law, police officers are prohibited from inflicting, instigating or tolerating any act of torture, cruel, inhuman or degrading treatment or punishment for any purpose.<sup>108</sup> The prohibition is absolute and cannot be overridden by reason of a superior's orders, the threat of war or a state of emergency.<sup>109</sup> Any act of torture is an extraditable offence in any extradition treaty between countries<sup>110</sup> and states are required to provide the greatest assistance in criminal matters relating to torture and for which there are considerations of extradition.<sup>111</sup>

### **Prohibition Against Torture**

The UNCAT requires the enactment of domestic legislation that prohibits and prevents the use of torture and to ensure that the use of torture is an offence under criminal law.<sup>112</sup> Legislation must also ensure that statements made as a result of torture are inadmissible as evidence against an accused, and only admissible against an officer accused of using torture as evidence that the



statement was made.<sup>113</sup> The rules and procedures for arrest, interrogation, detention and imprisonment must be periodically reviewed with a view to preventing torture.<sup>114</sup>

In support of legal measures, the UNCAT also encourages training for all law enforcement personnel on the prohibition against torture and to ensure that the prohibition is contained in the description of officers' duties and functions.<sup>115</sup>

## **Investigation into Torture**

UNCAT state parties are obliged to take measures to facilitate thorough investigation by competent authorities where there are reasonable grounds to believe that an act of torture has been committed. The state must also ensure the right of complaint by a person subject to torture, the prompt and thorough investigation by a competent authority of that complaint, and the protection of the complainant and any witnesses against ill-treatment or intimidation.<sup>116</sup> Where a complaint of torture is substantiated by the competent authority, the legal system must provide for fair and adequate compensation, including compensation for the dependents of a person who dies as a result of torture.<sup>117</sup>

The obligations in respect of investigating and documenting torture are contained in the UN General Assembly's Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Principles clarify the general provisions in the UNCAT in relation to the matters outlined below.

First, in the absence of an express complaint, investigations must commence where there are otherwise indications of torture or ill-treatment. Investigations must be made by competent and impartial investigators implementing the highest professional standards and the findings (in the form of a written report that provides for scope, methodology and conclusions) must be published in a reasonable time and made public. Where there may be the perception of bias, or lack of expertise to conduct such investigations, the state must ensure that an independent commission of inquiry (or similar mechanism) is established to carry out investigations.<sup>118</sup> Investigative authorities must have adequate powers and resources to obtain all information necessary for an inquiry. This includes adequate budgetary and technical resources and powers to summon witnesses (including the police) and documents.<sup>119</sup>

Second, victims and witnesses must be protected, and officials under investigation must be "removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation".<sup>120</sup> Victims and their legal representatives must be provided with information about, and access to, information or any hearings relevant to the investigation. If hearings are conducted, victims will be entitled to give evidence.<sup>121</sup>

Regionally, the African Commission on Human and Peoples' Rights has adopted the Robben Island Guidelines which provide African states with guidance on fulfilling their obligation to punish and prevent the use of torture and other ill-treatment. The Guidelines promote the domestic ratification of international and regional instruments that prohibit torture<sup>122</sup> and cooperation with international mechanisms, including the African Commission on Peoples' and Human Rights, UN Charter Committees and reports of the United Nations Special Rapporteurs on prisons and conditions of detention in Africa, arbitrary, summary and extra-judicial killings in Africa, and the rights of women.<sup>123</sup>

The Guidelines also encourage states to:

- create an offence of torture under domestic law which accords with the provisions of the UNCAT;
- prohibit the expulsion or extradition of persons if there is a risk that they will be subject to torture;
- combat impunity by subjecting those who have committed acts of torture to judicial processes; and
- establish accessible and independent complaints mechanisms and ensure that investigations are in accordance with the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).<sup>124</sup>

The Guidelines address the needs of victims of torture by promoting compensation, protection of informants or persons subject to torture from violence or intimidation and access to medical care and other rehabilitation tools. These provisions not only apply to the victims, but to their families as well.<sup>125</sup>

## **Prevention of Torture**

The UNCAT requires states to take positive measures to prevent torture and cruel, inhuman or degrading treatment or punishment, including police training and promoting the rights of complainants to prompt investigation and fair and adequate compensation for victims.<sup>126</sup>

The Optional Protocol to the UNCAT (OPCAT) provides for a system of regular visits to places of detention by international independent observers and national bodies for the purpose of preventing torture, cruel, inhuman or degrading treatment or punishment.<sup>127</sup> However, none of the five EAC states have signed the OPCAT.<sup>128</sup>

The Robben Island Guidelines contain a number of measures to promote the adoption and effective implementation by African states of the UNCAT, including encouraging states to:

- guarantee basic safeguards to persons deprived of their liberty that accord with due process (see Policing under the rule of law);
- ensure conditions of detention comply with the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;<sup>129</sup>
- prohibit the use of unauthorised detention facilities and incommunicado detention;
- maintain comprehensive records of all persons deprived of their liberty (including date, place and reason for incarceration);
- ensure criminal investigations are conducted by those with authority to do so under criminal procedure laws, keep comprehensive written and/or audio visual records of interrogations, including the identity of the interrogators;
- legislate so that statements made as a result of torture or other prohibited treatment are only used in evidence against those alleged to have committed the torture; not as evidence in the criminal matter which is the subject of the statement;
- provide oversight mechanisms, including an independent and impartial judiciary, and establish an independent complaints mechanism capable of receiving, investigating and taking appropriate action against complaints, strengthen the role of national human rights institutions and civil society (including facilitation of visits to places of detention); and

- develop training and codes of conduct and ethics for law enforcement and other relevant officials and support the work of civil society in awareness raising.<sup>130</sup>

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

They will:

- i. consider and treat all persons deprived of their liberty as innocent until proven guilty by a competent judicial authority;
- ii. keep persons awaiting trial separate from convicted persons;
- iii. provide all persons deprived of their liberty with adequate food and clothing, unless the detained person elects to provide their own;
- iv. facilitate assistance from medical practitioners;
- v. inform family and friends of the detention and allow detained persons to maintain contact with those persons to the extent that such contact is consistent with the administration of justice, security and the good order of the place of detention; and
- vi. allow all persons deprived of their liberty to access legal assistance and receive visits from their legal advisors which are within the sight, but not hearing, of officers.

The International Bill of Rights requires that all persons who are deprived of their liberty are treated with humanity and with respect for their inherent dignity.<sup>131</sup> The Code of Conduct for Law Enforcement Officials requires officials to ensure the protection of the health of persons in their custody and to ensure that medical attention is available when required.<sup>132</sup>

These general provisions are expounded by a number of treaties and agreements that deal with the treatment of prisoners in custodial institutions and the protection of persons in any form of detention. International law also sets out minimum standards for non-custodial measures which are reviewed as part of the general requirements for the treatment of persons in custody.

These common standards are drawn from the provisions in this body of international law that specifically applies to persons who have been deprived of their liberty and remain under police custody or control and do not extend to custody under the ambit of prison services.

**Treatment of Prisoners in Custodial Institutions**

The UN Standard Minimum Rules for the Treatment of Prisoners set out international good practice in the management of custodial institutions and the treatment of prisoners.<sup>133</sup> Sections C and D of the Minimum Rules deal specifically with untried prisoners and those who are in detention without charge or trial. It is in these contexts that persons in custody are most likely to be under the custody or control of the police.

In respect of the treatment of persons detained in police custody who are under arrest or awaiting trial, the Minimum Rules provide that unconvicted prisoners must be afforded the following rights in addition to those associated with due process:<sup>134</sup>

- considered, and treated, as innocent until proven guilty;
- kept separate from convicted prisoners and provided with climate appropriate single-dwelling cells;
- provided with adequate food and clothing, unless they elect to provide their own;

- have the opportunity, without it being a requirement, to work and to procure reading and writing materials provided that these materials are consistent with the administration of justice and the security and good order of the place of detention;
- receive visits from personal medical practitioners at their own expense and if there are reasonable grounds for the request,;
- be permitted to inform family and friends of their detention and continue to maintain contact to the extent that such contact is consistent with the administration of justice and the security and good order of the place of detention; and
- apply for free legal aid and receive visits from legal advisors which are within the sight, but not hearing, of officers.<sup>135</sup>

Regionally, the EA Bill of Rights also contains protections for persons detained by the police, which include appearance before a court within 24 hours of arrest, notification of rights, access to medical treatment, presumption of innocence and bail, and right to legal representation.<sup>136</sup> In respect of the treatment of persons arrested and/or detained without charge, the Minimum Rules apply, but without prejudice to the prohibition on arbitrary arrest or detention in the ICCPR.<sup>137</sup>

### **Protection of Persons in Any Form of Detention or Imprisonment**

Internationally, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which must be interpreted by states in a manner consistent with the ICCPR,<sup>138</sup> reaffirms that persons in any sort of detention or imprisonment (including police custody),<sup>139</sup> shall be treated humanely and with dignity, and may only be arrested or detained in accordance with the law.<sup>140</sup> Detainees are to be treated as innocent until proven guilty and any interrogation must also be in accordance with the law. Any derogation from these provisions should be subject to judicial or administrative review.<sup>141</sup>

Due process must be accorded to any person in custody, including:

- the right to know the charges against them;
- the right to legal representation;
- a record made of the fact of, and circumstances around, their incarceration;
- they must be made aware of their rights;
- be permitted to communicate with their family within a reasonable time and, if required, have access to an interpreter;<sup>142</sup>
- the right to challenge the lawfulness of the detention.<sup>143</sup>

Detained persons are to be brought before a competent judiciary as soon as possible after their arrest and there must be a presumption of bail.<sup>144</sup> If bail is denied, the necessity of ongoing detention must be kept under review by the authorities.<sup>145</sup>

The details of officials responsible for interrogations, as well as the date and duration of the interrogation, must be recorded and the detained person must have access to their legal representation where required by law.<sup>146</sup>

As far as practicable, unconvicted prisoners must be kept separate from convicted prisoners<sup>147</sup> and prisoners should, if possible, be detained at a location reasonable near his [or her] usual place of residence.<sup>148</sup>

In the treatment of persons under detention, the state is not permitted to derogate from human rights standards, either in practice or law, and this is subject to control by a judicial authority.<sup>149</sup>

Any act which violates these Basic Principles (or domestic laws which give effect to its provisions) must be subject to investigation and sanction and any such derogation will be taken into account in determining the admissibility of evidence against the detained person.<sup>150</sup> Places of detention must be subject to regular inspections by a relevant independent authority, and detained persons provided access to those authorities.<sup>151</sup>

The Body of Principles must be applied equally to all persons under detention or imprisonment without discrimination, although special measures for the protection of women, juveniles and minority communities will not be considered discriminatory for the purposes of the Basic Principles.<sup>152</sup>

Detainees should receive a medical examination as soon as possible after their imprisonment and should thereafter be permitted to access free medical assistance as needed.<sup>153</sup>

The Body of Principles reaffirms that persons under detention shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment, or to any form of violence or threats, and gives a wide treatment to the definition of torture.<sup>154</sup> The Principles also provide that the authorities must not take undue advantage of the situation of the detained persons for the purposes of compelling statements which amount to confessions, self-incrimination, or testimony against another person. Consistent with the prohibition against torture and other cruel treatment, prisoners must not be subject to threats or other acts of violence for the purpose of impairing capacity or judgement.<sup>155</sup> The punishment of detainees must be in accordance with the law and, before any disciplinary action is taken, the detainee must have the right to be heard, and if requested, any decision reviewed by a higher authority.<sup>156</sup>

The detainee, or any family member with knowledge of mistreatment, must be entitled to make a complaint about the treatment (without suffering prejudice on account of making a complaint) and the death or disappearance of a detainee must be subject to review and report.<sup>157</sup>

## **Standards for Non-Custodial Measures**

At international law, the police and courts are encouraged to impose non-custodial measures as an alternative to pre-trial detention. The Tokyo Rules set out the minimum safeguards for such measures<sup>158</sup> and are to be applied to all untried persons, without discrimination.<sup>159</sup>

Where appropriate, and in accordance with the Tokyo Rules and domestic legislation that gives effect to those Rules, the police should be empowered to release any suspect or offender if custody is not necessary to proceed with the case and to protect society, the rule of law, and the rights of the victim.<sup>160</sup> Those officers charged with the responsibility of imposing non-custodial measures should have adequate professional training and experience, with an emphasis on rehabilitation, the protection of offenders' rights and the rights of society.<sup>161</sup>

The Tokyo Rules encourage the periodic review of a range of non-custodial measures to ensure they are consistent with the rights of the offender and the victim as well as the proper administration of justice.<sup>162</sup>

At a regional level, the UN Economic and Social Council's Kampala Declaration on Prison Conditions in Africa notes the continent-wide problem of prison overcrowding, which is significantly impacted by the high number of prisoners awaiting trial. In that context, the Declaration encourages the police to seek solutions to reduce the number of pre-trial detentions by using methods of investigation that keep remand detention to a minimum.<sup>163</sup>

**f. The police will act in a manner that adheres to the absolute prohibition on extra-judicial executions and the government will legislate to ensure that such actions are investigated and prosecuted as a matter of priority and as punishable criminal offences under law. Police will not derogate from this principle on account of war, armed conflict or other national emergencies.**

At international law, the police are not permitted to engage in, or tolerate acts of, extra-judicial execution or enforced disappearances. Such actions are contrary to the rights to life, liberty and security of the person and the principles of the rule of law and due process, all of which are articulated by the UDHR and ICCPR.

### **Extra-Judicial Executions**

The UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Execution set out clear provisions for the investigation and prevention of these acts by law enforcement officials. The Principles provide that such actions must be punishable criminal offences under domestic law and that states are not permitted to derogate from the Principles on account of war, armed conflict or other national emergencies.<sup>164</sup>

In order to prevent the commission of these acts, the state is required to take a number of positive measures, which include:

- enacting law and establishing chains of command which promote the prevention of extra-legal, arbitrary and summary executions by any official with the power to arrest or detain and those with legal authority to use force or firearms;
- prohibiting the issuance of orders to commit these acts and to ensure that officials receive training in their prevention;
- ensuring that persons in custody are held at recognised locations and their presence, and any subsequent transfers, are recorded and communicated to legal counsel or next of kin;
- persons or groups at particular risk of extra-legal, arbitrary or summary executions must be afforded judicial or other effective protection by the state; and
- permitting qualified and independent persons to conduct random and unfettered inspections of places of custody.<sup>165</sup>

The Principles also set out standards for the investigation of extra-legal, arbitrary or summary executions. At a minimum, there must be thorough and impartial investigations into complaints of these acts to determine the cause, manner and time of death, the person responsible and any existing patterns or practices which may have brought about the death. Investigations must include an autopsy, witness statements and other evidence, and result in a final published report.<sup>166</sup> Officials conducting the investigation must have broad investigatory discretion and the power to compel officers and witnesses to provide a statement and demand the production of evidence.<sup>167</sup> An autopsy must be performed and a comprehensive autopsy report released by an approved official.<sup>168</sup> If an investigation is inadequate, the government must establish an independent commission of inquiry with broad investigatory discretion and power to obtain evidence.<sup>169</sup>

Officials involved in extra-legal, arbitrary and summary executions must be brought to justice. Following the orders of a superior officer, states of war, armed conflict or other emergencies will not be a defence.<sup>170</sup> Compensation must be available to victims' families.<sup>171</sup>

## Enforced Disappearances

The Declaration on the Protection of All Persons from Enforced Disappearances was made in response to a deep concern in the international community about persistent reports of persons arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of government, which include the police, remaining outside the protection of the law.<sup>172</sup> The Declaration provides that the systemic practice of enforced disappearances by a state is an act in the nature of a crime against humanity.<sup>173</sup>

The Declaration builds on the principles of life, liberty and security espoused in the UDHR and ICCPR, the prohibition against torture in the UNCAT, and other principles and declarations on the protection of persons in custody, to provide a specific framework for eliminating and preventing enforced disappearances.<sup>174</sup> The Declaration prohibits the practice, permission and tolerance by the state, of enforced disappearances and requires states to take judicial and administrative measures to ensure, prevent and punish such acts.<sup>175</sup> Neither following orders from a superior officer nor a state of war, conflict or other emergency can be invoked as a defence to participation in an enforced disappearance.<sup>176</sup> Persons alleged to have been involved in an enforced disappearance are to be suspended and tried before a competent judicial authority.<sup>177</sup> Victims and their families must have access to compensation to enable their rehabilitation.<sup>178</sup>

Police must receive training on the content of the Declaration.<sup>179</sup>

Measures aimed at reducing the risk of enforced disappearances include:

- permitting a prompt, effective, broad-scope judicial inquiry and remedy to determine the location of a person deprived of their liberty and the institution responsible for such deprivation;
- keeping persons deprived of their liberty at an officially recognised place of detention, having them promptly brought before a judicial authority and their details entered into a register which is made available to their family or next of kin;
- the release of persons deprived of their liberty (including the date and state of health at the time of release) being made capable of verification;
- implementing laws that establish the category of officers permitted to deprive a person of their liberty, the conditions under which this may occur and penalties for the legally unjustifiable refusal by an officer to release information on the person so deprived;
- establishing a chain of responsibility for all law enforcement officers responsible for arrest, apprehensions, detention, charge, transfer, imprisonment and those permitted to use force of firearms; and
- establishing complaint mechanisms and implementing broad ranging and independent investigative procedures, with public reporting requirements, in the event of a complaint or receipt of other information about a possible enforced disappearance.<sup>180</sup>

**g. The police will act in a manner that ensures victims are treated with compassion and dignity, which includes access to prompt, fair and inclusive mechanisms of redress that respect the privacy of victims. They will make known and provide victims with assistance, including psychological, medical and social services. The police organisation will ensure that officers receive training to sensitise them to the diverse needs of victims.**

The Declaration on Basic Principles for Justice of Victims of Crime and Abuse of Power defines victims<sup>181</sup> and their rights and aims to ensure that police, justice, health, social services and other personnel dealing with victims are able to provide proper and prompt aid.

In relation to policing, the Declaration encourages states to:

- treat victims with compassion and dignity, which includes access to prompt, fair and inclusive mechanisms of redress which respect the privacy of victims;
- provide restitution to victims of abuse of power or crime on the part of officials (including police);
- provide compensation to victims and where this is not fully available, provide financial compensation to victims with serious impairment as a result of the crime or abuse of power;
- provide and make known to the victim other free assistance, including psychological, medical and social services; and
- ensure that police receive training to sensitise them to the diverse needs of victims.<sup>182</sup>

With specific reference to victims of torture, cruel, inhuman and degrading treatment or punishment, the Robben Island Guidelines promote the provision of appropriate, adequate treatment and rehabilitation of victims within African states. In particular, the Guidelines encourage the provision of compensation, medical and other rehabilitation services, protection for informants and victims of torture from violence or intimidation, and assistance to the families of victims of torture.<sup>183</sup>

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

The international and regional framework for policing recognises that minority communities are in particular need of protection by the police and from abusive policing practices. The type of protection is two fold: first, they require legal structures to eliminate and prevent discriminatory policing practices that target minority communities. Second, a framework for protection is needed to ensure that the police are themselves sensitive to the particular needs of such groups in the course of policing them, whether as victims, witnesses or accused persons.

The international legal structure does not cover the field in terms of the type of minority communities that can both face discrimination or require police sensitisation to their special needs. However, the international framework does offer examples of the way in which states and police should act towards specific groups, the general principles of which can be applied to several communities that, in a regional or national context, should be afforded such protections. The examples of the type of communities who have been recognised as requiring protection and which are covered in these common standards are: women, juveniles and children, migrant workers, internally displaced persons and refugees.

The special protections discussed below build on the general standards for policing articulated in these common standards, with additional contextual obligations that promote the special needs of particular communities.



## Women

CEDAW, which recalls the fundamental rights and freedoms enshrined in the UDHR, ICCPR and ICESR,<sup>184</sup> requires states to review policies and laws which create or perpetuate discrimination against women and must ensure that public authorities and institutions (including the police service) treat men and women equally.<sup>185</sup> Its provisions are generally reflected in the Protocol to the African Charter on Human and Peoples' Rights on Women in Africa.<sup>186</sup> Legal and operational structures of policing that institutionalise the discrimination against women manifest in a number of ways, including the experience of women as police officers, women as victims of crime and women as victims of police ill-treatment.

The Declaration on the Elimination of Violence Against Women defines violence to include arbitrary deprivation of liberty and physical, sexual and psychological violence against women which is committed, or condoned, by the state, and requires states to take measures to prevent gender-based violence against women.<sup>187</sup> The Declaration recognises women's rights to life, equality, equal protection under the law, freedom from discrimination, and the right not to be subject to torture and other cruel, inhuman or degrading treatment or punishment, as set out in the UDHR and ICCPR.<sup>188</sup>

The Declaration encourages states to:

- refrain from engaging in or condoning violence against women;
- ensure legal and administrative measures for the punishment of violence against women by the state or private individuals;
- ensure that legal, political and administrative measures for the investigation of violence against women are gender sensitive; and
- take measures to ensure that law enforcement officials with responsibility for investigating or punishing violence against women receive training to ensure they are sensitive to the needs of women.<sup>189</sup>

The UN General Assembly has established the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice. The Strategy provides guidelines for effective compliance with international instruments that deal with violence against women and encourages the integration of a gender perspective in policy formulation to promote "gender equality and equal and fair access to justice" for women.<sup>190</sup> The Strategy encourages national legal frameworks that provide for:

- consistent enforcement of laws, codes, policies and procedures that criminalise violence against women;
- development of investigative procedures that do not degrade women or further contribute to their victimisation;
- ensuring that the safety of the victim and the prevention of further acts of violence are taken into account when police exercise powers of arrest, detention and issuance of bond;
- ensuring that police exercise their powers in a manner consistent with the rule of law and are accountable for any infringements thereof;
- ensuring police respond promptly to complaints of violence against women;
- encouraging recruitment of women into the police organisation; and
- making information about participation in criminal proceedings available to women.<sup>191</sup>

The Strategy reiterates the need for police to undergo gender-sensitivity and general human rights training.<sup>192</sup>

At a regional level, EAPCCO is undertaking a gender mainstreaming process that will address the need for police training and sensitisation to gender-based violence, as well as women's experiences as police officers.<sup>193</sup>

## Juveniles

The ICCPR provides specific protections to juvenile offenders which include the separation of juveniles from the adult prison population and the provision of age and legal status-appropriate treatment.<sup>194</sup>

The Beijing Rules expand the provisions of the ICCPR and set out the minimum standards to be applied in the handling of juvenile offenders. Its provisions are generally reflected in the African Charter on the Rights and Welfare of the Child.<sup>195</sup> Law enforcement agencies are required to respect the legal status of juvenile suspects and offenders, promote their well-being and protect them from harm.<sup>196</sup>

The Beijing Rules acknowledge the protections afforded to prisoners under the Minimum Standard Rules for the Treatment of Prisoners and further encourage commitments to:<sup>197</sup>

- apply the provisions of the Rules without discrimination;
- establish laws and policies on the administration of juvenile justice with a particular emphasis on the balance between protecting their basic rights and those of society, and promotes the principle of proportionality, while respecting the well-being of the suspect or offender;
- provide scope for discretion at the various levels of administration of juvenile justice (including investigation), and ensure appropriate accountability structures and training for personnel authorised to exercise such discretion;
- safeguard the right to due process, including the presumption of innocence, the right of a person to know the charges brought against them, the right to the presence of a parent or guardian, and the rights to a fair trial and the protection of privacy;
- notify parents or guardians and permit a judge to determine the issue of release as soon as practicable after the apprehension of a juvenile;
- ensure that contacts between the law enforcement agencies and a juvenile offender are managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to them, with due regard to the circumstances of the case;
- provide the police with discretion, in accordance with written guidelines, to dismiss matters against juveniles without resorting to trial; and
- make detention before trial the last resort and if so detained, juveniles should be kept separate to adults.<sup>198</sup>

The Beijing Rules recommend a specialisation within the police service for dealing with juvenile suspects and offenders and for police who are in frequent contact with juvenile suspects and offenders to receive sensitisation training. The Rules also recommend that special units to deal with juvenile suspects and offenders are established in large cities.<sup>199</sup>

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty further expand and reinforce the protections afforded to persons under the international law generally, and the

Beijing Rules specifically. They are intended to establish minimum standards for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.<sup>200</sup> For the purpose of the Rules, the deprivation of liberty extends to police custody.<sup>201</sup> The Rules countenance the following:

- juveniles should only be deprived of their liberty in accordance with the Beijing Rules and that deprivation of liberty should be the last resort;
- enacting domestic laws and procedures which give effect to the Rules;
- ensuring that deprivation of liberty only occurs according to law and consistent with human rights norms; and
- for juveniles under arrest or awaiting trial, they must be presumed innocent until proven guilty, they must have the right to legal counsel and the right to work and leisure insofar as such activities are consistent with the administration of justice.<sup>202</sup>

The UN General Assembly has established Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) in order to guide states on juvenile-specific issues within their broader crime prevention strategies. States are encouraged to enact legislation that gives effect to the international framework for juvenile justice, including the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty.<sup>203</sup>

Those provisions of the Guidelines that impact policing include establishing prevention plans and policies at institutional and community levels, staffed by specialised personnel, in coordination with other concerned government and non-government agencies, that:

- reduce crime rates among young persons;
- put fairness and equity at the centre of any intervention;
- safeguard the well-being, development, rights and interests of young persons; and
- recognise that some behaviour is part of growth processes and that labels such as “delinquent” tend to perpetuate undesirable behaviour.<sup>204</sup>

Police actions and polices must also be governed by the socialisation and development process of children. Accordingly, preventative policies should take into account children’s access to family, education and community.<sup>205</sup> The institutionalisation of children should always be considered a last resort.<sup>206</sup>

## Children

The CRC, which is reflected regionally in the African Charter on the Rights and Welfare the Child requires all state institutions (including the police and courts) to make the best interests of the child the paramount consideration in any action they take involving a child.<sup>207</sup>

The CRC recognises the rights of children and requires that every child alleged to have infringed the penal law be treated in a manner consistent with the promotion of their best interests, human rights, sense of dignity and worth and affords them the rights of due process.<sup>208</sup> The CRC also encourages states to consider a number of options for child offenders as alternatives to institutional care which should be consistent with both the well-being of the child and the circumstances of the offence.<sup>209</sup>

The CRC and the African Charter on the Rights and Welfare of the Child unequivocally state that no child shall be subject to torture, cruel, inhuman or degrading treatment or punishment, capital punishment or life imprisonment or arbitrarily deprived of their liberty and a child deprived

of their liberty shall be afforded due process.<sup>210</sup> Both also recognise the right of children to freedom of assembly and freedom of expression, only limited to those permitted derogations in Section 3i (public order policing), below.<sup>211</sup>

The CRC Optional Protocol requires the state to consider the best interests of the child in the context of children's treatment in the criminal justice system, in which the police are a key actor.<sup>212</sup>

The UN Economic and Social Council has issued Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime which provide a framework for legal, policy and practical measures to ensure that the rights of child victims and witnesses are fully respected.<sup>213</sup> The Guidelines also promote ratification of and compliance with the Convention on the Rights of the Child, and state that implementation of both the Convention and Guidelines are to be supported by training.<sup>214</sup> Although the Guidelines do not speak specifically to policing, they are nonetheless helpful in informing the type of approach police should take in their interaction with child victims and witnesses.

The Guidelines provide a set of principles that should underpin interaction with child victims and witnesses, and to which the police should adhere. Those principles are:

- the right to be treated with dignity and compassion;
- the right to be protected from discrimination, on any grounds;
- the right to be informed of the availability of support services and the procedures for criminal justice processes (including protective measures available and the progress of matters);
- the right to be heard and to express views and concerns;
- the right to effective assistance (in terms of policing, this imposes a positive obligation on police to make known the existence of legal services.);
- the right to privacy;
- the right to be protected from hardship during the justice process (for example, by limiting the length of police interviews); and
- the right to safety.<sup>215</sup>

To promote the effective implementation of the international legal framework, the UN Economic and Social Council established Guidelines for Action on Children in the Criminal Justice System. The Guidelines reiterate that respect for human dignity (which includes non-discrimination, upholding the best interest of the child, the right to life, survival and development, and respect for the views of the child) should guide states' implementation of the Guidelines.<sup>216</sup> The Guidelines promote the development of national laws, policies and practices that give full effect to the international framework, and that respect the inherent rights and dignity of children.<sup>217</sup>

In terms of specific targets set by the Guidelines and which pertain to policing children, states must:

- give particular attention to establishing a child-centred approach in their juvenile justice system;
- ensure that no child under the age of criminal responsibility is subject to criminal charges;
- make diversionary, alternative and educational measures available to children at all stages of the criminal justice process, including at the pre-arrest stage;
- ensure easy access between children and their family or community;
- establish independent bodies to monitor places of child detention (which should adhere to the UN Rules for the Protection of Juveniles Deprived of their Liberty);

- ensure police are trained in human rights and other international principles that underpin juvenile justice; and
- ensure that prompt, thorough and impartial investigations of allegations that a child's rights and freedoms have been infringed occur, and that there are corresponding sanctions.<sup>218</sup>

The EA Bill of Rights expressly recognises the rights of children to be free from all forms of discrimination and, if arrested or detained, to be kept separate to adult detainees and be provided with a state-appointed lawyer.<sup>219</sup>

## **Migrant Workers**

The Migrant Workers Convention guarantees the rights of liberty and security of the person, to migrant workers and their families.<sup>220</sup> This includes protection by the state from violence, threats and intimidation by public officials, private groups or individuals.<sup>221</sup> Migrant workers and their families also enjoy the right of freedom of movement, subject to public order considerations.<sup>222</sup> The application of these rights must be made without discrimination on any grounds, including race, sex, colour, language or religion.<sup>223</sup>

The responsibility of the state, through the police, towards migrant workers and their families who enter the criminal justice system, as set out in the Migrant Workers Convention requires:

- verifications of the identify of migrant workers and their families to be in accordance with the law;
- freedom from individual and collective arbitrary arrest and detention;
- notification of the reason for arrest and any charges to be made as far as possible in a language the migrant worker or their family understands;
- prompt hearing and trial within a reasonable time;
- access to consular or diplomatic authorities and notification of any rights deriving from relevant treaties; and
- the right to legal representation and access to an interpreter.<sup>224</sup>

If deprived of their liberty, migrant workers and their families are entitled to be treated with humanity and respect for their inherent dignity and cultural identity. The Convention makes provisions for keeping untried migrant workers and their families separate from convicted prisoners, and for providing the same rights as nationals, to visits by their families, as well as encouraging states to consider the unique problems that migrant workers' families may experience as a result of detention.<sup>225</sup> The absolute prohibition against torture that exists at international law is recited in the Convention.<sup>226</sup>

If a migrant worker or their family is subject to unlawful arrest or detention, or is a victim of a miscarriage of justice that resulted in their wrongful conviction, or suffers violation of any of the rights set out in the Convention, there is an enforceable right to adequate compensation.<sup>227</sup> The right of migrant workers and their families to equal treatment under the law as nationals and the right to a fair and public hearing by a competent, independent and impartial court or tribunal is enshrined in the Convention.<sup>228</sup>

If police confiscate identity documents or documents authorising entry, residence and work permissions, they must provide the migrant worker or their family with a detailed receipt.<sup>229</sup>

Migrant workers and their families are protected from double jeopardy, whereby a person cannot be tried and punished for an action to which they have already been subject to conviction or acquittal by a recognised court or tribunal.<sup>230</sup>

The Convention also prohibits the collective expulsion of migrant workers and their families, requiring the authorities to consider each case individually. If a decision to expel a migrant worker and their family is made, the reason for the decision and the right to appeal must be communicated to them in a language they understand and they must be provided with an opportunity to settle their personal affairs.<sup>231</sup>

No unlawful derogation from the rights provided to migrant workers and their families is permitted and it shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights.<sup>232</sup>

## **Internally Displaced Persons**

International law recognises the rights of all persons to move and reside freely within the borders of the state, subject to public order considerations, and freedom from discrimination on any grounds.<sup>233</sup>

## **Refugees**

The Refugee Convention defines the status and rights of refugees. In respect of their interaction with police, the Refugee Conventions requires that refugees be afforded with the following rights:

- non-discrimination in the application of the Convention;
- free access to the courts; and
- the right to be free from expulsion or being sent to a country where they may face persecution.<sup>234</sup>

The ICCPR guarantees the right of all persons to an interpreter in the determination of criminal charges against them.<sup>235</sup> Additionally, the UNCAT and the AU Convention provides that a person must not be refouled where there are substantial grounds to believe that the person would be in danger of being subject to torture and threats to their life, liberty and security.<sup>236</sup>

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

## **General Principles**

The ICCPR, the African Charter on Peoples' and Human Rights and the EAC Bill of Rights recognise the right of all persons to peaceful assembly, without restriction, insofar as the exercise of this right is consistent with the law, democracy, public peace and security, and the rights of others.<sup>237</sup>

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials recognises the right to participate in lawful and peaceful assembly enshrined in the UDHR and restricts the use of force and firearms in the policing of other assemblies to:<sup>238</sup>

- unlawful, but peaceful, assemblies: avoid the use of force and, if force is necessary, use force to the minimum extent necessary;<sup>239</sup> and
- violent assemblies: use less dangerous means of crowd control, but if force becomes necessary, use it to the minimum extent necessary. The use of firearms is prohibited except when necessary to protect life in the following circumstances:
  - self-defence;
  - in the defence of others against the imminent threat of death or serious injury;
  - to prevent the commission of a crime that presents a grave threat to life; or
  - to overcome the resistance to arrest of a person, or to prevent their escape, if that person's actions represent a grave threat to life.<sup>240</sup>

## Use of Non-Violent Tactics

The Basic Principles promote the development and regulated use of non-lethal incapacitating weapons and other weapons for the differentiated use of force and firearms.<sup>241</sup> Police should be provided with self-defence equipment (including “shields, helmets, bullet-proof vests and bullet-proof means of transport”) to decrease the reliance on the use of any force and firearms.<sup>242</sup> Police are expected to utilise non-violent tactics before resorting to force or firearms.<sup>243</sup> It is only when other means would be ineffective or fail to produce the intended result that law enforcement officials are permitted to use force or firearms.<sup>244</sup>

## Training

The Basic Principles recommend that all law enforcement officers receive appropriate training and testing on the use of force, and that incidents of force or the use of firearms are reviewed against training programmes and operational procedures.<sup>245</sup> The Basic Principles note that law enforcement officers should only take receipt of firearms following the successful conclusion of special firearms training,<sup>246</sup> which have a particular emphasis on skills that will reduce the need to use force and firearms. These include:

- police ethics;
- human rights, especially in the investigative process;
- alternatives to the use of force and firearms, including the peaceful settlement of conflicts;
- understanding of crowd behaviour; and
- methods of persuasion, negotiation and mediation.<sup>247</sup>

# 4. Police Organisations

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

The International Bill of Rights and the international and regional instruments that expand and refine its provisions provide a framework on how the police must promote and protect human rights. Although there is no set of standards that specifically pertain to police accountability, a review of the accountability provisions in individual instruments reveal several commonalities. These include internal and external oversight, with elements of judicial oversight.

The police are accountable to multiple audiences on various aspect of policing including effective use of resources, performance and conduct. The interaction between civilian political authority and citizens in general with the police in development of policy and strategic plans is a specific subset of external accountability arrangements and is often referred to as accountability before the fact. Alongside these mechanisms of external accountability are a range of “after the fact” systems of oversight, such as accountability for resource utilisation and performance, to bodies such as parliament, the offices of the auditor general, and oversight of conduct to national human rights commissions and specialist oversight bodies. The latter can include investigative bodies and those that oversee recruitment, promotion and discipline within the police. It is generally accepted that external oversight is best supported by strong internal oversight systems, and likewise, internal systems work best when supported by external systems.<sup>248</sup>

Systems of internal accountability include:

- internal police hierarchy: line of command providing a continuous oversight process;
- reporting procedures;
- mechanisms for receiving and dealing with complaints;
- disciplinary procedures;
- criminal procedures; and
- whistle blowing.<sup>249</sup>

External systems of accountability include:

- the judiciary;
- parliament;
- independent bodies such as national human rights institutions, specialist police oversight agencies, auditors, public service commissions, etc;
- civil society and non-governmental organisations; and
- citizens.

## **General Standards for Accountability**

Accountability provisions in international and regional instruments reviewed for this report provide for the following basic provisions:

- effective internal accountability mechanisms, including clear chains of command, that are governed by laws and codes of conduct that promote and protect human rights,
- effective and independent external accountability mechanisms;<sup>250</sup>
- investigations into misconduct must be:
  - impartial;
  - thorough;
  - prompt;
  - transparent;
  - adhere to high professional standards;
  - published and made available to the public;<sup>251</sup>
- preventative measures, including visits to places of detention and proper systems of audit for weapons and police budgets;<sup>252</sup>
- internal and external accountability mechanisms must be well resourced;<sup>253</sup>
- compensation must be made available to victims;<sup>254</sup> and
- witnesses and informants must be protected and informed of the processes of accountability to ensure their participation.<sup>255</sup>



## External Accountability Mechanisms

National human rights institutions (NHRIs) generally have a mandate to investigate complaints against the police as part of their overall mandate to promote and protect human rights.<sup>256</sup> In 1993, the UN General Assembly adopted the Paris Principles which set out the minimum requirements for NHRIs with a view to improving their effectiveness.<sup>257</sup>

The Principles state that institutions must have a constitutional or legislative guarantee of autonomy from the government, including operational and financial autonomy. NHRIs must have a broad mandate to promote and protect human rights that is established by law and supported by adequate resources, infrastructure and powers of investigation.<sup>258</sup>

The Principles recommend that NHRIs have a mandate to submit or hear any matter without referral to a higher authority on matters including:

- legislative and administrative provisions that are intended to protect and preserve human rights;
- violations of human rights; and
- the harmonisation of national legislation, regulations and practices with international human rights.<sup>259</sup>

To support these functions, the Principles confer NHRIs the power to hear any person and obtain any information or documents necessary.

In addition to a mandate to investigate and conduct hearings, the Paris Principles also provide NHRIs with:

- the power to make recommendations;
- freedom to consider any questions within its competence;
- freedom to address public opinion directly;
- capacity to meet on a regular basis;
- power to establish working groups and set up local or regional sections;
- authority to maintain consultation; and
- encouragement to develop relations with non-governmental organisations.<sup>260</sup>

## The judiciary

Several international instruments refer to the use of “judicial authorities” to conduct oversight on policing. The Basic Principles on the Independence of the Judiciary provide some guidance on how the judiciary should be structured to ensure that its oversight over policing is effective, impartial and provides guarantees for human rights and dignity. The Principles promote the enactment of a constitutional guarantee of judicial independence that is observed and respected by all government institutions, including the police.<sup>261</sup> The judiciary is required to make impartial decisions, based on fact and law, without interference from “any quarter, for any reason” and unwarranted or inappropriate interference with the judicial process is not permitted.<sup>262</sup> Further, the judiciary retains control over all matters of a judicial nature and have “exclusive authority to decide whether an issue submitted for its decision is within its competence and defined by law”. This ensures that the judiciary can conduct oversight.<sup>263</sup>

The UN Economic and Social Council has established Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary which guide states’ implementation of judicial systems based on the Basic Principles.<sup>264</sup>

**b. The police will implement basic standards for the recruitment of officers, including selection of candidates by proper screening processes to ensure that they exhibit appropriate moral, psychological and physical qualities for the role. Recruitment will ensure that the police organisations are representative of the community as a whole, with ethnic, gender, language and religious compositions reflective of the population it serves.**

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials sets out basic standards that should be adhered to by governments and law enforcement agencies in the recruitment of officers, including:

- selection by proper screening procedures;
- ensuring candidates exhibit appropriate moral, psychological and physical qualities for the role;
- demonstrate physical fitness (which is subject to periodic review); and
- ongoing professional training.<sup>265</sup>

The UN Economic and Social Council's Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials also notes that the selection, education and training of police is of "prime importance", and that regional cooperation and information exchanges are encouraged, and promotes "adequate" salaries and working conditions for police.<sup>266</sup>

**c. The police will ensure members receive comprehensive and ongoing training on their rights and obligations.**

Weaved throughout the international law that underpins the common standards, is a requirement that police receive comprehensive and ongoing training on their rights and obligations, specifically:

- prohibition against torture;<sup>267</sup>
- appropriate use of force and firearms;<sup>268</sup>
- prevention of extra-judicial killings and enforced disappearances;<sup>269</sup>
- sensitisation to the needs of victims;<sup>270</sup>
- sensitisation to the needs of women<sup>271</sup> and ensuring effective responses to the needs of victims of gender-based violence, as well as processing and investigating these crimes;<sup>272</sup>
- training on the scope for discretion at the various levels of administration of juvenile justice (including investigation)<sup>273</sup> and, for police who are in frequent contact with juvenile suspects, sensitisation training;<sup>274</sup>
- in order to combat corruption, education and training programmes should be organised to enable police officers to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialised and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.<sup>275</sup> Police should also receive continual professional training and education in all aspects pertaining to law enforcement, with special attention to ethics and integrity;<sup>276</sup> and ensure training on issues about corruption.<sup>277</sup>

In addition to those specific requirements, the UN High Commissioner for Human Rights, Centre for Human Rights, has published guidelines on the content of human rights training for the

police. These guidelines require states to provide rights-based training to law enforcement personnel on:

- ethics and legal conduct;
- policing in democracies;
- non-discrimination in law enforcement;
- police investigations;
- arrest and detention;
- the use of force, including accountability for the use of force and firearms, permissible circumstances for the use of firearms, and procedures for the use of firearms;
- civil disorder;
- states of emergency;
- armed conflict;
- protection of the human rights of marginalised groups such as juveniles, women, refugees, non-nationals and victims;
- police command and management;
- community policing; and
- police violations of human rights.<sup>278</sup>

**d. Police will not only refrain from engaging in acts of corruption and abuse of power, but will rigorously oppose and combat all such actions. States are required to implement measures to facilitate the investigation of corruption and abuse of power and to take preventative measures, including police anti-corruption training and enacting domestic legislation that criminalises such actions.**

The prohibition against police engaging in acts which amount to corruption and abuse of power is evident in a number of international conventions and other standards. At international law, corruption refers to any act, attempted act or omission in connection with an official duty which is made in response to the demand or receipt of incentives, promises or gifts.<sup>279</sup> Corruption is recognised by the international community as a threat to stability and security, and as detrimental to good governance and the rule of law.<sup>280</sup>

The UN Code of Conduct for Law Enforcement Officials recognises that acts of corruption are incompatible with the nature of law enforcement activities and that the government must enforce the law against any officers who commit acts of corruption.<sup>281</sup> The Code states that law enforcement officers shall not only refrain from engaging in any acts of corruption, but rigorously oppose and combat all such acts.<sup>282</sup>

The Convention Against Corruption, which promotes states' obligations to prevent and deal with corruption and create accountability measures to prevent it, applies to police agencies in their capacity as public officials pursuant to the Convention.<sup>283</sup> As signatories to the Convention, states are required to take the following measures to combat corruption:

- introduce anti-corruption policies and practices that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability;
- periodically review the effectiveness and adequacy of legal and administrative anti-corruption measures;
- collaborate on anti-corruption measures with other states;

- implement systems of public service recruitment which adhere to principles of efficiency and transparency, promote adequate remuneration and promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialised and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions;
- enact a Code of Conduct for Public Officials which promotes integrity, honesty and responsibility in the exercise of public functions, in reference to the United Nations Code of Conduct for Public Officials, and which supports reporting and punishment mechanisms;
- take measures to enhance procurement and management of public finances, including promotion of transparency and accountability in the management of public finances, implementing accounting and auditing standards and systems of oversight, and preservation of records;
- take measures to enhance transparency in reporting of public administration activities, including access to information by the public;
- take measures to prevent corruption in the judiciary; and
- take measures to promote the participation of the private sector, including civil society, in raising awareness of and combating corruption.<sup>284</sup>

The CAC requires the enactment of legislation which makes it a criminal offence for any public official to engage in bribery, embezzlement, misappropriation or other diversion of public property, trade in influence, abuse their function, obtain illicit enrichment or obstruct justice.<sup>285</sup> The CAC also encourages measures to protect informers, witnesses and victims of corruption.<sup>286</sup>

The Declaration on Basic Principles for Justice of Victims of Crime and Abuse of Power requires states to consider the enactment of domestic legislation which would proscribe acts constituting an abuse of power and to provide compensation and other remedies to victims of abuse of power by the state and/or its institutions.<sup>287</sup> The Declaration further requires the periodic review of domestic laws in relation to the abuse of power and promotes the establishment of preventative mechanisms and remedies to victims.

Corruption is one of the six priority crime areas of Interpol and the organisation promotes regional cooperation for eradicating the causes and effects of corruption. Interpol defines corruption as “any course of action or failure to act by individuals or organisations, public or private, in violation of law or trust for profit or gain”.<sup>288</sup>

In 1998, Interpol established the Group of Experts on Corruption (IGEC) with a mandate to facilitate the coordination and harmonisation of different national and regional approaches to combating corruption.<sup>289</sup> The IGEC mission statement is as follows:

*We believe in a free and just society. To be truly just, society must embrace high standards of integrity and openly resist corruption. To this end, we join with the community to ensure such standards and accept responsibility to fight all forms of corruption through education, prevention and effective law enforcement.*<sup>290</sup>

IGEC has published two key documents as part of its anti-corruption work. The first, which was adopted by the Interpol General Assembly in 1999, is a Declaration of Intent for Law Enforcement

(the Seoul Declaration). Member states of Interpol agreed to implement national integrity programmes which incorporate the following elements:

- the three-tier approach to combating corruption: education and prevention, operational/ investigation, and public relations;
- recognising the necessity for a code of conduct for law enforcement officers, and where practicable, adopting and complying with such a code as recommended by the Interpol Group of Experts;
- refining the recruitment process to include integrity testing, oral interviews, and background investigations in order to determine as far as possible the degree of the applicant's integrity, without regard to economic or social status, sex, race, religion or political beliefs;
- due to the transnational nature of crime it is essential for law enforcement to cooperate with all legally authorised agencies in the pursuit of justice, both on a national and international level, and to encourage cooperation with all entities with a serious commitment to combating crime in general, but corruption specifically;
- all law enforcement officials should receive continual professional training and education in all aspects pertaining to law enforcement, with special attention to ethics and integrity;
- the management structures involved in anti-corruption initiatives should be responsible for:
  - reviewing annually, the statements of assets and liabilities of all personnel in accordance with national legislation;
  - ensuring the unit's accountability and transparency to the community;
  - monitoring factors that can identify corruption;
  - identifying weaknesses in working methods, administrative and legal processes;
  - ensuring that proper internal and external audit procedures are introduced and maintained;
  - availing themselves of the advances in information technology and ensuring that these tools are available for all personnel;
  - creating appropriate structures to protect informants and whistleblowers; and
  - enforcing efficient and swift procedures to ensure that complaints of the community receive proper attention.
- the remuneration received by law enforcement officers should be sufficient to afford them a decent and reasonable standard of living.<sup>291</sup>

IGEC has also published draft Global Standards to Combat Corruption in Police Forces/Services. The objectives of the draft standards are to ensure all police forces and services have high standards of honesty, integrity and ethical behaviour, to promote and strengthen measures to prevent, detect, punish and eradicate corruption, and to bring police officers to justice for acts of corruption.<sup>292</sup>

The Global Standards require each Interpol member state to commit to establishing and maintaining high standards of conduct for the honest, ethical and effective performance of police functions, which include measures on proper use of public resources, reporting acts of corruption, avoiding conflicts of interest and strengthening public confidence in police officers.<sup>293</sup> Police organisations are required to establish and maintain effective systems for recruitment, postings, promotion and termination, and ensure training on issues about corruption.<sup>294</sup>

Additionally, states must establish deterrents to bribery and use their best endeavours to ensure that mechanisms and systems for the prevention, detection, punishment and eradication of corruption are in line with current Interpol practices. This includes strengthening systems of

revenue collection, money and property handling, and collection of evidence.<sup>295</sup> States are also required to implement systems for reporting corruption (by both police officers and the public) and facilitate monitoring by oversight bodies.<sup>296</sup>

At a regional level, the EA Bill of Rights will impose a positive obligation on states to progressively take all reasonable legislative and other measures to stamp out corruption and protect whistleblowers.<sup>297</sup>

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

The UN Guidelines for the Prevention of Crime emphasise that crime prevention strategies should be underpinned by human rights and the rule of law, and that their effectiveness depends on cooperation between state agencies (including the police) as well as partnership with the community.<sup>298</sup> They also set out the importance of international cooperation, both in terms of capacity-building and training, establishing networks and addressing the links between local crime problems and transnational organised crime.<sup>299</sup>

The Guidelines promote the sustainable integration of crime prevention strategies in a government's crime control structures and programmes by establishing clear plans, taking a multi-sector approach, partnering with the community and ensuring sufficient budgetary allocations.<sup>300</sup> The Guidelines also encourage the development of crime prevention plans with clear targets and priorities which are supported by coordination between the relevant agencies and the public.<sup>301</sup> States should also ensure that agencies and the community have crime prevention capacity through training and cooperation with relevant practitioners.<sup>302</sup>

The UN Economic and Social Council has issued Guidelines for Cooperation and Technical Assistance in the field of Urban Crime Prevention that sets out standards for cooperation at local (inter-agency) levels on urban crime prevention projects.<sup>303</sup> The Guidelines provide that the multi-agency and coordinated approach to crime prevention should be underpinned by an integrated crime prevention action plan.<sup>304</sup> A comprehensive and efficient integrated crime prevention plan should include:

- the nature and type of crimes to be tackled, objectives of the plan, timelines for achieving the objectives and responsibilities of the cooperating agencies;
- involvement from a range of actors including the police, justice sector institutions, community, economic sector and media;
- consideration of factors such as education, religious, moral and civil values, communities most in need of assistance, and methods of combating cultures of violence and intolerance; and
- action at various levels, including primary prevention (adopting working methods for police that promote crime prevention and civil responsibility); prevention of recidivism (adapting police intervention methods, developing new methods of intervention to promote alternative remedies to crime); and protection of victims by improving their treatment.<sup>305</sup>

A key facility in promoting cooperation is community policing. Community policing principles have been developed by the United Nations Centre for Human Rights based on the principles of the UDHR, Code of Conduct, Tokyo Rules and the experiences of police experts in several member states. They have been designed to help promote greater cooperation and coordination between the police and the communities they serve.



The principles are to:

- establish a partnership between police and law-abiding members of the community;
- adopt a community relations policy and plan of action;
- recruit from all sectors of the community;
- train officers to deal with diversity;
- establish community outreach and public information centres;
- liaise regularly with all groups in the community;
- build contacts with the community through non-enforcement activities;
- assign officers to a permanent neighbourhood beat;
- increase community participation in policing activities and community-based public safety programmes;
- involve the community in identifying problems and concerns;
- use a creative problem-solving approach to develop responses to specific community problems, including non-traditional tactics and strategies; and
- coordinate policies, strategies and activities with other government agencies and with non-government organisations.<sup>306</sup>

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

All five countries of the EAC are members of Interpol, an association of cooperating states. Interpol promotes “mutual assistance and suppression of crime” in the spirit of the UDHR and its Constitution prohibits police actions which are contrary to human dignity and which are political, military, religious or racial in character.<sup>307</sup> Member states are expected to ratify and give effect to international human rights and anti-corruption standards to improve police accountability and oversight. To facilitate international policing operations, Interpol has developed rules on the processing of information and controlling personal data.<sup>308</sup>

The United Nations Declaration on Crime and Public Security promotes security by encouraging states to implement measures to combat serious trans-national crime on a coordinated regional or international level.<sup>309</sup> States must promote bilateral, regional, multilateral and global enforcement cooperation and assistance and, in furtherance of this aim, ensure that they take measures to prevent such crime at a domestic level, strengthen information sharing and facilitate technical assistance (which includes exchange programmes and police training).<sup>310</sup> States must also take measures to strengthen their own law enforcement systems and to provide other states with assistance to do the same, through methods including training and providing technical assistance.<sup>311</sup>

The UN Model Treaty of Extradition proposes several mandatory grounds for refusing extradition – and on this basis, the police are not to effect the extradition of a person for any reason. These include, *inter alia*:

- for offences of a political nature;
- if there are substantial grounds for believing that the extradition request is made for the purpose of punishing a person on the basis of their race, religion, nationality, ethnic origin, political opinions, sex or status (or their position may be prejudiced for any of those reasons);
- for conduct that is only an offence under military law, not ordinary criminal law;

- if the person is subject to amnesty or the extradition is in relation to an offence for which a statute of limitations applies;
- where the extradition pertains to a decision made in absentia and the person was not provided with notice or opportunity to arrange a defence; and
- if the person has been or would be subject to torture or ill-treatment, or will not receive minimum guarantees in criminal proceedings.<sup>312</sup>

The UN has also established a Model Treaty on Mutual Assistance in Criminal Matters which promotes the “widest measure of cooperation” between states to combat crime.<sup>313</sup> Cooperation includes taking evidence, serving documents, search and seizure, collecting information, original documentation and other evidentiary items.<sup>314</sup> The Model Treaty provides that requests must be carried out promptly and in a manner consistent with the law of the state requested, provided there are no permitted grounds of refusal (which include offences of a political nature or if the purpose of the request is grounded in discrimination of any kind).<sup>315</sup>

The Common African Defence and Security Policy 2004 (CADSP), while not directly referring to policing organisations, recognises that the peace and security of each country is dependent and interlinked with that of neighbouring states and the continent as a whole. The central role played by police in the maintenance of peace and security means that they are key players in regional initiatives. The CADSP identifies a number of “conflicts/tensions” that undermine peace and security and in which police may have a role, including:

- lack of respect for the sanctity of human life, impunity, political assassinations and other subversive activities;
- situations which prevent and undermine the promotion of democratic institutions and structures, including absence of the rule of law, equitable social order, popular participation and good governance;
- improper conduct of electoral processes;
- absence of the promotion and protection of human rights, individual and collective freedoms, equal opportunity for all, including women, children and minorities;
- corruption;
- plight of refugees and internally displaced persons and insecurity caused by their presence;
- illicit proliferation, circulation and trafficking in small arms and light weapons;
- violent and other crimes, including organised and cross border crimes;
- human and drug trafficking; and
- money laundering.<sup>316</sup>

One of the building blocks of the Common Policy includes an African Standby Force, with a police component, for the purpose of preventative deployment and peace building.<sup>317</sup>

The Nairobi Protocol acknowledges that the proliferation of small arms and light weapons is a regional issue and encourages states to take measures to improve cooperation among law enforcement agencies for the promotion of effective policing of this issue and curbing corruption within police agencies associated with the arms trade. Measures include strengthening regional police cooperation through training and information exchange, establishing direct communication systems between police organisations and promoting cooperation with regional bodies such as Interpol.<sup>318</sup>









# PART **four** challenges and opportunities

“THE WAY FORWARD - IMPLEMENTATION OF THE COMMON STANDARDS”

“The common standards, effectively co-owned by the police organisations of Burundi, Kenya, Rwanda, Tanzania and Uganda, have the ability to provide a benchmark against which audits of each state's policing can be made.”



## Introduction

The implementation of the standards, as with the implementation of policy generally and throughout the world, is not without challenges. Protection of the fundamental rights to life, liberty and security of the person is a core function of policing, as articulated in the laws that govern policing in all EAC countries.<sup>319</sup> On the one hand, these protections are manifested in domestic laws pertaining to arrest, detention and the use of force. However, there are persistent reports that the five police organisations of the EAC are often unable or unwilling to exercise their functions in full realisation of this mandate – unable due to inadequate legal structures (which, for example, may not provide guidelines on the appropriate use of force during public disturbances), training and lack of resources, and unwilling on account of various factors such as political interference and weak accountability structures that promote a culture of impunity in all ranks.<sup>320</sup>

It was not in the scope of this report to provide a comprehensive audit of all domestic legislation, policy and practice against the common standards. However, it is illustrative to consider the challenges of aligning police practice and policy at a domestic level with the common standards in two key and recognised problem areas of policing in East Africa: torture and the use of force.

## Challenges

### Torture

The common standards proposed in this report provide that the police must uphold the absolute prohibition on the use of torture and other cruel, inhuman or degrading treatment or punishment. The police must not inflict, instigate or tolerate any act of torture, cruel, inhuman or degrading treatment or punishment. No circumstances will override this prohibition, including threats of war, political instability or periods of emergency.

The law in all five EAC states contains a general prohibition against the use of torture.<sup>321</sup> However, reports of torture, cruel, inhuman or degrading treatment or punishment by the police persist.<sup>322</sup> Although each state contains general prohibitions, the legal framework for the elimination and prevention of torture does not accord with UNCAT or the Robben Island Guidelines. In Tanzania's case, the government has signed but failed to ratify UNCAT. None of the states have signed or ratified the OPCAT although the mandate of the national human rights institutions in Kenya and Uganda facilitate independent inspections of places of detention.

In Burundi, Kenya, Tanzania and Uganda, the law does not provide a comprehensive definition of torture that clarifies the type of conduct that will constitute torture, cruel, inhuman or degrading treatment or punishment. As a result, there is no certain legal cause of action or remedy for, *inter alia*, psychological torture or conditions of police custody that would otherwise amount to cruel or unusual punishment.

In Burundi, there is no legal provision for the criminalisation of acts of torture which means that while the Constitution prohibits its use, torture does not constitute a crime pursuant to the Criminal Code. In Uganda, the prohibition against torture is not absolute.

In a number of EAC countries, the legal framework (or lack of proper implementation) fails to guarantee basic safeguards to persons deprived of their liberty that accord with due process. In



Burundi, the law does not require police to notify a person of their rights upon arrest, which includes their right to access a lawyer or an independent medical practitioner; persons can be held by police for up to 14 days without charge. In Uganda and Kenya, there are numerous reports that the police fail to bring arrested persons before a competent judicial authority within the 48 hours permitted by law.<sup>323</sup>

Both Burundi and Kenya lack specific legal frameworks for the investigation of torture, as well as the punishment of perpetrators and compensation of victims by a competent authority. In Uganda, the Human Rights Commission (UHRC) has a mandate to act as a competent authority. However, the UN Committee Against Torture has expressed concerns that the government fails to comply with the UHRC's recommendations for compensation to victims of torture and prosecution of acts of torture.<sup>324</sup> In Kenya, the Committee also found that the Kenya National Commission for Human Rights (KNCHR) is unable to freely exercise its mandate to visit places of detention.<sup>325</sup> In Burundi, there is no effective framework for monitoring places of detention by either a competent authority or civil society.<sup>326</sup>

Most countries in the region have failed to adopt measures to protect victims, informants and witnesses to torture.<sup>327</sup> The Committee on Torture also noted that police training in Burundi and Kenya lacks a specific focus on torture.<sup>328</sup>

## Use of Force

The common standards contained in this report provide that the police must uphold the right to life, liberty and security of the person by only using force and firearms when strictly necessary, and only to the extent required for the fulfilment of their lawful duty.

The legal framework for the use of force by police in the five countries of the EAC does not accord with the Basic Principles. While there is a general requirement in each state that police use proportionate force only when necessary, there is either not enough guidance on what is appropriate and necessary, or the domestic laws create exceptions that contravene the Basic Principles. Additionally, none of the five countries have proper systems of reporting and investigation as required by the Basic Principles.

In Burundi, the law simply states that police officers can use force to pursue a legitimate aim that could not otherwise happen without force. The use of force must be reasonable and proportional to that aim and preceded by a warning.<sup>329</sup>

In Kenya, the constitutionally recognised right to life<sup>330</sup> is qualified by the lawful and justifiable use of force in circumstances which include:

- defence of persons or property from violence;
- effecting a lawful arrest;
- suppression of public riots, insurrections or mutinies; and
- preventing the commission of an offence.<sup>331</sup>

In Uganda, police officers are permitted to use arms in the course of their duty in accordance with the Police Act and corresponding standing orders on the use of force.<sup>332</sup> Firearms may be used by officers if they have reasonable grounds to believe that they cannot otherwise prevent the commission of particular acts, have issued a warning of the impending use of firearms which was ignored and reasonably believe that they, or others, are at risk of grievous bodily

harm. The use of firearms must be reasonable in the circumstances. Providing these conditions are met, it is lawful for police to use firearms if a person:

- charged or convicted with a felony escapes, or attempts to escape, from lawful custody;
- uses force to rescue, or attempt to rescue, another person from lawful custody; or
- uses force to prevent, or attempt the prevention, of their arrest or that of another person.<sup>333</sup>

In Tanzania, police are authorised to carry arms in the performance of their duties.<sup>334</sup> Police officers are prohibited from touching or confining the body of a person arrested unless the arrested person has agreed to the arrest by either their words or actions.<sup>335</sup> However, an officer is authorised to use all means necessary to make an arrest if there is forcible resistance or evasion to arrest.<sup>336</sup> An officer must use no more restraint than necessary to prevent the escape of an arrested person.<sup>337</sup> In making an arrest, a police officer is only permitted to use force (or subject a person to indignity) to the extent necessary to make the arrest or prevent the escape of an arrested person.<sup>338</sup> In the course of making an arrest or preventing an escape, an officer can take an action that results in the death of a person if that officer had reasonable grounds to believe that the act was necessary to protect life or prevent serious injury.<sup>339</sup>

The laws of all five EAC states recognise the right of peaceful assembly.<sup>340</sup> The framework for public order policing is different across the five states and none provide safeguards or guidelines on the use of force to disperse violent assemblies.

## Opportunities

Domestically, the common standards provide an agreed starting point from which individual governments or civil society organisations in East Africa can develop and implement audits to assess the legal and operational framework for policing. The common standards project was endorsed at the November 2008 EAPCCO Tenth Annual General Meeting and the Eighth Meeting of Ministers of Security of the EAPCCO countries. As such, the process is effectively co-owned by the police organisations of Burundi, Kenya, Rwanda, Tanzania and Uganda. This is an important consideration in the ability of the common standards to provide a benchmark against which audits of each state's policing can be made. These type of audits will highlight the successes and challenges to best practice policing in the region and in doing so complement both the development of an agenda for change as well as the actions needed to achieve such change.

Regionally, the common standards provide an important reference point for the ongoing harmonisation of policing in the EAC as it strives for greater integration. The standards serve as a reminder of the principles and practices to which EAC states and their police agencies have committed and can provide an agreed starting point for the EAC's activities to harmonise police training and grades.









A photograph of two young girls standing in front of a rustic wooden structure. They are wearing green sweaters and olive-green skirts. The girl on the right has her arm around the girl on the left. The background shows a wall made of horizontal wooden planks and a dirt ground with some rocks.

# PART five

project  
partners

"AFRICAN POLICING CIVILIAN OVERSIGHT FORUM, COMMONWEALTH HUMAN RIGHTS INITIATIVE & EASTERN AFRICA POLICE CHIEFS COOPERATION ORGANISATION"

"Facilitators of a consultative approach to the development of the common standards for policing in East Africa."

# African Policing Civilian Oversight Forum (APCOF)

APCOF is a network of African policing practitioners drawn from state and non-state institutions. It is active in promoting police reform through civilian oversight on policing. It believes that the broad values behind establishment of civilian oversight is to assist in restoring public confidence, develop a culture of human rights, integrity and transparency within the police and promote good working relationship between the police and the community. It achieves its goal through raising awareness and sharing information on police oversight, developing regional policing accountability standards and providing technical assistance to civil society, police and new and emerging oversight bodies in Africa. APCOF was established in 2004 as a coalition of police oversight bodies and practitioners in Africa and is registered as a non-profit company in terms of Section 21 of the South African Companies law.

The objectives of APCOF are to:

- Create and sustain public confidence in police.
- Develop a culture of human rights, integrity, transparency and accountability within the police.
- Promote a good working relationship between the police and the community.
- Promote good working conditions in the police.

The structure works on a range of issues such as:

- Promoting fair treatment of citizens by police agencies within the continent.
- Exchange of information and better practices among oversight bodies.
- Campaigning for the establishment of police oversight bodies in countries where they do not currently exist.
- Campaigning for improved resource allocation.
- Standard setting for policing and civilian policing oversight bodies in Africa.
- Promoting better working conditions for police officials.
- Encouraging and supporting the formation of regional networks to promote the issues of police reform.

The current directors of APCOF reflect the continental expertise from both state and civil society in promoting policing reform:

- Florence Simbiri Jaoko, Chairperson, Kenya National Commission on Human Rights, Kenya
- Parry Osayande, The Chair, Police Service Commission, Nigeria.
- Prof Etannibi Alemika, Chair, Criminology, Department of Sociology, University of Jos, Nigeria.
- Edith Kibalama, Executive Director, East Africa Centre for Constitutional Development, Uganda.
- Innocent Chukwuma, Executive Director, Cleen (Center for Law Enforcement Education Network), Nigeria.
- Elias Valoyi, Executive Director and Tommy Tshabalala, Head of Investigations, Independent Complaints Directorate, South Africa.
- Ababacar Ndiaye, Project Officer, Senegalese Commission on Human Rights, Senegal.
- Amir Suliman, Executive Director, Khartoum Centre for Human Rights and Environmental Development, Sudan.



- Tito Rutaremara, Ombudsman, Office of the Ombudsman, Rwanda.
- Prof. Elrena vd Spuy, Centre for Criminology Faculty of Law, University of Cape Town, South Africa.
- Sean Tait, Coordinator.

## Commonwealth Human Rights Initiative

CHRI is an independent, non-partisan, international NGO, mandated to ensure the practical realisation of human rights across the Commonwealth. CHRI was founded in 1987 by Commonwealth professional associations – doctors, journalists, lawyers, legal educators and joined later by parliamentarians, broadcasters, publishers and trade unions – as it was felt that while member countries had both a common set of values and legal principles from which to work, and a forum within which to promote human rights, there was little focus on human rights issues.

CHRI's objectives are to promote awareness of and adherence to the Harare Commonwealth Declaration, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as in-country laws and policies that support human rights in member states. CHRI has a family of offices – Headquarters in New Delhi, India; an Africa Office in Accra, Ghana and a Liaison Office in London – that jointly implement programme activities. CHRI works closely with local partners around the Commonwealth and particularly recognises the importance of South-South cooperation.

CHRI's core programmes focus on ensuring greater accountability and transparency of governments and greater participation of people in decision-making as a means of redressing some of the power balances that perpetuate the violation of human rights. Accordingly, CHRI has developed a strong focus on Access to Justice and Access to Information. CHRI's efforts are focused on systemic reform and human rights education, while also acting as a catalyst for action. Since 2001, CHRI's Access to Justice Programme has been promoting police reform and accountability in Commonwealth East Africa (Kenya, Tanzania and Uganda).

## East African Police Chiefs Cooperation Organisation (EAPCCO)

The East African Police Chiefs Cooperation Organisation, EAPCCO, currently has 11 members: Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, Sudan, Tanzania and Uganda. It was founded in Kampala in 1998. On 20 June 2000, the EAPCCO Constitution was signed in Khartoum, Sudan and came into force on 21 August 2002.

EAPCCO comprises four structures: The Council of Police Chiefs as the highest decision-making authority of EAPCCO; a Permanent Coordinating Committee (PCC) is responsible for formulating strategies to combat crime in the region and the creation of operational mechanisms; a Legal Sub-Committee (LSC) works to harmonise legal provisions of the member states relating to extradition and mutual legal assistance and makes relevant recommendations; and a Training Sub-Committee (TSC) identifies training potential within the sub-region for the benefit of member police forces.



# Glossary

## A

Access to Interpreters: 20, 25, 26, 36, 45, 46  
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**X****Y****Z**

# Appendix A

## Treaties, Protocols, Standards, Guidelines, Codes of Conduct and Declarations

Treaty/Protocol	Burundi	Kenya	Rwanda	Tanzania	Uganda
Universal Declaration of Human Rights	-	-	-	-	-
International Covenant on Civil and Political Rights (ICCPR)	R(a)9/5/90	R(a)1/5/72	R(a)16/4/75	R(a)11/6/76	R(a)21/6/95
Optional Protocol to the ICCPR	-	-	-	-	R(a)14/11/95
Second Optional Protocol to the ICCPR	-	-	-	-	-
International Covenant on Economic, Social and Cultural Rights	R(a)9/5/90	R(a)1/5/72	R(a)16/4/75	R(a)11/6/76	R(a)21/1/87
International Convention on the Elimination of All Forms of Racial Discrimination	R(a) 27/10/77	R(a)13/9/01	R(a)16/4/75 (R) Not considered bound by Article 22	R(a)27/10/72	R(a) 21/11/80
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	-	-	-	-	R(a)14/11/95
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	R8/1/92	R(a)9/4/84	R2/3/81	R20/8/85	R22/7/85
Optional Protocol to CEDAW	S13/11/01	-	-	R(a)12/1/06	-
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)	R(a) 18/2/93	R(a)21/2/97	-	-	R(a)3/11/86
Optional Protocol to CAT	-	-	-	-	-
Convention on the Rights of the Child (CRC)	R19/10/90	R30/7/90	R24/1/91	R10/6/91	R17/8/90
Optional Protocol to CRC on Involvement of Children in Armed Conflict	R24/6/08(R) Voluntary recruitment from 18	R28/1/02(R) Voluntary recruitment from 18	R(a)23/4/02(R) Voluntary recruitment from 18	R(a)11/11/04(R) Voluntary recruitment from 18	R(a)6/5/02(R) Voluntary recruitment from 18
Optional Protocol to CRC on the Sale of Children, Child Prostitution and Child Pornography	R(a)6/11/07	S8/9/00	R(a)14/3/02	R(a)23/4/03	R(a)30/11/01
Code of Conduct for Law Enforcement Officials	-	-	-	-	-
Basic Principles for the Use of Force and Firearms by Law Enforcement Officials	-	-	-	-	-
Standard Minimum Rules for the Treatment of Prisoners	-	-	-	-	-
Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel and Inhuman Treatment or Punishment in Africa (Robben Island Guidelines)	-	-	-	-	-

Treaty/Protocol	Burundi	Kenya	Rwanda	Tanzania	Uganda
Declaration on the Protection of All Persons from Enforced Disappearances	S6/2/07	S6/2/07	-	-	S6/2/07
UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)	-	-	-	-	-
UN Guidelines for the Prevention of Crime	-	-	-	-	-
Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment	-	-	-	-	-
UN Basic Principles on the Role of Lawyers	-	-	-	-	-
UN Guidelines on the Role of Prosecutors	-	-	-	-	-
UN Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials	-	-	-	-	-
UN International Code of Conduct for Public Officials	-	-	-	-	-
UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	-	-	-	-	-
UN Minimum Standard Rules for Non-Custodial Measures	-	-	-	-	-
UN Kampala Declaration on Prison Conditions in Africa	-	-	-	-	-
UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions	-	-	-	-	-
Declaration on Basic Principles for Justice of Victims of Crime and Abuse of Power	-	-	-	-	-
Declaration on the Elimination of Violence Against Women	-	-	-	-	-
UN Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice	-	-	-	-	-
UN Rules for the Protection of Juveniles Deprived of their Liberty	-	-	-	-	-
UN Guidelines for the Prevention of Juvenile Delinquency	-	-	-	-	-
UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime	-	-	-	-	-
UN Guidelines for Action on Children in the Criminal Justice System	-	-	-	-	-
Convention Relating to the Status of Refugees	-	-	-	-	-
Convention Against Corruption	-	-	-	-	-
UN Basic Principles on the Independence of the Judiciary	-	-	-	-	-

## Treaty/Protocol

Burundi

Kenya

Rwanda

Tanzania

Uganda

Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary

UN Guidelines for Cooperation and Technical Assistance in the Field of Urban Crime Prevention

UN Declaration on Crime and Public Safety

UN Model Treaty on Extradition

UN Model Treaty on Mutual Assistance in Criminal Matters

Treaty Establishing the East African Community

EAC Development Strategy, 2006-2010

Constitutive Act of the African Union

African Charter on Human and Peoples' Rights

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

Draft EAC Bill of Rights

The East African Community Framework on Good Governance (1<sup>st</sup> Draft), August 2009

EAPCCO Constitution

Common Market for Eastern and Southern Africa Treaty

Agreement Establishing the Intergovernmental Authority on Development

Solemn Declaration on a Common African Defence and Security Policy

The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, 2004

African Charter on the Rights and Welfare of the Child

Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights

Interpol Group of Experts on Corruption, Global Standards to Combat Corruption in Police Forces/Services

Interpol, Supporting the Initiatives of the Interpol Group of Experts on Corruption

UNHCR, International Human Rights Standards for Law Enforcement

INTERPOL Constitution

**R** Ratification, Accession (a), Succession (d); **S** Signature; **D** Denunciation; **(R)** Reservations or Declarations; - Not signed / Not open for signature (not a treaty or convention)

## Appendix B

### List of Acronyms

<b>APCOF</b>	African Policing Civilian Oversight Forum
<b>AU</b>	African Union
<b>CAC</b>	Convention Against Corruption
<b>CADSP</b>	Common African Defence and Security Policy
<b>CEDAW</b>	Convention on the Elimination of all Forms of Discrimination Against Women
<b>CHRI</b>	Commonwealth Human Rights Initiative
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>CRC</b>	Convention on the Rights of the Child
<b>EAC</b>	East African Community
<b>EAPCCO</b>	Eastern Africa Police Chiefs Cooperation Organisation
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICERD/CERD</b>	Convention on the Elimination of All Forms of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IDRC</b>	Canadian International Development Research Centre
<b>IGAD</b>	Inter Governmental Authority on Development
<b>IGEC</b>	Interpol Group of Experts on Corruption
<b>Interpol</b>	International Criminal Police Organisation
<b>KNCHR</b>	Kenya National Commission for Human Rights
<b>NHRI</b>	National Human Rights Institutions
<b>OAU</b>	Organisation of African Unity
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNCAT</b>	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>UNCAT (OPCAT)</b>	Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>UNHRC</b>	United Nations Human Rights Committee

## Endnotes

- <sup>1</sup> [www.apcof.org.za](http://www.apcof.org.za) (at 12 June 2009).
- <sup>2</sup> [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org) (at 12 June 2009).
- <sup>3</sup> Department for International Development, Why do we need to work more effectively in fragile states? Dfid UK , 2005 says that: A further, urgent matter for reform includes that of ensuring that the security service is properly mandated, resourced and accountable to civilian control.
- <sup>4</sup> EAC Treaty Article 5, <http://www.eac.int/documents/EAC%20Treaty.pdf>, Accessed 23 February 2008
- <sup>5</sup> EAC Development Strategy 2006-2010, available at [http://www.eac.int/advisory-opinions/doc\\_details/159-eac-development-strategy-2006-2010.html](http://www.eac.int/advisory-opinions/doc_details/159-eac-development-strategy-2006-2010.html) (at 15 June 2009).
- <sup>6</sup> EAC, The East African Community Framework on Good Governance (1<sup>st</sup> Draft), August 2009.
- <sup>7</sup> Hon. Beatrice Kiraso, Opening Remarks, EAC Consultative Meeting with Regional Civil Society Organisations on the Proposed EAC Framework on Good Governance, Bujumbura, Burundi, 19-20 August 2009.
- <sup>8</sup> See, Commonwealth Human Rights Initiative: *Police Accountability: Too Important to Neglect, Too Urgent to Delay*, New Delhi, 2006, page 17.
- <sup>9</sup> Articles 3(e)-(f) and 4(m), Constitutive Act of the African Union.
- <sup>10</sup> Articles 1 and 23-24, African Charter on Human and Peoples' Rights.
- <sup>11</sup> Part 11, African Charter on Human and Peoples' Rights.
- <sup>12</sup> Article 30, African Charter on Human and Peoples' Rights.
- <sup>13</sup> Articles 55 and 56, African Charter on Human and Peoples' Rights.
- <sup>14</sup> Article 54, African Charter on Human and Peoples' Rights.
- <sup>15</sup> Article 5, Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.
- <sup>16</sup> Article 34(6), Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.
- <sup>17</sup> Article 8, Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.
- <sup>18</sup> Article 9, Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.
- <sup>19</sup> Article 27, Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.
- <sup>20</sup> Articles 3(b) and 6(d), Treaty Establishing the East African Community 1999.
- <sup>21</sup> Articles 7(2) and 8(1), Treaty Establishing the East African Community.
- <sup>22</sup> Draft developed by the National Human Rights Institutions in the region under the auspices of Kituo Cha Katiba (Eastern African Centre for Constitutional Development), P.O. Box 3277, Kampala, Uganda, Website: [www.kituoachakatiba.co.ug](http://www.kituoachakatiba.co.ug), November 2007.
- <sup>23</sup> Articles 2(1), 2(4)-(5) and 44, Draft East African Bill of Rights.
- <sup>24</sup> Articles 4(1), 5-6, 9, 15 and 21, Draft East African Bill of Rights.
- <sup>25</sup> Articles 41(3)-(4), Draft East African Bill of Rights.
- <sup>26</sup> World Bank, What is Governance?, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/EXTMNA/REGTOPGOVERNANCE/0,,contentMDK:20513159~pagePK:34004173~piPK:34003707~theSitePK:497024,00.html> (at 9 September 2009).
- <sup>27</sup> Article 4, EAC, The East African Community Framework on Good Governance (1<sup>st</sup> Draft), August 2009.
- <sup>28</sup> Article 4, EAPCCO Constitution.
- <sup>29</sup> Article 3(d) and 6(e)-(i), Common Market for Eastern and Southern Africa Treaty and Article 18A, Agreement Establishing the Intergovernmental Authority on Development.
- <sup>30</sup> Preamble and Article 11(j), Solemn Declaration on a Common African Defence and Security Policy.
- <sup>31</sup> Section 8(ii)(j), Solemn Declaration on a Common African Defence and Security Policy.
- <sup>32</sup> Article 3, Universal Declaration of Human Rights.
- <sup>33</sup> Articles 1, 6-7, 9, 18-19 and 21-22, ICCPR.



<sup>34</sup> Article 4, ICCPR.

<sup>35</sup> UNCESCR comment to the ICESCR no. 3, pars. 10 and 11 (“Any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned.”) (1990). [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument) (at 13 July 2009).

<sup>36</sup> Article 2, UN Code of Conduct for Law Enforcement Officials. See also, UN General Assembly (1979) *Resolution 34/169*, December 17, para 9, [www.un.org/documents/ga/res/34/a34res169.pdf](http://www.un.org/documents/ga/res/34/a34res169.pdf).

<sup>37</sup> The Human Rights Committee hears complaints pursuant to the ICCPR.

The Committee on the Elimination of Discrimination Against Women hears complaints pursuant to the Convention on the Elimination of all Forms of Discrimination Against Women.

The Committee Against Torture hears complaints pursuant to the UNCAT.

The Committee on the Elimination of Racial Discrimination hears complaints pursuant to the CERD.

These “treaty bodies” are complemented in their operation by the complaint procedures available under the Commission on Human Rights and the Commission on the Status of Women.

<sup>38</sup> See Appendix A for ratification by states.

<sup>39</sup> Office of the United Nations High Commissioner for Human Rights, <http://www2.ohchr.org/english/bodies/petitions/individual.htm#against>, accessed 22 October 2009.

<sup>40</sup> All five states of the EAC have signed the ICCPR. The ICCPR sets out a framework for policing that is expanded by other conventions such as the Convention Against Torture and the Convention on the Elimination of Discrimination Against Women. Although not all states have signed the subsequent thematic Conventions, they have nonetheless made a commitment to the basic principles espoused in the common standards by their commitment to the ICCPR.

<sup>41</sup> Input in a focus group setting was received from the Kenya Police Force, Tanzania Police Force, Uganda Police Force, Rwanda Police Force and Burundi National Police Force. The study was endorsed at the November 2008 EAPCCO 10<sup>th</sup> AGM and 8<sup>th</sup> Meeting of Ministers of Security of the EAPCCO countries. As such, the process and resulting standards are effectively co-owned by the region’s five police organisations.

<sup>42</sup> See, for example, Article 2, ICCPR. Most instruments reviewed by the authors contained similar provisions.

<sup>43</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>44</sup> Guideline 1, Guidelines for the Prevention of Crime – Economic and Social Council Resolution 2002/12, annex.

<sup>45</sup> Guideline 7, Guidelines for the Prevention of Crime, Economic and Social Council Resolution 2002/12, annex.

<sup>46</sup> See ICCPR. Most instruments reviewed by the authors contained similar requirements.

<sup>47</sup> *Halsbury’s Laws of England*, Vol: Constitutional Law and Human Rights, paragraph 6. See also, Declaration of Delhi – International Commission of Jurists, *New Delhi Congress: The Rule of Law in a Free Society*, New Delhi, India, 5–10 January 1959, [http://www.icj.org/article.php3?id\\_article=3088&id\\_rubrique=11&lang=eng](http://www.icj.org/article.php3?id_article=3088&id_rubrique=11&lang=eng) (at 20 October 2008).

<sup>48</sup> Articles 9–11, UDHR.

<sup>49</sup> See, *Peter Grant v Jamaica*, Communication No. 597/1994, UN Doc. CCPR/C/56/D/597/194 (1996). The European Court of Human Rights has held that detention of 4 days, 6 hours without being brought before a judge violates the European Convention on Human Rights – although note that the court’s latitude for interpreting “promptly” was constrained by the French version of the European Convention which uses the word *aussitot*, which literally means “immediately” (*Brogan v. United Kingdom*, A145-B, 18, 20 (29 November 1988)). See also *Borisenco v Hungary* (852/1999), ICCPR, A/58/40 vol. II (14 October 2002) – a detention of 3 days before being brought before a judicial officer constituted a violation of the requirement for promptness in the absence of any state explanation for the delay.

<sup>50</sup> See *Hugo van Alphen v The Netherlands*, Communication No. 305/1988, UN Doc. CCPR/C/39/D/305/1988 (1990) – the UN Human Rights Committee noted that pre-trial remand in custody must be “necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.” An arrestee must be granted pre-trial release unless one of the above factors, or other equally compelling factors, is present. This idea is echoed by UN General Assembly Resolution 43/173, in which the Assembly adopted the Body of Principles for the Protection of All Persons under Any

Form of Detention or Imprisonment. Principle 39 entitles persons detained on a criminal charge to release pending trial, unless a judicial authority decides otherwise in the interest of the “administration of justice” – UN General Assembly Resolutions 43/173, Annex (1988).

<sup>51</sup> Articles 9 and 14, ICCPR.

<sup>52</sup> Articles 9-12, Standard Minimum Rules for the Treatment of Prisoners and Principle 1, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>53</sup> International law does not provide a fixed time period that will satisfy the requirement of promptness. However, in *Pennant v Jamaica* (647/1995), ICCPR, A/54/40 vol. II (20 October 1998) 118 (CCPR/C/64/D/647/1995), the UN Human Rights Committee determined that Article 9 of the ICCPR was not violated by a three day delay in informing the arrested person of the charges brought against him.

<sup>54</sup> In international human rights treaties, the term “lawyer” is avoided in favour of “legal assistance” because in many countries, providing lawyers to every accused is impractical either because there are few lawyers or it exceeds the budget constraints of the state. There is no precise cut-off after which a detainee must be granted legal assistance, but it is clear that detainees must be given the opportunity to communicate with a legal advisor soon after they are arrested. See Principle 7, Basic Principles on the Role of Lawyers, (“prompt” or maximum 48 hours). If a detainee is interrogated, the right to have access to a lawyer becomes even more important – “to deny access to a lawyer for the first 48 hours of police questioning, in a situation [in this case, interrogation] where the rights of the defence may well be irretrievably prejudiced, is – whatever the justification for such denial – incompatible with the rights of the accused...” – *Murray v United Kingdom*, EcoHR, Case No. 41/1994/488/570 (1996).

<sup>55</sup> See UN Human Rights Committee Communication No. 219/1986, *Guesdon v France* – “the right to have the free assistance of an interpreter if the accused cannot understand or speak the language used in court as provided for by Article 14, Paragraph 3(f) enshrines other aspects of the principles of fairness and equality of arms in criminal proceedings. This right arises at all stages of the oral proceedings. It applies to aliens as well as to nationals”. While this provision speaks to court proceedings, it also has application to policing as access to justice is predicated on promoting “equality of arms” in criminal proceedings – if it can be demonstrated that a lack of interpreter at any stage in investigation, charge or prosecution created inequality that was irremediable by the provision of an interpreter during court appearances.

<sup>56</sup> Article 14, ICCPR. These provisions are echoed in subsequent international instruments, notably the Body of Principles for the Protection of All Persons Under Any Form of Detention, Principles 10–20.

<sup>57</sup> Article 14(7), ICCPR.

<sup>58</sup> Preamble, Article 1 and Article 4(m), Constitutive Article of the African Union.

<sup>59</sup> Article 5, African Charter on Human and Peoples’ Rights.

<sup>60</sup> Article 7, African Charter on Human and Peoples’ Rights.

<sup>61</sup> Article 3(b), Treaty Establishing the East African Community, 1999.

<sup>62</sup> Articles 6(d), 7(2) and 8(1), Treaty Establishing the East African Community, 1999.

<sup>63</sup> Section 8(ii)(g), Solemn Declaration on a Common African Defence and Security Policy.

<sup>64</sup> Preamble, Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August – 7 September 1990, report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.

<sup>65</sup> Guideline 1, Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August – 7 September 1990, report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.

<sup>66</sup> Guidelines 4-5, Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August – 7 September 1990, report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.

<sup>67</sup> Guidelines 12-13 and 18, Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August – 7 September 1990, report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.

<sup>68</sup> Guidelines 21–24, Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August – 7 September 1990, report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.

<sup>69</sup> Article 1, UN Code of Conduct for Law Enforcement Officials.

- <sup>70</sup> Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, UN Economic and Social Council Resolution 1989/61, annex, Part IA and IIA.
- <sup>71</sup> Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, UN Economic and Social Council Resolution 1989/61, annex, Part IA.
- <sup>72</sup> Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, UN Economic and Social Council Resolution 1989/61, annex, Part IB.
- <sup>73</sup> Principles 1-3, International Code of Conduct for Public Officials, General Assembly Resolution, 51/59, annex.
- <sup>74</sup> Principles 4-6, International Code of Conduct for Public Officials, General Assembly Resolution, 51/59, annex.
- <sup>75</sup> Principles 10-11, International Code of Conduct for Public Officials, General Assembly Resolution, 51/59, annex.
- <sup>76</sup> Article 4, UN Code of Conduct for Law Enforcement Officials. For the right to privacy, see ICCPR, ICESCR.
- <sup>77</sup> Commentary to Article 1, UN Code of Conduct for Law Enforcement Officials.
- <sup>78</sup> See Section 4e (community policing).
- <sup>79</sup> Article 3, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>80</sup> Commentary to Article 3, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>81</sup> Commentary to Article 3, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>82</sup> Preamble and Article 1, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>83</sup> Article 8, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>84</sup> Article 1, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>85</sup> Article 7, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>86</sup> Article 24, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>87</sup> Article 25, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>88</sup> Article 25, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>89</sup> Article 21, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>90</sup> Articles 2, 22 and Commentary to Article 3, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>91</sup> Article 23, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>92</sup> Preamble, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>93</sup> Preamble, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The Basic Principles also refer to resolutions of a number of UN committees and congresses, including Resolution 14 of the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, which acknowledge that the use of force by law enforcement officials must be consistent with human rights norms.
- <sup>94</sup> Article 9, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>95</sup> Article 9, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>96</sup> Article 5, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>97</sup> Article 10, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>98</sup> Article 11, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>99</sup> Preamble, The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, 2004.
- <sup>100</sup> Article 6, The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, 2004.
- <sup>101</sup> Articles 7(c) and 4(b), The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, 2004.
- <sup>102</sup> Article 2, UDHR.
- <sup>103</sup> Article 3, ICCPR.
- <sup>104</sup> Article 2, International Convention on the Elimination of All Forms of Racial Discrimination. For the purposes of the Convention, racial discrimination is defined as “any distinction, exclusion, restriction or

preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life” – Article 1, ICERD.

<sup>105</sup> Articles 2 and 4–6, CERD.

<sup>106</sup> Article 4(1), ICCPR.

<sup>107</sup> Article 1, Convention Against Torture.

<sup>108</sup> Article 5, UN Code of Conduct for Law Enforcement Officials, Preamble, Article 1 and Article 16, Convention Against Torture.

<sup>109</sup> Article 2, Convention Against Torture, Article 5, UN Code of Conduct for Law Enforcement Officials.

<sup>110</sup> Articles 4 and 8, Convention Against Torture.

<sup>111</sup> Article 9, Convention Against Torture.

<sup>112</sup> Articles 2 – 3, Convention Against Torture. Although neither Rwanda nor Tanzania have signed the CAT, they are signatories to the ICCPR which contains a general prohibition against the use of torture, cruel, inhuman or degrading treatment or punishment.

<sup>113</sup> Article 15, Convention Against Torture.

<sup>114</sup> Article 11, Convention Against Torture.

<sup>115</sup> Article 4, Convention Against Torture.

<sup>116</sup> Article 13, Convention Against Torture.

<sup>117</sup> Article 14, Convention Against Torture.

<sup>118</sup> Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly Resolution 55/89, annex, Principles 2 and 5.

<sup>119</sup> Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly Resolution 55/89, annex, Principle 3(a).

<sup>120</sup> Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly Resolution 55/89, annex, Principle 3(b).

<sup>121</sup> Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly Resolution 55/89, annex, Principle 4.

<sup>122</sup> Part 1A, Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.

<sup>123</sup> Part 1B, Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.

<sup>124</sup> Parts 1C-F, Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.

<sup>125</sup> Part 3, Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.

<sup>126</sup> Articles 10–13 and 16, Convention Against Torture.

<sup>127</sup> Article 1, Optional Protocol to the Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>128</sup> See, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9-b&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&lang=en) (at 21 December 2008).

<sup>129</sup> Part 2C, Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa. See also, Section 3e (Protection of Persons in Custody).

<sup>130</sup> Parts 2A-F, Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.

<sup>131</sup> Article 10(1), ICCPR, Article 6, African Charter on Human and Peoples’ Rights, Articles 5(1)-(3), Draft East African Bill of Rights, 2007.

<sup>132</sup> Article 6, UN Code of Conduct for Law Enforcement Officials.

<sup>133</sup> Preamble, Standard Minimum Rules for the Treatment of Prisoners.

<sup>134</sup> Article 84(1)-(2), Standard Minimum Rules for the Treatment of Prisoners.

<sup>135</sup> Articles 84(2) and 86–93, Standard Minimum Rules for the Treatment of Prisoners.

<sup>136</sup> Articles 5(4), 5(5)(a) and 6(3), Draft East African Bill of Rights, 2007.

<sup>137</sup> Article 95, Standard Minimum Rules for the Treatment of Prisoners, and Article 9, ICCPR.

- <sup>138</sup> General Clause, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>139</sup> For the purpose of the Principles, detention is defined as “any person deprived of personal liberty except as a result of conviction for an offence” – Use of Terms (b), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>140</sup> Principles 1–2, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>141</sup> Principles 9 and 36, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>142</sup> Principles 10–19, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>143</sup> Principle 32, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>144</sup> Principles 27 and 38, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>145</sup> Principle 38, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>146</sup> Principle 23, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>147</sup> Principle 8, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>148</sup> Principle 20, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>149</sup> Principles 3-4, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>150</sup> Principles 7 and 27, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>151</sup> Principle 29, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>152</sup> Principle 5, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>153</sup> Principle 24, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>154</sup> Principles 6–7, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>155</sup> Principle 21, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>156</sup> Principle 30, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>157</sup> Principles 33-34, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>158</sup> Rule 1, United Nations Minimum Standard Rules for Non-Custodial Measures.
- <sup>159</sup> Rule 2.2, United Nations Minimum Standard Rules for Non-Custodial Measures. According to Rule 2.1, the Minimum Standards apply to all persons subject to prosecution, trial or the execution of a sentence.
- <sup>160</sup> Rule 5.1, United Nations Minimum Standard Rules for Non-Custodial Measures.
- <sup>161</sup> Rule 15, United Nations Minimum Standard Rules for Non-Custodial Measures.
- <sup>162</sup> Rules 2–3, United Nations Minimum Standard Rules for Non-Custodial Measures.
- <sup>163</sup> Kampala Declaration on Prison Conditions in Africa, UN Economic and Social Council Resolution 1997/36, annex.
- <sup>164</sup> Principle 1, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
- <sup>165</sup> Principles 2–4 and 6–7, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

- <sup>166</sup> Principles 9–17, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
- <sup>167</sup> Principle 10, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
- <sup>168</sup> Principles 13–14 and 16, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
- <sup>169</sup> Principle 11, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
- <sup>170</sup> Principles 18–19, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
- <sup>171</sup> Principle 20, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
- <sup>172</sup> Preamble, Declaration on the Protection of All Persons from Enforced Disappearances. The Declaration, which has been signed by Burundi, Kenya and Uganda, is not yet in operation. However, it is included as part of the common standards, as it provides a framework for rights that are already articulated in the ICCPR and Convention against Torture, but with specific reference to enforced disappearances.
- <sup>173</sup> Preamble, Declaration on the Protection of All Persons from Enforced Disappearances.
- <sup>174</sup> Preamble and Article 1, Declaration on the Protection of All Persons from Enforced Disappearances.
- <sup>175</sup> Articles 2–5, Declaration on the Protection of All Persons from Enforced Disappearances.
- <sup>176</sup> Articles 6–7, Declaration on the Protection of All Persons from Enforced Disappearances.
- <sup>177</sup> Article 16, Declaration on the Protection of All Persons from Enforced Disappearances.
- <sup>178</sup> Article 17, Declaration on the Protection of All Persons from Enforced Disappearances.
- <sup>179</sup> Article 6, Declaration on the Protection of All Persons from Enforced Disappearances.
- <sup>180</sup> Articles 9–14, Declaration on the Protection of All Persons from Enforced Disappearances.
- <sup>181</sup> For the purposes of this Declaration, a victim is defined as a person who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power – Article 1, Declaration on Basic Principles for Justice of Victims of Crime and Abuse of Power.
- <sup>182</sup> Articles 4 and 11–16, Declaration on Basic Principles for Justice of Victims of Crime and Abuse of Power.
- <sup>183</sup> Part 3, Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.
- <sup>184</sup> Preamble, Convention on the Elimination of All Forms of Discrimination Against Women.
- <sup>185</sup> Article 2, Convention on the Elimination of All Forms of Discrimination Against Women. For the purpose of this Convention, discrimination against women means “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” – Article 1, Convention on the Elimination of All Forms of Discrimination Against Women.
- <sup>186</sup> See Articles 2, 3, 4 and 8, Protocol to the African Charter on Human and Peoples’ Rights on Women in Africa.
- <sup>187</sup> Preamble and Articles 1-2, Declaration on the Elimination of Violence Against Women.
- <sup>188</sup> Article 3, Declaration on the Elimination of Violence Against Women.
- <sup>189</sup> Article 4, Declaration on the Elimination of Violence Against Women.
- <sup>190</sup> Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, UN General Assembly Resolution 52/86, annex, paragraph 4.
- <sup>191</sup> Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, UN General Assembly Resolution 52/86, annex, Part III and paragraph 10(a).
- <sup>192</sup> Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, UN General Assembly Resolution 52/86, annex, paragraphs 12(a)-(b).



<sup>193</sup> Slide 6, Presentation – Gender Mainstreaming in Eastern Africa, “Responses and Policy Issues – Expert Presentation” (Sandra Oder, ISS). Proposed measures include training designed to ensure that police officers can effectively respond to the needs of victims of gender-based violence, as well as processing and investigating these crimes; gender responsive policies, protocols and capacity building to increase police professionalism and access to service (measures may take the form of codes of conduct and screening recruits for previous involvement in gender-based violence); establishment of women-only units; and the active recruitment of more women police officers.

<sup>194</sup> Article 10, ICCPR.

<sup>195</sup> Article 17(2), African Charter on the Rights and Welfare of the Child.

<sup>196</sup> Rule 1, United Nations Minimum Rules for the Administration of Juvenile Justice.

<sup>197</sup> Rule 9, United Nations Minimum Rules for the Administration of Juvenile Justice.

<sup>198</sup> Rules 2.1, 2.3, 5–8, 10.1–10.3, 11.1–11.2 and 13, United Nations Minimum Rules for the Administration of Juvenile Justice. See also, Principles 16.3–16.4, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>199</sup> Rule 12, United Nations Minimum Rules for the Administration of Juvenile Justice.

<sup>200</sup> Rules 2-3, United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

<sup>201</sup> Rule 11(b), United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

<sup>202</sup> Rules 2, 7, 11(b), 12-13 and 18, United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

<sup>203</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), UN General Assembly Resolution 45/112, annex, Part VI.

<sup>204</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), UN General Assembly Resolution 45/112, annex, paragraphs 5-6 and Part III.

<sup>205</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), UN General Assembly Resolution 45/112, annex, Part IV.

<sup>206</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), UN General Assembly Resolution 45/112, annex, paragraph 46.

<sup>207</sup> Article 3, Convention on the Rights of the Child, Article 4, African Charter on the Rights and Welfare of the Child.

<sup>208</sup> Article 40(2), Convention on the Rights of the Child.

<sup>209</sup> Article 40(4), Convention on the Rights of the Child.

<sup>210</sup> Article 37, Convention on the Rights of the Child, Articles 5, 7-9 and 16, African Charter on the Rights and Welfare of the Child.

<sup>211</sup> Articles 13 and 15, Convention on the Rights of the Child.

<sup>212</sup> Article 8, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

<sup>213</sup> Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, Economic and Social Council Resolution 2005/20, annex, paragraph 3. See also, Guidelines for Action on Children in the Criminal Justice System, Economic and Social Council resolution 1997/30, annex, Part III.

<sup>214</sup> Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, Economic and Social Council Resolution 2005/20, annex, paragraphs 3-4.

<sup>215</sup> Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, Economic and Social Council Resolution 2005/20, annex, Parts III-XIV. See also, Principles 16.3 – 16.4, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>216</sup> Guidelines for Action on Children in the Criminal Justice System, Economic and Social Council Resolution 1997/30, annex, paragraphs 8(a) and 10.

<sup>217</sup> Guidelines for Action on Children in the Criminal Justice System, Economic and Social Council Resolution 1997/30, annex, paragraph 11.

<sup>218</sup> Guidelines for Action on Children in the Criminal Justice System, Economic and Social Council Resolution 1997/30, annex, paragraphs 14-15, 20-21 and 24-25.

<sup>219</sup> Articles 21(1) and 21(8), Draft East African Bill of Rights, 2007.

<sup>220</sup> Only Uganda has signed the Migrant Workers Convention. However, all states are signatories to ICCPR and Convention on the Elimination of All Forms of Racial Discrimination, which provide for all the rights provided in the Migrant Workers Convention (i.e. states must guarantee basic due process and



- freedom from torture and must not discriminate in the application of these protections for any reason, including ethnicity).
- <sup>221</sup> Article 16, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- <sup>222</sup> Articles 36 and 39, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- <sup>223</sup> Article 7, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- <sup>224</sup> Articles 16 and 18(3)(a), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. See also, Articles 14(3)(a) and (f), ICCPR. See also, Principle 16.2, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- <sup>225</sup> Article 17, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- <sup>226</sup> Article 10, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- <sup>227</sup> Articles 16, 18 and 83, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- <sup>228</sup> Article 18, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- <sup>229</sup> Article 21, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- <sup>230</sup> Article 18(7), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- <sup>231</sup> Article 22, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- <sup>232</sup> Article 82, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- <sup>233</sup> Article 5, Convention on the Elimination of All Forms of Discrimination, Article 12, ICCPR, Article 4, Convention on the Elimination of All Forms of Discrimination Against Women.
- <sup>234</sup> Articles 3, 16 and 33, Convention Relating to the Status of Refugees.
- <sup>235</sup> Article 14, ICCPR.
- <sup>236</sup> Article 3, Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment, Article 3(3), Convention Governing the Specific Aspects of Refugee Problems in Africa.
- <sup>237</sup> Article 21, ICCPR. See also, Article 15, Convention on the Rights of the Child, Article 11, African Charter on Human and Peoples' Rights, Article 9(1)(d), Draft East African Bill of Rights, 2007.
- <sup>238</sup> Article 12, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>239</sup> Article 13, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>240</sup> Articles 9 and 14, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>241</sup> Articles 2-3, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>242</sup> Article 2, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>243</sup> Article 4, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>244</sup> Article 4, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>245</sup> Articles 19-20, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>246</sup> Article 19, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>247</sup> Article 20, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- <sup>248</sup> See, Stone, C. and Ward, R. "Democratic Policing, A Framework for Action," *Policing and Society* 10, 2000.
- <sup>249</sup> Commonwealth Human Rights Initiative, *Police Accountability: Too Important to Neglect, Too Urgent to Delay*, New Delhi, 2006.
- <sup>250</sup> Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, UN Economic and Social Council Resolution 1989/61, annex, Part IB, Articles 9–14, Declaration on the Protection of All Persons from Enforced Disappearances.
- <sup>251</sup> Articles 10–14 and 16, Convention Against Torture, Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General

Assembly Resolution 55/89, annex, Principles 2 and 5, Principles 9–17, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Articles 9–14, Declaration on the Protection of All Persons from Enforced Disappearances and Articles 5, 7-8, 10-11 and 13, Convention against Corruption.

<sup>252</sup> Article 1, Optional Protocol to the Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment, Principles 33-34, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, 2004.

<sup>253</sup> Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly Resolution 55/89, annex, Principle 3(a).

<sup>254</sup> Article 14, Convention Against Torture, Articles 4 and 11–16, Declaration on Basic Principles for Justice of Victims of Crime and Abuse of Power.

<sup>255</sup> Article 13, Convention Against Torture, Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly Resolution 55/89, annex, Principles 3(b) and 4.

<sup>256</sup> Commonwealth Human Rights Initiative, *Police Accountability: Too Important to Neglect, Too Urgent to Delay*, New Delhi, 2005, p. 62.

<sup>257</sup> Paris Principles.

<sup>258</sup> Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (Paris Principles), General Assembly Resolution, 4 March 2003, A/RES/48/134, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N94/116/24/PDF/N9411624.pdf?OpenElement> (at 9 September 2009).

<sup>259</sup> Annex, Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (Paris Principles), General Assembly Resolution, 4 March 2003, A/RES/48/134, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N94/116/24/PDF/N9411624.pdf?OpenElement> (at 9 September 2009).

<sup>260</sup> Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (Paris Principles), General Assembly Resolution, 4 March 2003, A/RES/48/134, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N94/116/24/PDF/N9411624.pdf?OpenElement> (at 9 September 2009).

<sup>261</sup> Principle 1, Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August – 6 September 1985, report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2., annex.

<sup>262</sup> Principles 2 and 4, Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August – 6 September 1985, report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2., annex.

<sup>263</sup> Principle 3, Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August – 6 September 1985, report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2., annex.

<sup>264</sup> Procedure 1, Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary, Economic and Social Council Resolution 1989/60, annex.

<sup>265</sup> Article 18, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>266</sup> Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, UN Economic and Social Council Resolution 1989/61, annex, Part IIB(6).

<sup>267</sup> Article 4, Convention Against Torture, Parts 2A-F Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.

<sup>268</sup> Articles 19-20, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>269</sup> Principle 3, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and Article 6, Declaration on the Protection of All Persons from Enforced Disappearances.

<sup>270</sup> Article 16, Declaration on Basic Principles for Justice of Victims of Crime and Abuse of Power.

<sup>271</sup> Article 16, Declaration on Basic Principles for Justice of Victims of Crime and Abuse of Power.

- <sup>272</sup> Slide 17, Presentation – Gender Mainstreaming in Eastern Africa, Responses and Policy Issues – Expert Presentation (Sandra Oder, ISS).
- <sup>273</sup> Rule 6, United Nations Minimum Rules for the Administration of Juvenile Justice.
- <sup>274</sup> Rule 12, United Nations Minimum Rules for the Administration of Juvenile Justice.
- <sup>275</sup> Article 7, Convention Against Corruption.
- <sup>276</sup> Interpol, Supporting the Initiatives of the Interpol Group of Experts on Corruption, Resolution No. AGN/68/RES/4, Seoul, 1999.
- <sup>277</sup> Articles 4.3–4.6, Interpol Group of Experts on Corruption, Global Standards to Combat Corruption in Police Forces/Services.
- <sup>278</sup> UNHCR, International Human Rights Standards for Law Enforcement.
- <sup>279</sup> Commentary to Article 7, UN Code of Conduct for Law Enforcement Officials.
- <sup>280</sup> Preamble, Convention Against Corruption.
- <sup>281</sup> Commentary to Article 7, UN Code of Conduct for Law Enforcement Officials.
- <sup>282</sup> Article 7, UN Code of Conduct for Law Enforcement Officials.
- <sup>283</sup> Article 1(a)(ii), Convention Against Corruption.
- <sup>284</sup> Articles 5, 7-8, 10-11 and 13, Convention Against Corruption.
- <sup>285</sup> Articles 15, 17, 18-20 and 25, Convention Against Corruption.
- <sup>286</sup> Articles 32-33, Convention Against Corruption.
- <sup>287</sup> For the purpose of the Declaration, a victim is defined as a person who individually or collectively has suffered harm, including physical or mental harm, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of international recognised relating to human rights – Article 18, Declaration on Basic Principles for Justice of Victims of Crime and Abuse of Power.
- <sup>288</sup> Interpol, About Corruption and Interpol Group of Experts on Corruption, [www.interpol.int](http://www.interpol.int) (accessed 31 March 2009).
- <sup>289</sup> Interpol Group of Experts on Corruption, [www.interpol.int](http://www.interpol.int) (accessed 31 March 2009).
- <sup>290</sup> Interpol Group of Experts on Corruption, [www.interpol.int](http://www.interpol.int) (accessed 31 March 2009).
- <sup>291</sup> Interpol, Supporting the Initiatives of the Interpol Group of Experts on Corruption, [www.interpol.int](http://www.interpol.int) (accessed on 31 March 2009). See also Article 2, Interpol Group of Experts on Corruption, Global Standards to Combat Corruption in Police Forces/Services.
- <sup>292</sup> Article 1, Interpol Group of Experts on Corruption, Global Standards to Combat Corruption in Police Forces/Services.
- <sup>293</sup> Article 4.1, Interpol Group of Experts on Corruption, Global Standards to Combat Corruption in Police Forces/Services.
- <sup>294</sup> Articles 4.3 and 4.6, Interpol Group of Experts on Corruption, Global Standards to Combat Corruption in Police Forces/Services.
- <sup>295</sup> Articles 4.8 and 4.13, Interpol Group of Experts on Corruption, Global Standards to Combat Corruption in Police Forces/Services.
- <sup>296</sup> Articles 4.12 and 4.16, Interpol Group of Experts on Corruption, Global Standards to Combat Corruption in Police Forces/Services.
- <sup>297</sup> Article 46(3), Draft East African Bill of Rights, 2007.
- <sup>298</sup> Guidelines 5, 9, 12 and 16, Guidelines for the Prevention of Crime, Economic and Social Council Resolution 2002/12, annex.
- <sup>299</sup> Part V, Guidelines for the Prevention of Crime, Economic and Social Council Resolution 2002/12, annex.
- <sup>300</sup> Guidelines 17 – 20, Guidelines for the Prevention of Crime, Economic and Social Council Resolution 2002/12, annex.
- <sup>301</sup> Guidelines 17 and 20, Guidelines for the Prevention of Crime, Economic and Social Council Resolution 2002/12, annex.
- <sup>302</sup> Guideline 18, Guidelines for the Prevention of Crime, Economic and Social Council Resolution 2002/12, annex.
- <sup>303</sup> Guideline 1, Guidelines for Cooperation and Technical Assistance in the Field of Urban Crime Prevention, Economic and Social Council Resolution 1995/9, annex.
- <sup>304</sup> Guideline 2, Guidelines for Cooperation and Technical Assistance in the Field of Urban Crime Prevention, Economic and Social Council Resolution 1995/9, annex.

- <sup>305</sup> Guideline 3, Guidelines for Cooperation and Technical Assistance in the Field of Urban Crime Prevention, Economic and Social Council Resolution 1995/9, annex.
- <sup>306</sup> UN Economic and Social Council Action to Promote Effective Crime Prevention, Guidelines for Crime Prevention, UN ECOSOC, July 2002.
- <sup>307</sup> Articles 2-3, INTERPOL Constitution, <http://www.interpol.int/Public/ICPO/LegalMaterials/constitution/constitutionGenReg/constitution.asp> (at 12 January 2009).
- <sup>308</sup> See, Rules on the Processing of Information for the Purposes of International Police Cooperation, as amended by Resolution AG-2005-RES-15, entering into force on 1 January 2006 and Rules on the Control of Information and Access to Interpol's Files, Vade Mecum, Part 2, Chapter 16. Both available at <http://www.interpol.int/Public/icpo/LegalMaterials/constitution/default.asp> (at 4 June 2009).
- <sup>309</sup> Article 1, United Nations Declaration on Crime and Public Security, General Assembly Resolution 51/60, annex.
- <sup>310</sup> Articles 2-4, United Nations Declaration on Crime and Public Security, General Assembly Resolution 51/60, annex.
- <sup>311</sup> Article 9, United Nations Declaration on Crime and Public Security, General Assembly Resolution 51/60, annex.
- <sup>312</sup> Article 3, Model Treaty on Extradition, General Assembly resolution 45/116, as amended by Resolution 52/88.
- <sup>313</sup> Preamble, Model Treaty on Mutual Assistance in Criminal Matters, General Assembly Resolution 45/117, as amended by Resolution 53/112.
- <sup>314</sup> Article 1(2), Model Treaty on Mutual Assistance in Criminal Matters, General Assembly Resolution 45/117, as amended by Resolution 53/112.
- <sup>315</sup> Articles 1 and 6, Model Treaty on Mutual Assistance in Criminal Matters, General Assembly Resolution 45/117, as amended by Resolution 53/112.
- <sup>316</sup> Article 8, Solemn Declaration on a Common African Defence and Security Policy.
- <sup>317</sup> Paragraph A(1)(ii), "The Building Blocks of A Common African Defence and Security Policy", Solemn Declaration on a Common African Defence and Security Policy.
- <sup>318</sup> Articles 4(a) and 16-17, The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, 2004.
- <sup>319</sup> CHRI Reports.
- <sup>320</sup> For the purpose of the Code of Conduct, a law enforcement officer "includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention", and the officers of the military if police powers are exercised by the military in the relevant jurisdiction – Commentary to Article 1, UN Code of Conduct for Law Enforcement Officials, [http://www.unhcr.ch/html/menu3/b/h\\_comp42.htm](http://www.unhcr.ch/html/menu3/b/h_comp42.htm), (at 8 September 2008).
- <sup>321</sup> Section 74(1), Constitution of the Republic of Kenya, Sections 14A(2)-(3), Police Act, 1961 (Kenya), Article 25, Constitution de la République du Burundi, Article 15, Constitution of the Republic of Rwanda, Article 24, Constitution of the Republic of Uganda, Section 21(e), Anti-Terrorism Act, 2002 (Uganda), Section 25(4), Police Act, 1994 (Uganda), Article 29(2), Constitution of the United Republic of Tanzania.
- <sup>322</sup> See, Human Rights Watch, "Every Morning They Beat Me": Police Abuses in Burundi, April 2008, available at <http://www.hrw.org/en/reports/2008/04/29/every-morning-they-beat-me-0>, NGO report on the Implementation of the ICCPR by Tanzania to the Human Rights Council, January 2009, available at [www2.ohchr.org/english/bodies/hrc/docs/ngos/T\\_NGO\\_Coalition\\_HRC95\\_Tanzania.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/T_NGO_Coalition_HRC95_Tanzania.pdf), UN Committee Torture Report for Uganda, <http://www.unhcr.org/refworld/publisher,CAT,,UGA,42cd71634,0.html>, Human Rights Watch, There Will be No Trial: Police Killings of Detainees and the Imposition of Collective Punishments, <http://www.hrw.org/en/reports/2007/07/23/there-will-be-no-trial>, Commonwealth Human Rights Initiative, *The Police, The People, The Politics: Police Accountability in Kenya*, New Delhi, 2006, Commonwealth Human Rights Initiative, *The Police, The People, The Politics: Police Accountability in Tanzania*, New Delhi, 2006 and Commonwealth Human Rights Initiative, *The Police, The People, The Politics: Police Accountability in Uganda*, New Delhi, 2006.
- <sup>323</sup> UN Committee Torture Report for Uganda <http://www.unhcr.org/refworld/publisher,CAT,,UGA,42cd71634,0.html>, Commonwealth Human Rights Initiative, *The Police, The People, The Politics: Police Accountability in Kenya*, New Delhi, 2006.
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<sup>325</sup> Kenya UN Committee Torture Report.

<sup>326</sup> Burundi UN Committee Torture Report <http://www.unhcr.org/refworld/country,,CAT,,BDI,456d621e2,4603b7242,0.html>

<sup>327</sup> Burundi, Kenya, Uganda Committee Reports.

<sup>328</sup> Kenya and Burundi torture reports, UN Committee for Torture.

<sup>329</sup> Article 47, Loi n°1/23 du 31 décembre 2004 portant création, organisation, missions, composition et fonctionnement de la Police Nationale.

<sup>330</sup> Section 71(1), Constitution of the Republic of Kenya.

<sup>331</sup> Section 71(2), Constitution of the Republic of Kenya.

<sup>332</sup> Sections 4 and 6(1)(c), Police Act, 1994 (Uganda).

<sup>333</sup> Section 28, Police Act, 1994 (Uganda).

<sup>334</sup> Section 5(1), Police Force and Auxiliary Services Act, 1995 (Tanzania).

<sup>335</sup> Section 11(1), Criminal Procedure Act, 1985 (Tanzania).

<sup>336</sup> Section 11(2), Criminal Procedure Act, 1985 (Tanzania).

<sup>337</sup> Section 12, Criminal Procedure Act, 1985 (Tanzania).

<sup>338</sup> Section 21(1), Criminal Procedure Act, 1985 (Tanzania).

<sup>339</sup> Section 21(2), Criminal Procedure Code, 1985 (Tanzania).

<sup>340</sup> Article 32, Constitution de la République du Burundi, Section 80, Constitution of the Republic of Kenya, Article 36, Constitution of the Republic of Rwanda, Article 26(1)(d), Constitution of the Republic of Uganda.



# CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, in addition to a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

## Human Rights Advocacy

CHRI makes regular submissions to official Commonwealth bodies and member governments. Periodically, CHRI conducts fact finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit ensures that human rights issues are in the public consciousness.

## Access to Information

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

## Access to Justice

**Police Reforms:** In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

**Prison Reforms:** CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractice. A major area is focused on highlighting failures of the legal system that result in terrible overcrowding, unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.

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