



PAN-AFRICAN PARLIAMENT



# MODEL POLICE LAW FOR AFRICA

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## INTRODUCTION



The Model Police Law for Africa was adopted by the Plenary Session of the Pan-African Parliament (PAP) on 13 October 2019 after a first reading in May 2017 mandated its Permanent Committee on Justice and Human Rights to continue its efforts.

The objective of the Model Law is to establish a police organisation, including its vision, mission, responsibilities and duties, in accordance with the principles enshrined in binding international and regional law, including the Charter of the Organisation of African Unity and the African Charter on Human and Peoples' Rights and their interpretive and subordinate instruments.

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

The obligations, in respect of policing for the countries of the African Union (AU), derive from their membership of the AU and its organs. A key principle that underpins the AU is the promotion of peace and security and herein its founding document makes specific reference to the promotion and protection of the rights contained in the International Bill of Rights and the African Charter. The AU Security Sector Reform (SSR) Policy Framework confirms the norms underpinning the governance of the police as:

- Democratisation, democratic governance and democratic control
- Rule of law
- International and regional human rights law.

The Model Law encapsulates this by envisaging law enforcement agencies that have as their central role the protection of life, liberty and security of the person; the maintenance of public safety and social peace; and upholding and protecting the rule of law and human rights. The Model Law further provides that law enforcement agencies, with the power to arrest and/or detain, must refrain from arbitrarily depriving any person of their liberty and must afford detainees the procedural rights

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guaranteed by law (including presumption of innocence, right to bail or bond, right to challenge lawfulness of arrest and detention). In addition to these procedural rights, the law provides that law enforcement personnel must ensure that all persons deprived of their liberty are treated in a manner consistent with the inherent dignity of the person, including the separation of categories of prisoners, provision of adequate food, clothing and hygiene, and facilitation of visits from lawyers, medical personnel and family. Special protection must be afforded to persons who are marginalised or vulnerable and to categories of persons who are afforded such special protections under the law (such as women, juveniles and persons with disabilities).

The Model Law requires that law enforcement personnel discharge the duties assigned to them by law in a manner that is equitable and with a high degree of professional responsibility. They must be subject to restrictions on the use of force and firearms and an absolute prohibition against torture and other ill-treatment. In recognition of the right to peaceful assembly, the legal framework for policing must strike a balance between effective public order management, the use of force and the right to peaceful assembly.

Finally, the Model Law provides for law enforcement agencies that are accountable and establish minimum standards for recruitment, transfer, discipline, the provision of training and the adherence to prohibitions against corruption and abuse of power.

The Model Law is set out in five parts:

- Preliminary providing purpose and definitions
- The Police Service providing for roles, function and powers
- Police personnel providing for the appointment, discipline, removal and transfer of commissioned and non-commissioned officers
- Conduct and discipline
- Four schedules on conditions of employment, powers, mutual legal assistance and accountability.

Key terms used throughout the Model Law are defined, in accordance with definitions adopted and accepted at the regional level, including the Charter of the Organisation of African Unity and the African Charter on Human and Peoples' Rights and their interpretive and subordinate instruments.

The work of the Permanent Committee on Justice and Human Rights on undertaking this task was guided by the PAP Rules of Procedure and the Protocol to the Treaty Establishing the African Economic Community relating to the PAP. Both documents recognise the PAP as the legislative component within the AU governance system and confer onto the PAP the responsibility to harmonise the legislative texts of Member States of the PAP and the AU as guided by Rule 4 of the PAP Rules of Procedure. Moreover, the decision to bestow on the Permanent Committee on Justice and Human Rights the responsibility to develop the instrument was guided by Rule 26 of the PAP Rules of Procedure. The rule grants the Committee the mandate to, 'promote respect for and develop sound principles of freedom, civil liberties, justice, human and people's rights and fundamental rights within the union.'

The Model Police Law for Africa is the product of almost four years of work in a joint effort by the Committee on Rules and the Committee on Justice and Human Rights and its technical partner the African Policing Civilian Oversight Forum. The Committee on Justice and Human Rights first conceptualised the model legislation on 4 August 2015.

The committee recognised that member states are increasingly reforming policing as part of broader democratisation efforts. However, at the African level, there is no overarching legislative framework to guide the development of policing legislation to ensure consistency with the aims and objectives of the AU Constitutive Act, the African Charter on Human and Peoples' Rights and the broader normative framework for policing found in international law. It is in this regard that the committee

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has developed a Model Police Law for Africa as a normative contribution to improving policing in Africa that will complement other AU and regional efforts to promote safety, security, democratic governance and human rights.

Guided by the belief that the PAP can make an important contribution to this sector, the committee developed a zero draft of the Model Law. This zero draft was discussed at an expert drafting meeting of the committees and included both external experts and AU legal representation held on 13–14 September 2016 in Johannesburg, South Africa. This meeting led to a first draft of the Model Law. The Draft Model Police Law for Africa was presented and discussed by the committee in October 2016 and was further workshopped with the committee on 4–5 May 2017 in Johannesburg, South Africa. The draft and the concept were presented to the plenary in May 2017 at which the committee was congratulated for its efforts and mandated to develop a Model Police Law for Africa. A second draft for consultation was formally adopted on 9 March 2018. The second draft was submitted to an expert consultation held on 19–20 October 2018 in Kigali, Rwanda. This consultation was held on the margins of the plenary and attended by experts in and outside of the AU. Expert input was considered by the committees on 6 March 2019 and a final draft was brought back to the plenary and approved on 13 October 2019.

Policing that provides safety and security but also upholds and promotes human rights, contributes to African development goals. These development goals include economic growth and democracy and were set out in Agenda 2063. As part of these efforts, the AU has adopted a Security Sector Reform Policy Framework to promote harmonisation and consistency in reform across the continent. Similarly, the African Commission on Human and Peoples' Rights (ACHPR) has produced several interpretive documents on policing in line with the African Charter. The PAP, with the adoption of the Model Police Law for Africa, has provided a third critical contribution in a demonstration of the collaboration and synergy between the organ and the AU. Model legislation that establishes clear principles and formal guidelines for the mandate, structure, operations and performance of law enforcement agencies is foundational to efforts to address the complex issues faced by police organisations in their engagement with the state, community and oversight actors.

It is my pleasure to present the Model Police Law for Africa.

**Hon. Ignatienne NYIRARUKUNDO**

Chairperson of the PAP's Committee on Justice and Human Rights



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# RESOLUTION



## RESOLUTION ESTABLISHING THE ADOPTION OF THE MODEL POLICE LAW FOR AFRICA

The Pan-African Parliament,

**Considering** the provisions of Article 17 of the Constitutive Act of the African Union establishing the Pan-African Parliament that enjoins the PAP to ensure the “full participation of the African people in the development and economic integration of the continent”;

**Recalling** Article 3 of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament and Rule 4 (a) of the Rules of Procedure of the Pan-African Parliament, which empower PAP to facilitate regional cooperation, development and promotion of “collective self-reliance and economic recovery” as well as the implementation of the policies, objectives and programmes” of the African Union;

**Conscious** of Article 11 (3) of the PAP Protocol and Rule 4 (1) (d) & (e) of the PAP Rules of Procedure, which empowers the PAP to work towards the harmonisation or co-ordination of the laws of African Union Member States, inter alia through proposing and developing model laws;

**Considering further** the African Charter on Human and Peoples’ Rights and AU Agenda 2063, the African Charter on Democracy, the AU Security Sector Reform Policy Framework that promotes harmonisation and consistency in reforms across the continent and the African Commission on Human and Peoples Rights African interpretive documents on policing;

**Recalling further** the PAP Resolution on the Draft Model Police Law for Africa, which was adopted during the Sixth Ordinary Session of the Fourth Parliament, in May 2017;

**Noting** that the development of a Model Police Law for Africa by the Pan-African Parliament will make a significant normative contribution to improving policing in Africa and will complement other African Union and regional efforts to promote safety, security, democratic governance and human rights;

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**Further noting** that a Model Police Law for Africa is an effective way to promote review by Member States of existing policing legislation and bilateral treaties, and to encourage legislative reform that governs the mandate, organisational structure and performance of law enforcement agencies in African Union Member States;

**Confirming** that model police legislation in Africa must be based on democratic and civilian control, adherence to rule of law and human rights compliant standards of policing;

**Recalling** that the Pan-African Parliament's legislative mandate makes it well placed to develop a Model Police Law for Africa and Model Treaty for Mutual Legal Assistance for police co-operation in Africa;

**Further noting** that the Model Law and Model Treaty for Mutual Legal Assistance for police co-operation in Africa can be adopted in whole or in part by African Union Member States, or used as a template to establish or review existing policing laws;

**Welcoming** of the partnership between the Pan-African Parliament and Africa Policing Civilian Oversight Forum (APCOF) by promoting and mainstreaming policing matters within the African Union Member States through the development of a Model Police Law;

**Appreciating** the contributions from the regional consultations on the Draft Model Police Law which provided an opportunity for African citizens, the grassroots organisations and other interested stakeholders to engage with the Draft Model Police Law;

**In accordance with** Rule 5 (b), (c) and (d) of the Rules of Procedure of the Pan-African Parliament, which empowers the PAP to, inter alia, organise debate, discuss, express an opinion, make recommendations and take resolutions on the objectives and on any matters relating to the African Union and its organs, Regional Economic Communities, Member States and their organs and institutions.

**Now hereby resolves to:**

1. **Adopt** the Model Police Law for Africa;
  2. **Request** the Bureau of PAP to submit the Model Police Law to the AU Policy Organs for endorsement and use by the AU Member States;
  3. **Strengthen** the collaboration and exchanges among regional and national parliamentary bodies with a view to enhancing the capacity of parliamentarians to monitor and promote policing mainstreaming in national policies and programmes, as well as the budgetary and legislative instruments.
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# MODEL POLICE LAW FOR AFRICA

## PART 1 Preliminary



### 1. Purpose

The purpose of this Police Law for Africa ('Model Law') is to:

- a. Articulate a legal framework for policing in Africa that is consistent with the Constitutive Act of the African Union, the African Charter on Human and Peoples' Rights ('the African Charter'), and other regional and international standards;
- b. Encourage State Parties to the African Charter to review and revise their existing policing law to ensure that the legal framework for policing at the national level is consistent with the State Parties' obligations under the African Charter and other regional and international legal instruments; and
- c. Guide the development by State Parties to the African Charter of new legislation and policy, or the review of existing legislation and policy.

### 2. Definitions

In this Model Law:

**African Charter** is the African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

**Appropriate protective and less-lethal equipment** means shields, helmets, batons, body armour, and other equipment and less-lethal weapons that have been independently tested and verified for accuracy, reliability and suitability to policing functions and compliance with regional and international human rights standards.

**Arbitrary arrest and detention** means the act of apprehending and detaining a person for reasons or in a manner that is in contravention of the law, or for reasons or in a manner that is otherwise discriminatory, unreasonable, unnecessary or disproportionate.

**Arrest** means the act of apprehending a person for the alleged commission of an offence, or the action of a police officer to detain a person as authorised by law.

**Breach of discipline** means an act or omission committed in contravention of this Act by a police officer in the performance or purported performance of the officer's duties.

**Child** means every person below the age of 18.

**Coercive measures** means the use of force and firearms.

**Community policing** means establishing and maintaining a partnership between the community and the Police Service for the purpose of promoting communication, cooperation, improved police services, transparency and joint problem solving, as contemplated in Section 6(b) of this Act.

**Commissioned officer** means a police officer certified as a commissioned officer of the Police Service under Section 14.

**Conduct** in relation to a police officer means an act or omission in the exercise, performance or discharge of a power, function or duty which the officer has as a police officer.

**Deputy Head of the Police** means a person appointed as a Deputy Head of the Police under Part 3, Division 3.

**Detention** means the act of apprehending a person and restricting their freedom of liberty and movement.

**Directed transfer** means the transfer of a police officer under Section 25.

**External Civilian Oversight Mechanism** means a body established by law with the mandate and powers to receive complaints and referrals about police misconduct as set out in Schedule 4.

**Firearm** means any portable barrelled weapon that expels, is designed to expel, or may be readily converted to expel, ammunition by action of explosive.

**Force** means the use, including the threat of use, of physical means (including impact, as well as chemical, electronic or similar means) to harm a person or to damage property.

**Grave threat** means a real, proximate and serious threat, though it is not necessarily imminent.

**Head of the Police** means the executive head of the Police Service, appointed under Part 3, Division 2.

**Head of the Police's instructions** means any instructions issued under Section 16(d).

**Imminent threat** means a threat that is impending, and likely to lead to immediate harm in a matter of a few seconds.

**Legitimate law enforcement objective** means one that is recognised in national, regional and international law, and that concerns the protection of the public, such as preventing the perpetration of a criminal offence, arresting a person suspected of having committed a criminal offence, or detaining a convicted criminal pursuant to a lawful sentence.

**Minister** means the person holding a ministerial position with responsibility for the Police Service.

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**Misconduct** in relation to a police officer means:

- a. Conduct which constitutes an offence punishable by imprisonment;
- b. Conduct which is likely to bring the Police Service into disrepute or diminish public confidence in it; or
- c. Improper conduct, whether in the officer's official or private capacity.

**Necessary** means that no reasonable alternative, other than resorting to the use of coercive measures, is available at the moment, to achieve a legitimate law enforcement objective as defined in this Act.

**Offence** means an act or omission that is contrary to the law.

**Operational independence** means that commissioned officers of the Police Service have the sole power to decide on the enforcement of any law within the service's mandate to enforce, and independence in terms of budgeting and Ministerial instruction as contemplated in Part 2, Division 2 of this Act.

**Persons with disabilities** means persons who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.

**Police officer** means a person appointed to the Police Service and who has taken the oath or affirmation of a commissioned officer under Section 23, Part 4, Division 4, of this Act.

**Police Service** means the body established under Section 3.

**Precaution** means that police officers shall apply non-violent means before resorting to coercive measures, unless such means are unlikely to achieve the intended result.

**Proportionate** means relative to the threat posed by an individual, or group of individuals, and the offence that has been, or is about to be, committed.

**Rank** means a rank specified in Section 12.

**Regional and international human rights instruments** means legal instruments, whether binding or advisory, related to human rights protections as adopted by the United Nations, the African Union, sub-regional political and economic communities or national constitutions.

**Status** means, in relation to a person who is the subject of police action (including custody), the identity, situation, actions or beliefs of a person in relation to their race, ethnic group, colour, gender, language, religion, political or any other opinion, national and social origin, fortune, birth, disability or any other status recognised in national, regional and international law.

**Torture** means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from them or a third person information or a confession, punishing them for an act they or a third person has committed or is suspected of having committed, or intimidating or coercing them or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

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# MODEL POLICE LAW FOR AFRICA

## PART 2 The Police Service



### **DIVISION 1 – Constitution, role, functions and powers**

#### **3. The Police Service**

The Police Service is constituted by a body established by this section, and consists of the following persons:

- a. The Head of the Police;
- b. Deputy Heads of the Police;
- c. Other police officers; and
- d. Civilian employees of the Police Service.

#### **4. Vision of the Police Service**

The Police Service is to be an independent, responsible, accountable and professional civilian law enforcement agency that respects, protects and promotes human rights, has a close and positive relationship in partnership with the society it serves and provides an equitable service to all of society.

#### **5. Role of the Police Service**

The role of the Police Service is to:

- a. Protect the rights of all persons under its jurisdiction;
  - b. Prevent the commission of offences;
  - c. Maintain peace and order;
  - d. Detect, investigate and bring before a court of law any person reasonably suspected of committing an offence; and
  - e. Uphold the law so as to promote a safe and secure society.
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## 6. General functions of the Police Service

- a. The functions of the Police Service include the following:
  - i. Prevent, detect and investigate offences;
  - ii. Protect, respect and uphold the rights of all persons under its jurisdiction, including the rights to life, liberty and security of the person;
  - iii. Enforce and uphold the law;
  - iv. Maintain public safety and social peace;
  - v. Protect life, freedom and property;
  - vi. Help those in need of assistance within the duties assigned to it by law;
  - vii. Cooperate with and provide assistance to other legal authorities and carry out Court orders; and
  - viii. Carry out any other duties prescribed in law.
- b. To achieve the full performance of the general functions of the Police Service as contemplated in subsection (a), the Police Service shall:
  - i. Establish and maintain a partnership between the community and the Police Service;
  - ii. Promote communication between the Police Service and the community;
  - iii. Promote cooperation and communication between the Police Service and the community in fulfilling the needs of the community regarding policing;
  - iv. Improve the rendering of police services to the community at national and local levels;
  - v. Promote transparency in the Police Service and accountability of the Police Service to the community;
  - vi. Promote joint problem identification and problem-solving by the Police Service and the community;
  - vii. Uphold the integrity of the Police Service; and
  - viii. Strive to achieve gender equality and be representative of the demographic composition of the community it serves.

## 7. Powers of police officers

- a. The Head of the Police shall ensure that police officers are equipped, trained and supported to exercise their powers, functions and duties in accordance with the law and in a manner that respects, protects and promote the human rights of all people.
  - b. Members of the Police Service have the following powers, functions and duties as police officers:
    - i. Prevent the commission of offences;
    - ii. Detect, investigate and apprehend suspected offenders;
    - iii. Issue warnings and orders in relation to the commission of offences;
    - iv. Collect, store and process information, including personal data in relation to the investigation of crime;
    - v. Temporarily restrict freedom of movement and access to prescribed areas or property;
    - vi. Perform stops, searches and identity verification of persons;
    - vii. Perform searches of property and seize items;
    - viii. Perform execution of process and all lawful summonses, warrants, orders and directions issued by a court or tribunal; and
    - ix. Use coercive measures to achieve a legitimate law enforcement interest, where the measures are necessary and proportionate to achieve that interest in a democratic society.
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## 8. Duties of police officers

- a. In the performance or discharge of a power, function or duty, as set out in Section 7, and elaborated in Schedule 2 of this Act, police officers shall:
    - i. Respect, protect and promote the right to life, dignity and security of the person, and all other human rights as provided in national law, the African Charter and other regional and international human rights instruments;
    - ii. Only use those powers and any coercive measure to the extent prescribed by the law and only when in pursuit of a legitimate law enforcement interest, where the performance or discharge of the powers or coercive measures are a necessary and proportionate measure to achieve that interest in a democratic society;
    - iii. Ensure equal protection to all persons and refrain from discrimination against persons or groups on the basis of race, ethnic group, colour, gender, language, religion, political or any other opinion, national and social origin, fortune, birth, disability or any other status recognised in national, regional and international law;
    - iv. Take special measures to protect the rights and make reasonable accommodation for any person or groups of persons who so require on the basis of their status;
    - v. Respect, protect and promote the right of all persons to freedom from torture and other cruel, inhuman or degrading treatment or punishment, and to freedom from arbitrary arrest and detention;
    - vi. Provide a satisfactory explanation and make available information on the circumstances in every case of death or serious injury to persons as a result of the performance or discharge of a power, function or duty of the police;
    - vii. Follow orders made by officers of a superior rank, except where such orders are manifestly unlawful;
    - viii. Report all orders, decisions and actions made by police officers that are in contravention of the law;
    - ix. Dispose of unclaimed or forfeited property by sale, public auction or destruction, or by any other means that are provided for by law, under the supervision of a judicial authority, with the net proceeds of any sale under this subsection to be paid into a fund, the purpose and use of which is determined by its establishing legislation; and
    - x. Cooperate with internal Police Service complaints and investigation processes, and any inquiries or investigations made by prescribed authorities with the mandate to cause investigations or inquiries into policing matters.
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## **DIVISION 2 – Operational independence**

### **9. Ministerial directions**

- a. The Minister may give written directions to the Head of the Police in relation to the policy and priorities to be pursued in the performance of the functions and powers of the Police Service.
- b. A direction under subsection (a) cannot be given in relation to any of the following matters:
  - i. The constitution of the Police Service, including the organisational structure;
  - ii. Enforcement of the law in relation to any person or group of persons;
  - iii. The investigation or prosecution of offences in relation to any person or group of persons;
  - iv. The preservation of the peace and the protection of life and property in relation to any person or group of persons; nor
  - v. The allocation or deployment of police officers to or at particular locations, and in the event of particular or extraordinary situations, responses and deployments made in cooperation with other government ministries or departments.
- c. The Minister may give direction under subsection (a) in relation to the matter specified in subsection (b)(v) if any of the following entities have made a report or recommendation in relation to the matter and, in the Minister's view, the Head of the Police has not responded adequately to that report or recommendation:
  - i. The External Civilian Oversight Mechanism;
  - ii. Other constitutional or statutory authority/ies, a board of inquiry or other formal review process, established by law, with the mandate to conduct oversight or accountability functions in relation to the Police Service;
  - iii. The Parliament; or
  - iv. The Auditor-General.
- d. The Minister shall ensure that a copy of a direction is published and made available to the public, including on internet websites maintained by the Ministry and the Police Service.

### **10. Police Service annual budget**

- a. The Parliament, on the advice of the Head of the Police, External Civilian Oversight Mechanism and the Responsible Minister, determines and allocates the annual operating budget of the Police Service.
  - b. The Parliament may, from time to time, and on the advice of the Head of the Police, External Civilian Oversight Mechanism and the Responsible Minister, determine and allocate special or specific grants directed towards national policing priorities.
  - c. Prior to making a determination and allocation under subsections (a) and (b), the Parliament shall:
    - i. Receive and consider reports on the budget and priorities of the Police Service for the financial year from:
      1. The Responsible Minister;
      2. The Police Service; and
      3. The External Civilian Oversight Mechanism, where it exists.
    - ii. Cause the publication of a parliamentary police service budget report that sets out the proposed annual budget allocation to the Police Service and the policy basis for the allocation; and
    - iii. Receive and consider public submissions in relation to the Police Service budget report.
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- d. In making a determination under subsections (a) and (b), the Parliament shall have regard to:
  - i. The information received and reviewed in subsection (c);
  - ii. Crime related and non-crime related policing activity based on the estimated total workload for the Police Service in all areas of policing activities; and
  - iii. The policing to population ratio at the national and station level.
- e. Responsibility for managing the income, expenditure, reserves and capital borrowing of the Police Service is vested in the Head of the Police or other delegated authority prescribed by law for the financial management of the Police Service.
- f. The Responsible Minister shall ensure that a copy of the annual Police Service budget allocated by Parliament is published and made public, including on internet websites maintained by the Ministry and the Police Service.
- g. The Head of the Police shall participate in and cooperate with any parliamentary interaction with, or debate on, the annual Police Service budget.

## 11. Reporting

- a. The Head of the Police shall prepare a report in respect of each financial year in relation to the performance of the functions of the Police Service, including budgetary reporting that includes any funds collected by the Police Service through fines or other revenue.
  - b. The Head of the Police shall give the report to the Minister within 90 days after the end of the financial year, and a copy of the report must be published by the Police Service and made available to the public, including on an internet website maintained by the Police Service.
  - c. Subject to subsection (d), the Minister may, from time to time, request the Head of the Police to provide additional information or reports of a kind specified by the Minister in relation to the performance of the functions of the Police Service.
  - d. The Head of the Police shall comply with a request under subsection (c) except if the Head of the Police considers that giving the information or reports of the kind specified by the Minister would reasonably be likely to:
    - i. Prejudice any investigation or prosecution of a contravention or possible contravention of the law; or
    - ii. Endanger the life or physical safety of any person.
  - e. The Head of the Police shall participate and cooperate with parliamentary engagement on the report contemplated in subsection (a).
-

# MODEL POLICE LAW FOR AFRICA

## PART 3 Police Service Personnel



### DIVISION 1 – Ranks and commissions

#### 12. The Police Service

- a. The Police Service will, by regulation, establish a structure of ranks.
- b. The following are the ranks of commissioned police officers in descending order of seniority:
  - i. Head of the Police;
  - ii. Deputy Heads of the Police; and
  - iii. Further ranks as established by regulation.

#### 13. Number of police officers

- a. The Parliament may, from time to time, by regulation, determine:
  - i. The total number of police officers that may be appointed under Section 13; and
  - ii. The total number of police officers that may hold each rank below the rank of Deputy Head of the Police.
- b. In making determinations under subsection (a), the Parliament will take into account:
  - i. The advice of the Minister, the Head of the Police and the External Civilian Oversight Mechanism;
  - ii. Population and demographic data and the importance of a police service that reflects societal demographics;
  - iii. The policing to population ratio at the national and station level, taking into account national and station level data on crime and non-crime related policing functions; and
  - iv. The financial resources available.
- c. Decisions on the deployment of police officers are vested in the Head of the Police.

#### **14. Commissioned officers**

- a. Subject to the requirements of Section 14 (c), the Head of the Police may certify that a police officer at the rank of Assistant Head of the Police and below, is a commissioned officer of the Police Service.
- b. The performance or discharge of a power, function or duty of a police officer is subject to the direction and control of the Head of the Police.
- c. A person is qualified for certification as a commissioned officer if the person:
  - i. Is of good character and reputation;
  - ii. Has completed the requisite police service training prescribed by law and regulation for admission to the Police Service as an officer;
  - iii. Has the qualifications and experiences prescribed by law and regulation for certification at a specified rank; and
  - iv. Has the aptitude required to perform as a police officer at a specified rank.
- d. A police officer may appeal or apply for a review of a decision by the Head of the Police to determine whether a person is qualified for certification as a commissioned officer.
- e. The appeal will be received and determined by an appeals division within the Police Service Directorate of Human Resources, with a procedure established that satisfies the requirements of due process and procedural fairness and the rule of law.
- f. The appeals division is bound by the rules of due process and procedural fairness in all appeals and reviews.

#### **15. Oath of commissioned officers**

- a. Police officers shall take an oath of office, or make an affirmation of office, prior to the performance of any duty or exercise of any power as a police officer.
  - b. The oath or affirmation shall be in a form established by regulation and is to be administered by:
    - i. A member of the judiciary in the case of the Head of the Police or Deputy Heads of the Police; or
    - ii. The Head of the Police, or as delegated, for all other ranks.
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## **DIVISION 2 – Head of the Police**

### **16. Role of the Head of the Police**

- a. The Head of the Police is the chief executive officer of the Police Service and, subject to the direction of the Minister under Section 8, is responsible for the management and control of the Police Service.
- b. The role of the Head of the Police is to:
  - i. Implement the role, functions and powers of the Police Service;
  - ii. Report to the Minister on the general conduct, performance and operation of the Police Service;
  - iii. Provide advice, information and views to the Minister on the operations of the Police Service and matters of policing policy and priorities; and
  - iv. Implement the policing policy and priorities of the Government.
- c. The Head of the Police is responsible to the Minister for the general conduct, performance and operations of the Police Service.
- d. The Head of the Police may from time to time issue instructions for the general administration of the Police Service and for the effective and efficient conduct of the operations of the Police Service.
- e. Without limiting the matters for which the Head of the Police may issue instructions pursuant to subsection (d), the Head of the Police's instructions shall satisfy the requirements for democratic policing provided by the African Union, and all other international standards.

### **17. Appointment of the Head of the Police**

- a. Subject to an open, transparent and competitive process, as specified in the regulation that the Minister shall cause to be established under this Act, the Head of State or the Responsible Minister may appoint a Head of the Police.
- b. Appointment of the Head of the Police will be made on the recommendation of the Parliament following a report received in writing from a specially constituted independent body consisting of representatives from the members of the Parliament, the judiciary and civil society.
- c. The Head of the Police may hold office for a period not exceeding five years, with eligibility for one further term of five years on reappointment, following reapplication and subject to satisfactory performance.
- d. The Head of the Police is appointed on the terms and conditions that are specified in the instrument of appointment.

### **18. Resignation or retirement of the Head of the Police**

- a. The Head of the Police may resign or retire by giving notice of not less than three months to the Parliament.
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## 19. Removal of the Head of the Police

- a. The Parliament may remove the Head of the Police from office on the recommendation of the Minister on any of the following grounds:
    - i. Gross misconduct;
    - ii. Criminal conviction;
    - iii. Violation of the instrument of appointment;
    - iv. Negligent duty; or
    - v. Incapacity in the performance of duty.
  - b. The Head of the Police may appeal or apply for a review of a decision made under this Section 19.
  - c. The appeal will be received and determined by the Parliament within 90 days, with a procedure established that satisfies the requirements of due process and procedural fairness and the rule of law.
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## **DIVISION 3 – Deputy Heads of the Police**

### **20. Role of Deputy Heads of the Police**

- a. The role of the Deputy Head of the Police is responsibility for the strategic management and control of the role, functions and powers of the Police Service delegated to them by the Head of the Police.
- b. The role of the Deputy Head of the Police is subject to the direction and control of the Head of the Police.

### **21. Appointment of Deputy Heads of the Police**

- a. On the advice of the Parliament, the Head of the Police may appoint Deputy Heads of the Police.
- b. Deputy Heads of the Police may hold office for a period not exceeding five years, with eligibility for further terms of five years on reappointment, subject to the advice of the Head of the Police.
- c. Deputy Heads of the Police are appointed on the terms and conditions that are specified in the instrument of appointment.

### **22. Removal of Deputy Heads of the Police**

- a. The Parliament may remove Deputy Heads of the Police from office on the recommendation of the Head of the Police on any of the following grounds:
    - i. Misconduct;
    - ii. Criminal conviction;
    - iii. Violation of the terms of the instrument of appointment;
    - iv. Conduct that has brought the Police Service into disrepute;
    - v. Negligent duty; or
    - vi. Incapacity in the performance of duty.
  - b. A Deputy Head of Police may appeal or apply for a review of a decision made under this section.
  - c. The appeal will be received and determined by an appeals division within the Police Service Directorate of Human Resources, with a procedure established that satisfies the requirements of due process and procedural fairness and the rule of law.
  - d. The appeals division is bound by the rules of due process and procedural fairness in all appeals and reviews.
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## **DIVISION 4 – Other police officers**

### **23. Appointment of police officers**

- a. Subject to Section 13, the Head of the Police may appoint a person as a police officer below the rank of Deputy Head of the Police.
- b. The Head of the Police may only appoint a person under this section if the person satisfies the prescribed criteria for employment which shall be determined as contemplated in subsection (c) and include that the candidate, at a minimum, be:
  - i. At least 18 years of age at the time of application;
  - ii. A citizen or permanent resident of the country of application;
  - iii. In possession of a high school completion certificate, or equivalent;
  - iv. Of good character and reputation, and disclose any prior convictions (including those committed as a juvenile) or excessive driving offences, for review and decision regarding fitness to serve as a police officer;
  - v. Willing to undergo medical and fitness tests as prescribed and meet the minimum requirements for both; and
  - vi. Willing to undergo initial and continuous training, and to undertake work in a demanding and physically challenging role.
- c. The full criteria for employment as a police officer shall be determined by the Parliament, on the advice of the Responsible Minister, and published and be measured by the aptitude and special qualifications necessary for the discharge of duties of the rank to which the criteria apply.

### **24. Promotion of police officers**

- a. The Head of the Police may promote a police officer appointed under Section 20 to a higher rank in accordance with this section.
  - b. In determining a promotion, the Head of the Police shall have regard to the suitability of the candidate for promotion.
  - c. The suitability of the candidate for promotion is determined against the following:
    - i. All positions – measured by the aptitude and special qualifications necessary for the discharge of duties of the position, together with merit, good conduct, diligence, quality of service, mental capacity and physical fitness.
    - ii. [Middle ranks] – in addition to subsection (c)(i), the criteria for the promotion of an officer of the rank of [middle ranks] includes the potential to develop the executive ability, leadership and management skills essential in senior executive positions.
    - iii. [Senior ranks up to Deputy Head of the Police] – in addition to subsection (c)(i), the criteria for the promotion of an officer of the rank of [senior positions] includes the executive ability, leadership and management skills essential to senior executive positions.
  - d. The criteria for promotion as a police officer shall be determined by the Parliament on the advice of the Responsible Minister or the External Civilian Oversight Mechanism, where it exists. The criteria will be published and measured by the aptitude and special qualifications necessary for the discharge of duties of the rank to which the criteria apply.
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## 25. Transfer of police officers

- a. The Head of the Police may transfer a police officer in accordance with this section.
- b. The Head of the Police may transfer a police officer to another position of the same rank on application or request by the officer. In determining a transfer on application or request, the Head of the Police shall have regard to the suitability of the candidate for transfer, in accordance with the suitability criteria in Section 24.
- c. The Head of the Police may transfer a police officer to any part of the Police Service if the Head of the Police considers it necessary to do so.

## 26. Promotion and transfer appeals

- a. A police officer may appeal or apply for a review of a decision by the Head of the Police under Sections 23, 24 and 25.
- b. The appeal will be received and determined by an appeals division within the Police Service Directorate of Human Resources, with a procedure established that satisfies the requirements of due process, procedural fairness and the rule of law.
- c. The appeals division is bound by the rules of due process and procedural fairness in all appeals and reviews.

## 27. Conditions of employment, promotion and transfer

- a. The Police Service will, by regulation, set out the conditions of employment, promotion and transfer for commissioned officers of the Police Service.
- b. The instruments of employment, promotion and transfer for all police officers shall comply with the conditions set forth in the regulations, and include provisions on:
  - i. Non-discrimination and equal opportunity;
  - ii. Remuneration and entitlements;
  - iii. Regular hours of work;
  - iv. Expected aptitude and special qualifications necessary for the discharge of duties of the position;
  - v. Expected standards of good conduct, diligence, quality of service, mental capacity and physical fitness;
  - vi. Leave, including annual leave, parental leave, study leave, medical leave, long service leave and carer leave;
  - vii. Training and on-going skills development;
  - viii. Conduct, grievance and disciplinary processes;
  - ix. Drug and alcohol testing;
  - x. Conflicts of interest and disclosures;
  - xi. Resignation and retirement; and
  - xii. Uniforms and equipment.

## 28. Resignation and retirement

- a. A police officer may resign or retire from the Police Service by giving written notice of not less than 4 weeks to the Head of the Police.
  - b. A police officer shall retire from the Police Service upon reaching the age as prescribed by the relevant public administration legislation, but not older than 65 years.
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## 29. Police uniforms and equipment

- a. Subject to subsection (b), the Head of the Police may from time to time determine:
    - i. The type or design of uniforms or other equipment to be worn or carried by police officers; and
    - ii. The conditions under which uniforms are to be worn or other equipment is to be carried.
  - b. In making a determination under subsection (a), the Head of the Police shall ensure that:
    - i. Standards of grooming and acceptable accessories for police officers are set, which may differ based on gender identity, physical features, religious belief or activity, and provide for exceptions on the basis of medical, cultural or religious grounds;
    - ii. Any equipment or weaponry provided to police officers has been independently tested and verified for accuracy, reliability and suitability to policing functions in compliance with regional and international human rights standards;
    - iii. Police officers are provided with a range of appropriate personal protective equipment and appropriate less-lethal weapons to reduce reliance on methods that are capable of causing death or serious injury; and
    - iv. The issuance of firearms to police officers is only done after comprehensive firearms training and testing, including periodic recertification, and that the use of firearms is regulated in compliance with Principle 9 of the UN Basic Principles on the Use of Force and Firearms and the African Commission on Human and Peoples' Rights General Comment No. 3 on the African Charter on the Right to Life.
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## **DIVISION 5 – Liability for misconduct by police officers**

### **30. Misconduct by a police officer**

For the purposes of this Model Law, police misconduct includes:

- a. Conduct which constitutes an offence punishable by imprisonment;
- b. Conduct which is likely to bring the Police Service into disrepute or diminish public confidence in it;
- c. Improper conduct, whether in the officer's official or private capacity; or
- d. A breach of discipline by a police officer.

### **31. Claims for relief against police misconduct**

- a. A claim for relief against police misconduct is an action for damages or other relief in respect of the alleged police misconduct.
  - b. The State is liable for misconduct by police officers in the course of their duty.
  - c. Where the conduct of the individual officer is found to be a wilful or negligent act or omission, the State may initiate recovery proceedings against the officer.
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# **MODEL POLICE LAW FOR AFRICA**

## **PART 4 Conduct and Discipline**



### **DIVISION 1 – Code of Conduct for police officers**

#### **32. Code of Conduct**

- a. The Police Service shall establish, by regulation, a Code of Conduct for commissioned officers and service regulations for non-commissioned officers.
  - b. The Code of Conduct shall set out the expectations of police conduct in a manner consistent with the State's obligations under the African Charter and other regional and international legal instruments.
  - c. All commissioned police officers shall be bound by the Code of Conduct and all non-commissioned officers shall be bound by the service regulations.
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## DIVISION 2 – Breach of discipline

### 33. Breach of discipline

A police officer commits a breach of discipline if they:

- i. Commit an act or omission in contravention of this Model Law or subordinate rules;
- ii. Fail to comply with lawful instructions from the Head of the Police, their delegated authority or a higher rank;
- iii. Engage in conduct that is likely to bring the Police Service into disrepute or diminish public confidence in it;
- iv. Have committed an act or omission that constitutes misconduct;
- v. Are negligent or careless in the discharge of their duty;
- vi. Without the approval of the Head of the Police, apply or hold a licence or permit to conduct any trade, profession or business;
- vii. Without the approval of the Head of the Police, conduct any trade, business or profession or accepts any other employment;
- viii. Fail to comply with anti-corruption law;
- ix. Have been charged with an offence under criminal law and the offence has been found proven; or
- x. Act in a manner prejudicial to the good order or discipline of the Police Service.

### 34. Investigation and charge

- a. If the Head of the Police, or their delegated authority, reasonably believes that a police officer may have committed a breach of discipline, the Head of the Police, or their delegated authority, shall cause an investigation into the matter to be conducted by a duly established permanent or *ad hoc* police service discipline unit.
  - b. If, after conducting an investigation under subsection (a) and subject to subsections (c) and (d), the Head of the Police, or their delegated authority, reasonably believes that a police officer has committed a breach of discipline, the Head of the Police, or their delegated authority, may charge the officer with the commission of that breach of discipline.
  - c. If the Head of the Police, or their delegated authority, reasonably believes that the police officer has committed a criminal offence, the Head of the Police, or their delegated authority, shall refer the matter to the Director of Public Prosecutions.
  - d. The Head of the Police, or their delegated authority, shall refer any use of force or firearms that is in contravention of this Model Law or other national law, regulation or instruction to an external civilian oversight mechanism.
  - e. At any time during an investigation, or following a charge, into a breach of discipline, the Head of the Police, or their delegated authority, may transfer the police officer to other duties, or direct the officer to take any leave accrued to them, or suspend the officer without pay.
  - f. For all referrals under subsection (d), the Head of the Police, or their delegated authority, may suspend the officer without pay until the final determination of the matter by the External Civilian Oversight Mechanism, where it exists.
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### **35. Inquiry into a charge**

- a. All charges brought by the Head of the Police under subsection 2(c) shall be the subject of an inquiry into and determination of the charge.
- b. The inquiry shall be conducted by an officer of equal or superior rank to the subject of the inquiry within the Internal Police Discipline Unit.
- c. The official conducting the inquiry is bound by the rules of due process and procedural fairness.

### **36. Determination of the inquiry**

- a. If, after considering all the submissions made at any inquiry, the person conducting the inquiry finds that the charge has been proven, the person conducting the inquiry may make, with regard to the type of offence, one or more of the following recommendations to the Head of the Police:
    - i. Reprimand;
    - ii. Impose a fine;
    - iii. Reduction in rank or seniority;
    - iv. Transfer;
    - v. Dismissal.
  - b. If, after considering all the submissions made on inquiry, the person conducting the inquiry finds that the charge has not been proven, any suspension against the officer relating to the charge terminates and any amount equal to the pay the officer would have received during that period of suspension shall be paid to the officer.
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## **DIVISION 3 – Complaints**

### **37. Making complaints**

- a. A complaint about the conduct of a police officer may be made:
    - i. To another police officer; or
    - ii. To the External Civilian Oversight Mechanism.
  - b. In respect of all complaints made under subsection (a)(i), the officer receiving the complaint shall refer the complaint to the Head of the Police if that officer considers the complaint relates to an allegation of misconduct.
  - c. The Head of the Police shall investigate a complaint made to a police officer about the misconduct of another police officer in accordance with the process established in Part 4, Division 2 of this Model Law.
  - d. The Head of the Police shall cause the enactment of instructions, rules or regulations regarding the protection of complainants from reprisals.
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## **DIVISION 4 – Compulsory notification to the External Civilian Oversight Mechanism**

### **38. Compulsory notification of serious police misconduct**

- a. The Head of the Police, or any member of the Police Service, shall, within 24 hours, refer to the External Civilian Oversight Mechanism any allegation received, or information obtained in relation to Division 2 or Division 3 about:
    - i. Any deaths in police custody;
    - ii. Deaths as a result of police action;
    - iii. Any complaint relating to the discharge of an official firearm by any police officer;
    - iv. Rape of any person while that person is in police custody;
    - v. Any complaint of torture or assault against a police officer in the execution of their duties;
    - vi. Any complaint of corruption against a police officer in the execution of their duties;
    - vii. Any other matter referred to it as a result of the decision of the Head of the Police, or if so requested by the Minister or the Parliament.
  - b. On notification by the Head of the Police to the External Civilian Oversight Mechanism in subsection (a), responsibility for the investigation of the matter is vested in the External Civilian Oversight Mechanism.
  - c. In relation to a notification by the Head of the Police or any member of the Police Service in subsection (b), the Head of the Police shall:
    - i. Ensure the full cooperation of the Police Service with the inquiries or investigation by the External Civilian Oversight Mechanism, including all requests for information;
    - ii. Within 30 days of receipt, implement the outcome of any External Civilian Oversight Mechanism report or investigation into a compulsory referral; and
    - iii. Cause a written report into the implementation to be submitted to the External Civilian Oversight Mechanism and the Minister on the quarterly progress regarding all matters referred to in subsection (ii).
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# MODEL POLICE LAW FOR AFRICA

## PART 5 Schedules



### SCHEDULE 1 Conditions of Employment for Police Officers

#### 1. Enactment of regulations

- a. The Head of the Police shall ensure the enactment of regulations or standing orders that set out the basic minimum conditions of employment for police officers.
- b. At a minimum, the regulations or standing orders in subsection (a), shall consistent with this Schedule 1, and shall cover the following:
  - i. Non-discrimination and equal opportunity;
  - ii. Remuneration and entitlements;
  - iii. Regular hours of work;
  - iv. Expected aptitude and special qualifications necessary for the discharge of duties of the position;
  - v. Expected standards of good conduct, diligence, quality of service, mental capacity and physical fitness;
  - vi. Leave, including annual leave, parental leave, study leave, medical leave, long service leave and carer leave;
  - vii. Training and on-going skills development;
  - viii. Conduct, grievance and disciplinary processes;
  - ix. Drug and alcohol testing;
  - x. Conflicts of interest and disclosures;
  - xi. Resignation and retirement; and
  - xii. Uniforms and equipment.

#### 2. General rights of police officers

- a. Police officers enjoy the same civil rights as other citizens. As public servants, police staff shall have the right to exercise civil, economic, social and cultural rights, to the fullest extent possible.

- b. Restrictions on the rights set out in subsection (a) may only be made when they are necessary for the exercise of the functions of the police in accordance with the law and in conformity with regional and international human rights standards. In particular, police officers shall not be actively involved in politics or be a member of a political party.
- c. The enjoyment of any right set out in subsection (a), as restricted by subsection (b), shall be secured for police officers without discrimination on any ground such as gender, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

### **3. Privacy of police officers**

- a. Police officers enjoy the right to privacy and reasonable expectations of privacy apply to police officers in their workplace. Privacy issues may arise but are not limited to situations such as workplace surveillance, email and telephone monitoring, drug testing, requirements to submit DNA samples or fingerprints for records, investigation into sexual orientation or gender identity.
- b. Any such restrictions on the right to privacy by police officers in relation to subsection (a), shall only be enforced in response to an identified aim which is consistent with regional and international human rights standards. If there is a less restrictive method that will still achieve the same result, the Police Service shall use that method.

### **4. Police officers and the right to freedom of expression and association**

- a. Police officers are entitled to basic rights of expression and association as provided by national law, and police officers have the right to organise or to participate in representative organisations as well as the right to bargain collectively, with restrictions on these rights only as prescribed by law and which are necessary in a society in the interests of national security or public order or for the protection of the rights and freedoms of others.

### **5. Basic working conditions of police officers**

- a. The Police Service shall take all necessary measures to ensure that the working conditions of police officers are consistent with the right of all persons to work under equitable and satisfactory conditions as guaranteed by Article 15 of the African Charter.
  - b. The recognition of the right of police officers to the enjoyment of just and favourable conditions of work shall ensure, in particular:
    - i. Remuneration which provides all police officers, at a minimum, with:
      - 1. Fair wages and equal remuneration for equal work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; and
      - 2. A decent living for themselves and their families.
    - ii. Safe and healthy working conditions which comprise the right to be protected in dangerous situations with adequate equipment, training, professional operations and allocation of adequate resources;
    - iii. Equal opportunity for everyone to be promoted in their employment to an appropriate higher level, subject to no considerations other than those of seniority and/or competence;
    - iv. Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays; and
    - v. Health and safety regulations, pension system, sick leave (especially with respect to on-duty incidents), invalidity insurance, parental leave and child-care responsibilities.
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## 6. Rights of police officers in disciplinary and criminal proceedings

- a. In relation to disciplinary proceedings:
    - i. Disciplinary proceedings brought against police officials should be subject to review by an independent body or court; and
    - ii. Public authorities shall support police personnel who are subject to ill-founded accusations concerning their duties.
  - b. In relation to criminal proceedings:
    - i. Police officers charged with a criminal offence shall be entitled to the full protection of all fair trial rights and guarantees; and
    - ii. Police officials shall be entitled to the right to a fair trial before an independent and impartial judicial authority.
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## **SCHEDULE 2**

### **Powers of Police Officers**

#### **1. Power to stop**

- a. Any police officer may stop any person whom they:
  - i. Observe doing any act or thing for which a licence or permit is required by law;
  - ii. Observe in the possession of anything for which a licence or permit is required by law;or
  - iii. Form a reasonable suspicion of doing any act or thing or of being in possession of anything for which a licence or permit is required by law.
- b. A police officer can request that the person subject to the action in subsection (a) produce the licence, permit or proof of ownership.
- c. If the person fails to produce the licence, permit or proof of ownership, the police officer can request the person to attend the nearest police station within a reasonable time with the required licence, permit or proof of ownership.
- d. Prior to taking any action under subsection (a), police officers shall identify themselves as police officers and produce their police identification cards.
- e. Any decision or action taken by a police officer in contravention of subsection (a), or based on discrimination of any kind, will constitute misconduct and be subject to the process established in Section 34 of this Act.

#### **2. Power to stop and search a person**

- a. A police officer may stop a person for the purpose of carrying out a search if the police officer has reasonable suspicion that the person:
  - i. Has committed a criminal offence;
  - ii. Is about to commit a criminal offence;
  - iii. Has in their possession an unlawfully obtained item;
  - iv. Has in their possession an unlawful item; or
  - v. Has in their possession a weapon that is likely to be used in the commission of a criminal offence.
- b. In all actions taken under subsection (a), the police officer shall have formed a reasonable suspicion prior to conducting a stop and search.
- c. It is a violation of subsection (a) for a police officer to stop and search a person in order to establish the requisite reasonable suspicion.
- d. Prior to taking any action under subsection (a), police officers shall identify themselves as police officers and produce their police identification cards.
- e. Any decision or action taken by a police officer in contravention of subsection (a) or based on discrimination of any kind, will constitute misconduct and be subject to the process established in Section 34 of this Act.

#### **3. Power to search a person**

- a. Police officers shall conduct searches in accordance with the law and in a manner consistent with the inherent dignity of the person and their right to privacy.
  - b. Police officers who conduct searches shall:
    - i. For all types of searches, including pat-down searches, strip searches and internal body searches, be of the same gender as the person being searched;
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- ii. Prior to the conduct of the search, inform the person being searched of the reason for the search;
  - iii. Make a written record of the search, which is accessible to the person being searched, their lawyer and any other third parties with the authority to access such records;
  - iv. Provide a receipt for any items confiscated during the search;
  - v. Only conduct strip searches and internal body searches where there are reasonable grounds to do so, and only in private; and
  - vi. Ensure that internal body searches are conducted by a medical professional and only upon informed consent by the person being searched or by a court order.
- c. Prior to taking any action under subsection (a), police officers shall identify themselves as police officers and produce their police identification cards.
  - d. A written report of any property taken from the person searched and a certificate of seizure shall be completed and signed by the owner and the police officer. Failure by the owner to sign should be recorded, with reasons for the failure.
  - e. Any decision or action taken by a police officer in contravention of subsection (a) or (d) or based on discrimination of any kind, will constitute misconduct and be subject to the process established in Section 34 of this Act.

#### **4. Power to search and seize property**

- a. Police officers shall conduct searches of property in accordance with the law and in a manner consistent with the right to privacy and only on the basis of a search warrant.
  - b. Police officers may conduct a property search without a warrant if they have reasonable suspicion that:
    - i. A person who is the subject of an arrest warrant in relation to a serious criminal offence is in the premises; or
    - ii. The property is being used for the commission of an offence that poses a serious threat to life or property and waiting to obtain the warrant would result in harm to life or property.
  - c. Prior to conducting a search of property, police officers shall:
    - i. Identify themselves as police officers and produce their police identification cards;
    - ii. Provide reasonable time to any persons on the property to grant them entry to the property;
    - iii. Make a written report of any property taken from the premises and have a certificate of seizure completed and signed by the owner and the police officer. Failure by the owner to sign should be recorded with reasons for the failure;
    - iv. Take into account any religious or cultural considerations that need to be observed on entry of the premises and ensure that the conduct of the search is consistent with the rights to dignity and privacy; and
    - v. Provide a full written report of the property search and any seizures to an officer-in-charge.
  - d. If the owner or tenant of the premises experiences damage as a result of the search, they can seek redress from the Police Service.
  - e. Any officer may be charged with misconduct for unlawful entry or unlawful acts carried out in the course of a search of property or seizure of property.
  - f. Any decision or action taken by a police officer in contravention of this section or based on discrimination of any kind, will constitute misconduct and be subject to the process established in Section 34 of this Act.
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## 5. Power to arrest

- a. Subject to subsection (b), a police officer may arrest a person on grounds and procedures established by law. Police officers shall ensure that they effect arrests in a manner that respects the rights of privacy and dignity of the arrested person.
  - b. Police officers shall only carry out an arrest:
    - i. Pursuant to a warrant; or
    - ii. On reasonable grounds that the person subject to arrest has committed a criminal offence, or is about to commit, a criminal offence.
  - c. At the time of effecting an arrest, police officers shall inform the arrested person of the reasons for the arrest.
  - d. Police officers may only use coercive measures to effect an arrest as a measure of last resort and only in circumstances where it is strictly necessary to use such coercive measures in order to carry out an arrest.
  - e. If coercive measures are necessary in the circumstances:
    - i. The level of force shall be proportionate to the threat or the harm to be avoided and at no more than the minimum level necessary; and
    - ii. The use of firearms is strictly limited to the arrest of a person presenting an imminent threat of death or serious injury, or to prevent the commission of a serious crime involving a grave and proximate threat to life and only when less extreme measures are insufficient to make the arrest.
  - f. Police officers shall inform arrested persons of the following rights:
    - i. The right to be informed of the reason for the arrest and any charges against the arrested person;
    - ii. The right to information in accessible formats and the right to an interpreter;
    - iii. The right to silence and freedom from self-incrimination;
    - iv. The right of access, without delay, to a lawyer of choice or if the person cannot afford a lawyer, to a lawyer or other legal service provider, provided by state or non-state institutions;
    - v. The right to contact and access a family member or other person of choice and, if relevant, consular authorities or embassy;
    - vi. The right to urgent medical assistance, to request and receive a medical examination and to obtain access to existing medical facilities;
    - vii. The right to apply for release on bail or bond pending investigation or questioning by an investigating authority or court appearance;
    - viii. The right to be free from torture and other cruel, inhuman or degrading treatment or punishment;
    - ix. The right to humane and hygienic conditions during the arrest period, including adequate water, food, sanitation, accommodation and rest, as appropriate considering the time spent in custody;
    - x. The right to challenge promptly the lawfulness of the arrest before a competent judicial authority; and
    - xi. The right to freely access complaints and oversight mechanisms.
  - g. At the time of effecting an arrest, police officers shall inform arrested persons of the rights provided in subsection (f) orally and in writing, and in a language and format that is accessible and understood by the arrested persons.
  - h. Prior to taking any action under subsection (a), police officers shall identify themselves as police officers and produce their police identification cards.
  - i. Any decision or action taken by a police officer in contravention of subsection (a), or based on discrimination of any kind, will constitute misconduct and be subject to the process established in Section 34 of this Act.
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## 6. Police custody

- a. A police officer may detain a person in custody on grounds and procedures established by law, providing that the use of police custody is, in all the circumstances, an exceptional measure of last resort.
  - b. Prior to a decision or action by a police officer to deprive a person of their liberty in police custody, the police officer can apply all available alternatives to detention as prescribed by law.
  - c. Police officers shall only hold a person in a formally recognised and gazetted place of detention.
  - d. If a person in custody is eligible for police bail or bond, in accordance with relevant criminal procedure legislation, the police officer designated to make decisions on bail or bond shall only deny bail or bond:
    - i. On grounds that are clearly established by law and which are consistent with regional and international human rights standards and are not motivated by discrimination of any kind, such as on the basis of race, ethnic group, colour, gender, language, religion, political or any other opinion, national and social origin, fortune, birth, disability or any other status; and
    - ii. If there are reasonable grounds to believe that the accused has been involved in the commission of a criminal offence that carries a custodial sentence and there is a danger that the accused will abscond, commit further serious offences, or if there is a danger that the release of the accused will not be in the interests of justice.
  - e. If a person is deemed eligible for police bail or bond with conditions, the police officer setting those conditions shall ensure that the least restrictive conditions are imposed that will reasonably ensure the appearance of the accused person in all court proceedings and protect victims, witnesses, society and any other person.
  - f. If a person is deemed ineligible for police bail or bond, the officer making that decision shall cause written reasons for such denial to be made and demonstrate that alternatives to detention were considered.
  - g. Police officers shall inform arrested and detained persons of their right to prompt access to a judicial authority to review, renew and appeal decisions to deny police bail or bond and facilitate access by the detained person to such judicial authorities on request.
  - h. Police officers shall ensure that persons are not held in police custody for more than 48 hours prior to their appearance before a competent judicial authority.
  - i. Police officers shall ensure that persons held in police custody have access to confidential and independent complaints mechanisms, and shall facilitate a detainee's access to such mechanisms on request.
  - j. Police officers shall inform arrested and detained persons of their rights in relation to legal assistance services, including:
    - i. Access without delay to lawyers and other legal service providers, at the latest prior to and during any questioning by police officers and thereafter throughout the criminal justice process;
    - ii. Confidentiality of communication, including meetings, correspondence, telephone calls and other forms of communications with lawyers and other legal service providers shall be respected. Such communication may take place within the sight of officers providing that they are conducted out of the hearing of officers;
    - iii. The right of detainees to be provided with the means to contact a lawyer or other legal service provider of their choice or one appointed by the state;
    - iv. The right to access case files and have adequate time and facilities to prepare a defence; and
    - v. No unlawful or unreasonable restriction to lawyers or other legal service providers.
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- k. Police officers shall ensure that the conditions of detention in police custody conform with all applicable regional and international standards, and treat all detainees in their care with respect for their inherent dignity, protection, and guarantee freedom from torture and other cruel, inhuman or degrading treatment or punishment.
- l. Police officers shall:
  - i. Limit the use of force against persons in police custody to circumstances in which force is strictly necessary for, and proportionate to, the need to maintain the security and order of the detention facility, or when personal safety is threatened;
  - ii. Prohibit the use of firearms other than for reasons of self-defence or the defence of others against the imminent threat of death or serious injury and only when other less extreme measures have been used to achieve that aim or will prove ineffective;
  - iii. Limit the use of restraints and the type of restraints used, to ensure consistency with the presumption of innocence and treatment of detained persons that accords with respect for the inherent dignity of the person; and
  - iv. Restrict the use of solitary confinement and apply anticipatory measures for crisis situations that aim to de-escalate without the need to resort to seclusion, restraint or forced treatment.
- m. Police officers shall ensure that any searches carried out on persons in police custody are consistent with Section 3 of this Schedule.
- n. Police officers shall ensure that all persons in police custody have access to health assessment screenings to reduce suicide and self-harm.
- o. Police officers shall ensure that the physical conditions of accommodation in police custody are consistent with the law, including regional and international human rights standards, in relation to nutrition, hygiene, clothing, bedding, exercise, physical and mental healthcare, societal contact, religious observance and reasonable accommodation.
- p. Police officers shall ensure that children under the age of 18 years in police custody are held separately from the adult population and that men and women are held separately.
- q. Police officers shall ensure that all detainees in police custody are provided with appropriate facilities to communicate with, and receive visits from, family, subject to reasonable restrictions and supervision deemed necessary in the interests of security.
- r. Any decision or action taken by a police officer in contravention of this Section 9, or based on discrimination of any kind, will constitute misconduct and be subject to the process established in Section 34 of this Act.
- s. Police officers shall allow, and cooperate with, duly mandated and accredited officials of any entity authorised to conduct inspections of police cells.
- t. Police officers shall make regular checks on the wellbeing of persons in their custody and record these checks and their results in the custody register.

## **7. Transfer of detainees**

- a. The transfer of persons by police officers is only permitted if authorised by law and the conduct of police officers in the facilitation of a transfer shall respect the inherent dignity of the person and the right to privacy.
  - b. Persons shall only be transferred between official gazetted places of detention.
  - c. Any transfer of a person shall be recorded in a register, and the detainee's next of kin shall be informed about the transfer prior to the transfer taking place.
  - d. Only vehicles duly authorised by the relevant authority as appropriate for the transfer of detainees may be used.
  - e. Vehicles shall be searched prior to and following the transportation of any arrested or detained person.
  - f. Detainees who are, or have been, violent, and who continue to present a risk to themselves or others shall not be transported with other detainees.
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- g. Children shall not be transported with adults, and women or girls shall not be transferred with men or boys.
  - h. Police officers shall take care during the transfer of persons, especially those with disabilities or who are restrained.
  - i. Any decision or action taken by a police officer in contravention of this Section 10, or based on discrimination of any kind, will constitute misconduct and be subject to the process established in Section 34 of this Act.
  - j. The Head of the Police shall ensure that memoranda of understanding are concluded between the Police Service and any agency that may be authorised by law to transfer detainees.

## 8. Coercive measures

- a. The Head of the Police shall ensure that all policing operations are planned and conducted taking into account all necessary precautions so as to minimise the risk of coercive measures.
  - b. The Head of the Police shall ensure that all police officers receive appropriate instructions, equipment, training and recertification, and are subject to civilian command.
  - c. All police officers shall ensure that they, as far as possible, apply non-violent methods before resorting to coercive measures.
  - d. All police officers shall ensure that the use of coercive measures is:
    - i. Exceptional;
    - ii. Only in pursuit of a legitimate law enforcement objective as defined in the Act;
    - iii. In a manner that is non-discriminatory; and
    - iv. Consistent with the requirements of precaution, necessity and proportionality as defined in this Act.
  - e. The use of firearms by police officers is restricted to circumstances in which there is an imminent risk of death or serious injury to a person, or to prevent the commission of a serious crime involving a grave and proximate threat to life, and only when less extreme measures are insufficient to achieve these objectives.
  - f. The intentional lethal use of firearms by police officers is restricted unless strictly unavoidable in order to protect life, thus making it proportionate, and all other means are insufficient to achieve that objective, thus making it necessary. Assessment of legality, necessity and proportionality shall be based on the relevant facts with a requirement for reasonable grounds, rather than mere suspicion or presumption, of risk or harm.
  - g. Where the use of coercive measures is unavoidable, in accordance with this Section 8, police officers shall minimise damage and injury, respect and preserve human life and ensure that at the earliest possible moment assistance is rendered to any injured or affected person and that their next of kin is notified.
  - h. If police officers resort to the use of firearms, they shall identify themselves as a police officer and give a clear warning of their intention to use firearms with sufficient time for the warnings to be observed, unless to do so would be ineffective or would put lives at undue risk.
  - i. In custodial settings, police officers shall not, in their relations with persons in custody, use force except as a last resort, and only in cases involving self-defence, attempted escape, the protection of a person from violence at the hands of another person, and protection from self harm, or active or passive physical resistance to an order based on law or regulations.
  - j. The Head of the Police shall provide police officers with a range of appropriate personal protective equipment and appropriate less-lethal weapons, as defined in this Act, to reduce reliance on methods that are capable of causing death or serious injury.
  - k. Any decision or action taken by a police officer in contravention of this Section 16, or based on discrimination of any kind, will constitute misconduct and be subject to the process established in Section 34 of this Act.
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## 9. Public order policing

- a. In all public order policing operations, police officials have a duty to respect and protect the right to assembly.
  - b. The role of the police in a public order policing operation is to ensure the safety of the public and to safeguard the human rights of all persons.
  - c. For every public order policing operation, the Head of the Police shall cause to be established a clear, transparent and single command structure, with the operational roles and responsibilities of police officers within the chain of command clearly established, articulated and publicly known.
  - d. The Head of the Police shall cause to be established a communication mechanism to facilitate effective communication between the Police Service and other stakeholders. In this context, stakeholders include but are not limited to assembly organisers, essential service providers, local authorities, the media, other security sector actors, oversight and accountability mechanisms and civil society.
  - e. The Head of the Police shall ensure that all police officials are trained to facilitate the right to assembly, and the curriculum shall include, at a minimum:
    - i. The normative framework for the right to assemble freely with others, as well as a clear explanation of the relationship between assembly and other regional and international human rights standards;
    - ii. Communication skills training;
    - iii. Understanding participant behaviour, including different types of group behaviour, and techniques for differentiating between various groups and people and their individual behaviours;
    - iv. Techniques in minimising conflict, including negotiation and mediation skills;
    - v. Tactics to promote de-escalation of tension and violence and methods for minimising the risk of harm to assembly participants, observers and bystanders;
    - vi. The lawful use of coercive measures;
    - vii. The proper use of less-lethal weapons to minimise the risk of abuse by police officials;
    - viii. The safety and protection of persons and groups vulnerable to limitations of their right to assemble freely with others and/or other human rights violations in the context of assemblies;
    - ix. The roles and mandates of internal and external accountability mechanisms and the obligation of police officers to cooperate with such structures; and
    - x. Principles of accountability, including the internal and external mechanisms to which police officers are answerable.
  - f. The Head of the Police shall ensure that the Police Service has in place a strategy for the adequate preparation and planning for assembly operations, which shall include consideration of the following issues:
    - i. Information and intelligence gathering, collection and processing that complies with regional and international human rights standards to ensure accurate information is available to conduct risk assessments and contingency planning, and to plan for the necessary and proportionate deployment and equipping of police officers to assembly operations;
    - ii. Communication and facilitation with assembly organisers and other stakeholders, with a view to fostering trust and confidence in the policing of assemblies, to assist with risk assessment and contingency planning and to assist in preventing the escalation of tension and violence;
    - iii. Risk assessments that are informed by continuous information gathering as set out in subsection (i) and communication as contemplated in subsection (ii) and which:
      1. Favour the presumption of the right to assemble freely with others;
      2. Take into account current and historical factors that may influence the conduct of an assembly, such as prevailing political or social tensions; and
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3. Take into account the protection of persons who are vulnerable to limitations of their right to assemble freely with others.
- iv. Contingency plans, based on the risk assessment set out in subparagraph (iii), which include, at a minimum:
    1. The provision of essential services, including emergency services, traffic management and medical services;
    2. The facilitation and management of counter-assemblies or simultaneous assemblies;
    3. Measures to be taken to de-escalate tension, to contain any escalation of tension and to deal with the potential for violence during assemblies;
    4. For the eventuality that non-coercive measures turn out not to be effective, the graduated use of any coercive measures in compliance with regional and international human rights standards;
    5. Measures to minimise harm in all scenarios, including the protection and safety of police officers, assembly participants, by-standers and monitors, with special measures in place to identify and provide specific protection to groups vulnerable to rights abuses in the context of assemblies;
    6. Considerations relating to adverse weather conditions and other environmental factors;
    7. The availability of police officers and the obligation of the Police Service to ensure that officers have adequate training in the management of assemblies, sufficient rest and access to food and water;
    8. Maintenance of regular internal communication and adequate record-keeping to ensure that all police officers deployed to an assembly operation are aware of the tactical and other operational plans;
    9. Maintenance of regular external communication with assembly organisers and participants, the media, civil society organisations and oversight authorities, including on any changes to the tactical or operational approach of police officers during the conduct of an assembly operation; and
    10. Other hazards and risks identified in the risk assessment that are specific to the context of the particular assembly.
  - v. Comprehensive briefing and debriefing for police officers by operational commanders prior to, and immediately following, deployment to an assembly operation regarding the risk assessment, contingency plan and tactical approach taken to the particular assembly.
- g. The Head of the Police shall ensure that the Police Service has in place a strategy for the management of an assembly operation as it unfolds. At a minimum, the strategy shall cover the following issues:
    - i. Communication, including continuous dialogue and negotiation with assembly organisers and participants to proactively address any issues that may arise during the conduct of an assembly activity;
    - ii. Provision of equipment and personnel to ensure that all communication to assembly participants is clearly audible and made in a language understood by the intended audience and that the intended audience is provided with sufficient time to follow the instructions of police officers of their own accord, including any warnings or directions provided;
    - iii. Visible identification of all police officials deployed overtly to an assembly operation on an individual basis, such as their name or service number;
    - iv. Potential adverse influence that the visible appearance of police officials, deployment tactics and equipping of officers may have on the way in which an assembly develops;
    - v. Deployment of the minimum number of officials commensurate to the size of the assembly necessary to ensure the protection and safety of officials, participants, observers and bystanders and a graduated approach to any increase of visible policing numbers during the course of an assembly;
    - vi. The placement of reinforcement units out of the sight of assembly participants to the extent that the Police Service has assessed this to be appropriate;
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- vii. Documentation of the assembly operation, including through the use of photography, providing that such recording and surveillance have a basis in law, are in pursuit of a legitimate interest which is consistent with international and regional human rights standards and are a necessary and proportionate measure to achieve this end within a democratic society;
  - viii. Contingencies for the stop, search and arrest of persons in circumstances where there is a reasonable suspicion that an individual poses an actual risk of violence or is involved in a criminal activity, and only where the use of such tactics are in compliance with this Act, and other regional and international human rights standards;
  - ix. Facilitation of first aid and other essential services, including the establishment of clear protocols for communicating with medical service providers;
  - x. The facilitation of multiple assemblies to ensure that the imposition of any limitations or restrictions on simultaneous or counter-assemblies are legal, necessary, proportionate and comply with the principles of non-discrimination and equality before the law;
  - xi. The provision of alternatives to simultaneous or counter-assemblies, taking into account the need for such assemblies to occur within the sight and sound of the other assembly;
  - xii. The legal, necessary, proportionate and non-discriminatory enforcement of any prior conditions imposed by a public authority on the conduct of an assembly and which are clearly laid out in law;
  - xiii. Tactics for de-escalation of tension including:
    - 1. That operational commanders continuously monitor assemblies with the aim of identifying and proactively addressing issues as they arise;
    - 2. Favour tactics such as open communication, negotiation and dialogue with assembly organisers and participants;
    - 3. Differentiation between individual and group behaviour, and to identify and remove specific persons identified as acting in an unlawful or violent manner, while continuing to facilitate the enjoyment of the right to assemble freely with others for all other persons;
    - 4. Crowd management strategies, such as containment, on the basis that they are implemented with precaution and are lawful and proportionate measures which do not amount to collective detention; and
    - 5. Recourse to coercive measures only when other, less harmful, means of de-escalation have failed and only in accordance with this Act and other regional and international human rights standards.
  - xiv. The use of coercive measure, and in particular:
    - 1. The application of non-violent measures by police officials prior to resorting to the use of coercive measures;
    - 2. The use of coercive measures only if other means of achieving a legitimate law enforcement objective are ineffective or unlikely to be successful;
    - 3. Differentiation between peaceful assembly participants and those engaged in violent acts;
    - 4. Coercive measures as an exceptional measure, with the intentional lethal use of force by police officials prohibited unless it is strictly unavoidable in order to protect life, thus making it proportionate, and all other means are insufficient to achieve that objective, thus making it necessary;
    - 5. Operational guidelines on the use of coercive measures including:
      - a) Exercise of restraint;
      - b) Proportionality to the seriousness of the threat of harm;
      - c) Minimising damage and injury, and respecting and preserving human life;
      - d) Provision of assistance and medical aid to any injured person at the earliest possible opportunity; and
      - e) Immediate reporting of any use of coercive measures to commanding officers.
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6. Limitations on the use of firearms to circumstances in which there is:
    - a) An imminent risk of death or serious injury to a person; or
    - b) To prevent the commission of a serious crime involving a grave threat to life; and
    - c) Only when less extreme measures are insufficient to achieve these objectives.
  7. The requirement that prior to the use of firearms, police officers identify themselves and give a clear warning of their intention to use firearms with sufficient time for the warnings to be observed;
  8. The prohibition against the use of firearms to disperse an assembly, or the indiscriminate discharge of firearms into a crowd;
  9. The use of crowd control weapons, including less-lethal crowd control weapons, only where there are legitimate grounds for the use of coercive measures or for dispersal and only when their use is necessary and proportionate and in circumstances when other less harmful means have been attempted and found to be ineffective or will be ineffective in the circumstances;
  10. The exercise of caution in the use of crowd control weapons, which have the potential for use in an arbitrary and/or discriminatory manner and/or are indiscriminate in their effects;
  11. The effective evaluation and control of all weapons, including non-lethal weapons, available to police officials in the policing of an assembly;
  12. The provision of a range of appropriate personal protective equipment and non-lethal weapons to reduce reliance by police officials on methods that are capable of causing death or serious injury; and
  13. Restrictions on the use of remote-controlled less-lethal weapons.
- xv. Dispersal of assemblies as a measure of last resort, with recourse to coercive measures only in a manner that is legal, necessary, proportionate and at the minimum level necessary.
- h. The Head of the Police shall ensure that the Police Service has in place a strategy for the post-assembly environment. At a minimum, the strategy shall cover the following issues:
- i. The use of alternatives to detention for arrested persons, and provisions for safe custody of persons deprived of their liberty in accordance with this Act and other regional and international human rights standards;
  - ii. Post-assembly debriefing processes, which include relevant stakeholders where possible, to focus on:
    1. Promoting monitoring, evaluation and learning to identify both failings and good practice in the policing operation, the effectiveness of risk assessments and contingency planning, internal and external communication, deployment and equipment;
    2. The use of coercive measures;
    3. The health, safety and working conditions of police officers deployed to the assembly operation (in particular where police officers died or were seriously injured);
    4. Tactics and decision-making; and
    5. Future training needs.
  - iii. Investigations into the discharge of any firearm or other less-lethal weapon by police officers during assembly operations;
  - iv. The immediate referral of any case of death or serious injury of a person during an assembly operation to the External Civilian Oversight Mechanism; and
  - v. The public communication of any findings of de-briefings or internal investigations resulting from each assembly operation.
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## **10. Information management (including maintenance of registers and other record-keeping, confidentiality and privilege)**

- a. All arrests and detention shall be recorded by police officials at the earliest possible time following arrest or detention in an official register with sequentially numbered pages.
  - b. All registers shall contain the following information, as a minimum:
    - i. The identity, age and address of the person, and the contact information of another person responsible for the care or custody of the person, if applicable;
    - ii. The date, time and place that:
      1. The person was arrested or detained;
      2. The person was notified of the reasons for arrest and detention;
      3. A record of the arrest or detention was made in the register;
      4. Notification of the arrest or detention to a third person of the arrested person's choice took place; and
      5. Notification of rights was provided.
    - iii. The identity of the officers involved in the arrest or detention;
    - iv. Observations on the state of the mental and physical health of the arrested or detained person (including any visible injuries) and whether the person requested or required medical assistance or reasonable accommodation, with due respect for medical confidentiality;
    - v. An itemised account of any personal items belonging to the detained person taken by the arresting or detaining officers;
    - vi. The date, time and place of any transfers, and the identity of the officer(s) responsible for, and involved in, that transfer; and
    - vii. Any complaints raised by the arrested or detained person.
  - c. In addition to the requirements set out in subparagraph (b), police officials shall cause the following additional information to be recorded in an arrest register:
    - i. The reason for the arrest;
    - ii. The date, time and place that the arrested person was notified about the reasons for the arrest and the identity of the officer who performed the notification; and
    - iii. The date and time that the arrested person or an officer notified a third person of the arrested person's choice about the arrest.
  - d. In addition to the requirements set out in subparagraph (b), police officials shall cause the following additional information to be recorded in a custody register:
    - i. The time and date the detained person was granted or refused unconditional release or release on summons, and the reasons for the refusal; and
    - ii. The date and time that the detained person was notified of the charges brought against them, the right to seek release, the reason for the refusal to grant release and the identity of the officer who performed the notification.
  - e. Police officers shall ensure access to official registers is provided to the arrested or detained person, their lawyer or another legal service provider, family member, or any other authority or organisation with a mandate to visit or inspect places of detention.
  - f. Any decision or action taken by a police officer in contravention of this Section 10, or based on discrimination of any kind, will constitute misconduct and be subject to the process established in Section 34 of this Act.
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## 11. Special provisions for vulnerable groups

- a. Police officers shall take measures to protect the rights of all persons in their care and provide additional services or protections for certain groups, such as children, women (especially pregnant or breastfeeding women), persons with albinism, the elderly, persons with HIV/AIDS, refugees, sex workers, persons discriminated against on the basis of sexual orientation or gender identity, non-citizens, stateless persons, racial or religious minorities, or other categories of persons requiring additional services or protections in the circumstances.
  - b. In relation to children, police officers shall ensure:
    - i. The principle of the best interests of the child is paramount in any decision-making and action taken in relation to child suspects and detainees;
    - ii. If there is uncertainty regarding the age of an arrested or detained person, but reason to believe that the person may be under the age of 18, treat the person as a child if and until such time as that person's age is determined to be 18 years or older;
    - iii. All children are treated with humanity and respect, and in a manner that takes into account the needs of a person of that age;
    - iv. Detention is a measure of last resort and for the shortest possible time period;
    - v. Prioritise non-custodial alternatives and diversion programmes for children in conflict with the law;
    - vi. Upon arrest:
      1. The child's parent(s) or guardian(s) and the authority charged with the welfare of the child is immediately notified, where such notification is in the best interests of the child;
      2. Inform the child and their parent(s) or guardian(s), providing it is in the child(s) best interest to make such third-party notification, of the charges against the child and the child's rights as a criminal accused; and
      3. Provide the child with access to a lawyer or other legal service provider.
    - vii. In police custody:
      1. Limit detention to the shortest possible period of time;
      2. Detain children separately from adults, unless it is in their best interest to be kept with family members also detained;
      3. Hold female children separately from male children;
      4. Facilitate the presence of a parent or guardian at all stages of the criminal proceeding, unless it is considered not to be in the best interests of the child; and
      5. Ensure the provision of care, protection and the necessary social, educational, vocational, psychological, medical and physical assistance that the child may require.
    - viii. Provide the child with an opportunity to be heard either directly or through a representative of the child's choice;
    - ix. Take into account the views of the child;
    - x. Manage children in such a way as to respect the legal status of the child and promote the child's well-being, ensure the child's privacy, and avoid harm to the child; and
    - xi. Ensure reasonable access by the child to parents, guardians or statutory authorities responsible for the care and protection of children.
  - c. In relation to women, police officers shall ensure:
    - i. Women and girls are only searched by a police officer of the same gender;
    - ii. Women and girls are held separately from men and boys;
    - iii. For women with caretaking responsibilities for children, that they are permitted prior to or on admission to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children;
    - iv. Provision of facilities necessary to contact families, including children, their children's guardians and legal representatives;
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- v. Provision of the facilities and materials required to meet women and girls' specific hygiene needs;
  - vi. Provision of gender-specific health screening and care, including the right to be seen by a woman medical practitioner;
  - vii. No close confinement or disciplinary segregation for pregnant or breastfeeding women, or women accompanied by infants; and
  - viii. Provision of obstetric and paediatric care before, during and after birth.
- d. In relation to persons with disabilities, police officers shall ensure:
- i. Every person with a disability is treated in conformity with the law and consistent with the right to humane treatment and the inherent dignity of the person;
  - ii. The existence of a disability in no way justifies a deprivation of liberty;
  - iii. Persons with disabilities are treated in a manner that takes into account the needs of a person with physical, mental, intellectual or sensory disabilities, including by provision of reasonable accommodation;
  - iv. Persons with disabilities provide informed consent with regard to any treatment;
  - v. Persons with disabilities enjoy full legal capacity, access to justice on an equal basis with others, equal treatment before the law and recognition as a person before the law;
  - vi. Persons with disabilities are informed about, and provided access to, promptly as required, appropriate support to exercise their legal capacity, including through the provision of interpreters, information in accessible formats and/or independent third parties who are appropriately qualified;
  - vii. Persons with disabilities can access, on an equal basis with other persons subject to detention, the physical environment, information and communication and other facilities provided by the Police Service, taking into account the gender and age of the person;
  - viii. Any necessary adaptations are made to the physical conditions of detention to take into account the needs of persons with disabilities and that the detention does not amount to inhuman or degrading treatment;
  - ix. Communication with and by persons with disabilities in detention is on an equal basis with others;
  - x. The provision of reasonable accommodation;
  - xi. Procedural and substantive due process; and
  - xii. Persons with disabilities are permitted to keep in their possession any form of aid relevant to their disability, unless a genuine security reason requires the removal of any form of aid, in which case suitable alternatives are provided.
- e. In relation to refugees, police officers shall ensure that:
- i. Refugees are informed of their right to contact consular officials and other relevant international organisations, such as the United Nations High Commissioner for Refugees and be provided with the means of contacting those authorities without delay on request by the refugee; and
  - ii. Officials from the organisations in subparagraph (i) are provided unhindered access to the detained refugee and provide the detainee with facilities to meet with such persons.
- f. In relation to non-citizens, police officials shall ensure that:
- i. Non-citizens are informed of their right to contact consular officials and relevant international organisations; and
  - ii. Provide unhindered access to the consular official or staff and the staff of relevant international organisations and provide the detainee with facilities to meet with such persons.
- g. In relation to stateless persons, police officials shall ensure that:
- i. Stateless persons are informed of their right to contact a lawyer or other legal service provider who can address their needs, and relevant international organisations, and be provided with the means to contact them without delay; and
  - ii. Provide unhindered access to persons contemplated in subsection (i), and provide the detainee with facilities to meet with such persons.
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- h. In relation to internally displaced persons, police officials shall ensure that they recognise that such persons enjoy the same rights to public safety as other persons and act to ensure the provision of the same level of support for security in an internally placed persons camp as for any other city or town of that size.
  - i. Any decision or action taken by a police officer in contravention of this Section 11, or based on discrimination of any kind, will constitute misconduct and be subject to the process established in Section 34 of this Act.

## **12. Oversight and accountability**

- a. All police officials shall cooperate in full with investigations or other inquiries made into the Police Service by oversight and/or accountability authorities with the mandate to conduct such investigations and inquiries.
  - b. Any decision or action taken by a police officer in contravention of subsection (a), or based on discrimination of any kind, will constitute misconduct and be subject to the process established in Section 34 of this Act.
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### **SCHEDULE 3**

#### **Mutual Legal Assistance and Cooperation**

1. Subject to the provisions of this Schedule, the Head of the Police may request or provide advice or assistance to an international or regional policing organisation or institution, or to a police service in a foreign country, on a temporary basis, for the purposes of:
    - a. Obtaining evidence to assist in criminal investigations or proceedings;
    - b. Service of process or procedural documents;
    - c. Extradition of an accused or sentenced person;
    - d. Enforcement of foreign criminal verdicts;
    - e. Transfer of criminal proceedings;
    - f. Obtaining criminal record information; or
    - g. Joint border policing and confidence building.
  2. Subject to the provisions of this Schedule, the Head of the Police may request or provide for the deployment of police personnel on a bilateral basis, as part of a formed policing unit or peace support operations.
  3. The power to request or authorise the provision of assistance by the Police Service with an international or regional policing organisation or institution, or to a police service in a foreign country in subsections (1) and (2) are subject to any mutual legal assistance treaty that exists between the parties.
  4. If there is no mutual legal assistance treaty in existence between the parties, mutual legal assistance will be provided in accordance with a written agreement on the terms of the co-operation between the parties, exchanged through their respective competent authorities.
  5. The Head of the Police may only request or accept international criminal assistance if the offence for which the provision of assistance is required is a criminal offence under both domestic law and under the law of the foreign state making or receiving the request.
  6. The Minister shall cause regulations to be enacted on the minimum qualifications and rank required for police officers prior to their deployment to mutual legal assistance operations or formed policing units which shall, at minimum, exclude the deployment of any police officer against whom a finding of breach of discipline or misconduct has been made in terms of this Act.
  7. In international criminal assistance matters, police officers may exercise all those powers and be subject to all duties, ordinarily conferred on a police officer under this Act.
  8. In international criminal assistance matters, police officers are subject to the standards of conduct and processes for breach of discipline and misconduct as established in this Act.
  9. In making its budget determinations under Section 9 of this Act, the Parliament shall ensure the allocation of a budget to support the deployment of police officers in terms of subsections (1) and (2) of this Schedule 3.
  10. Mutual legal assistance and cooperation agreements shall be subject to parliamentary oversight.
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## **SCHEDULE 4**

### **External Civilian Oversight Mechanism**

1. To promote accountability of the Police Service, the Parliament should cause the enactment of legislation to establish an external civilian oversight mechanism.
  2. The powers conferred by law to the External Civilian Oversight Mechanism should include:
    - a. Authorisation to receive complaints about police conduct from any person;
    - b. Receipt of mandatory police reporting of all deaths in police custody or due to police action, and issuing penalties to the Police Service for delayed or non-reporting;
    - c. Comprehensive record-keeping, including recording and tracking complaints and abuses;
    - d. Full investigatory powers, including the power to compel police cooperation with investigations and authorisation to undertake investigations into complaints received;
    - e. Referral of cases for criminal prosecution to the public prosecutor;
    - f. Provision or referral of witnesses to witness protection, where necessary; and
    - g. Recommendations to propose general reform measures on policing to the Police Service and the Parliament.
  3. The Parliament should ensure that the External Civilian Oversight Mechanism is adequately resourced and funded, and provided sufficient means to carry out comprehensive investigations and hire skilled staff.
  4. The enacting legislation shall provide for the full operational and hierarchical independence of the External Civilian Oversight Mechanism from the Police Service, free of executive or political interference, and ensure that the mechanism:
    - a. Is subject to separate reporting lines from the Police Service;
    - b. Has democratically appointed members following consultations with or approval by the Parliament, with members guaranteed security of tenure; and
    - c. Is financially independent by means of parliamentary approval of the mechanism's annual operating budget, with statutory guarantees provided for the size and timing of the annual operating budget.
  5. The External Civilian Oversight Mechanism shall be subject to parliamentary oversight and should be required to make annual reports to the Parliament on its activities, budget and expenditure, and make that information available to the public, including on internet websites maintained by the mechanism.
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The Model Police Law for Africa sets the vision for policing in Africa based on the notion that all people in Africa enjoy policing services that command respect and are committed to ensuring that all people feel safe and secure. To build legitimacy and trust with the community, this vision for policing emphasises the need to establish professional, well-resourced and highly skilled services, that strive to protect and facilitate the full participation of all people in all areas of social, economic, cultural and political life, underpinned by an approach which is demilitarised, community-centred, rights-based and accountable.

