

# **SUBMISSION on the NATIONAL POLICE SERVICE REGULATIONS**



## **COMMONWEALTH HUMAN RIGHTS INITIATIVE**

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*The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international NGO working for the practical realisation of human rights in the countries of the Commonwealth.*

# SUBMISSION on the NATIONAL POLICE SERVICE REGULATIONS ANALYSIS AND COMMENTS

## Introduction

This submission represents the Commonwealth Human Rights Initiative's (CHRI) consideration of the National Police Service Regulations, 2014 and our corresponding recommendations. We have analysed select regulations which gave rise to significant concerns, identified these gaps and weaknesses, and provided suggestions for amendment to bring the specific regulation in conformity with national law and international standards. Cornerstone documents are Code of Conduct for Law Enforcement Officials (1979, hereinafter referred to as Code of Conduct) and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990; hereinafter referred to as Basic Principles), as well as all of the relevant domestic legislation.

CHRI is an independent, non-partisan, non-governmental organisation headquartered in New Delhi, India. CHRI's areas of work are focused on the right to information, access to justice, and human rights advocacy.<sup>1</sup> Since 2001, CHRI's Access to Justice programme has been promoting police reform in the Commonwealth East African countries of Kenya, Tanzania and Uganda. CHRI has published two reports on policing for each country, conducted regional roundtable conferences and helped establish civil society police reform networks. In 2009 and 2010, CHRI worked in partnership with the African Policing Civilian Oversight Forum (APCOF) and the East African Police Chiefs Cooperation Organisation (EAPCCO) and in collaboration with the East African Community to articulate common standards for policing in the region. In Kenya, CHRI was instrumental in the establishment of the civil society forum TURF – The Usalama Reform Forum – which is an organisation that brings together NGOs working in the area of security sector reform. Through TURF, CHRI has made contributions to the legislative reform process in the policing arena, with submissions made to the Police Reform Implementation Committee (PRIC) on Bills including the Independent Policing Oversight Authority Bill and the Private Security Industry Regulation Bill. This year, CHRI released a regional report on police reform developments in East Africa, titled “*A Force for Good? Improving the Police in Kenya, Tanzania and Uganda*”.<sup>2</sup>

We are very encouraged that the Commission for the Implementation of the Constitution invited public comments on the draft regulations. However, we would like to share the difficulties in completing this large task within the short period of ten days, which was the time given for submissions. At the outset, we would suggest that adequate time is given for such submissions so the effort and work needed can be properly put in. We do hope that the rest of the process will be genuinely consultative. We strongly recommend that the Commission publishes all of the feedback received, and facilitates follow-up for individuals and organisations as needed.

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<sup>1</sup> For more information on CHRI's activities, please visit [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)

<sup>2</sup> The report is available at the link below:

[http://humanrightsinitiative.org/publications/police/A\\_FORCE\\_FOR\\_GOOD\\_Improving\\_the\\_Police\\_in\\_Kenya\\_Tanzania\\_and\\_Uganda.pdf](http://humanrightsinitiative.org/publications/police/A_FORCE_FOR_GOOD_Improving_the_Police_in_Kenya_Tanzania_and_Uganda.pdf)



We have commented on nine regulations, which in our opinion contain the most serious issues. Although we tried to point out the inconsistencies and incoherencies to the best extent possible, we encourage respective regulative bodies to review the regulations with an overall aim of improving coherence and cohesion as well as avoiding repetitions and contradictions.

## Analysis

### The National Police Service (Use of Force) Regulations, 2014

There are fundamental issues and concerns which must be addressed in this set of Regulations. There are number of provisions that are either alarming, or contravene current laws, or fall short of international standards. In addition, there are critical areas which need to be added.

Regarding the substance of the Regulations, our comments are as follows.

#### Set objectives are not met

The aim of these Regulations stem from paragraph 12, Part A of the Sixth Schedule of the National Police Service Act, 2011 (NPS Act) which requires the Inspector General and Cabinet Secretary to develop regulations to give further direction on the lawful use of force that must include 1) a list of lawful means to use force, 2) training requirements to be allowed to use these means and, 3) procedures for reporting the use of the means of force, indicating whether the use of force was necessary or not.<sup>3</sup> While Section 4 of the Regulations incorporates these objectives in subsections (e), (f) and (g)<sup>4</sup>, there is scant procedural detail provided in the text of the Regulations on these aspects. The Regulations do not provide in any way a list of lawful means to use force. Nor do the ss. 17-19 dealing with training in use of these means and firearms adequately address the “training requirements to be allowed to use these means”, providing only that “The Inspector-General shall ensure that the curriculums developed by the Service provide room for good training”, which runs contrary to the Regulations’ declared objective and the demands of the NPS Act.

On the last aspect of reporting procedures, the Regulations fall short of the provisions of the NPS Act. Section 14 of the Regulations stipulates that only use of force, which causes death or serious injuries must be reported to the Independent Policing Oversight Authority (IPOA). However, the NPS Act also requires that a police officer “who uses any form of force shall immediately, report to the officer’s superior explaining the circumstances that necessitated the use of force”.<sup>5</sup> CHRI recommends that a relevant provision elaborating on the reporting procedure of the use of *any* form of force be included in the Regulations.

#### Unnecessary repetition of Part A, Sixth Schedule

Linked to the point above, in this set of Regulations, there is excessive and unnecessary verbatim repetition of principles and provisions already laid down in Part A of the Sixth Schedule of the NPS Act. In fact, most of the Regulations repeat Sections of the Sixth Schedule, rather than establishing procedural detail on the aspects required in Section 12 of the Schedule or attending to new aspects. There is no need to restate what is already

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<sup>3</sup> The National Police Service Act, 6<sup>th</sup> Schedule, Part A, s. 12

<sup>4</sup> Also, subsection (e) duplicates subsection (h).

<sup>5</sup> NPS Act, 6<sup>th</sup> Schedule, Part A, s. 12, s. 4;

available in the NPS Act. CHRI strongly recommends that a technical review of these Regulations is done with a view to delete verbatim duplications with the Sixth Schedule.

#### Other internal inconsistencies

The Regulations are also incomplete and internally incoherent. For instance, Part II “General Preliminary Provision on the Use of Force” is followed by Part VI “Training in Use of Firearms” (the title and partly the content are obviously copied from the National Police Service (Conditions as to the Use of Firearms) Regulations, 2014). Another example is s. 2 that contain a definition of “ammunition”, although there is not a single reference to ammunition throughout the text of the Regulations. Moreover, s. 18 of these Regulations dealing with the training in use of firearms duplicates s. 51 of the National Police Service (Conditions as to the Use of Firearms) Regulations, 2014. Thus, it is recommended to delete the section 18 as misplaced. Again, as part of the technical review above, these internal inconsistencies should also be identified and addressed as needed.

#### Conditions for the use of force

In another inconsistency, Section 9 titled “Conditions for use of force” duplicates s. 11 (“Obligations of the Service”). More largely, “conditions as to the use of force” are adequately covered by the entire Part A of the Sixth Schedule, which lays down the needed principles that force used is to be proportional, strictly necessary, and non-violent and non-lethal as far as possible; also it requires reporting to superiors on use of force, as well as establishes accountability. This is comprehensive enough and does not need to be repeated in the Regulations, particularly as Section 6 of the Regulations already states that a police officer may use force or firearms in accordance with the rules on their use contained in the Sixth Schedule. Different words in different laws/rules that refer to and address the same set of circumstances create uncertainty and confusion, and allows in arbitrary actions. CHRI recommends that with the condition laid down in Section 6 of the Regulations, no other provisions are needed on conditions for use of force.

#### An offence not to use force

A very troubling provision is enshrined in s. 13 of the Regulations that aims to penalise police officers who fail to use force when obligated to do so. It should be born in mind that the use of force is neither obligation, nor a duty of a police officer. It is an extreme measure that “*may only be employed when non-violent means are ineffective or without any promise of achieving the intended result*” (emphasis added).<sup>6</sup> In our opinion, this provision is likely to promote the resort to force among the police officers out of fear of punishment, even when the strict necessity test is not met. Thus CHRI recommends that s. 13 is deleted.

#### Offences

Section 20 holds anyone who contravenes any provision of these Regulations as committing an offence. There is a fine and imprisonment term stipulated in subsection (2) on conviction, and a “general” penalty of a fine or imprisonment term invoked for anyone who commits an offence “to which no penalty is provided for under these Regulations” in Section 21. We recommend that there is a specific listing of offences with their exact ingredients and their punishments (read with our recommendation that the offence stated in S. 13 is deleted). At present, there are only vague and undefined mentions of what constitute offences under these Regulations, across various sections. We suggest that it is most appropriate that offences related to arbitrary, excessive or abusive use of force or firearms should be incorporated into the offences chapter of the NPS Act, as that is the principal legislation. These new additions should not be made in isolation but only after consulting senior lawyers

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<sup>6</sup> NPS Act, 6<sup>th</sup> Schedule, Part A, s. 12, s. 1; Basic Principles, s. 4.

and experts as well as the Police Service, and also should not contradict or dilute already established offences and their punishments in any existing laws.

### Summary of recommendations

- To meet the objectives set in the NPS Act and s. 4 of the Regulations, the CHRI recommends to develop a list of lawful means to use force and training requirements to be allowed to use these means, as well as include in the text of the Regulations procedures for reporting the use of any form of force, indicating whether the use of force was necessary or not;
- Conduct a full technical review of the Regulations to ensure that verbatim duplication with the Sixth Schedule (Part A) of the NPS Act is deleted; as well as address internal inconsistencies and redundant definitions;
- Delete s. 13 of the Regulations;
- Consolidate an exact list of offences and their appropriate punishments related to arbitrary, excessive or abusive use of force or firearms; after proper and wide consultation

We also recommend to develop and include the following provisions in the Regulations:

- In accordance with s. 24 of the Basic Principles, the Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take measures in their power to prevent, suppress or report such use;
- In accordance with provisions of the NPS Act<sup>7</sup> and s. 25 of the Basic Principles, refusing to carry out orders that include unlawful use of force and firearms should not be penalized and should not be a disciplinary offence;
- In accordance with provisions of the NPS Act<sup>8</sup> and s. 26 of the Basic Principles, following the orders of a superior shall not be an excuse for unlawful use of force and firearms;
- In accordance with s. 20 of the Basic Principles special attention must be paid to issues of police ethics and human rights, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Consequently, the requirement to include these issues into police curricula is encouraged to be introduced in the Regulations;
- In accordance with provisions of the NPS Act, a police officer in uniform shall at all times affix a nametag or identifiable Service number in a clearly visible part of the uniform

### The National Police Service (Conditions as to the Use of Firearms) Regulations, 2014

As above, there are fundamental issues and concerns which must be addressed in this set of Regulations.

<sup>7</sup> NPS Act, 6<sup>th</sup> Schedule, Part C, s. 1;

<sup>8</sup> *Id*, Part A, s. 11;



Our general comment is to improve the document's internal coherency. For instance, s. 2 contains a reference to the wrong article in the Constitution (Article 239 instead of Article 243); besides numerous typos, on many occasions the Regulations refer to the police as Force, although the NPS is shortened to Service only in both the NPS Act and s. 2 of the Regulations. Also some provision are contradicting each other or misplaced (discussed below).

Regarding the substance of the Regulations, our comments are as follows.

#### *Not all set objectives are met*

Section 4 sets the objectives of the Regulations, based on the obligation of the Cabinet Secretary to issue regulations on the use of firearms enshrined in the NPS Act.<sup>9</sup> However, the Regulations do not follow all set objectives through: while objectives (a)-(d) are addressed in the text of the Regulations, the substantiation of objectives (e)-(g) is absent. Thus, the Regulations have no mention of “techniques that could diffuse tension and reduce the likelihood of the need to use force”, does not provide “for testing of officers carrying fire arms at regular intervals, but at least once a year” or the consequences for failing this test. At the same time the objectives (i)-(k) repeat the objectives of the National Police Service (Use of Force) Regulations, 2014. It is therefore recommended that the said objectives be deleted, while objectives (e)-(g) be paid full attention and substantiated.

#### *Unnecessary repetition of Part B, Sixth Schedule, NPS Act, relating to conditions as to the use of firearms*

Linked to the similar concern from above, there is confusing and unnecessary verbatim repetition of principles and provisions already laid down in Part B of the Sixth Schedule of the NPS Act relating to conditions of use of firearms. The Regulations also, sprinkled across different Sections, lists when firearms can be used, or not used. In places, there is inconsistency between the Regulations and Schedule in this regard. Again, we warn against unnecessary duplication and recommend that any verbatim duplication is identified and deleted in the Regulations.

#### *Some internal inconsistencies*

Subsection (2) of s. 7 is both grammatically incomprehensible and potentially misleading, reading “The use of firearm against any person or person's places both legal, as well as moral responsibility on all police officers”. We recommend that the provision is clarified and the intended meaning drafted in clear and precise language.

Subsection (4) of s. 14 that reads “A member of the Service shall not use firearm for private purposes” is misplaced and should be moved to s. 7 (“Use of Firearms”).

#### *An offence not to use firearm*

Similarly to the s. 13 of National Police Service (Use of Force) Regulations, 2014, s. 11 of the Regulations penalises police officers who fail to use firearms when obligated to do so. As was argued before, the use of force is neither obligation, nor the duty of a police officer. The use of firearms is less so. CHRI recommends s. 11 is deleted.

#### *Carrying firearms*

Section 12 stipulates that “A police officer shall only carry firearms upon issuance with the same under the Standing Orders or these Regulations”. The Service Standing Orders consultation draft, published in February 2014, clarify that firearms should only be carried

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<sup>9</sup> *Id*, Part B, s. 8;

when the nature of duty to be performed make it necessary or desirable.<sup>10</sup> We recommend to include this stronger provision in the section 12 of the Regulations to avoid unnecessary arming of the police officers.

#### Training in the use of firearms

Subsection (3) of s. 51 specifies the basic outline of the training in the use of firearms. Although, the s. 52 places burden of substantiating what this training entails on Service Standing Orders, we deem it necessary to complement subsection (3) of s. 51 with training areas proposed by the Basic Principles to ensure compliance with international standards. In accordance with s. 20 of the Basic Principles special attention must be paid to issues of police ethics and human rights, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. We recommend these issues are incorporated into subsection (3) of s. 51.

#### Warning shots not allowed

Section 10 of the Regulations gives rise to a troubling concern. The Section's real focus is the decision of a police officer to "open fire", but this gets subsumed by other concerns. Notably, the Section neglects to delineate any steps to be followed before the police can resort to open fire, nor does it stipulate the specific circumstances which would necessitate opening fire. Section 10 is not acceptable as it is and should be deleted. Consideration and expert opinion must be sought to draft the procedural steps to be taken before resorting to open fire, and to pinpoint as far as possible the specific circumstances in which deciding to open fire becomes permissible. It is necessary to distinguish between different situations, such as apprehension of offenders and public order management, for which the points at which opening fire will differ and the possible dangers and harm caused will also differ.<sup>11</sup>

### **Summary of recommendations**

- **To meet the objectives set in the NPS Act and s. 4 of the Regulations, develop and substantiate objectives (e)-(g);**
- **Conduct a full technical review of the Regulations to ensure that verbatim duplication with the Sixth Schedule (Part B) of the NPS Act is deleted; as well as address internal inconsistencies and redundant definitions;**
- **Delete s. 11 of the Regulations;**
- **Incorporate training areas from the Basic Principles to subsection (3) of s. 51;**
- **Clarify circumstances under which police officers can carry firearms by harmonising the Regulations with relevant parts of Service Standing Orders;**
- **Draft procedural steps to be taken before resorting to open fire, and to pinpoint as far as possible the specific circumstances in which deciding to open fire becomes permissible;**
- **Render the document coherent by correcting typos, grammar and references.**

### The National Police Service (Use of Power) Regulations, 2014

The Regulations are aimed at ensuring discipline within the Service, fighting abuse of office by police officers and various corrupt practices. However, the Regulations lack precision,

<sup>10</sup> Service Standing Orders, (consultation draft, February 2014), CAP 13, s. 19.

<sup>11</sup> It would be important to reference the Service Standing Orders (Consultation draft), 2014, CAP 64 when considering procedures to be followed in public order management.

with a number of terms used that are either not defined or ambiguous or both. For instance, s. 20 refers to “offers of entertainment” that can place the police officer in a position of obligation. Section 21 mentions invitations, which are suspect “on the face of it”. At the same time, s. 10 establishes that police officer shall not be held accountable or liable for any act of commission or omission “made in good faith while in the course of duty”. Same applies to the dense language used to promote prudence in financial affairs among the police officers.<sup>12</sup> Such vague provisions and ill-defined categories must be redrafted in clear and precise language that is well understood by all police officers. While disallowing these corrupt practices is a welcome step to supplement the Anti-Corruption and Economic Crimes Act in a Service-specific way, we deem it necessary to, on the one hand, provide clear cut definitions of these terms, and to, on the other hand, to introduce penalisation of corruption in a broad sense with a reference to the Anti-Corruption and Economic Crimes Act.

Also s. 2 contains a reference to the wrong article in the Constitution (Article 245 instead of Article 243).

Regarding the substance of the Regulations, our comments are as follows.

#### Definition of power

Section 6 defines power as “an obligation or authority, whether express or implied, bestowed on a police officer to execute any of his or her functions under the Act or any other written law”. It is our belief that the reference must be made only to express obligations and authority, rather than this overarching definition. The current drafting is overbroad and leaves room for too much discretion in interpreting the “power” of police officers. More largely, we feel that it is not the best practice to even define the term “power” as it is so overbroad that it is difficult to derive any real meaning from it. Police officers have numerous powers and obligations, linked to different aspects of policing, both coercive and not. The contours and/or definitions of these powers are spread over numerous laws. The most crucial thing is to ensure that police powers remain within strict legal limits and within the constitutional framework. Our primary recommendation is to do away with the definition of power; but if it is retained, then we recommend that reference be made only to express obligation or authority. We recognise that if the definition of power is removed, this set of Regulations may have to be re-named.

#### Responsible exercise of power

Section 7 stipulates that the police must use their power responsibly, prescribing prosecution in the court of law for those who fails to do so. Again, this is the problem with generalising across the gamut of police powers. In this case, it does not take into account the full range of accountability that can be invoked. Specific offences must be matched with appropriate punishments, whether disciplinary action, criminal prosecution, or both. It is recommended that Section 7 is redrafted entirely with greater specificity.

#### Use of personal data

Section 28 states that a police officer shall not use or transfer personal data “collected during the execution of official duties for any purposes other than for which they were collected or a purpose directly related to that purpose, unless prescribed consent has been obtained from the data subject”. According to the art. 4 of the Code of Conduct, matters of confidential nature in police’s possession must remain confidential, unless the performance

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<sup>12</sup> Section 16(2) reads: “*Serious pecuniary embarrassment stemming from financial imprudence which leads to the impairment of an officer's operational efficiency will result in disciplinary action*”. It is not quite clear what “pecuniary embarrassment” is, and how its seriousness is measured.



of the duty or the needs of justice *strictly require* otherwise. To bring the s. 28 in conformity with international standards, it is recommended to add the following clause at the end of the subsection (1): “or unless the performance of the duty or the needs of justice strictly require otherwise”.

### Summary of recommendations

- **Consider doing away with the definition of “power” in its entirety, which would also mean that this set of Regulations are re-named; if it is retained, remove reference to *implied* obligation and authority from the definition of power;**
- **Redraft Section 7 in its entirety;**
- **Introduce an additional clause to protect confidential data.**

### The National Police Service (Promotion of Human Rights) Regulations, 2014

CHRI welcomes the Regulations and is pleased that they provide substantial and meaningful protection of children, persons with disabilities and persons with special needs and guarantee full and equal enjoyment of police services to these groups. Section 2 of the Regulations contains a reference to the wrong article in the Constitution (Article 239 instead of Article 243).

Regarding the substance of the Regulations, our comments are as follows.

#### *The promotion of human rights framework is incomplete*

The Regulations are made under the s. 126(1)(c) of the NPS Act, which reads as follows:

“[The Cabinet Secretary shall] develop guidelines on the promotion of human rights by the Service and in particular making police premises accessible and equipped to enable them to support –

- (i) child protection;
- (ii) persons with disabilities; and
- (iii) persons with special needs.”

Although we recognise that s. 126(1)(c) mentions only these three particular social groups, we stress that, given the “in particular” clause, it would be an incorrect reading of the section and detrimental to the purpose of promotion of human rights within the Service to limit the regulative capacity of the Cabinet Secretary under the s. 126(1)(c) to these groups only. Thus, we strongly believe that promotion of human rights framework is incomplete without adopting a gender-specific framework of promotion of human rights related to protection of the rights of women. This regulation is needed to increase gender sensitivity of the Service and to equip it with necessary knowledge and means to counter gender based violence.

A good starting point is Service Standing Orders (Consultation draft), 2014 and, in particular s. 26 of Chapter 60 (“Prisoners and Accused Persons”). We encourage the Cabinet Secretary or any other relevant regulator to develop further guidelines that would provide a clear and comprehensive framework that would secure the objectives mentioned above. We believe that such a framework should include rules on arrest and detention of women, technicalities of the application of police procedures to women which would ensure the protection of their dignity and human rights, establishment of helpdesks in police stations, prohibition of

inhuman and degrading treatment, promotion of gender sensitivity among officers of the Service and awareness creation.

#### **Summary of recommendations**

- **Supplement the Regulations, or develop new gender-specific Regulations, that would ensure the promotion of human rights related to protection of the rights of women.**

#### **The National Police Service (Handling of Information) Regulations, 2014**

The Regulations deal with the way the police officers handle information they receive in the course of their duty. The legal framework for the Regulations is derived from Articles 35 and 244 of the Constitution and s. 48 of the NPS Act. There is no national Right to Information legislation in place in Kenya which governs and regulates the constitutional right to information and how information is to be provided to the people of Kenya. Already, it is of serious concern that Section 48 of the NPS prescribes restriction on the public access of the information held by the Service. It is highly problematic that access to information is being restricted any law or regulation in the absence of a clear central legal framework which actualises the right.

#### **Summary of recommendations**

- **CHRI strongly recommends that this set of Regulations is postponed until there is comprehensive access to information legislation in place. Any Regulations on handling information should only be drafted once there is a proper legal framework in place, so that an accepted standard is in place.**

#### **The National Police Service Commission (Human Resource Management) Regulations, 2014**

The Regulations is a coherent and cohesive instrument to guide the NPSC and the Inspector-General in human resource management in the Service. We hold no reservations against the provisions of the Regulations. The only thing we would like to point out is that s. 9 duplicates s. 8, and is, consequently, recommended to be deleted.

#### **Summary of recommendations**

- **Delete section 9 as duplicating section 8.**

#### **The National Police Service Commission (Recruitment and Appointments) Regulations, 2014**

CHRI welcomes the Regulations and is pleased that they clarify the roles of the National Police Service Commission (NPSC) and the Inspector-General with regards to recruitment and appointment. The Regulations are well-drafted and provide a comprehensive framework for transparent and accountable recruitment and appointment of the officers of the Service. However, we note that some gaps remain.

#### ***Shortlisting requirements at the first stage of recruitment are not clear***

The first stage of the recruitment is carried by the NPSC, when successful candidates are shortlisted for the second stage of the recruitment. According to s. 12(5),



“Upon receipt of the applications from the applicants, the Commission shall prepare a short-list of the applicants to be invited for the physical, aptitude and medical assessment as well as verification of documents submitted.”

However, aside from the entry criteria and documents listed, there does not seem to be any further guidance for the Commission to determine who to shortlist in the first phase. Therefore, we recommend supplementing this section with a clear list of rules to guide the Commission or reference to relevant policy or recruitment manual.

*Recruitment manuals are to be developed and published*

As far as recruitment manual is concerned, the Regulations refer to it whenever the recruitment panels need guidance in assessing physical and medical fitness of the candidates. It is of paramount importance that the manual is available to the panels at the time of the next recruitment. We also recommend to make the manual public to guarantee the transparency of the recruitment process.

*Oversight mechanism to ensure accountability of the recruitment panels is lacking*

Section 12(13) of the Regulation confers exercise of the second stage of recruitment on the recruitment panels. Their formal establishment and regulation of the panels’ composition and modus operandi is a good development. However, the oversight mechanism to ensure their accountability to the Commission is not existent. Section 10(4)(f) obligates the Commission to ensure adequate supervision of the panels. Despite the importance of the issue,<sup>13</sup> oversight and accountability of the panels are not elaborated upon anywhere in the text of the document. It is therefore recommended that the NPSC develops and incorporates into the Regulations an oversight mechanism to ensure accountability and transparency of the panels.

*Recruitment exercise is to be limited to day hours*

Section 14(2) specifies that the NPSC will set and communicate the time the recruitment exercise will start at the recruitment centres. Based on the experience of previous recruitment, it is recommended to limit the time of the exercise to daylight hours to ensure transparency of the recruitment process.

**Summary of recommendations**

- **Develop and incorporate rules that will guide the NPSC in shortlisting successful candidates during the first stage of the recruitment;**
- **Develop and publish recruitment manual;**
- **Develop and incorporate oversight mechanism to ensure the accountability and transparency of the recruitment panels;**
- **Complement s. 14(2) with a requirement that the recruitment exercise can only take place during the daylight hours.**

**The National Police Service Commission (Transfer and Deployment) Regulations, 2014**

The Regulations are guidelines for the NPSC and the Inspector-General with regards to transfer and deployment of the police officers. We have identified several gaps and also have some additional suggestions.

<sup>13</sup> Especially taking into account the allegation of mass corruption that marred the July 14, 2014 recruitment.

### Greater education on the limits and proper use of transfer

The Regulations state in several provisions that transfers will not be used as a disciplinary sanction, or as a reward measure. The Commission and Inspector General are obligated to ensure transfers are not used as a channel for corruption in any way. Lobbying or canvassing for or against a transfer is to be constituted as a disciplinary offence. While these are all very positive and encouraging precedents, awareness and understanding of these provisions should be integrated into police training and well-publicised so all of this is crystal clear across the police department. Strategies for their dissemination and awareness raising within the police department should be considered and implemented.

### Reasons for deployment and right to appeal against deployment are not spelled out

The Regulations prohibits the use of transfers and deployments as a disciplinary sanction or as a reward measure. NPSC's involvement in the process and the concerned officer's right to appeal the intended transfer are meant to ensure that transfers are informed by legitimate reasons listed in the s. 3(2). However, there is no such a list of legitimate reasons for deployment of the police officers. Moreover, the officers of the Service are not guaranteed the right to appeal against deployments. Being a short-term temporary movement, deployment thus may become a venue for punishing or rewarding officers. It is therefore recommended that the reasons for deployment be articulated in the Regulations and the right to appeal be extended to deployments, though the procedure may vary from appeals against transfers.

### Grounds for appeal are incomplete and need significant substantiation

We hold that the appeal procedure established for transfers needs to be improved too. Section 6(2) stipulates only two grounds on which appeals against transfer can be made – medical and compassionate grounds. This means that police officers have no recourse to appeal transfer orders or any other grounds, which renders meaningless the said prohibition of misuse of transfers and also defies the principles of natural justice. CHRI strongly recommends that police officers are given the recourse to appeal transfer orders, on stipulated grounds. This may require further elaboration beginning from the National Police Service Commission Act 2011, and also in these Regulations.

#### **Summary of recommendations**

- **Develop and incorporate a list of legitimate reasons for deployment;**
- **Ensure there is awareness and full knowledge in the police department on the stipulated and proper uses of transfer and what transfer cannot be used for;**
- **Guarantee a right of a police officer to appeal against the deployment, though the procedure may vary from appeals against transfers;**
- **Guarantee a right of a police officer to appeal against transfer or deployment on stipulated grounds (this may require amending the National Police Service Commission Act 2011).**

### The National Police Service Commission (Discipline) Regulations, 2014

CHRI welcomes the Regulations and is pleased that they clarify the respective roles of the NPSC and the Inspector-General with regards to enforcement of discipline in the Service. Essentially, the Inspector-General is the primary person responsible for discipline, while the Commission is granted review powers. Elaborate disciplinary and appeal procedures aim to ensure that the action taken is fair and commensurate to the offence committed. Despite





recognising the framework as a significant step forward for the NPS, we would like to point out some inconsistencies and gaps in the Regulations.

#### *Schedule of punishment is lacking*

Based on s. 89(1) of the NPS Act, the s. 5(3) of the Regulations contains a list of possible disciplinary punishments that can be applied to the delinquent police officer. The punishments vary in gravity, so do the disciplinary offences.<sup>14</sup> However, neither the Act, nor the Regulations provide any guidance as to what punishment should apply to what offences. The only test found in the Regulations to guide the Commission is that the action taken must be commensurate to the offence (s. 6(2)). Therefore we recommend to develop a clear regulation that will both establish what punishments can be applied to what offences and be flexible enough to take into account aggravating and mitigating circumstances that can affect the action taken.

#### *Possible conflict with the National Police Service Commission (Promotions) Regulations, 2014 over demotion / reduction in rank*

Section 5(3) also contains a list of punishments that cannot take effect without approval and confirmation by the NPSC that include 1) an order of restitution; 2) stoppage of salary increments for a period of time; 3) reduction in rank; 4) dismissal from the service; 5) any combination of the punishments. With regards to 3) reduction in rank, there is a possible overlap with the National Police Service Commission (Promotions) Regulations, 2014. The said Regulations establish the appeal procedure against demotions, while present Regulations also contain a procedure to be followed when reduction in rank is a possible punishment. Given the differences in procedures, the confusion may arise over what procedure to follow. We therefore recommend to clarify and define demotion and reduction in rank (if the Commission indeed mean they constitute different things) or use uniform language (if the Commission believes they are indeed the same thing); and, in the latter case, bring the procedures in both regulations in conformity.

#### *Commission's powers are contradictory*

Dealing with review powers of the NPSC, the Regulations in s. 6(2) state that the Commission shall make recommendations to the Inspector-General on the required corrective action to be taken, if it believes that disciplinary measures taken are not commensurate to the offence committed. At the same time s. 9(2) gives the NPSC stronger powers of review that include 1) confirming disciplinary punishment; 2) imposing a different disciplinary action; 3) setting aside the entire disciplinary process and declaring the police officer not liable; and 4) directing that the disciplinary process be conducted anew. To avoid confusion and improve coherency of the document, we recommend incorporating the action contained in s. 6(2) as an option under s. 9(2).

#### *Complainant's role in disciplinary proceedings commenced by the member of the public not spelled out*

Section 7(1)(a) of the Regulations specifies that the disciplinary proceed can commence following a complaint from a member of the public. However, the Regulations do not spell out, inter alia, how in this case the complaint shall proceed, what role in the proceedings the complainant will have, if the complainant must be notified of the outcome of the case, and what protection the complainant will have against possible intimidation and reprimand, etc. Therefore, we recommend to develop and supplement the Regulations by the provisions that cover disciplinary proceedings commenced by the member of the public. These issues

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<sup>14</sup> NPS Act, 2011, 8<sup>th</sup> Schedule.



are addressed to some extent in Service Standing Orders (Consultation Draft, 2014),<sup>15</sup> which can be used as a starting point.

### Summary of recommendations

- Develop and incorporate a schedule of punishments;
- Clarify and define demotion from reduction in rank, or use uniform language across regulations. In the latter case, bring in conformity disciplinary procedure contained in the present regulations with appeal procedure contained in the National Police Service Commission (Promotions) Regulations, 2014;
- Include soft power of recommending change in the disciplinary action to the Inspector-General as a fifth option of review actions that can be taken by the NPSC under s. 9(2);
- Establish complainant's role in disciplinary proceedings commenced by a member of the public.

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<sup>15</sup> CAP 29, s. 14

