

Policing and Human Rights

Assessing southern African countries' compliance with the SARPCCO Code of Conduct for Police Officials



African Policing Civilian Oversight Forum

Policing and Human Rights

Assessing southern African countries' compliance with the SARPCCO Code of Conduct for Police Officials

Edited by Amanda Dissel and Cheryl Frank



© 2012, African Policing Civilian Oversight Forum. All rights reserved.

ISBN: 978-1-920489-81-6

No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form, or by any means, without the prior permission of the publisher.

Published for the African Policing Civilian Oversight Forum by African Minds.

African Policing Civilian Oversight Forum
2nd Floor, The Armoury, Buchanan Square, 160 Sir Lowry Road, Woodstock, Cape Town
www.apcof.org

African Minds
4 Eccleston Place, Somerset West, 7130, South Africa
info@africanminds.co.za
www.africanminds.co.za

ORDERS:
African Books Collective
PO Box 721, Oxford OX1 9EN, UK
orders@africanbookscollective.com
www.africanbookscollective.com

Design, typesetting and printing: COMPRESS.dsl | South Africa

Contents

	Authors	iv
	Acronyms	vi
	Acknowledgements	viii
1	Introduction	1
2	Angola	8
3	Botswana	24
4	Lesotho	38
5	Malawi	56
6	Mozambique	76
7	Namibia	100
8	South Africa	121
9	Swaziland	142
10	Zambia	159
11	Zimbabwe	177
12	Conclusion	201

Authors

- » David Bruce, Independent Researcher, South Africa
- » Peter Chinoko, Catholic Commission for Justice and Peace, Malawi
- » Maria Lúcia da Silveira, *Associação Justiça, Paz e Democracia* (AJPD), Angola
- » Pauline Dempers, Breaking the Wall of Silence, Namibia
- » Amanda Dissel, Independent Researcher, South Africa
- » Louise Edwards, African Policing Civilian Oversight Forum (APCOF)
- » Roselyn Hanzi, Zimbabwe Lawyers for Human Rights, Zimbabwe
- » Leon Kukkuk, Independent Researcher, Angola
- » Mijausse Maguiava, Mozambican Force for Crime Investigation and Social Reintegration (FOMICRES), Mozambique
- » Trevor Maisiri, African Public Policy and Research Institute (APPRI), Zimbabwe
- » Themba Masuku, Independent Researcher, South Africa
- » Lungile Mnisi, Coalition for Concerned Civics, Swaziland
- » Dr Gladys Mokawa, University of Botswana, Botswana
- » Prof. Mpho Molomo, University of Botswana, Botswana
- » Dr Robert Mtonga, International Physicians for the Prevention of Nuclear War (IPPNW), Zambia
- » Benjamin Nyqvist, Urban Trust of Namibia (UTN), Namibia
- » Eugenia Pascoal, Mozambican Force for Crime Investigation and Social Reintegration (FOMICRES), Mozambique
- » Dr Martin Rupiya, African Public Policy and Research Institute (APPRI), Zimbabwe
- » Sean Tait, African Policing Civilian Oversight Forum (APCOF)
- » Marosa Tsehlo, Independent Consultant, Lesotho

Acronyms

ACC	Anti-Corruption Commission (Namibia)
ACC	Anti-Corruption Commission (Zambia)
ACHPR	African Commission on Human and Peoples' Rights
AJDP	<i>Associação Justiça, Paz e Democracia</i> (Angola)
APCOF	African Civilian Policing Oversight Forum
APPRI	African Public Policy and Research Institute (Zimbabwe)
APRM	African Peer Review Mechanism
BBC	British Broadcasting Corporation
BDF	Botswana Defence Force
BDP	Botswana Democratic Party
BPS	Botswana Police Service
CAT	United Nations Committee Against Torture
CEDAW	United Nations Committee on the Elimination of Discrimination against Women
CHRPA	Commission for Human Rights and Public Administration (Swaziland)
CID	Crime Intelligence Division (Botswana)
CID	Criminal Investigations Department (Lesotho)
CID	Criminal Investigation Directorate (Zambia)
CIS	Crime Intelligence Service (South Africa)
CLC	Community Law Centre (South Africa)
DCEC	Directorate on Corruption and Economic Crime (Botswana)
DHD	<i>Direitos Humanos e Desenvolvimento</i> (Directorate of Human Rights and Development, Mozambique)
DIS	Directorate of Intelligence Service (Botswana)
DNIC	National Directorate of Criminal Investigation (Angola)
DPIC	Provincial Directorate of Criminal Investigation (Angola)
DPP	Director of Public Prosecutions (Swaziland)
EPOC	Ekurhuleni Pride Organising Committee (South Africa)
EU	European Union

FCS	Family Violence, Child Protection and Sexual Offences Units (South Africa)
FIDA	Federation of Women Lawyers (Lesotho)
GCPU	Gender and Child Protection Unit (Lesotho)
GNU	Government of National Unity (Zimbabwe)
GPA	Global Political Agreement (Zimbabwe)
HAWKS	Directorate for Priority Crime Investigations in the SAPS (South Africa)
HIV	Human Immunodeficiency Virus
IAADH	Angola Anti-militaristic Initiative for Human Rights
IBA	International Bar Association
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (Zimbabwe)
ICD	Independent Complaints Directorate (South Africa)
ICPRA	International Council of Police Representative Association (Swaziland)
IDASA	Institute for Democracy in Africa
IIU	Internal Investigation Unit (Swaziland)
ILEA	International Law Enforcement Agency (Botswana)
IPID	Independent Police Investigative Directorate (South Africa)
LAC	Legal Assistance Centre (Namibia)
LDH	<i>Liga Mocambicana dos Diritos Humanos</i> (Mozambican Human Rights League)
LGBTI	Lesbian, Gay, Bisexual, Transgendered and Intersex persons
LMPS	Lesotho Mounted Police Service
LVS	Lay Visitors Scheme (Malawi)
MACC	Minimum Anti-Corruption Capacity Requirements (South Africa)
MDC	Movement for Democratic Change (Zimbabwe)
MHRC	Malawi Human Rights Commission
MI	Military Intelligence (Botswana)
MPLA	Popular Movement for the Liberation of Angola
MPS	Malawi Police Service
NamPol	Namibia Police Force
NGO	Non-Governmental Organisation
NPCDU	Namibian Police Complaints and Discipline Unit
OPCAT	Optional Protocol to the United Nations Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment
OPDSC	Organ on Politics, Defence and Security Cooperation (SADC)
OSISA	Open Society Initiative for Southern Africa
OSSU	Operational Support Service Unit (Swaziland)
PCA	Police Complaints Authority (Lesotho)

PLAN	People's Liberation Army of Namibia
PNA	<i>Polícia Nacional de Angola</i> (Angolan National Police)
PPCA	Police Public Complaints Authority (Zambia)
PPSU	Police Professional Standards Unit (Zambia)
PRM	<i>Polícia da Republica da Mocambique</i> (Mozambique National Police)
RSP	Royal Swaziland Police
SACCORD	Southern African Centre for the Constructive Resolution of Disputes
SADC	Southern African Development Community
SAP	South African Police Force
SAPS	South African Police Service
SARPCCO	Southern African Regional Police Chiefs Cooperation Organisation
SASAS	South African Social Attitudes Survey
SBIS	Swaziland Broadcasting and Information Services
SFF	Special Field Force (Namibia)
SFTU	Swaziland Federation of Trade Unions
SSG	Special Support Group (Botswana)
SWAGGA	Swaziland Action Group Against Abuse
SWAPO	South West Africa People's Organisation (Namibia)
SWATF	South West Africa Territorial Force (Namibia)
UN	United Nations
UNCAT	United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment
UNCT	United Nations Country Team
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNITA	National Union for the Total Independence of Angola
UNJHRO	United Nations Joint Human Rights Office
UPR	Universal Peer Review
VSR	Victim Support Room (South Africa)
VSU	Victim Support Unit (Malawi)
WCPU	Woman and Child Protection Unit (Namibia)
WILSA	Women in Law in Southern Africa
WOZA	Women of Zimbabwe Arise
ZANU-PF	Zimbabwe African National Union – Patriotic Front
ZHRC	Zambia Human Rights Commission
ZHRC	Zimbabwe Human Rights Commission
ZLHR	Zimbabwe Lawyers for Human Rights
ZPS	Zambia Police Service
ZRP	Zimbabwe Republic Police

Acknowledgements

APCOF would like to extend its sincere thanks to the Open Society Initiative for Southern Africa (OSISA) and the Open Society Foundation for South Africa (OSF-SA) for their support of this study. The opinions expressed in this review do not necessarily reflect those of OSF-SA or OSISA.

1

Introduction

Introduction

The Southern African Police Chiefs Cooperation Organisation (SARPCCO) was established in 1985. Its objectives were to foster better cooperation and mutual assistance between police organisations in the countries of southern Africa. These 13 countries are: Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. SARPCCO's objectives are to assist in the development of strategies and information to address crime in the region and cross-border crime and to make recommendations to the governments in the region in regard to effective policing. It also aims to formulate systematic regional police strategies taking into account the performance requirements of regional police services.¹

The SARPCCO Constitution outlines certain principles of cooperation which include: respect for national sovereignty, equality of the police force/services, non-political professionalism, non-discrimination and flexibility of working method, and mutual benefit for all members. Importantly, it refers to the observance of human rights, mutual respect and goodwill.²

¹ Interpol (undated) *Profile of the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO)*. <https://www.interpol.int/Public/ICPO/SRB/SARPCCO.pdf>, accessed 31 June 2012

² *Ibid*, p.3

In furtherance of this commitment to human rights, SARPPCO held a human rights workshop in Kasame, Botswana in 2000. The workshop aimed to raise awareness and understanding of international human rights with regard to the police. It also aimed to facilitate discussion among police officers as to how police organisations could implement human rights standards and strengthen human rights-based policing. The meeting recommended the development of a protocol to facilitate the implementation of human rights in training and implementation.³ Accordingly, a Code of Conduct was developed and adopted at the 6th Annual General Meeting of SARPPCO on 31 August 2001.⁴

The Code of Conduct is intended as a minimum standard for policing in the region. It is guided by respect for all human life, for reverence of the law, integrity, respect for property and service excellence. It recognises that human rights norms and ethical practices are essential aspects of professionalising the police services.⁵ The Code of Conduct outlines 13 articles which are intended to help police organisations achieve these objectives.

The Code of Conduct is intended to have national application. In terms of the Harare Resolution, each member country of SARPPCO undertakes to take measures to implement the Code of Conduct nationally, adapting it to its own requirements. A further commitment was made for SARPPCO to oversee the implementation of the Code of Conduct, and to develop a training plan for how the Code could be taught to police in all the member countries.⁶

A decade after the adoption of the Code of Conduct, the African Policing Civilian Oversight Forum (APCOF) developed a set of indicators which aim to help countries measure the implementation of the Code of Conduct.⁷ These indicators later formed the basis for an assessment of the Lesotho Mounted Police Service in 2011.⁸ Following on from this, during 2011 and 2012, APCOF and its partners conducted an assessment of ten member countries in SARPPCO. The objectives of this study are to assist civil society, policing organisations and states to gain a clearer understanding on their efforts to implement and adhere to the Code of Conduct in each country, while reflecting on broader human rights principles. This report thus reflects on ten of the SARPPCO member countries: Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe. Unfortunately, Mauritius, the Democratic Republic of

3 SARPPCO and SAHRIT (2003) *SARPPCO Code of Conduct: Human Rights and Policing: Towards Ethical Policing Resource Book*. Harare: SARPPCO and SAHRIT, p.22

4 SARPPCO (2001) *Harare Resolution on the SARPPCO Code of Conduct for Police Officials*. http://www.kubatana.net/docs/demgg/sarpcco_code_of_conduct.pdf, accessed 31 June 2012

5 *Ibid.*

6 SARPPCO (2001) *Harare Resolution on the SARPPCO Code of Conduct for Police Officials*. Gaborone: SARPPCO

7 Dissel A and Tait S (2011) *Implementing the Southern African Regional Chiefs Cooperation Organisation (SARPPCO) Code of Conduct*. Cape Town: African Policing Civilian Oversight Forum

8 Dissel A, Masuku T, Tsehlo M and Tait S (2011) *The Police as Friend and Helper to the People: Assessing the Lesotho Mounted Police Performance in Terms of the Southern African Regional Chiefs Cooperation Organisation (SARPPCO) Code of Conduct*. Cape Town: African Policing Civilian Oversight Forum

the Congo and Tanzania were excluded from the study due to insufficient funds and time.

APCOF recognises that many countries in the region are in a developmental phase, and that their policing organisations and guiding legislation are often in the process of being adapted to international human rights norms and standards. Accordingly, while reflecting on challenges in adhering to the SARPPCO Code of Conduct, APCOF also aims to reflect on some of the positive steps countries have taken in this regard.

The indicators of the SARPPCO Code of Conduct

Indicators are a means to help measure performance against stated objectives. They help organisations to determine how well they are doing against these objectives, and to identify stumbling blocks or areas of concern.

Human rights-based norms and standards often establish wide and ambitious objectives which are difficult for many countries to achieve. The Code of Conduct itself establishes a very wide framework of 13 Articles, each with a brief explanation of what is meant by the Article. The indicators that were developed by APCOF are thus intended to break these Articles down into a more comprehensible set of objectives. For each of the SARPPCO Articles, APCOF developed a set of ‘indicators’ which help to establish the standards police managers need to uphold in their strategic and operational implementation of the Code of Conduct. The indicators are intended to help managers understand what their responsibilities are, and how they can go about achieving them. For external bodies, such as oversight organisations, the indicators can help them understand the requirements of policing within a human rights framework, and to guide them in their assessment of performance against these requirements.⁹

As an example, the indicators selected by APCOF for Article 1 on Human Rights, were:

- » Police actions are based on law and human rights;
- » Police are trained in human rights;
- » Violations of human rights are addressed; and
- » Human rights and dignity of police officials are respected.

In addition to the indicators, APCOF developed a set of ‘measures’. The measures break down each indicator into practical information which can be gathered by a

⁹ For a more detailed discussion on the indicators, and their measures, please see: Dissel A, Masuku T, Tsehlo M and Tait S (2011) *The Police as Friend and Helper to the People: Assessing the Lesotho Mounted Police Performance in Terms of the Southern African Regional Chiefs Cooperation Organisation (SARPPCO) Code of Conduct*. Cape Town: African Policing Civilian Oversight Forum, pp.3–5

researcher or police manager. Thus, for the indicator ‘police are trained in human rights’, selected measures include:

- » Training on human rights is incorporated in the basic, in-service and management training;
- » Training includes theoretical as well as practical skills based on scenarios that are related to daily practice;
- » Civil society and human rights experts are involved in human rights training;
- » Percentage of police officials who receive fundamental human rights training, and/or receive refresher training in the last two years.

Finally, APCOF identified a list of possible ‘means of verification’ – or sources of possible information that could help a researcher to identify how far the police had gone in achieving the indicators and measures. Verification sources include: surveys and interviews with police, key stakeholders and members of the public; official documents and records from the police and state; constitutions and legislation; regulations and practice or policy guidelines of the police; information submitted to or compiled by various treaty bodies; reports by oversight bodies; court records; independent research reports; and media articles.¹⁰

Methodology for the ten-country study

The objective of this study was to obtain as much detailed information on each country against the identified indicators, measures and means of verification as possible. APCOF worked in collaboration with researchers from each country to collect information and to write a preliminary country report.

Although each country researcher did have a template of the indicators, the methodology for collecting primary information from each country depended on the circumstances in that country and the skills and resources of the researchers. In Mozambique and Angola, researchers developed a set of questions which they used to interview stakeholders. Researchers in Zambia, Namibia and Botswana conducted police and stakeholder interviews using an open-ended type questionnaire based on the indicators for each article.

Researchers in Malawi, South Africa and Zimbabwe used only published sources of information and conducted no interviews nor obtained primary data for this study. Researchers collecting primary data and interviewing police attempted to obtain permission from the police, but this was not granted in each instance.

¹⁰ Dissel A, Masuku T, Tsehlo M and Tait S (2011) *The Police as Friend and Helper to the People: Assessing the Lesotho Mounted Police Performance in Terms of the Southern African Regional Chiefs Cooperation Organisation (SARPCCO) Code of Conduct*. Cape Town: African Policing Civilian Oversight Forum. pp.3–5

The information collected by country researchers was strengthened by an analysis of available documentation and media stories and compiled into a preliminary report. Reports emanating from Angola and Mozambique were crudely translated into English using a translation function available on Google.

The preliminary report was then augmented by further desktop research and analysis by researchers in South Africa. These researchers looked particularly at international research material on the country in question, as well as at documents generated through international treaty bodies, such as the United Nations (UN) Universal Periodic Review (UPR) process, reports of any UN Special Procedures and the Human Rights Council. The South African researchers relied on information that was available in the public domain, and primarily information that was accessible on the internet.

Although this was intended as an assessment of police performance against the indicators, and research material was initially collected in this regard, the information is not presented in relation to each indicator, but rather in relation to each article of the Code of Conduct. This was done to accommodate the limited space available for publication of the report, but it also reflects the difficulty researchers had in collecting information on each indicator.

Limitations of the study

An ambitious study of this nature suffers from a number of limitations:

- » Due to the limited time period of the study, and limited funds available, country researchers were unable to conduct detailed and long-term data collection that possibly would have allowed for a more nuanced and in-depth understanding of the dynamics impacting on policing. The researchers were thus only able to collect and analyse information that was readily available, either from the police or other official sources, or information that was in the public domain.
- » As explained above, different methodologies were employed in different countries to obtain primary data. Some of the countries chose to focus on particular topics rather than others. As a result, the primary data collected was of a different sort in each country, and makes comparison across countries difficult.
 - » The quality and reliability of primary data collected varied significantly, and in some cases it was not accompanied by sufficient explanatory information to allow it to be fully utilised and analysed.
 - » The sample size of respondents interviewed was in most cases small, and it is difficult to generalise or take these views as representative of the overall policing institution or of all stakeholders, as the case may be.

- » Some countries were able to conduct interviews or surveys with members of the police. The accuracy of the responses is difficult to assess as police are often bound by a silent code of honour wherein they feel obliged by loyalty to make the police look good, and not to expose any challenges they do experience. It was thus important that information that was obtained directly from the police was balanced by information from external sources where this was available.
- » Many countries do not publish or make official information and statistics publically available, or reports are only sporadically available. Accordingly, information that was accessed might be out of date, in the case of annual reports for previous years, or simply have been unavailable to researchers. Some of the indicators require data that is available only from the police, such as the number of disciplinary proceedings instituted against staff; the number of staff trained per year; or the internal policy of operational guidelines. In some cases the police are unwilling or unable to provide this information to researchers because it is not collated on a regular basis or is not easily accessible. Official websites for the police or other bodies in the country were not always functioning, or were not updated. Accordingly, information was not always available on each indicator for every country.
- » Researchers were to a large extent reliant on information obtained from external sources due to the paucity of information from official sources. Where possible, information was obtained from various UN processes or procedures. However, many of the countries were not up to date with the submission of their treaty-based reports and obligations, and thus this information was not available. The UPR process allowed us to obtain relatively recent information from most countries, however, since the UPR process works in five-year cycles, some of this information was five years out of date. Organisations such as Amnesty International, Human Rights Watch and the US Department of State publish information on most countries on an annual basis and this information is easily accessible to researchers, but these reports tend to focus on human rights violations rather than on positive achievements. Where possible, researchers attempted to balance the information obtained from different sources.
- » The limitations in the information available may impact on the reliability of information presented and the analysis, as information often tends to lag behind new developments and amendments to policy or practice. Where new laws or policy had been introduced, it was not always possible to determine to what extent these had been put into practice.

- » Finally, the editors of this compilation of country reports had to edit the information in order to comply with length requirements for the whole document. As a result, not all the information collected could be included into the report. The editors have attempted to summarise the main findings into the country reports.

2

Angola

Background

The Popular Movement for the Liberation of Angola (MPLA) has ruled Angola since independence in 1975. For more than 27 years, it was engaged in a civil war with the National Union for the Total Independence of Angola (UNITA). The war finally ended in February 2002 with the death of UNITA leader, Jonas Savimbi, leaving the MPLA in power under the leadership of José Eduardo dos Santos. Following the 2002 peace accords, Angola has progressed rapidly through phases of post-war emergency and rehabilitation, to reconstruction and development.

On 20 October 2004, the Angolan government established the Office of National Reconstruction and Rehabilitation, with the mandate to promote, supervise and implement specific programmes to promote economic development. Angola is Africa's second-largest oil producer, so has considerable wealth for public spending. Yet this also creates the climate for extensive corruption and self-enrichment. Democracy in the country remains very fragile. Opposition parties are weak and fragmented, leaders are unaccountable and power is unequally distributed. Civil society is growing progressively robust but has little influence over the government.

The national Angolan People's Police evolved from the Portuguese colonial police and the People's Police Corps of Angola, which was established after independence under the Ministry of Defence. Internal security was characterised by elaborate structures and regular restructuring. Police responsibilities were again reorganised when Angola adopted a multi-party democratic system in 1991. The Ministry of the Interior became solely responsible for all internal security.

The Angolan National Police (PNA – *Polícia Nacional de Angola*) is structured around a general command. The Police Commissioner is nominated by the President. The Commissioner reports to the National Defence Council.¹¹ The police consist of the Organs of Technical Assistance, Organs of Instrumental Assistance, Organs of Consultative Assistance and the Central Organs.

The National Police is divided into Provincial Commandos, which are then further subdivided into Divisional Commandos in the capital, Luanda, and into Municipal Commandos in the provinces. These are then divided into police stations and police posts.

The police launched a Ten-year Modernisation and Development Plan in 2003, which focuses on improvements in professionalism, civic responsibility, transparency and working closely with communities. Reforms included:

- » The establishment of complaints offices in Luanda and the other provinces where people could make complaints relating to police conduct;
- » The restructuring of the Luanda Provincial Command into seven divisions, each with responsibility for covering a specific area in order to increase public security;
- » A massive programme to retrain serving police officers in police colleges;
- » The educational qualification requirement for police recruits was raised.¹²

Methodology

This study used a combination of desktop research, interviews and observations in Angola. Fifty-three people were contacted to provide information, 34 responded, but only 13 fully completed the questionnaire which was submitted to them.¹³ Primary data was gathered by the *Associação Justiça, Paz e Democracia* (AJPD). Due to the paucity of reliable and verifiable information, this report depends heavily on interviews, discussion on opinions and perceptions, internet resources available, newspaper articles and the reports of the United Nations bodies. It also extracted information from social media such as Facebook and Twitter. Unfortunately, due to the limited time frames, and because no official permission was obtained from the police, the report does not contain the perspective of both official and unofficial sources. Limitations of time, the sources of the information and the small number of informants determine that this report can be seen as a general overview of police performance in terms of the Code of Conduct, rather than an accurate assessment.

¹¹ Polícia Nacional, Law No. 9 of 2008

¹² Amnesty International (2007) *Above the Law: Police Accountability in Angola*. London: Amnesty International.

¹³ These included five representatives of non-governmental organisations; three members of parliament; members of two political parties; eight journalists; six activists; four representatives of the PNA; three retired police officers; one judge, one retired judge and one lawyer.

Article 1: Respect for human rights

Standard: In the performance of their duties, police officials shall respect and protect human dignity, maintain and uphold the human rights of all persons.

Angola has ratified several core international treaties and declarations on human rights, as well as being party to the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child.¹⁴

The Constitution of 2010 is the supreme law of Angola, and all other laws are subordinate to it.¹⁵ The Constitution enshrines fundamental rights and provides that they be interpreted in harmony with the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and international instruments.¹⁶ Fundamental rights that are protected include the right to equality; right to life (the death penalty is prohibited); prohibition on torture and ill-treatment; freedom of association and property rights. Rights may only be restricted to the extent that they are limited by what is necessary, proportionate and reasonable in a free and democratic society.¹⁷

The Constitution provides for the establishment of a national police that is permanent, regular, and non-partisan.¹⁸ The police service should be organised on the basis of a hierarchy and discipline, and is responsible for protecting and securing the country, with due regard to the Constitution and international laws to which Angola is party. Legislation provides for the organisation and functioning of the police.

The law applicable to the police is the Organic Law of the National Police (*Estatuto Orgânico da Polícia Nacional*),¹⁹ supplemented by the Disciplinary Regulations,²⁰ and internal regulations approved by the Commander General of Police.²¹ The police are described as a militarised force. The Organic Law outlines the objectives of the police, which are:

- » The defence of democratic legality;
- » The maintenance of public order and tranquillity;
- » Respect for the regular exercise of fundamental rights and freedoms of citizens;
- » Crime prevention and combating of crime;
- » Collaboration in the implementation of national defence policy, as provided by law.

¹⁴ These include: the International Covenant on Civil and Political Rights, the International Covenant on Social, Economic and Cultural Rights, the Convention on the Rights of the Child; and the Convention on the Elimination of Discrimination against Women

¹⁵ Constitution of the Republic of Angola, 21 January 2010

¹⁶ *Ibid*, article 26

¹⁷ *Ibid*, article 57

¹⁸ *Ibid*, article 210

¹⁹ Decree No. 20 of 1993

²⁰ Decree No. 41 of 1996

²¹ Amnesty International (2007) *Above the Law: Police Accountability in Angola*. London: Amnesty International

In carrying out these objectives, the police must promote and protect the human rights and freedoms enshrined by the Constitution, as well as international human rights laws and standards.

Human rights training

Awareness of human rights is incorporated into the training of the police, with some components being offered by organisations from civil society, primarily through short and ad hoc short courses.²² Respondents suggested that such training is superficial and theoretical, and it is 'treated as an issue from another world'.²³ The training includes a basic overview of human rights and policing, as well as a focus on crime intelligence, interviewing of suspects, search and seizure, collection of evidence and the management of arrest and detention. Very little of the human rights training is extended to new recruits. According to information collected by the AJPD, around 100 police officers received about five consecutive days of human rights training in 2011 in six out of 18 provinces: Kwanza-Sul, Benguela, Huambo, Bié, Kuando-Kubango and Cabinda.

The police respondents interviewed indicated that they considered the training as somewhat useful and of some relevance to their daily policing work.

Oversight over the police

The Constitution makes provision for the National Assembly to elect an Ombudsman (*Provedor de Justiça*) and assistant ombudsman.²⁴ The objectives are to defend the rights and freedoms guaranteed to citizens. The Ombudsman can use informal means for resolving disputes, as well as resort to the courts to defend these rights.²⁵ Individuals or collectives of people may lay complaints. The activities of the Ombudsman are independent.

Organic Law established the position and office of the Ombudsman in 2005.²⁶ Although the Constitution requires the submission of annual reports to the National Assembly, no reports from the Ombudsman have been made publicly available. The Ombudsman is limited to making recommendations and is a reactive body that can only respond to complaints raised, except in cases of very serious human rights abuses. Some issues can only be addressed with the approval of the president's office. The mandate of the Ombudsman also extends to some oversight over the prison system and includes visits to prisons and monitoring the treatment and conditions of prisoners.

There are no formal internal mechanisms of oversight within the police, though Amnesty International referred to an internal complaints office being

²² *Ibid.*

²³ Respondent from civil society

²⁴ Constitution of the Republic of Angola, article 163

²⁵ *Ibid.*, article 192

²⁶ Organic Law 4 of 2006 and Organic Law 5 of 2006

established in 2003.²⁷ This is essentially a function that has been added to the competencies of the police to accept complaints made by the public. The complaints are handled internally, by senior officers. Respondents to this study complained that there is little feedback once the complaint has been lodged. It should also be noted that the outcomes of these complaints have never been made public. Some measure of oversight is undertaken through the regular monitoring visits made by the Minister of the Interior and the General Assembly, where the Minister is often required to answer questions relating to operational issues as well as respond to specific complaints.

Civil and criminal action taken against the police

No coherent information is available on the number of criminal cases or civil claims brought against the police. The authorities have also repeatedly failed to provide such information upon request from organisations such as Amnesty International.²⁸ However, the media and civil society organisations record numerous abuses by the police, including abuses against civil society organisations.²⁹ These cases are ‘eternally investigated’ and the accused continue to benefit from impunity.³⁰

Reports indicate that few police officials implicated in human rights abuses are investigated or disciplined, and criminal charges are sometimes brought against them. Unusually, in March 2010, a court convicted seven Angolan police officers for killing eight men. After the police were told that the men were criminals, the police made them lie down and shot them in the back. These officers were sentenced to 24 years in prison for the murders.³¹ The media frequently report on human rights violations, including violations of the right to peaceful unarmed assembly; arbitrary detention; torture and inhumane treatment at police stations; summary justice and lack of impartiality on the part of judges; abuse and excessive use of force by the police during demonstrations; high levels of corruption; and cases of police intolerance.

Rights of the police

All the security forces, including the police, have no right to strike and are not unionised. Respondents noted that, in principle, police officers have all the rights enjoyed by all civil servants, with the exception of rules pertaining to the security forces.³²

27 Amnesty International (2007) *Above the Law: Police Accountability in Angola*. London: Amnesty International

28 *Ibid.*

29 Human rights abuses against civil society organisations such as Associação Justiça, Paz e Democracia (Association for Justice, Peace and Democracy); Associação Mãos Livres (ALM) (Free Hands); Associação Omunga; Associação Construindo Comunidades (ACC) (Association Constructing Communities); Associação SOS Habitat, amongst others

30 Respondent from civil society

31 *BBC News* (22 March 2010) Police officers jailed 24 years for killings. <http://news.bbc.co.uk/2/hi/africa/8580778.stm>, accessed on 21 June 2012

32 Respondent from civil society

In its 2007 report, Amnesty International noted that the police disciplinary structure is organised along the lines of command, where superior officers are responsible for disciplining their subordinates. They expressed concern that the Disciplinary Regulations of the police require complete obedience to the orders of superiors. Contrary to international norms on human rights, which state that obedience to superior orders is not an excuse, an officer in the Angola National Police is required to raise a concern with his superior if s/he believes that an action may result in injury, but he must continue with the action if ordered to do so by his superiors.³³ Amnesty International pointed out the police frequently violate their disciplinary regulations to abstain from human rights violations, and when they do so, disciplinary action is seldom taken against them.³⁴

Police have noted an improvement in their disciplinary system from the period during the war. One respondent noted that ‘police officers are subject to a disciplinary system that is fair and just, as such they have the right to a defence in a court where they may have representation under the law by someone of their choice or by the state institute for legal assistance’.³⁵ Police working conditions are often less than adequate. Many have no access to transport or communications. Salaries for lower-level officers are still well below their basic needs, with a basic salary of about USD150 per month. This creates an incentive for corruption.

Article 2: Non-discrimination

Standard: Police officials shall treat all persons fairly and equally and avoid any form of discrimination.

The Constitution guarantees equality before the Constitution and the law.³⁶ Discrimination is prohibited on a wide basis, including on the basis of ancestry, sex, race, ethnicity, colour, disability, language, place of birth, religion, political, ideological or philosophical belief, economic condition, education or social status or profession. While social and ethnic discrimination is very rare in the country, the principles of equality before the law are undermined by corruption where the elite have a strong influence over the administration of justice, enabling them to evade justice, while the poor are often at the mercy of the criminal justice system.

As part of the promotion of national reconciliation and national unity, the police observe a strict policy of non-discrimination in recruitment and distribution of police officers. There is a good gender balance in the police, partially as a result of the liberation struggle, which relied on women fighting side by side with men.

³³ Amnesty International (2007) *Above the Law: Police Accountability in Angola*. London: Amnesty International. See also, Human Rights Council, Working Group on the Universal Periodic Review (8–10 February 2010) *Summary prepared by the office of the High Commission on Human Rights, in accordance with paragraph 15(c) of the annex to Human Rights Council Resolution 5/1, A/HRC/WG.6/7/AGO/3*

³⁴ Amnesty International (2007) *Above the Law: Police Accountability in Angola*. London: Amnesty International, pp.7–9

³⁵ Police respondent

³⁶ Constitution of the Republic of Angola, article 23

Over the last few years many women have been incorporated into the police, where they are accorded the same merit-based opportunities as men. Several respondents noted that problems with gender do not lie with the police as such, but with society that still tends to believe that police work is the domain of men.³⁷

Respondents indicated that they saw very little discrimination within the police, and one respondent who is an albino noted that there was no discrimination on his entry into the force, or his treatment within it. However, one respondent noted that although Angola is a country with a high number of physically disabled people, and people with disabilities are well represented in the civil service generally, there were very few people with disabilities in the police.³⁸

There was no information on whether issues of diversity are included in the training, though one respondent indicated that diversity issues are briefly mentioned in training.³⁹ Respondents were not aware of whether there was any specific capacity in the police to meet with the needs of special vulnerable groups of victims. According to respondents, there are improvements in the way the police deal with sex workers and homeless persons, though street vendors are often the targets of excessive use of police force.

Policing resources are heavily concentrated in the capital, Luanda. The distribution of police stations and courts is insufficient. In a country spread over 1.25 million km², with 18 provinces and 163 municipalities, vast parts of the country have no police stations or posts.

Article 3: Use of force

Standard: Police officials may only use force when strictly necessary and to the extent required for the performance of their duties and adhering to national legislation and practice.

The Constitution guarantees the right to life, and outlaws the death penalty.⁴⁰ Respondents indicated that there were instructions to the police not to use excessive force, though researchers were unable to substantiate this. Amnesty International and various civil society organisations have documented excessive use of force over the years,⁴¹ and extra-judicial executions by the police.⁴²

37 Respondents from both civil society and the police

38 Respondents from both civil society and the police

39 Respondents from the police

40 Constitution of the Republic of Angola, article 30

41 Amnesty International (2012) *Annual Report 2012: The State of the World's Human Rights: Angola*. London: Amnesty International. <http://www.amnesty.org/en/annual-report/2012>, accessed on 22 May 2012

42 Amnesty International (2011) *Annual Report 2011: The State of the World's Human Rights: Angola*. London: Amnesty International. <http://www.amnesty.org/en/region/angola/report-2011>, accessed on 21 June 2012

The Regulations to the Police Act state that the use of police weapons is permitted when absolutely necessary or in order to repel aggression or attempted aggression against oneself or one's place of work, or whenever requested by superiors in order to maintain public order and carry out arrests.⁴³ 'Ill-treatment, insults or violence against detainees are forbidden, both at the time of the arrest and subsequently, except in the case of resistance, flight or attempted flight.'⁴⁴ These provisions are contrary to international norms and standards, which require that the use of force is proportional and that minimal force be used. Lethal force should only be used to protect human life.

In addition to firearms training, respondents indicated that the police do receive training in martial arts and other techniques to pacify a person and avoid the unnecessary use of lethal force. Follow-up training is provided on an ad hoc basis as required and every two years. Depending on circumstances police receive batons, teargas, handcuffs and rubber bullets. They also receive equipment for their own protection.

Whenever police are on duty in circumstances where firearms may be necessary, officers, or those who may need to arrest suspects, are issued with firearms. No information is available on the criteria used to decide the type of arms issued. In spite of a policy to use arms appropriate for the police, assault weapons such as AK47s are still in use. It is not clear how often assault weapons are used: some respondents said such weapons were used fairly often, while others said these weapons were used rarely. According to respondents, all police stations have a safe for the storage of weapons and a control book to monitor when firearms are issued and returned.

Police respondents indicated that when there are complaints of excessive force, there are investigations into the circumstances surrounding the fact, and corrective measures are taken. Yet, there is very little evidence of these investigations, as no reports or findings are released to the public.

The PNA often use excessive force to break up public gatherings, and many of these occurrences are reported in the formal media, but more frequently appear in the social media. In 2011, Amnesty documented several cases where protestors had been shot by police, and several people had been killed.⁴⁵ Increasing violence has become a feature in quelling anti-government protests. Recently, kidnappings and torture have become frequent tools to suppress any form of dissent. In one incident, reportedly on 10 March 2012, uniformed and plain-clothed officers stopped the taxi in which youth protest leader Gaspar Luamba was travelling, and took him to the 10th Police Station, in Cazenga, Luanda's largest slum. He was

⁴³ Amnesty International (2007) *Above the Law: Police Accountability in Angola*. London: Amnesty International

⁴⁴ *Ibid*, p.9

⁴⁵ Amnesty International (2012) *Annual Report 2012: The State of the World's Human Rights: Angola*. London: Amnesty International. <http://www.amnesty.org/en/annual-report/2012>, accessed 22 May 2012

apparently tortured in the cell, and then released after three hours, as news was already out on the police's involvement in his abduction.⁴⁶

There are also reports of excessive force used during forced evictions.⁴⁷

Article 4: Torture and cruel, inhuman and degrading treatment or punishment

Standard: No police officer shall, under any circumstances, inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment of any person.

The Constitution prohibits torture, forced labour, and cruel, inhuman and degrading treatment or punishment.⁴⁸ Angola is not yet a party to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT), despite recommendations by the United Nations that it ratify the Convention, and an undertaking by the Angolan government to do so.⁴⁹ Torture is not a criminal offence, and no action has been taken to incorporate aspects of the UNCAT into domestic law. Angola is also not party to the Optional Protocol to the Convention.

The UN Working Group on Arbitrary Detention was concerned about the fact that there is almost no legal representation for suspects or detainees, and that police generally conduct their investigations unsupervised by the magistrate of prosecutions. They argued that this has a negative impact on the quality of work of prosecutors, who tend to 'post-facto legalise police misconduct such as unlawful interrogation and incriminations based on confessions obtained only by a police investigator'.⁵⁰ This could lead to the situation where allegations that the suspect was tortured by the police are ignored by the courts. The Working Group received many reports of allegations of torture and ill-treatment in police detention facilities and in prisons, and occurring during interrogation, and noted that complaints of ill-treatment are hardly ever investigated and perpetrators almost never brought to justice. As an indication of the poor response to these allegations, the Working Group noted that the Luanda police were unable to provide statistics on the number of investigations or disciplinary actions taken against police for alleged misconduct or abuse.⁵¹

The Angola Anti-militaristic Initiative for Human Rights (IAADH)⁵² denounced the increasing use of disproportional and unjustified use of force by the

46 *Maka Angola* (6 June 2012) Violence: The Way of Politics in Angola. <http://makaangola.org/2012/06/english-violence-the-way-of-politics-in-angola/?lang=en>, accessed 26 June 2012

47 Amnesty International (2007) *Above the Law: Police Accountability in Angola*. London: Amnesty International

48 Constitution of the Republic of Angola, article 60

49 Human Rights Council (24 March 2010) *Report of the Working Group on the Universal Periodic Review: Angola*. A/HRC/14/11

50 Human Rights Council (29 February 2008) *Report of the Working Group on Arbitrary Detention: Mission to Angola*. A/HRC/7/4/ADD.4, para 81

51 *Ibid*, paras 92–93

52 Iniciativa Angolana Antimilitarista para os Direitos Humanos (IAADH)

police, mostly to break up demonstrations, torture, disappearances and detainees kept incommunicado, without access to lawyers, family or medical care.⁵³

Article 5: Protection of persons in custody

Standard: Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention when required.

The Constitution deals with the rights of prisoners and detainees. This includes the rights of a detainee to be informed of their rights of arrest on detention; the right to be informed of where they will be detained; the right to choose a lawyer; and the right to remain silent. Deprivation of liberty is permitted only in the cases and under conditions determined by law. The police may only detain a person in instances provided by the Constitution and law, or when a person is caught *in flagrante delicto* (caught in the act) or a warrant has been issued for his arrest by a competent authority.⁵⁴ The Constitution prohibits unlimited detention. Detainees retain their fundamental freedoms subject to the limitations required by their incarceration.⁵⁵ The Constitution does not provide for the usual period of detention up to 48 hours before being brought before a court, but there are police instructions to the effect that suspects must be brought to court within 72 hours.⁵⁶

The Angolan National Police, including the Rapid Intervention Police, as well as the National Directorate of Prison Services and the Service for Migration of Foreigners fall under the authority of the Ministry of the Interior. Accordingly, this Ministry is responsible for the bulk of civilian detentions within the scope of the criminal justice system.⁵⁷ The National Directorate of Criminal Investigation (DNIC) and the Provincial Directorate of Criminal Investigation (DPIC) have holding cells, and some police stations have holding facilities where arrested and suspected persons can be detained. Illegal immigrants can also be held at police stations pending deportation, or before being transferred to the Viana Immigration Detention Centre.⁵⁸

Pre-trial detention is regulated by Organic Law⁵⁹ and the Criminal Procedure Code. An arrested person must be transferred to a DNIC or DPIC holding facility and presented before a magistrate of public prosecution on the same day of arrest, and no later than five days after arrest. Magistrates of public prosecution must legalise detention during the criminal investigation, and are responsible for the

53 A IAADH denuncia o orgão de Ordem dos Advogados de Angola (OAA) 23 September 2011. <http://iaadh.de/media/setembro2011/iaadh%20denuncia%20o%20orgao%20de%20ordem%20dos%20advogados%20de%20angola.html>, accessed 11 October 2011

54 Constitution of the Republic of Angola, article 64

55 *Ibid.*, article 67

56 *Ibid.*, article 63

57 Human Rights Council (29 February 2008) *Report of the Working Group on Arbitrary Detention: Mission to Angola*. A/HRC/7/4/ADD.4, para 18

58 *Ibid.*

59 Organic Law 18/A/92 of 1992

renewal or extension of pre-trial detention. The maximum period of detention can be up to 180 days in certain cases. This detention order cannot be challenged by the courts during the investigation stage.⁶⁰ A judge only becomes involved in authorising the detention of a person once the trial has commenced. In law, a person should be brought to a prosecutor for interrogation, but this seldom happens in practice, and the police generally interrogate a suspect on their own.⁶¹ The UN Working Group on Arbitrary Detention, in its visit to Angola in 2007, was concerned about the scale of arbitrary detention, and the fact that people are in many instances held in pre-trial detention beyond the legally prescribed periods.⁶²

Civil society reports that the laws against arbitrary detention are frequently ignored, and journalists, opposition party members and activists are frequently detained without reasons. Minors are regularly detained with adults in police detention facilities and in prisons.⁶³ Though information on conditions is scanty, the Working Group noted that conditions were generally bad, and in the holding cells of the DNIC and in several of the prisons visited, conditions ‘are alarming’.⁶⁴ The report mentions serious problems in the water and food supply due to budgetary constraints, and severe overcrowding in intensely humid circumstances. Detention facilities are old, and not well maintained, and several of the prisons have experienced riots leading to death and injury of inmates.⁶⁵ The Working Group visited one building which collapsed several weeks later, but has now been rebuilt with better conditions.

Information was not available on the nature of health care available to detainees. The lack of resources on both the part of the police and the health sector makes it difficult to ensure that all detainees receive adequate health care when required. One respondent mentioned that prisoners with medical complaints are taken to provincial hospitals, though their referral there would depend on whether there are vehicles to transport them there or an official to accompany them. It is not clear what procedures exist in respect of detainees in police custody and their access to treatment.

The government is in a process of legal reform of the criminal justice system in respect of pre-trial detention,⁶⁶ and it is hoped that this will address the legal regime regarding detention, as well as conditions and treatment of detainees. In the meantime, a number of prison facilities have been constructed according to modern standards and prison staff have received intensive training.

60 Human Rights Council (29 February 2008) *Report of the Working Group on Arbitrary Detention: Mission to Angola*. A/HRC/7/4/ADD.4, paras 41–46; 76

61 *Ibid.*, para 78

62 *Ibid.*, para 79

63 *Ibid.*, para 88

64 *Ibid.*, para 98

65 *Ibid.*

66 *Ibid.*

There is sporadic and somewhat superficial oversight by civil society of prisons. Organisations such as the AJPD, *Mãos Livres* and churches visit prisons once or twice a year. The Ombudsman visits prison and police detention facilities. Even though reports tend not to be too detailed, some prison visits have resulted in reports of which the recommendations had been sent to the government. The government and in some cases NGOs, have managed to follow up on these recommendations. It is not clear what oversight exists in respect of those detained in police custody.

Article 6: Victims of crime

Standard: All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary.

There appears to be little awareness around the needs and rights of victims of crime, and few respondents were able to answer questions in this regard. One respondent pointed out that citizen's rights are well communicated by the government. On entry into the PNA, police officers sign a document informing them of their rights as civil servants. Respondents felt that victims of political crimes were treated very badly. Victims of sexual crimes may receive some guidance, but police stations do not have counselling facilities available for victims. The government reported to the Universal Periodic Review process in 2010 that family counselling centres with specialised psychologists, lawyers and sociologists had been established to assist victims of domestic violence in the provinces of Luanda, Benguela, Bié and Lunda Norte, falling under the Ministry of Social Reintegration.⁶⁷ The government was working with the Angolan Lawyers Association to ensure the assignment of lawyers to centres in each province.⁶⁸

Domestic violence is a widespread concern, which the government has prioritised. There is a task team under the Ministry of Social Reintegration to deal with domestic violence. The police are inadequately trained on this issue, and therefore refer a victim of domestic violence to the dedicated institutions for assistance. There is a lack of coordination between the criminal justice sector and other departments. There is no system to compensate victims through the criminal justice system.

⁶⁷ Human Rights Council (8-19 February 2010) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council Resolution 5/1: Angola. A/HRC/WG.6/7/AGO/1*, para 60

⁶⁸ *Ibid.*

Article 7: Respect for the rule of law and Code of Conduct

Standard: Police officials shall respect and uphold the rule of law and the present Code of Conduct.

There seems to be little awareness of the SARPCCO Code of Conduct, and most respondents questioned its relevance in view of numerous other challenges faced by the police. One respondent from civil society noted that although all police officials are obliged to know the Code of Conduct, few have an actual copy of the instrument. It is not distributed to all police stations. Despite this lack of awareness of the Code of Conduct, it was believed that police are aware of their duties: ‘However, we note that in general that the police know very well what they must and must not do. They also know their rights and responsibilities.’⁶⁹ Amnesty International reported that the police are engaged in reforming codes of practice as part of the Modernisation and Development Plan.⁷⁰ It is crucial that these codes are developed in conformity with international codes and standards.

The PNA Mission confirms the need to uphold human rights principles, yet *Circulo Angolano Intelectual* draws attention to persistent and alarming institutional violence by the police and calls on the police to promote values such as human rights, tolerance, promotion of peace, solidarity and social justice, democratic citizenship, amongst others.⁷¹

As reported on previously in this chapter, there are many instances where the police are failing to adhere to the rule of law. Frequent violations of human rights occur, and even legislation and regulations are not always adhered to. The police, as an institution as well as individual police members, are seldom held accountable and brought to justice for violations of the law and human rights.

Article 8: Trustworthiness

Standard: Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.

Article 10: Performance of duties

Standard: The public demands that the integrity of police officials be above reproach. Police officials shall therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undermine the public’s confidence in a police force/service.

⁶⁹ Respondent from civil society

⁷⁰ Amnesty International (2007) *Above the Law: Police Accountability in Angola*. London: Amnesty International

⁷¹ *Polícia angolana assegura que não há milícias em Luanda* (26 May 2012). <http://www.circuloangolanointelectual.com/?p=14855>, accessed 1 June 2012

Article 11: Professional conduct

Standard: Police officials shall at all times fulfil the duties imposed upon them by the law in a manner consistent with the high degree of responsibility and integrity required by their profession.

There is a high level of mistrust of the police, partly associated with the historical role the police played in the civil war and the repression of political opposition. Although the police may have improved their human rights record since the end of the civil war, there is still a long way to go in establishing trust among the community.

Information on police recruitment procedure is publicly accessible. However, the process is at times undermined by corruption and nepotism, with the result that inappropriate people are sometimes recruited into the police. Similarly, while the promotional policy requires the candidate's academic qualifications, experience, service record and good behaviour to be taken into account, this is sometimes undermined by corrupt practices.

Part of the endeavour to establish a more professional, trustworthy police service is to ensure it is properly trained according to professional standards. The Modernisation and Development Plan emphasised training as an important priority. A number of new training schools have opened and a School of Police Science is scheduled to open in 2012. The police have entered into a number of training agreements over the last few years with countries such as Russia and Cuba.⁷² Training is constantly evolving and any evaluation of police performance will benefit from a more detailed assessment of the training curriculum and methodology. In February 2011, the Deputy Commander of the National Police, Paulo de Almeida, called for more speedy training of staff and capacity building, focusing on operational planning, command and leadership, fundamental knowledge of human rights and interpersonal communication for officers, police techniques, security forces tactics, road crime and law.⁷³

An important indicator for democratic policing is the non-partisanship and equality of policing. The Constitution guarantees diversity of expression, political organisation and democratic participation and representation.⁷⁴ But, politically, Angola is still highly polarised and the police are still used to support the majority party. Opposition parties often cannot expect much support from the police. In March 2012 the Secretary-General of the opposition party Bloco Democrático (Democratic Block), Dr Filomeno Vieira Lopes, a prominent public figure, was

⁷² *Afrique Avenir* (7 March 2010) Russia, Angola sign cooperation agreement on police training. <http://www.afriqueavenir.org/en/2010/03/07/russia-angola-sign-cooperation-agreement-on-police-training>, accessed 11 October 2011

⁷³ *Angola Press* (12 February 2011) Deputy police commander calls for speedy staff training. http://www.portalangop.co.ao/motix/en_us/noticias/politica/2011/11/48/Deputy-police-commander-calls-for-speedy-staff-training.47e0dcda-a503-4944-a4cb-f52317c5d3bf.html, accessed 11 October 2011

⁷⁴ Constitution of the Republic of Angola, articles 2 and 3

seriously beaten by militias on the margins of a demonstration while the police stood by and took no preventative action.⁷⁵

Article 9: Corruption and abuse of power

Standard: Police officials shall not commit or attempt to commit any act of corruption or abuse of power. They shall rigorously oppose and combat all such acts.

Transparency International's Corruption Perception Index ranks Angola as one of the most corrupt countries in the world (168 out of 183, where 183 is the most corrupt).⁷⁶ Corruption has become part of all aspects of economic and political life in Angola, including within the criminal justice system. The UN Working Group on Arbitrary Detention noted that there were many allegations of corruption within the administration. Often a bribe must be paid to release a person who has been wrongfully detained, or to ensure a speedy investigation of a case. The Working Group noted that this is facilitated by the absence of improper detention registers, which do not adequately record and control the details of detainees, including the dates of arrival or nature of the offence.⁷⁷

Respondents indicated that there is a serious problem of corruption and abuse of power at all levels of the police, as well widespread conflicts of interest. Despite this, a large number of police managers actively discourage any corruption amongst their subordinates and ensure that corruption is an important topic of discussion amongst the police at all levels.

Article 12: Confidentiality

Standard: Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of duty and needs of justice strictly require otherwise.

Law No.12/02 provides for the protection of confidential information and crimes against state security.

Information related to crime statistics are collected by the police but only made available to the public in a very ad hoc manner. Both police and the public commonly claim that crime is on the increase. Yet even the limited statistics that are available show that the incidence of crime remains substantially below what one would expect from a post-war country. The statistics are almost insignificant when compared to Nigeria, Kenya and South Africa.

⁷⁵ Filomeno Vieira Lopes recupera na Europa antes do regresso a Angola (radio broadcast, 18 April 2012). <http://www.portugues.rfi.fr/africa/20120418-filomeno-vieira-lobes-recupera-na-europa-antes-do-regresso-angola>, accessed on 25 June 2012

⁷⁶ Transparency International (2011) *Corruption Perception Index: 2011*. <http://cpi.transparency.org/cpi2011/results/>, accessed 21 June 2012

⁷⁷ Human Rights Council (29 February 2008) *Report of the Working Group on Arbitrary Detention: Mission to Angola*. A/HRC/7/4/ADD.4, para 94

The PNA do have an organisation website, where they publish ‘weekly crime statistics’. However, these are usually very dated, irregular and there is no archive of past statistics. The police make regular comments regarding crime in the media and on state television, but rarely disclose meaningful statistics. The official website contains complete copies of the legislation, regulations and disciplinary instructions related to the police.⁷⁸

Article 13: Property rights

Standard: In the performance of their duties police officers shall respect and protect all property rights. This includes the economical use of public resources.

Very little information was available concerning police respect for property rights. Respondents noted that in general the police do respect stolen property confiscated when they make arrests, and that vehicles and electronic equipment are usually returned to their owners.

⁷⁸ <http://cgpn.gov.ao/>, accessed 25 June 2012

3

Botswana

Background

The ruling Botswana Democratic Party (BDP) has been in power since the country attained independence in 1966. Although the country is widely regarded as a model of democracy on the continent, its presidency has extensive powers and the propensity to act alone.⁷⁹ Moreover, the predominant party system is likely to compromise the effectiveness of political competition. The executive–legislature fusion tends to undermine the independence of the legislature in its oversight functions. Weak intra-party democracy, where Members of Parliament are expected to tow the party line, and the patronage of expecting ministerial responsibilities, often make party cadres less robust in their oversight functions. Under these circumstances, a strong opposition and vibrant civil society are important for democracy. The independent media have played a vital role, particularly in terms of exposing impropriety by the police. Usually incidents alleging torture and inhuman treatment of people are brought to public view by the media, especially the private media.

Effective oversight bodies are important if the police service is to be effective. Public accountability and oversight bodies such as the Directorate on Corruption and Economic Crime have been established to investigate complaints and make recommendations for the prosecution of cases of corruption. This Directorate was also mandated to educate the public on the evils of corruption and how pillage

79. Molomo M (2000) Democracy under siege: The presidency and executive powers in Botswana. *Pula: Botswana Journal of African Studies*, Vol. 14, Issue 1, pp.97–98

could negatively affect the economy. Its remit also involves investigating cases of corruption against any person or public body, and includes investigations of complaints against the Botswana Police Service (BPS). Similarly, the Ombudsman was established to protect individuals and the public against any infringements in their rights and civil liberties, including the BPS. Nevertheless, the performance of these institutions is constrained by the absence of a requirement that politicians and senior government officers declare their assets, and the lack of a Freedom of Information Act.

Botswana is governed by its Constitution, which represents the supreme law of the land.⁸⁰ The police exist primarily to protect it and, based on its laws, to provide public safety. The Constitution entrenches only first generation rights, which relate to civil and political liberties.

The BPS has a broad mandate of maintaining law and order. Its core functions include ‘protecting life and property, preventing and detecting crime, repressing internal disturbances, maintaining security and public tranquillity, apprehending offenders, bringing offenders to justice, duly enforcing all written laws with which it is charged and generally maintaining the peace’.⁸¹ The BPS is a large organisation that was initially located in the Ministry of the State President, but is now in the new Ministry of Justice, Defence and Security. It comprises of two broad sections: Operations and Support Services. The Operations division comprises of the Criminal Investigations Department; Traffic; General Duties; Forensic Science Laboratory; and Crime Intelligence. The Support Services, on the other hand, consists of the Special Support Group (SSG); Transport and Communications; Departmental Management; Police College; Air Support; and Finance, Development and Procurement.⁸²

The BPS pre-dates the post-colonial state of Botswana. The Bechuanaland Mounted Police, as it was initially called, was established under the British Protectorate Administration. Over the years, it evolved from the Bechuanaland Mounted Police to Bechuanaland Border Police, Bechuanaland Protectorate Police, Botswana Police Force, and lately the Botswana Police Service (BPS).⁸³ At independence, it was constituted into a Police Force that took on board paramilitary operations because the country did not have a defence force. Even after the Botswana Defence Force (BDF) was established in 1977, it retained its paramilitary operations in the form of the Special Support Group (SSG). With the passage of time, the Botswana Police Force restructured and rebranded itself as a police service.

80 This is notwithstanding Kgosi Kgolo Kgafela II of Bakgatla ba Kgafela, who has challenged the Botswana Constitution in the courts, claiming that it is fraudulent and was adopted at independence without consultation by all stakeholders

81 Botswana Police Service (2010) *Commissioner's Annual Report*. Gaborone: Botswana Police Service, p.4

82 *Ibid*, p.9

83 <http://www.gov.bw/en/Ministries--Authorities/Ministries/State-President/Botswana Police>, accessed 9 December 2011

The Botswana Police College and International Law Enforcement Agency (ILEA) have been at the forefront of the training of the police. The BPS recognises that its strength lies in ‘skilled, well-trained, motivated and developed officers who enjoy equal opportunities and proper deployment’.⁸⁴ It also recognises that teamwork based on ‘collective effort, trust, understanding, support, hard work, perseverance and respect irrespective of rank and gender’ are critical to the success of their mission.⁸⁵

The BPS has established a corporate development strategy focused on public education, crime prevention, community policing and human resource development to support its key performance areas.⁸⁶ The overall thrust of this strategy, in line with the national vision 2016, is ‘to achieve a safe and secure nation’.⁸⁷ Notwithstanding its stated approach of community policing, the BPS does not have a relationship with civil society. Nevertheless, efforts are made to forge a close synergy with various aspects of the community to promote community policing. This constitutes an acknowledgement that community policing is a two-way process: the police and the community can help each other.

The BPS operates in a complex environment that is characterised by the increased sophistication of crime. Crime problems in the country range from petty crimes, such as the theft of telephone copper cable, to more sophisticated cybercrime. The crimes most frequently reported are petty crimes such as the theft of ‘handbags, laptops and cell phones’.⁸⁸ The profile of reported crime in Botswana between 2009 and 2011 shows an overall decline in all categories of crime by 2%.

Methodology

This review involved desktop research and semi-structured interviews. Secondary data was obtained from books, journal articles, the internet, government reports and published sources on the BPS. Primary data was collected through the use of in-depth interviews with key informants sampled from relevant offices using open-ended questions, which allowed probing to gain greater clarity. Key informants included people from the following organisations and professions: Botswana Police Service, Police College, Botswana Parliament, Botswana Defence Force, Botswana Prisons Service, Law Society, representatives from political parties, Ditshwanelo, Bocongo, attorneys, academia and civil society. Given the sensitivity of the information acquired, the confidentiality of the respondents is maintained.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ Botswana Police Service, Corporate Development Strategy 2009–2016. [http://www.gov.bw/en/Ministries--Authorities/Ministries/State-President/Botswana Police](http://www.gov.bw/en/Ministries--Authorities/Ministries/State-President/Botswana%20Police), accessed 9 December 2011, p.1

⁸⁷ Botswana Government (1997) *Vision 2016: Toward Prosperity for All*. Gaborone: Government Printer, p.1

⁸⁸ Botswana Police Service (2012) *National Year Ending 2011 Crime Analysis*. Gaborone: Botswana Police Headquarters, p.4

In terms of limitations, it should be noted that some documents were not available to the researchers due to national security interests. It should also be noted that the study might have been affected by the fact that interviews were undertaken in a period when a major national strike was taking place. This lasted eight weeks, and was unprecedented in Botswana's history. The police were in the forefront of quelling the unrest, which involved civil servants and students, and the heightened tension in relation to these matters could have influenced the responses of informants.

Article 1: Police actions and human rights

Standard: In performance of their duties, police officials shall respect and protect human dignity, maintain and uphold the human rights of all persons.

The Constitution of Botswana makes provision for a range of rights and freedoms for its citizens, including that of life, liberty, security of the person and the protection of the law; freedom of conscience, of expression and of assembly and association; protection for the privacy of citizens' homes and other property.⁸⁹

The BPS is generally regarded as respecting the human rights of the Batswana. Nevertheless, there have been allegations of abuses. Human rights organisations like Ditshwanelo are inundated with reports from members of the public complaining about the police. These cases range from negligence to ill-treatment in the handling of suspects.^{90,91} In a case that was brought before the courts, five security officers, two of them special constables on a security patrol in Ramotswa village in November 2005, allegedly 'arrested and forced Zimbabweans to have group sex, while they watched'.⁹²

According to the US Department of State, there were eight incidents of police shooting during apprehension, in which 11 civilians were killed.⁹³ These allegations involve cases such as the following:

- » In January 2009, the police shot and killed Mothusinyana Moagi, who reportedly fled after being confronted because he fit the description of a suspect;
- » In March 2009, the police shot and killed Mark Gumbo, while in pursuit of Gumbo and others suspected of armed robbery;

⁸⁹ Constitution of the Public of Botswana, chapter II, section 1

⁹⁰ Ditshwanelo (6 June 2012) *Presidential pardon for those convicted of Kalafatis murder*. Press Statement, Gaborone

⁹¹ Ditshwanelo (23 June 2004) United Nations International Day in Support of Victims of Torture: Police Brutality and Torture in Botswana. Press Statement, Gaborone. <http://www.ditshwanelo.org/bw/index/Other/Governance/Victims%20of%20Torture%20Press%20Release%20-%2023%20Jun%2004.htm>, accessed 24 July 2012

⁹² *Mmegi Online* (27 August 2009) Lawyer quits group sex case. <http://www.mmegi.com/index.php?sid=1&aid=4&dir=2009/August/Thursday27>, accessed 22 June 2012

⁹³ United States Department of State (2009) *Country Report on Human Rights Practices 2009: Botswana*. <http://www.state.gov/j/drl/rls/hrrpt/2009/af/135939.htm>, accessed 25 January 2012, p.1

- » In March 2009, the police shot Tshepo Molefe during an attempted robbery. The police claimed that Molefe and other suspects in the group fired at them and that Molefe ran towards the police officers, who then shot him.

The case of John Kalafatis, who was murdered execution style in March 2009 in a joint operation of the police and the military, was dramatic and perhaps unprecedented in Botswana. Kalafatis was a wanted criminal who was killed during a lawful arrest. His killers were convicted and sentenced to a prison term of 11 years on 9 June 2011. This situation was exacerbated by assertions from high-ranking politicians such as Vice-President Mompoti Merafhe, who said that he was confident that Botswana's image in terms of the rule of law and its human rights record would not be tarnished by the shootings. More specifically, he said, 'the integrity of this country cannot be determined by one or two shootings'.⁹⁴ In an unprecedented turn of events, President Ian Khama pardoned and released Kalafatis' killers in June 2012. The pardon elicited mixed reactions. Ditshwanelo recognised that the President has the prerogative, but was not convinced it was in the public interest to grant the pardon. A human rights lawyer and leader of the opposition party, the Botswana National Front, said the decision by the President to free people who killed Kalafatis 'in cold blood undermines the decision of the courts'.⁹⁵ The lawyer representing the Kalafatis family, Dick Bayford, said, 'the pardoning of the three was not surprising because all along it was clear that the brutal and senseless killing of John Kalafatis was engineered and sponsored from the highest echelons of power in the country'.⁹⁶

Although the researchers were assured by staff of the Botswana Police College that the police receive adequate training on human rights both at the college and through in-service training, other stakeholders feel that the police are wanting in this regard.⁹⁷ An examination of the curriculum at the Botswana Police College indicates that the thrust of their training is mainly on basic competences in general policing. Human rights training only appears as a topic within a course.

Article 2: Non-discrimination

Standard: Police officials shall treat all persons fairly and equally and avoid any form of discrimination.

The Botswana state was founded in 1966, as a non-racial democracy. The right to non-discrimination and equal treatment of all persons was considered an

⁹⁴ *Mmegi Online* (19 May 2009) One or two shootings not bad – Merafhe. <http://www.mmegi.bw/index.php?sid=1&aid=1&dir=2009/May/Tuesday19>, accessed 22 June 2012

⁹⁵ *Mmegi Online* (6 June 2012) Killers' release subverts the rule of law. <http://www.mmegi.bw/index.php?sid=1&aid=798&dir=2012/June/Wednesday6>, accessed 28 June 2012

⁹⁶ *Mmegi Online* (5 June 2012) Khama releases Kalafatis killers. <http://www.mmegi.bw/index.php?sid=1&aid=763&dir=2012/June/Tuesday5>, accessed 28 June 2012

⁹⁷ Interviews with a prison officer and two human rights activists

inalienable right that must be guaranteed for all. This right is enshrined in the Constitution, which states that people should not be discriminated against on the basis of race, ethnicity, sex and creed.⁹⁸

Discrimination on the basis of ethnicity, especially as it relates to promotions of police officers, although marginal, is said to be evident. However, the police deny its existence. What they acknowledge is the socio-cultural hierarchy that exists in Botswana, which tends to preclude the San from being well represented in the police service. As a result, the police have a quota that tries to address this anomaly. There has been consternation in the BPS that promotions are not equitable, that officers from the 'Itsheretlotse drama group' are given priority over others.⁹⁹ However, these allegations have been refuted by the BPS.

More disturbing are allegations by illegal immigrants, especially Zimbabweans, that they do not receive equal treatment when apprehended by the police.¹⁰⁰ While the Criminal Procedure and Evidence Act provides that the police can hold a suspect for 48 hours whilst they are still conducting their investigations, they allege that they are often held in police custody for more than 48 hours,¹⁰¹ and thereafter told to go and never to commit the same offence again.¹⁰² Such people often feel that they do not have any redress in that their illegal status compromises them, and do not press for their rights. The interpretation and implementation of this Act is problematic as it is alleged that the police often exploit the ignorance of people or abuse their powers by holding detainees beyond the stipulated legal time.

International laws and conventions maintain that people should not be discriminated against on the basis of their sexual orientation. However, Botswana is among the countries where homosexuality is illegal.¹⁰³ While prosecution of such offences is rare, the prohibition of homosexual activities renders gay people subject to the actions of the police and courts.

The BPS is yet to appoint a woman to the rank of Commissioner of Police. It was not until 1971 that women were recruited into the police service.¹⁰⁴ As a result, even though women are visible in the service, they do not hold senior positions. The highest rank held by women at the BPS is that of Senior Assistant Commissioner of Police. At present three women serve at that rank.

98 Constitution of Botswana, section 15(3)

99 *The Botswana Gazette* (9 to 15 May 2012) Police gripe at Itshiretsetse promotions. http://www.gazettebw.com/index.php?option=com_content&view=article&id=13325%3Apolice-gripe-at-itshiretsetse-promotions-&catid=18%3Aheadlines&Itemid=2, accessed 28 June 2012

100 Ditshwanelo (2006) Shadow Report to the United Nations Committee on the Elimination of Racial Discrimination 68th session, Geneva. Corroborated by an interview with officer at Ditshwanelo, 24 January 2012

101 *Ibid.*

102 *Ibid.*

103 Botswana, Laws of Penal Code (1964). http://www.vertic.org/media/.../Botswana/BW_Penal_Code.pdf, accessed 4 July 2012

104 Botswana Police Service (2010) *Commissioner's Annual Report*. Gaborone: Botswana Police Service

Article 3: Use of force

Standard: Police officials may only use force when strictly necessary and to the extent required for the performance of their duties and adhering to national legislation and practice.

The mandate of the police is to maintain public order and internal security. The circumstances in which the police may use lethal force are strictly circumscribed by both domestic and international human rights law: ‘the police may only intentionally use lethal force where it is necessary to protect life’.¹⁰⁵ The police employ various strategies to manage the increase in and the increasing sophistication of crime. These include the deployment of the Special Support Group (SSG), which is an armed unit within the police service, and is primarily concerned with monitoring and policing public order situations.¹⁰⁶ While there have been past reports of the SSG using force against citizens,¹⁰⁷ during the 2011 public-sector strike, they maintained a low profile and acted in a highly professional manner in monitoring the disturbances.

The policing of more sophisticated crimes – such as armed poaching, illegal trade in diamonds and other precious stones, and drug trafficking – sometimes requires joint operations between the police and the Botswana Defence Force, and there have been reports of the excessive use of force resulting in fatalities. The case of Kalafatis reported above is a case in point. Another incident involves Mothusinyana Sephiri, who was mistaken for a robber and was shot and killed by a police officer.¹⁰⁸ A similar incident occurred in Maun, where a story circulated that a woman was able to turn herself into a snake. People converged on her compound and when the people got out of hand and posed a danger to the woman, the police tried unsuccessfully to disperse them. The police then resorted to excessive force to disperse the crowd. Disciplinary action was taken against officers who failed to ‘exercise diligence when controlling the situation’.¹⁰⁹ The police maintain that where there is an incident that results in a fatality, it is usually due to negligence on the part of the police officer, and that the necessary steps are undertaken to punish wrongdoing.¹¹⁰

Alston maintains that the cause of continued police killings is ‘impunity for past killings’.¹¹¹ In this regard, it is instructive that stringent measures, including

¹⁰⁵ Alston P (28 May 2010) *Report of the Special Rapporteur on Extra-judicial, Summary or Arbitrary Execution*. United Nations General Assembly Human Rights Council, p.4

¹⁰⁶ <http://www.gov.bw/en/Ministries--Authorities/Ministries/State-President/Botswana-Police-Service->, accessed 12 June 2012

¹⁰⁷ Molomo MG (2001) Civil-Military Relations in Botswana’s Developmental State. *African Studies Quarterly*, Vol. 5, Issue 2, p.5

¹⁰⁸ *The Monitor* (4 October 2010) Justice delayed in Maun murder? <http://72.167.255.126/index.php?sid=1&aid=5345&dir=2010/October/Monday4>, accessed 28 June 2012.

¹⁰⁹ *Botswana Echo* (5 to April 2012) Police Officers disciplined over snake woman incident. <http://www.echoonline.co.bw/archives.html>, accessed 12 June 2012

¹¹⁰ *Ibid.*

¹¹¹ Alston P (28 May 2010) *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution*. United Nations General Assembly Human Rights Council, p.1

adherence to the SARPCCO Code of Conduct, are taken to curb incidents of this nature, and where they occur, the law should take its course.

Article 4: Torture or cruel, inhuman and degrading treatment or punishment

Standard: No police official shall under any circumstances, inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment of any person.

Although the Constitution and the laws of Botswana prohibit torture and inhuman treatment of people, there are reports that the police often ‘beat and abuse suspects to obtain evidence or elicit confessions’ from persons in their custody.¹¹² It is alleged that torture is rife among suspects who are categorised as ‘high risk’, that is involved in diamonds and narcotics, serious crime, car theft and armed robbery. The units that are alleged to be notorious for torture and inhuman treatment are Military Intelligence (MI), the Crime Intelligence Division (CID) and lately the Directorate of Intelligence Service (DIS).¹¹³

The security agencies have been under the spotlight since the advent of the DIS. There are not only allegations of conflation of roles and blurred areas of jurisdiction¹¹⁴ between the DIS and the police, but there are also allegations of incidents of unlawful arrest, detention, torture and humiliation when suspects are asked to ‘strip naked’.¹¹⁵ The DIS is also alleged to have a ‘sound-proof torture chamber’ where confessions are extracted through suffocation through the use of a ‘plastic bag’, a ‘rubber tube’ or a hosepipe, which is allegedly used to ‘whip people on the soles of their feet’.¹¹⁶ However, these allegations are difficult to prove, except where there are obvious physical wounds and scars.

Incidents where people have died in police custody are pointers that in some instances people apprehended for wrongdoing are subjected to inhumane treatment.

Ongoing stories of deaths which clearly seem to be under investigation by the police include:

¹¹² US Department of State (2010) *Country Report on Human Rights Practices 2009: Botswana*. <http://www.state.gov/j/drl/rls/hrrpt/2009/af/135939.htm>, accessed 25 January 2012, p.1

¹¹³ Interview with human rights activist, 1 February 2012

¹¹⁴ Ideally, the DIS is supposed to investigate incidents of crime and where a prima facie case of arrest is established, the police are then called in to make the arrest. It is alleged that the DIS often investigates and makes the arrest, and in such cases the police refuse to prosecute.

¹¹⁵ *Mmegi Online* (9 December 2011) DIS slapped with lawsuit. <http://www.mmegi.bw/index.php?sid=1&aid=597&dir=2011/December/Friday9>, accessed 28 June 2012

¹¹⁶ *Ibid.*

- » Olefile Momphithi was allegedly taken into custody at the Molepolole Police Station in August 2011 after handing himself in to the police, and has since gone missing. Momphithi (35) was wanted by the police for an armed robbery, which occurred on 20 July 2011. After robbing the Taj Filling Station in Molepolole, four men fled in a white Toyota Corolla. Momphithi's mother, Sarah Mmafostlara Momphithi, and her family lodged a formal complaint about the incident with the Police Commissioner, Thebeyame Tsimako, last year.¹¹⁷
- » The disappearance of Momphithi comes after the mysterious disappearance of another armed-robbery suspect, Olebile Kefhitilwe, who disappeared 16 months ago whilst in police custody at the same police station. His whereabouts are still unknown. His family strongly suspect that he died while the police were brutally torturing him.¹¹⁸
- » A family in Pandamatenga lodged a complaint about police brutality, saying it could have led to the death of a suspect. This investigation involved the exhumation of the body of a suspect after it emerged that the suspect might have been tortured before his death.¹¹⁹
- » In 2009, five detectives at Mogoditshane Police Station were accused of torturing a suspect, Jordan Setlapoloka, to death. Investigations were carried out and the case is pending before the courts.¹²⁰

Article 5: Protection of persons in custody

Standard: Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention when required.

Regarding the protection of the health of persons in custody, the BPS stated in instances that if the person in police custody was on medication, they ensured that it was made available to the individuals, or in instances where individuals were not in possession of their medication, police got hold of it for them. However, the country's health policy does not allow prison officers to provide foreign prisoners with ARV treatment; but, if they are able to provide it themselves, they are given the opportunity to do so. Detainees without an external support system struggle to survive. In addition, people with special dietary needs are not accommodated.

Are the police able to defer to the opinions of medical practitioners/personnel? Is there medical attention? In 2009, two people died in police custody. On 5 March 2009, David Monggae collapsed during an interrogation about cattle

¹¹⁷ *Ibid.*

¹¹⁸ *Mmegi Online* (3 February 2012) Another suspect dies in police custody? <http://www.mmegi.bw/index.php?sid=1&aid=302&dir=2012/February/Friday3>, accessed 27 June 2012

¹¹⁹ *ibotswana* (15 May 2012) Body of suspect exhumed after allegations of police torture. <http://www.ibotswana.co.bw/news/local/item/13769-body-of-suspect-exhumed-after-allegations-of-police-torture.html>, accessed 27 June 2012

¹²⁰ *Ibid.*

theft and subsequently died. In another incident, in July 2009, Italy Setlampoloka was arrested for a series of robberies and died in police custody.¹²¹ ‘It is alleged that the suspect died under torture as the police tried to extract a confession from him.’¹²² Upon realising that they had caused the death of Setlampoloka, ‘police allegedly took his body to Senamakola farm lands near Gabane where they simulated suicide by hanging his body from a tree’.¹²³ Yet there is an expectation that the police should take special care to ensure that people in custody do not commit suicide and that they shouldn’t be implicated in detainees’ deaths.

Article 6: Victims of crime

Standard: All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary.

Victims of crime are vulnerable, have often suffered both physical and emotional trauma, and as such, need to be treated with great care and sensitivity. Of concern was the lack of a special unit for child protection – as there are for diamonds and drugs – and this hampers the capacity of police to deliver and specifically address children’s care adequately.¹²⁴ Interviews with children are done in hostile environments without privacy, making it difficult to extract relevant information.¹²⁵ Often, the police are intimidating and abusive towards crime victims by asking questions in public that are demeaning and degrading to the victims. Police stations need to be well resourced such that victims are interviewed in secluded areas and by the appropriate sex to avoid any violations of privacy.

It was apparent from interviews that police have made strides in this regard. Proper infrastructure has been put in place to deal with victims such as children and abused people.

Currently only anti-corruption cases have provision for the protection of whistleblowers. However, not much has been done with regards general witness protection.

121 *Mmegi Online* (24 September 2012) Courts line up Kalafatis, Setlampoloka murder cases. <http://72.167.255.126/index.php?sid=1&aid=5194&dir=2010/September/Friday24>; See also US Department of State (2011) *Country Reports on Human Rights Practices for 2010: Botswana*. <http://www.state.gov/j/drl/rls/hrrpt/2009/af/135939.htm>, accessed 25 January 2012

122 *Mmegi Online* (24 September 2012) Courts line up Kalafatis, Setlampoloka murder cases. <http://72.167.255.126/index.php?sid=1&aid=5194&dir=2010/September/Friday24>, accessed 24 June 2012

123 *Ibid.*

124 *The Botswana Gazette* (30 May 2012) Justice for the children in Botswana. http://www.gazettebw.com/index.php?option=com_content&view=article&id=13586:justice-for-children-in-botswana&catid=21:columns&Itemid=2, accessed 28 June 2012

125 *Ibid.*

Article 7: Respect for the rule of law and Code of Conduct

Standard: Police officials shall respect and uphold the rule of law and the present Code of Conduct.

In observance of the rule of law, police officers are expected to identify themselves and produce a warrant when making a lawful arrest. The police are also expected to ‘inform the suspects of their rights upon arrest, including the right to remain silent, and they must charge them before a magistrate within 48 hours’.¹²⁶ This legal provision is often flouted when making arrests, especially of illegal immigrants. Any suspect brought before the courts of law must have legal representation and those without the means to acquire these services must be able to access lawyers on a pro bono basis. Delays in bringing cases before the courts are a serious concern in Botswana.

Article 8: Trustworthiness

Standard: The public demand that the integrity of police officials be above reproach. Police officials shall therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undermine the public’s confidence in a police service/force.

Trust in the police is born from the perception that the police act in people’s best interests, and serve to protect them and their property. Measurement of trust has been done through the Afrobarometer surveys of 2003, 2005 and 2008, which were based on nationally representative samples. Respondents were asked if they trusted the police. Those who said they trust the police a lot in 2003 numbered 35.7%; in 2005 this increased to 41.1%; and in 2008 it rose to 44.3%.¹²⁷ The irony is that even the highest rating of 44.3% in 2008 is still below 50%, which could be considered a decent rating. The statistics reveal that the public’s trust of the police is limited. This therefore has implications for community policing.

The cause of this limited trust is the conflation of policing, intelligence and military roles. There are incidents in which the police are implicated in excessive use of force, which also erodes public trust and confidence.

Article 9: Corruption and abuse of power

Standard: Police officials shall not commit or attempt to commit any act of corruption or abuse of power. They shall rigorously oppose and combat all such acts.

¹²⁶ US Department of State (2010) *Country Report on Human Rights Practices 2009: Botswana*. <http://www.state.gov/j/drl/rls/hrrpt/2009/af/135939.htm>, accessed 25 January 2012, p.3

¹²⁷ Analysis of raw Afrobarometer data 2003, 2005 and 2008. The authors are part of the Botswana Afrobarometer team

In line with their professional conduct based on integrity, police officers are not expected to abuse the rights and privileges of their office, and are expected at all times to display 'ethical behaviour that appreciates the need for confidentiality', respect for human rights and zero tolerance towards corruption.¹²⁸ However, according to the 2009 United States Department of State's human rights report on Botswana, 'police officials acknowledge that corruption was a problem in the lower ranks. Some officers took advantage of illegal immigrants and traffic violations.'¹²⁹ Although there are cases of corruption by the police, the problem is not entrenched. This is reflected in Afrobarometer survey results from 2003, 2005 and 2008, which indicated that public perceptions showed that most of the respondents (the highest 45% in 2005) felt in all three surveys that only some of the police may be corrupt.¹³⁰ By his own admission, the Commissioner of Police Thebeyame Tsimako, admitted that 'accepting bribes and theft top the list of crimes perpetrated by his officers'.¹³¹ However, he warned that such behaviour would be heavily punished when detected.

Perhaps what is more prevalent is the abuse of power. Save for the courts of law, which enforce juridical justice, the Directorate on Corruption and Economic Crime (DCEC) and the Ombudsman remain the only statutory bodies that can bring relief against corruption and unfair treatment. The DCEC investigates cases of fraud, money laundering, tax evasion, etc. The law does not provide for public access to government information, which the government generally restricts anyway.¹³² The Ombudsman, as the public protector, handles complaints of wrongdoing in the public sector, including the police. However, the Ombudsman cannot investigate action taken with respect to orders or directions given to the police or action taken for the purpose of protecting the security of the state, or investigating a crime.

Public awareness of these oversight institutions is limited. Besides, both the DCEC and the Ombudsman are not fully effective in respect of their reporting. Their independence and effectiveness could be enhanced if their reports were tabled directly in Parliament. Under the current setup, they are perceived as toothless bulldogs.

There are also incidents where the police, due to poor judgment or professional incompetence or the abuse of power, overstep their mandate and infringe on the civil liberties of citizens by engaging in the 'unlawful invasion of privacy'.¹³³

128 Botswana Government (2011) *Botswana Police College: Prospectus 2011*. Gaborone: Botswana Police College, p.3

129 US Department of State (2010) *Country Report on Human Rights Practices 2009: Botswana*. <http://www.state.gov/j/drl/rls/hrrpt/2009/af/135939.htm>, accessed 25 January 2012, p.3

130 Analysis of raw Afrobarometer data 2003, 2005 and 2008. The authors are part of the Botswana Afrobarometer team

131 *Mmegi Online* (22 February 2012) Corruption rife in police force. <http://www.mmegi.bw/index.php?sid=1&aid=713&dir=2012/February/Wednesday22>, accessed 12 June 2012

132 US Department of State (2010) *Country Report on Human Rights Practices 2009: Botswana*. <http://www.state.gov/j/drl/rls/hrrpt/2009/af/135939.htm>, accessed 25 January 2012, p.7

133 In a story that made front page news, it is alleged that two police officers from Central Police Station in Gaborone forced open William Molefe's bedroom, who was with one Gorata Esterhuizen, and they allowed a photographer of a local news paper to take pictures, which were published on 16 September 2011 (*The Midweek Sun*, 21 December 2011)

Article 10: Professional conduct

Standard: Police officials shall at all times fulfil the duties imposed upon them by law in a manner consistent with the high degree of responsibility and integrity required by the profession.

The mission of the BPS is to provide a professional policing service – characterised by a high level of skill, competence, speed and attention – in partnership with the community. Its vision is to build a service that is ‘free from any unethical’ acts and one that transforms into a ‘dignified police service worthy of honour’.¹³⁴ Inspired by Botswana’s political culture, the values that the BPS holds are *botho*, excellence, integrity and team work. *Botho* is a characteristic virtue of the Botswana based on humility, dignity, courtesy and respect, regardless of one’s social status. *Botho* is exacting; it requires one to be compassionate, empathetic, kind and considerate of others. In keeping with high professional standards that the police have set for themselves, it is imperative that officers are diligent, accurate and timely in their delivery of service.

Over the years, the BPS has been endowed with a leadership committed to institutionalising professional conduct in the service. For all intents and purposes, the BPS is a professional service that strives to discharge its mandate of maintaining public peace and law and order, without fear or favour. During the 2011 public-sector strike, the police, including the SSG, which is notorious for ‘its harsh treatment of rioters’, were ‘tolerant’ and displayed ‘professional’ conduct.¹³⁵

Professional conduct can be instilled through training and practice. The Botswana Police College stands out as an important role-player in ensuring that the BPS adheres to its mission, vision and values. The college is a tertiary institution within the BPS, established through Section 66 of the Police Act, as amended by Act No. 15 of 2002. The college is registered with the Botswana Training Authority and its programmes are developed by the University of Portsmouth in the United Kingdom. It offers both pre-service and in-service training with a diverse curriculum offering courses in human rights. In addition, the college offers international programmes and has a SARPPCO desk that formulates programmes and ensures that training meets its standards and expectations. The international programme has a Strategic Leadership Programme in which the Centre for Strategic Studies teaches a week-long module. The course is intended for chief officers at law enforcement agencies in preparation for strategic leadership roles. Under the auspices of the college, the United Nations Office on Drugs and Crime (UNDOC) also offers a training course on dealing with violence against women and children.

¹³⁴ Botswana Government (2011) *Botswana Police College: Prospectus 2011*. Gaborone: Botswana Police College, p.3

¹³⁵ *Mmegi Online* (15 June 2011) A Most Commendable Spirit by the Police Service. <http://www.mmegi.bw/index.php?sid=9&aid=1612&dir=2011/June/Wednesday15>, accessed 28 June 2012

The work of the Police College is augmented by the International Law Enforcement Academy (ILEA), a joint venture between the Botswana and United States governments.^{136,137} It was established in 2000 to combat transnational crime and to cooperate in law enforcement to make the world, in particular sub-Saharan Africa, safe and secure. The ILEA provides training for middle-level managers in law enforcement, with a view to support ‘criminal justice institution-building in Africa; capacity building to combat transnational crime including terrorism, narcotics trafficking, financial crime, cybercrime, illegal firearms trafficking and migrant smuggling’.¹³⁸

Article 11: Confidentiality

Standard: Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of duty and needs for justice strictly require otherwise.

In the interviews, there was no indication that the police violated the confidentiality of people’s sensitive information. What is perhaps worrisome are incidents of files that go missing from police custody, which suggests corruption or collusion with criminals.

Article 12: Property rights

Standard: In the performance of their duties police officers shall respect and protect all property rights. These include the economical use of public resources.

The nature of police work is that they handle all sorts of property, including that relating to private citizens and the government, for example, vehicles, firearms, radio equipment. All must be handled in an appropriate manner.

¹³⁶ In addition to ILEA Gaborone, there are four other ILEAs located around the world: ILEA Budapest in Hungary, ILEA Bangkok in Thailand, ILEA Roswell in New Mexico, USA, and ILEA San Salvador in El Salvador. There is also an ILEA Regional Training Centre in Lima, Peru, supervised by ILEA San Salvador, known as ILEA Latin America. For more details, see: <http://www.ileagaborone.co.bw/Objectives.htm> accessed 10/05/2010

¹³⁷ It was set up under the leadership of the United States Federal Law Enforcement Centre working under the Department of Homeland Security. <http://www.ileagaborone.co.bw/Objectives.htm> accessed 10/05/2010, p.1

¹³⁸ <http://www.ileagaborone.co.bw/Objectives.htm> accessed 10/05/2010, p.1

4

Lesotho

Background

The Kingdom of Lesotho is a small landlocked country, entirely surrounded by South Africa. It is a constitutional monarchy with the King largely playing a ceremonial role.¹³⁹

The Lesotho Mounted Police Service was established under the British Administration in 1872, but adopted a modern form and structure in the 1950s, adopting civilian ranks in 1958. Following independence from Britain in 1966, the police became more militarised. During the period of Lesotho's de facto one-party authoritarian rule between 1970 and 1986, and military rule between 1986 and 1993, the police were highly politicised and were used primarily to support the authoritarian regime and undermine political opposition. This strained the professionalism and integrity of the police, and many brutalities and repressive measures occurred at the hands of the police and the military.¹⁴⁰

The return of multi-party democracy to Lesotho in 1993 brought about more reforms. The police were moved from the authority of the Ministry of Defence to the Ministry of Home Affairs. The Constitution of 1993 placed the responsibility for law and order with the Lesotho Mounted Police Force, which later changed its name to the Lesotho Mounted Police Service (LMPS).¹⁴¹ A White Paper on

¹³⁹ The Information for this report is largely a summarised version of Dissel A, Masuku T, Tsehlo M and Tait S (2011) *The Police as Friend and Helper to the People: Assessing the Lesotho Mounted Police Performance in Terms of the Southern African Regional Chiefs Cooperation Organisation (SARPPCO) Code of Conduct*. Cape Town: African Policing Civilian Oversight Forum

¹⁴⁰ Matlosa K (2007) Lesotho. In Cawthra G, du Pisani A and Omari A (eds) *Security and Democracy in Southern Africa*. Johannesburg: Wits University Press

¹⁴¹ The Third Constitutional Amendment, Act No. 5 of 1998

Police Reform was drafted in 1997,¹⁴² leading to the adoption of the Police Service Act in 1998¹⁴³ and a five-year development plan for the LMPS for the period 1998–2003.¹⁴⁴ The Act provided the legal framework for reform and a new vision for the police, including a police service that would function without political bias and in partnership with communities. Its three strategic goals were the reduction of crime; improvement of service to the public; and the efficient management of police resources. It also envisaged an LMPS that would enhance confidence in the rule of law. The Act reintroduced civilian ranks, and introduced several internal oversight mechanisms.

A second review was undertaken in 2004 to assist the LMPS in the process of restructuring and professionalising the police. This involved a review of the Constitution, legislation and strategic and development plans of the LMPS. A number of recommendations were made to clarify the functions of the police.¹⁴⁵

The LMPS currently falls under the authority of the Ministry of Home Affairs and Public Safety. In 2010, there were 3 489 police officials in the LMPS.¹⁴⁶

Methodology

This report is largely drawn from a study that was conducted on the LMPS in 2010 when APCOF was piloting the application of the indicators for the SARPCCO Code of Conduct.¹⁴⁷ Permission was sought and granted from the LMPS to interview key staff members and to source police documents. Interviews were conducted in November 2010.¹⁴⁸ This information was supplemented by further desktop research of published studies, media reports and other information available on the internet. The LMPS were given an opportunity to comment on the report, and where appropriate, their comments have been taken into account. For the purposes of this publication, the review was updated to the extent that information was available on the internet. Since no primary data was gathered from the LMPS since early 2011, the research is unable to ascertain whether any new policies or practices have been introduced subsequent to the finalisation of the initial research in mid-2011.

142 Hendricks C and Musavengana T (2010) *The Security Sector in Southern Africa*. Monograph 174. Pretoria: Institute of Security Studies, p.83

143 Police Service Act, No. 7 of 1998

144 Lesotho Mounted Police Service (2010) *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Maseru: Lesotho Institute of Public Administration and Management

145 Lesotho Ministry of Home Affairs and Public Safety (2004) *Review of the Lesotho Mounted Police Service Reform and Restructuring Programme: Final Report*. Maseru: Lesotho Ministry of Home Affairs and Public Safety

146 Lesotho Mounted Police Service website, www.lmps.org.ls, accessed 9 December 2010, and Transformation Resource Centre (2006) *Mounted Friend and Helper: the History of the Lesotho Mounted Police Service*. In *Work for Justice, Issue 74*, p.8

147 Dissel A, Masuku T, Tsehlo M, and Tait S (2011) *The Police as Friend and Helper to the People: Assessing the Lesotho Mounted Police Performance in Terms of the Southern African Regional Chiefs Cooperation Organisation (SARPCCO) Code of Conduct*. Cape Town: African Policing Civilian Oversight Forum

148 Interviews were held with staff at four NGOs; a Member of Parliament; members of political parties; journalists; representatives of the LMPS; former police officers; a magistrate and a representative of the National Security Services

Article 1: Respect for human rights

Standard: In the performance of their duties, police officials shall respect and protect human dignity, maintain and uphold the human rights of all persons.

Lesotho has ratified many of the key international instruments on human rights at the international and regional level.¹⁴⁹ The Constitution is the supreme law in Lesotho, and enshrines fundamental rights to equality, life and personal security.¹⁵⁰ Several of these rights contain limitation clauses in the Constitution.

The Constitution provides for the establishment of a police service responsible for the maintenance of law and order having such functions as prescribed by an Act of Parliament.¹⁵¹ The defining Act is the Police Service Act.¹⁵² This Act defines the general functions of the police as being ‘to uphold the law, to preserve the peace, protect life and property, to detect and prevent crime, to apprehend offenders, bring offenders to justice, and for associated purposes’.¹⁵³

The LMPS Strategic Plan for 2010–2013 outlines a vision for the LMPS to become a professional and accountable police service, providing safety and security in partnership with the community, with an emphasis on prevention, reduction and detection of crime. The vision is framed within the observance of human rights standards.¹⁵⁴ Strategic objectives include upgrading the capacity of police officials through improving training programmes, internal capacity building, restructuring and the reduction of HIV infection.¹⁵⁵ The Strategic Plan places more emphasis on professionalising the police service to ensure compliance with international standards and on striving towards serving every individual impartially.

Police training

The LMPS training includes a six-month basic course for cadets, followed by nine months of more advanced training. Human rights training is incorporated into the basic training, using the Training Manual of Policing and Human Rights.¹⁵⁶ The SARPPCO Human Rights Training Manual is also used as a training manual for new recruits and cadets.¹⁵⁷ This manual deals with international standards, regional

149 These include: The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights; The Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; The International Convention on the Elimination of all Forms of Racial Discrimination; Convention on the Elimination of all Forms of Discrimination against Women, and the Optional Protocol to the Convention on the Elimination of Discrimination against Women; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime; Convention on the Rights of the Child and the Optional Protocol to the Convention; The African Charter on Human and Peoples’ Rights; African Charter on the Rights and Welfare of the Child

150 Constitution of Lesotho, Act No. 16 of 1993

151 Constitution of Lesotho, section 147

152 Police Service Act

153 Police Service Act, section 4

154 Lesotho Mounted Police Service (2010) *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Maseru: Lesotho Institute of Public Administration and Management

155 *Ibid*, p.23

156 Lesotho Mounted Police Service (2003/2004) *Police Training College Prospectus*. Maseru: Police Training College; and interview with Senior Inspector Mokete (2010) *Human Rights Course Curriculum for Police Recruits*. Maseru: Police Training College

157 SAHRRIT (2002) *International and Regional Human Rights Standards for Policing*. Harare: Human Rights Trust of Southern Africa

treaties and non-treaty instruments. Perusal of the course outline indicates that the training includes both theoretical and practical aspects, but the time allocated for the training is very short, and the accompanying study material runs only to a few pages. Several of the respondents believed the training was of a low standard. There seems to be no refresher human rights training for police officials who joined before human rights became part of the training. However, from time to time, there are ad hoc training courses and workshops that some officials do attend.

The LMPS has invited input from external stakeholders into the training of police officials, including organisations such as the Federation of Women Lawyers (FIDA) and Women in Law in Southern Africa (WILSA), who have provided training on legal issues and gender-based violence to new police recruits at the Police Training College.¹⁵⁸ Civil society organisations are critical of the short duration of the course, noting that it lasts only a few hours.¹⁵⁹

Oversight over the police

A number of external oversight mechanisms have been created in Lesotho, some of which are mandated to have specific oversight over the police, while others have a more general authority.

The Police Complaints Authority (PCA) is an independent, statutory and civilian oversight body established in terms of the Police Service Act that monitors police abuse of power and human rights violations. Its primary objective is ‘to oversee the operation of police, their conduct with the public, their general protection and conditions under which they work’.¹⁶⁰ The effectiveness of the PCA is constrained as it is not able to take complaints directly from members of the public, and may only investigate complaints received from the Commissioner of Police or Ministry of Home Affairs. On completion of its investigations, it is limited to making recommendations to the Commissioner of Police on whether to take disciplinary action or to prosecute a member. The review of the LMPS recommended amendments to the Police Act to strengthen the independence of the PCA.¹⁶¹

The Police Service Act also provides for a Police Inspectorate, which has the responsibility of monitoring the effectiveness and efficiency of the police service, and the extent to which the policing plan for the year has been carried out.¹⁶² The Directorate on Corruption and Economic Offences, established under the Prevention of Corruption and Economic Crime Offences Act,¹⁶³ is mandated to

158 Interview with a female manager at the Federation of Women Lawyers (FIDA), 24 November 2010; and interview with a female senior manager at Women and Law (WILSA), 24 November 2010

159 Interview with a female manager at FIDA, 24 November 2010

160 Police Service Act, section 22

161 Lesotho Ministry of Home Affairs and Public Safety (2004) *Review of the Lesotho Mounted Police Service and Restructuring Programme: Final Report*. Maseru: Lesotho Ministry of Home Affairs and Public Safety, p.69

162 Police Service Act, section 21

163 Prevention of Corruption and Economic Crime Offences Act, No. 5 of 1999

investigate any complaint of corruption against a public body, including the police service. Both the PCA and the Directorate on Corruption report to the executive rather than to the legislature, which limits the extent of their public accountability.

The Constitution provides for the establishment of an Office of the Ombudsman.¹⁶⁴ Its duties are outlined in the Ombudsman Act.¹⁶⁵ One of its objectives is to respond to complaints and grievances against the public sector by conducting independent investigations and recommending remedial action.¹⁶⁶ However, it has no enforcement powers and is limited to making recommendations. In its annual reports, which it must submit annually to Parliament, the Ombudsman has reported on several complaints against the public sector, including the police. Complaints related to: abuse of power, arrogance, prejudice, bias, denial of essential services or failure to provide a service, dishonesty, injustice, maladministration, unfairness, unlawful activities, violations of human rights and contractual agreements, and corruption.¹⁶⁷ The Ombudsman also undertakes visits to police and military detention cells and prisons.¹⁶⁸ The effectiveness of the Ombudsman's services are constrained by lack of autonomy over its budget and limited resources. It also has limited power to recruit its own staff.¹⁶⁹

The Sixth Amendment to the Constitution provides for a National Human Rights Commission, though it has not yet been fully established.¹⁷⁰

Reports of these oversight bodies are not publicly available, raising concerns about the impact and effectiveness of their work.

Law reports deal with many cases where civil claims are brought against the Minister and government in respect of human rights violations by the police, costing the state 'millions of Maloti every year as compensation'.¹⁷¹ The media report on numerous allegations of human rights violations by the police.¹⁷²

164 Constitution of Lesotho, sections 134 and 135

165 Ombudsman Act, No. 9 of 1996

166 Office of the Ombudsman, <http://www.ombudsman.org.ls/The%20Objectives.html>, accessed 13 January 2011

167 Office of the Ombudsman (2005) *Annual Report 2004/2005*. <http://www.ombudsman.org.ls/The%20Objectives.html>, p.1. The researchers were unable to access the latest Annual Report for 2008 from the Ombudsman website.

168 Human Rights Council (3–14 May 2010) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Lesotho*, A/HRC/WG.6/8/LSO/1

169 Kapa M (2009) *Promoting the effectiveness of Democracy Protection Institutions in Southern Africa: The office of the Ombudsman in Lesotho*. Johannesburg: Electoral Institute of Southern Africa

170 European Union (12 April 2012) *Remarks by the Head of Delegation of the European Union to Lesotho, H.E. Ambassador Hans Duynhouwer on the occasion of the TRC seminar on Establishment of a Human Rights Commission in Lesotho*. http://eeas.europa.eu/delegations/lesotho/documents/press_corner/20120419_en.pdf, accessed on 21 June 2012

171 Interview with a parliamentarian and member of the ruling party on the 26 November 2010. See also *Masupha v Commissioner of Police and Another* (CIV/T/149/2005) [2010] LSHC 3 (15 February 2010), <http://www.saflii.org/ls/cases/LSHC/2010/3.html>; *Solane v Commissioner of Police and Another* (CIV/T/16/06) [2008] LSHC 77 (1 October 2008). In this case the application was brought by the brother of the deceased. The application was dismissed; *Machepha v Commissioner of Police and Another* (CIV/T/223/2005) [2007] LSHC 35 (2 April 2007). <http://www.saflii.org/ls/cases/LSHC/2007/35.html>, and *Raposholi v Commissioner of Police and Another* (CIV/T/302/2004) [2007] LSHC 67 (30 May 2007), <http://www.saflii.org/ls/cases/LSHC/2007/67.html>

172 *Lesotho Times* (16 December 2010) Killer cop escapes jail sentence. <http://www.lestimes.com/?p=5108>, accessed 19 December 2011

Treatment of police officials

Police officers are able to join a staff association, but not a trade union.¹⁷³ The Lesotho Police Staff Association can represent police members but has a limited ability to mobilise workers and negotiate on working conditions. According to an Ombudsman report in 2005, working conditions at police stations and posts are very poor.¹⁷⁴ Concerns were also raised relating to: too few staff; a shortage of adequate uniforms suitable to the mountain climate; insufficient furnishings and heating equipment; and inadequate communication facilities and transport. Many of the police posts are in remote mountainous areas and police are reliant on horses for transport. However, the Ombudsman noted that horses were often old and not well cared for. It was also noted that there was inadequate housing and accommodation for officials all over the country. Respondents interviewed during the study complained about harsh discipline during training, poor working conditions, and of not being consulted when they are transferred to different posts or police stations.

The LMPS 2010–2013 Strategic Plan took note of the poor infrastructure for office and residential accommodation: ‘This state of affairs impedes quality of service in terms of infrastructure and observance of human rights for both suspects and victims of crime.’¹⁷⁵

There have also been media reports about abusive treatment by other officials.¹⁷⁶ In one criminal case, 19 police officials were charged with fraud and were placed on suspension for 13 years pending finalisation of their case. In the end, they were all acquitted.¹⁷⁷ This delay in the trial affected their right to be tried within a reasonable time, but also their right to work, and their employment opportunities within the LMPS were adversely affected.

Article 2: Non-discrimination

Standard: Police officials shall treat all persons fairly and equally and avoid any form of discrimination.

The Constitution provides that every person is entitled to equality before the law and to equal protection of the law.¹⁷⁸ Lesotho is a very homogenous country where 99% of the population are Basotho. Although women have a higher literacy

173 The staff association is a voluntary representative body, which represents all police officers, except for very senior police officers from the rank of assistant commissioner of police to commissioner. However, police officers from the rank of constable to senior inspector are allowed to join the staff association.

174 Office of the Ombudsman (2005) *Report on the Inspection of Police Cells*. <http://www.ombudsman.org.ls>

175 Lesotho Mounted Police Service (2010) *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Maseru: Lesotho Institute of Public Administration and Management, p.7

176 Lentsoe La Basotho, 20–26 January 2010. This report deals with a senior police officer (Superintendent) who was accused of raping a junior police woman in January 2010

177 *Public Eye Online* (16 August 2010) 19 cops acquitted of fraud. <http://www.publiceyenews.com/2010/08/16/19-cops-acquitted-of-fraud/>, accessed 10 December 2010

178 Constitution of Lesotho, section 19

rate than men, there are many discriminatory practices against women and they still constitute a minority within government and the business sector. There is no racial or language diversity in the LMPS as all members are Basotho. There is also limited gender representivity as only 17% of the LMPS are women. In 2010, it appeared that there was an effort to increase the number of women at the higher ranks, where the percentages of women were slightly more than the overall average.

There is generally no discrimination applied regarding the recruitment of new members. However, new recruits are required to undergo a medical examination, and those found HIV positive are excluded.¹⁷⁹ A new draft policy on HIV in the LMPS, currently under consideration by cabinet, will make this discriminatory practice unlawful.¹⁸⁰

Prejudices that exist in society tend to be reflected in the police service as well. Respondents reported that gays and lesbians in the community were discriminated against by police officers, who often refused to assist them or take seriously their complaints of serious crimes or rape. There were also allegations of discrimination towards Chinese nationals and other foreigners, who were sometimes targeted for bribes.¹⁸¹ Although there are several oversight bodies in Lesotho, none of those referred to above had any information regarding discrimination by the police.

Awareness of diversity is not yet an issue that has been addressed by the LMPS, and does not form part of basic or advanced training. Some priority is given to gender-based violence and the victimisation of children and women. According to respondents from the Gender and Child Protection Unit, there is some training available for the police on domestic violence and gender awareness, although not all police officers benefit from this. Training is provided by civil society organisations working on gender-based violence.¹⁸²

The Child and Gender Protection Unit was established in 2002, and is tasked with receiving and investigating complaints related to gender-based violence and sexual violence, abuse of children and human trafficking of women and children. There are approximately 87 members in the unit stationed all over the country.

Distribution of police resources

The LMPS has acknowledged that there is an uneven distribution of resources and motor vehicles in the districts, and that some police posts, especially those in remote areas, have no vehicles at all.¹⁸³ This impacts on policing effectiveness

179 Lesotho Mounted Police Service. *Recruitment Guidelines and Procedures*. <http://www.lmps.org.ls/joinLMPS.html>.

180 Masuku S (2011) *Promotion of the Lesotho Mounted Police Service (LPMS) HIV/Aids Workplace Policy: A report on workshops held with members of the LMPS in April 2011*. Johannesburg: Centre for the Study of Violence and Reconciliation. <http://www.csvr.org.za/docs/ReportonworkshopsontheLMPSHIV-AIDSPolicy.pdf>, accessed 21 June 2012

181 Interview with a female, senior radio broadcaster and journalist, 23 November 2010

182 Interview with a female, senior officer in the Gender and Child Protection Unit, 24 November 2010

183 Lesotho Mounted Police Service (2010) *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Maseru: Lesotho Institute of Public Administration and Management, p.7

especially in policing districts which cover a large, and not always easily accessible terrain. The LMPS has the capacity to generate monthly information returns, which could help it to distribute resources according to crime reports and population density. Some of the specialised units and services are not available in the more remote areas, such as the Child and Gender Unit.

Article 3: Use of force

Standard: Police officials may only use force when strictly necessary and to the extent required for the performance of their duties and adhering to national legislation and practice.

The Constitution enshrines the right to life, although the death penalty is retained.¹⁸⁴ This right is limited to the extent that a death may be considered justifiable under certain circumstances. This includes the use of force to such extent as is necessary in the circumstances in the case of:

- » The defence of any person from violence or for the defence of property;
- » In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- » For the purposes of suppressing a riot, insurrection or mutiny; or
- » To prevent the commission by that person of a criminal offence.

This provision allows the use of lethal force in far wider circumstances than that provided for by internal norms and standards, which allow for the proportionate use of force in the defence of life.¹⁸⁵ Yet, the Constitution allows for the use of force in defence of property, as well as for the capture of an escapee, to prevent the commission of a crime, or to suppress a riot.

The Criminal Procedure and Evidence Act¹⁸⁶ allows for the use of force during arrests which may result in ‘the killing’ of a person and which will be deemed justifiable homicide. The section applies to police and private persons and grants them very wide discretion to use, and potentially abuse their power.

No statistics were available on the number of police officers charged, prosecuted or sued for excessive use of force, and no statistics were available on the number of people shot, killed or wounded by the police. Interviews with disciplinary officers revealed that many police officers charged with criminal conduct are charged in relation to cases involving police brutality, assaults and

¹⁸⁴ Constitution of Lesotho, section 5

¹⁸⁵ United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, Havana, 27 August–7 September 1990, article 5 and the United Nations Code of Conduct for Law Enforcement Officials, UNGA res 34/169, 17 December 1979

¹⁸⁶ Criminal Procedure and Evidence Act, No. 9 of 1981, section 42(1)

excessive use of force. There are many stories of excessive police force in the media.¹⁸⁷

The policing of lawful assemblies is governed by the Public Meetings and Processions Act.¹⁸⁸ Respondents indicated that the police generally complied with legislation when policing political gatherings, although media reports indicate that excessive force is sometimes used.¹⁸⁹ There are also concerns that the army becomes involved in policing duties when responding to political rallies.¹⁹⁰

The LMPS has very limited policy in regard to the supply and use of weapons. Most police officials have never been provided with any weapon at all, including non-lethal weapons such as batons.

According to a respondent, most police recruits are not given any training on the use of non-lethal weapons, except for the Public Order Unit.¹⁹¹ There is limited control over the use of weapons, and there is generally insufficient training and policy regarding the use of firearms. Not many police officers are equipped with firearms, and officers are required to apply for the right to carry them. Many officers buy their own firearms and apply for a licence in their private capacity, rather than as members of the LMPS,¹⁹² raising concerns about whether there is adequate control over the use of private firearms when on duty. Responding to this concern, the 2010–2013 LMPS Strategic Plan envisages developing a firearms control strategy by 2012.¹⁹³

Article 4: Torture and cruel, inhuman and degrading treatment or punishment

Standard: No police officer shall, under any circumstances, inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment of any person.

Lesotho is party to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT). Article 2 of the UNCAT provides that no exceptional circumstances may be involved as a justification for torture, whether this is a state of war, threat of war, internal political instability or any other public emergency. The Constitution also prohibits torture or inhuman or degrading punishment or other treatment, but adds that ‘nothing contained in or done under the authority of any law shall be held to be inconsistent with or in

187 *Sunday Express* (13 February 2010) Footballer sues police. <http://sundayexpress.co.ls/?p=1773>, accessed 12 April 2012 and *Sunday Express* (13 February 2010) Police officer cleared of murder. <http://sundayexpress.co.ls/?p=1762>, accessed 12 April 2012

188 Public Meetings and Processions Act, No. 2 of 1993

189 *Lesotho Times* (25 November 2010) Rioting students shot. <http://www.lestimes.com/?p=4989>, accessed 17 December 2010

190 Human Rights Council (3–14 May 2010) *Summary Prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council Resolution 5/1: Lesotho*. A/HRC/WG.6/8/LSO/3

191 Interview with male police officer, 25 November 2010

192 Lesotho Ministry of Home Affairs and Public Safety (2004) *Review of the Lesotho Mounted Police Service and Restructuring Programme: Final Report*. Maseru: Lesotho Ministry of Home Affairs and Public Safety

193 Lesotho Mounted Police Service (2010) *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Maseru: Lesotho Institute of Public Administration and Management

contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Lesotho immediately before the coming into operation of this Constitution'.¹⁹⁴ It is not clear what is intended by this section, though it could possibly refer to the infliction of customary punishments. This clause limits the internationally inviolable right not to be tortured and leaves open the potential to inflict inhumane punishment, and should be amended. The Constitution also guarantees freedom from slavery and forced labour, and prohibits arbitrary search or entry.

Although it is a state party to the UNCAT, Lesotho has not taken steps to incorporate its provisions into domestic law. Torture is not a criminal offence.¹⁹⁵ However, individual officials, and the Commissioner of Police can be held liable under civil law and be obliged to pay compensation for damages. Individual officers perpetrating acts of torture or other ill-treatment can be convicted in terms of common law and statutory offences in the criminal law.¹⁹⁶

The Criminal Procedure and Evidence Act¹⁹⁷ provides that a confession is admissible once proven to be freely and voluntarily made, but the burden of proof rests with the person alleging torture to prove that s/he was tortured. This Act also prohibits prosecutors from using evidence which they know is tainted by torture or human rights violations, and requires prosecutors to take steps to ensure that those responsible for using such methods are brought to justice.¹⁹⁸ The LMPS Service Charter¹⁹⁹ also prohibits torture, and the Police Code obliges police officers to oppose 'any violation' and to report violations to their superior authority.

Despite these national and international provisions and prohibitions, the Ombudsman has noted serious shortcomings with respect to the treatment and detention of suspects.²⁰⁰ Civil society have also raised concerns that the police use torture and other ill-treatment to obtain confessions from suspects,²⁰¹ and a number of media reports and court cases seems to illustrate this point.²⁰²

Although the Police Code compels police officials to report any abuse by their colleagues, respondents indicated that such reports were seldom made. According

194 Constitution of Lesotho, article 8

195 United Nations General Assembly (2010) *Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance with paragraphs 15(c) of the annex to Human Rights Council resolution 5/1: Lesotho*. 8 February 2010. A/HRC/WG.6/8/LSO/3, para 4

196 African Commission on Human and Peoples' Rights (April 2006) *A Report on the Promotional Mission to the Kingdom of Lesotho*. www.achpr.org/states/lesotho/missions/promo-lesotho-2006, accessed 12 July 2012

197 Criminal Procedure and Evidence Act, section 228

198 Criminal Procedure and Evidence Act, section 230

199 Lesotho Mounted Police Service, Service Charter. Maseru: Lesotho Mounted Police Service, section 10(e)

200 Office of the Ombudsman (2004) *Ombudsman Report on the Inspection of Government Prisons and Hospitals in Lesotho*. Maseru: Office of the Ombudsman

201 United Nations General Assembly (2010) *Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance with paragraphs 15(c) of the annex to Human Rights Council resolution 5/1: Lesotho*. 8 February 2010. A/HRC/WG.6/8/LSO/3, para 16

202 See *Masupha v Commissioner of Police and Another* (CIV/T/149/2005) [2010] LSHC 3 (15 February 2010), <http://www.saflii.org/ls/cases/LSHC/2010/3.html>; *Solane v Commissioner of Police and Another* (CIV/T/16/06) [2008] LSHC 77 (1 October 2008); *Machepha v Commissioner of Police and Another* (CIV/T/223/2005) [2007] LSHC 35 (2 April 2007); and *Raposholi v Commissioner of Police and Another* (CIV/T/302/2004) [2007] LSHC 67 (30 May 2007); United States Department of State (2012) *Country Reports on Human Rights Practices for 2011: Lesotho*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 21 June 2012

to the LMPS Office of Complaints and Discipline, complaints made against police by members of the public are usually investigated by the police. Serious matters, such as allegations of torture are handled by the Investigation Unit Office.

According to the US Department of State, the PCA has dealt with cases of murder and death in detention at the hands of the police.²⁰³ Most often, complaints of torture are dealt with through civil litigation, at considerable expense to the state.²⁰⁴ The damages paid to individuals are however, relatively small. Unfortunately, an award of damages against the state does little to deter individual police officers from brutality or ill-treatment, unless the police officer is simultaneously charged with a disciplinary and criminal offence.

Article 5: Protection of persons in custody

Standard: Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention when required.

The Constitution deals with the right to liberty and provides for the rights of arrested and detained persons.²⁰⁵ A person must be brought before a court within 48 hours of arrest, and any further detention must be ordered by a court. The Constitution further provides for the release of a person if s/he has not been tried within a reasonable time. A person is entitled to redress for any contravention of this section, and any person unlawfully arrested or detained is entitled to compensation.²⁰⁶ The Constitution provides that any restriction on a person's freedom of movement that is involved in his/her lawful detention shall not held to be inconsistent with or in contravention of the right to freedom of movement.²⁰⁷ The section does not specify that such restriction should be limited only to the extent necessary to keep that person in lawful custody, which is a principle in the international guidelines regarding detention.²⁰⁸

203 United States Department of State (2010) *Country Reports on Human Rights Practices for 2009: Lesotho*. <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135960.htm>, accessed 11 April 2012

204 African Commission on Human and People's Rights (April 2006) *A Report on the Promotional Mission to the Kingdom of Lesotho*. www.achpr.org/states/lesotho/missions/promo-lesotho-2006, accessed 12 July 2012. See also *Public Eye Online* (29 October 2010) Security Chiefs to compensate tortured soldier. <http://www.publiceyenews.com/2010/10/29/security-chiefs-to-compensate-tortured-soldier/>, accessed 10 December 2010; *Public Eye Online* (1 November 2010) Mda to demand R24m. <http://www.publiceyenews.com/2010/11/01/mda-to-demand-m24m/>, accessed 10 December 2010; *Masupha v Commissioner of Police and Another* (CIV/T/149/2005) [2010] LSHC 3 (15 February 2010), <http://www.saflii.org/ls/cases/LSHC/2010/3.html>; *Solane v Commissioner of Police and Another* (CIV/T/16/06) [2008] LSHC 77 (1 October 2008). In this case the application was brought by the brother of the deceased. The application was dismissed on a technicality without discussion on the merits of the case. <http://www.saflii.org/ls/cases/LSHC/2008/77.html>; and *Machepha v Commissioner of Police and Another* (CIV/T/223/2005) [2007] LSHC 35 (2 April 2007). <http://www.saflii.org/ls/cases/LSHC/2007/35.html>

205 Constitution of Lesotho, section 6

206 Constitution of Lesotho, section 6(6)

207 Constitution of Lesotho, section 7(2)

208 See Principle 5 of the Basic Principles for the Treatment of Prisoners, General Assembly Resolution 45/111 of 14 December 1990

Some brief training is provided for police on the management of people in custody, but this does not sufficiently cover the international norms and standards applicable to detention.²⁰⁹

Not much information is available on conditions in custody, with the most recent information being the Ombudsman's report of inspections carried out on 51 police cells in 2005.²¹⁰ The Ombudsman noted that cells often consisted of bare concrete floors with inadequate ventilation and lighting, and generally no bedding or beds. There were few holding facilities for women, who were often required to sit in the charge office until being released on bail. Sanitation facilities were poor, with detainees using buckets and poorly maintained pit latrines. It was also noted that there were no facilities for personal hygiene or for cleaning cells. Meals were inadequate, and some of the police stations did not feed detainees at all.

According to the US Department of State, pre-trial detention often lasts months, or even years. Most of these detainees are held in prisons, though due to lack of sufficient accommodation they are held together with convicted and sentenced prisoners, in violation of international norms on separation of different categories of prisoners.²¹¹ It was also noted that although many prisons were dilapidated, some of the juvenile facilities had recently been refurbished. It was also noted that prisoners were entitled to free health care at government hospitals.²¹²

The Ombudsman is entitled to enter and inspect police, military or prison cells, government hospitals, asylums or other places of detention.²¹³ No further information has been made available since its report of inspections in 2005. It is possible that the National Human Rights Commission will begin to take on some of the oversight responsibilities once it becomes established. It will also be important to clarify the roles and responsibilities of the Ombudsman vis a vis the National Human Rights Commission to avoid duplication and to make best use of scarce resources.

Article 6: Victims of crime

Standard: All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary.

The LMPS Service Charter stipulates that victims of crime need to be supported, although respondents were not aware of any victim empowerment programme

209 S/Insp. Motsaohae. (Undated). *Human Rights Course: 2009/2010*. Maseru: Police Training College

210 Office of the Ombudsman (2005) *Report on Conditions in Police Cells*. Maseru: Office of the Ombudsman

211 United States Department of State (2010) *Country Reports on Human Rights Practices for 2009: Lesotho*. <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135960.htm>, accessed 12 April 2012

212 United States Department of State (2012) *Country Reports on Human Rights Practices for 2011: Lesotho*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 21 June 2012

213 The Ombudsman Act No. 9 of 1996, section 10

within the police. The LMPS Strategic Plan 2010–2013 identifies the need to establish a Victim Support Unit by 2012.²¹⁴ The needs of victims seem primarily to be dealt with through the Gender and Child Protection Unit (GCPU), which aims to offer a victim-friendly approach to working with victims, though it concentrates on victims who are woman and children.

Respondents were concerned that generally police were not aware of the needs of victims and did not treat them with sufficient sensitivity. This is perceived as the domain of the GCPU. Very little training is provided to police on this issue. The shortage of resources also impacts on the ability to provide quality service to victims. For example, a rape victim who reports the crime in a rural area may be referred to a GCPU in the nearest town, which may result in a delay in reaching assistance, and therefore constitutes secondary victimisation.²¹⁵ This may also compromise the collection of forensic evidence, as the victim may only reach a GCPU some days after the event. Respondents also noted poor follow-up by the police on the progress of a case and on investigations.

A Victims of Crime Support Office was established in the Maseru Magistrate's Court in 2006, which provides practical and emotional support to victims, and offers counselling. It also helps to facilitate victim-offender mediation and restitution to victims.²¹⁶ This is an initiative of the courts, rather than of the police, but the police are able to refer some complainants to this service.

Article 7: Respect for the rule of law and Code of Conduct

Standard: Police officials shall respect and uphold the rule of law and the present Code of Conduct.

The LMPS provides training on the United Nations Code of Conduct for Law Enforcement Officials²¹⁷ to its new recruits and cadets as part of their basic training. The course on Ethics and the Police also deals with the Code of Conduct. Lesotho is party to the SARPCCO Code of Conduct. Not many respondents had copies of this, although researchers were advised that copies could be obtained from the Office of Complaints and Discipline.²¹⁸ Such a circuitous route, especially for police officers not stationed at headquarters, is obviously not conducive to the dissemination of the Code of Conduct. Interviews with senior police officers indicated that all police officers are obliged to sign the Code of Conduct as a requirement and condition of employment.

214 Lesotho Mounted Police Service (2010) *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Maseru: Lesotho Institute of Public Administration and Management

215 Office of the Ombudsman (2005) *Report on Conditions in Police Cells*. Maseru: Office of the Ombudsman

216 Human Rights Council (3–14 May 2010) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Lesotho*, A/HRC/WG.6/8/LSO/1, para 36

217 United Nations Code of Conduct for Law Enforcement Officials, UNGA resolution 34/169, 17 December 1979

218 Interview with a male, senior officer at police training on the 22 November 2010

Article 8: Trustworthiness

Standard: Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.

Article 10: Performance of duties

Standard: The public demands that the integrity of police officials be above reproach. Police officials shall therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undermine the public's confidence in a police force/service.

Article 11: Professional conduct

Standard: Police officials shall at all times fulfil the duties imposed upon them by the law in a manner consistent with the high degree of responsibility and integrity required by their profession.

An Afrobarometer survey conducted in Lesotho in 2008 found that people had relatively low trust in the police. Whereas 53% of respondents trusted traditional authorities 'a lot', and 52% trusted the courts 'a lot', only 45% of respondents trusted the police 'a lot'. Twenty-one percent did not trust the police 'at all', and 18% trusted them 'a little'.²¹⁹ This is an improvement from a similar study conducted in 2005 where only 41% of respondents said that they trusted the police 'a lot', and 16% did not trust the police 'at all'.²²⁰ The majority of respondents in this study, including current and former police officials, felt that police officers were not trustworthy, due to corruption and the abuse of police authority. Some respondents raised the concern that when property is confiscated by the police for the purposes of investigating a crime, the property becomes lost or stolen. On the other hand, there have been several prosecutions of police who have abused their authority or used excessive force, instilling at least some faith that the police do not act with impunity.

The LMPS has put in place a sound recruitment and promotions policy to ensure that appropriate candidates are selected and promoted. As regards the recruitment of police officials, the criteria are clearly listed on the LMPS website, and a detailed recruitment process is outlined.²²¹ Similarly, there are guidelines related to the promotion of officials, with the objectives of ensuring 'promotion of those best suited for increased responsibility' and to 'encourage excellent

219 Afrobarometer (2008) *Summary of Results: Round 4 – Afrobarometer survey in Lesotho*. <http://www.afrobarometer.org/results/results-by-country-a-m/lesotho>, accessed 15 July 2012, p.24

220 Afrobarometer (2008) *Summary of Results: Round 3 – Afrobarometer survey in Lesotho, 2005*. <http://www.afrobarometer.org/results/results-by-country-a-m/lesotho>, accessed 15 July 2012, p.27

221 <http://www.lmps.org.ls/joinLMPS.html>, accessed 8 December 2010

performance'. It also aims to ensure that the promotion process is free from irrelevant considerations such as 'politics, nepotism and personal bias'. According to the policy, promotions are based on competence and merit and each police officer must be considered for promotion at least after every ten years of service.²²² It is not a requirement for police officials to attend management training before promotion to managerial positions.

The LMPS has a clear Mission Statement and set of values to guide the performance of their duties.²²³ In terms of the Constitution, every member is required to make a declaration before the Commissioner of Police regarding his previous work record.²²⁴

The LMPS does not have a policy on performance review. However, the practice is that police officers should be appraised every three months by their supervisors. Interviews by current and former police officers revealed that performance appraisals were conducted on an ad hoc basis. Respondents attributed this to the critical shortage of supervisors and the lack of clear guidelines for the appraisal system. One of the difficulties is that junior officers supervise each other, making the chain of command difficult to adhere to. The Strategic Plan 2010–2013 notes that there has been little progress in the area of police discipline and that many cases against police are still pending. The plan proposes developing legislation for a new and simpler structure for the police.²²⁵

Respondents to this study were generally of the view that the disciplinary system in the LMPS is dysfunctional, unfair and not transparent. They also said that the disciplinary system took too long to conclude cases because the presiding officers often lacked the skills to conclude cases speedily.

In terms of the Police Service Act, the Commissioner of Police is obliged to report to the Minister of Home Affairs and Public Safety, who must submit an annual report to Parliament. Despite repeated requests, the researchers were unable to obtain a copy of the annual report.

Article 9: Corruption and abuse of power

Standard: Police officials shall not commit or attempt to commit any act of corruption or abuse of power. They shall rigorously oppose and combat all such acts.

There is a widespread belief that the LMPS are corrupt. According to the Afrobarometer survey conducted in 2008, people in Lesotho thought that the police were more corrupt than other government departments. Fifty-one percent of

²²² Lesotho Mounted Police Service. *Police Appointment and Promotion Policy*

²²³ Lesotho Mounted Police Service (2010) *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Maseru: Lesotho Institute of Public Administration and Management

²²⁴ Constitution of Lesotho, section 10

²²⁵ Lesotho Mounted Police Service (2010) *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Maseru: Lesotho Institute of Public Administration and Management, p.15

respondents said that ‘some’ of the police were corrupt, and 22% said that ‘all’ of the police were corrupt.²²⁶ This belief has been reinforced by several prosecutions against senior members of the police for corruption and abuse of power. The prosecutions are nevertheless a good indicator that these officials are not above the law.²²⁷

Police officers receive training on the UN Code of Conduct which prohibits corruption by law enforcement officials, and prohibitions on corruption are contained in the SARPCCO training manuals.²²⁸

Low salaries have been identified as one of the factors leading to corruption, abuse and theft.²²⁹ One of the factors necessary to combat corruption, especially at junior levels, is to provide favourable working conditions and fair wages. The Constitution outlines unenforceable principles regarding fair working conditions for all.²³⁰ In the police, respondents indicated that though salaries are on par with the rest of the civil service, they are low, and insufficient to allow an adequate standard of living.²³¹ Low salaries do not, however, explain corruption which occurs at more senior levels. In 2010, corruption charges were pending against a Deputy Commissioner of Police, two Assistant Commissioners and one inspector regarding tender-rigging allegations. In a separate charge, the Commissioner of Police was under investigation regarding the awarding of a tender.²³²

The Police Service Act prohibits a police officer from engaging in employment or business outside of the police without the permission of the Commissioner.²³³ This is further governed by the Police Regulations.²³⁴ There is no policy or guideline specifying the penalty for corruption, and this is often left at the discretion of the disciplinary officials. Several police officials have been dismissed for engaging in corrupt activities. There is no registry of declarations where police must declare other business interests or income. According to respondents, many police officers do engage in private businesses such as taxi ownership, providing private security and as shop owners in order to supplement their income. The LMPS appears to turn a blind eye to this, as respondents were not aware of anyone being disciplined for these activities.

226 Afrobarometer (2008) *Summary of Results: Round 4 – Afrobarometer survey in Lesotho*. <http://www.afrobarometer.org/results/results-by-country-a-m/lesotho>, accessed 23 July 2012, p.23

227 United States Department of State (2004) *Country Reports on Human Rights Practices 2003: Lesotho*. Washington DC: United States Department of State. See also, *Lesotho Times* (25 November 2010) Ex-police boss escapes jail. <http://www.lesothotimes.com/?p=4975>, accessed 23 December 2010; United States Department of State (2010) *Country Reports on Human Rights Practices 2009: Lesotho*. <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135960.htm>; *Lesotho Times* (24 September 2009) Police boss off the hook. <http://www.lesothotimes.com/?p=2246>, accessed 10 December 2010; *Lesotho Times* (2 June 2011) Top cops faces fraud charges. <http://www.lesothotimes.com/?p=6230>, accessed 12 April 2012

228 SAHRIT (2003) *Code of Conduct: Human Rights and Policing: Towards Ethical Policing*. Training Manual. Harare: Sable Press

229 Lesotho Mounted Police Service (2010) *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Maseru: Lesotho Institute of Public Administration and Management

230 Constitution of Lesotho, section 30

231 In April 2010, the entry range for a student constable or constable is M3 447 per month (approximately USD 462), while higher ranking police officers take home less than M120 000 (approximately USD 16 000) per year: Salary Structure of the LMPS as at April 2010.

232 United States Department of State (2012) *Country Reports on Human Rights Practices for 2011: Lesotho*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 21 June 2012

233 Police Service Act, section 28

234 Regulation 15 and 22 of *Lesotho Mounted Police Service (Administration) Regulations* Legal Notice 202 of 2003, made under the Police Service Act 1998, <http://www.unisa.ac.za/default.asp?Cmd=ViewContent&ContentID=17587>, accessed 23 December 2010

One of the objectives of the 2010–2013 Strategic Plan is to reduce incidents of corruption in the LMPS by 83% (from 300 to 50) by 2016. By 2013, the police aim to sensitise the police and public on corruption and its effects; train 12 police officials on corruption; disseminate the LMPS corruption strategy to the police; translate the strategy into Sesotho; and capacitate presiding officers and prosecutors for disciplinary cases.²³⁵

Article 12: Confidentiality

Standard: Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of duty and needs of justice strictly require otherwise.

The Police Service Act deals with issues of confidentiality, providing that ‘except as provided by the Police Service Act, or in the performance of his duties, the exercise of his functions, or when lawfully required to do so by a competent court, no police officer shall disclose to any person any information acquired by him in the course of his duties’.²³⁶

Perhaps due to this provision, the LMPS do not make much information publicly accessible. They do have a website,²³⁷ which researchers were not able to access during the revision of this report in 2012. During 2011, the website contained basic information on the structure of the LMPS, some sections of the Police Service Act, the recruitment policy, and some outdated crime statistics. Crime statistics are collected by the Criminal Investigations Department (CID) but these are not collated in a meaningful way or made publicly available on a regular basis. Similarly, the Annual Report is not published on the website and is not readily available. The website is an important form of communication, which can be used to disseminate good news stories as well as developments in policing. Unfortunately, the LMPS is failing to take advantage of this opportunity. However, since few people in the country have access to computers or the internet, the police should also look at other forms of communication with the community.²³⁸ Apparently, crime information is shared at some community meetings.²³⁹

²³⁵ Lesotho Mounted Police Service (2010) *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Maseru: Lesotho Institute of Public Administration and Management, National Goal 2

²³⁶ Police Service Act, section 27

²³⁷ LMPS website www.lmps.org.ls

²³⁸ An Afrobarometer survey conducted in 2008 indicated that 93% of the population never use the internet and 87% of the urban population never use the internet. Afrobarometer (2008) *Summary of Results: Round 4 - Afrobarometer survey in Lesotho*. <http://www.afrobarometer.org/results/results-by-country-a-m/lesotho>, accessed 13 July 2012, p.55

²³⁹ Lesotho Mounted Police Service (2010) *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Maseru: Lesotho Institute of Public Administration and Management, p.26

Article 13: Property rights

Standard: in the performance of their duties police officers shall respect and protect all property rights. This includes the economical use of public resources.

The Police Service Act provides that the Police Finance Council must prepare an annual budget for the Police Service and submit it to the Police Authority for approval.²⁴⁰ The Ministry of Home Affairs receives approximately 5.3% of the National Budget, compared with 5.1% which is allocated to the Ministry of Defence and National Security.²⁴¹ According to respondents, the annual budget of the LMPS is in the region of M130 million of which about M55 million is allocated to salaries.²⁴² It has been argued that the LMPS does not have a sufficiently independent budget and the Commissioner has limited authority to manage the budget.²⁴³ Budget expenditure is governed by the Police Service Act.²⁴⁴ Expenditure is subject to an audit by the Auditor-General.

There are strict procedures in place for procurement of goods and services. The prosecution of senior managers for breach of tender procedures is an indication that officials are held to account for failure to adhere to these systems.

The LMPS has no policy in place on the rules and procedures for the use of state resources, but officials are required to exercise reasonable care,²⁴⁵ and disciplinary proceedings are brought against officials who abuse state resources.²⁴⁶ One of the concerns regarding the management of state resources is that there is not sufficient budget allocation for the maintenance of state vehicles and other resources.

The Criminal Procedure and Evidence Act provides a framework for how the property of others can be used or handled, and outlines the consequences for any property damaged by the police, for example, property that is damaged during the course of an authorised entry into premises.²⁴⁷ However, respondents indicated that police do not have adequate storage facilities for property confiscated or recovered during an operation, so property is often lost or damaged in police custody, or is not returned to its rightful owners. Although there is a record book to record such property, not all police are aware of these procedures, so records are not always kept.²⁴⁸

²⁴⁰ Police Service Act, section 41(1)(a)

²⁴¹ Hon T Thahane, Minister of Finance and Development Planning (12 February 2010) *Budget Speech to Parliament for the 2010/2011*. http://www.finance.gov.ls/documents/Budget_Speech_final%202010.pdf, accessed 17 December 2010

²⁴² The total budget for Lesotho for the 2010/2011 year was M10 476 million. Nedbank and Lesotho Revenue Authority (2010) Summary of Lesotho 2010/2011 Budget. http://www.nedbank.co.ls/news/Summary_of_Budget_Speech_Analysis-FP.pdf, accessed 18 December 2010

²⁴³ Lesotho Mounted Police Service (2010) *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Maseru: Lesotho Institute of Public Administration and Management, p.15

²⁴⁴ Police Service Act, section II.

²⁴⁵ Lesotho Mounted Police Service (2010) *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Maseru: Lesotho Institute of Public Administration and Management, p.15

²⁴⁶ *Ibid.*

²⁴⁷ Criminal Procedure and Evidence Act, sections 40 and 51–58

²⁴⁸ Lesotho Mounted Police Service (2010) *Lesotho Mounted Police Service Strategic Plan 2010–2013*. Maseru: Lesotho Institute of Public Administration and Management, p.15

5

Malawi

Background

Malawi gained its independence from Britain in 1964 and, until 1991, was under the one-party rule of President Kamuzu Banda and his Malawi Congress Party.²⁴⁹ The country's first multi-party elections in 1994 were won by the United Democratic Front, and in 1995, a new Constitution was adopted.²⁵⁰ Under the new Constitution, policing was transformed from regime policing to more transparent and accountable policing. However, despite some gains, factors such as increasing crime rates, criticisms of the implementation of new policing legislation in 2010, political interference, and the lack of effective civilian oversight have constrained full democratic transformation of the police.²⁵¹

The Presidency of Bingu wa Mutharika (2004 to 2012) was characterised by deteriorating democratic governance, including what some commentators described as the descent of Malawi into a police state,²⁵² with political interference and police brutality becoming commonplace over the past two years. The unexpected death of Mutharika in early 2012 led to the appointment of former Vice-President Joyce Banda as President. There are early promising signs of improvement in the policing environment under the Banda government, including the dismissal of the unpopular Inspector-General of the Police and the

249 Freedom House (2010) *Countries at the Crossroads: Malawi*. <http://www.freedomhouse.org/report/countries-crossroads-2010/malawi>, accessed 12 June 2012, p.1

250 Committee on the Elimination of Racial Discrimination (14 June 2006) *Written replies by the Government of Malawi concerning the List of Issues*, CERD/C/MWI/Q/5/Add.1

251 Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.99

252 *Open Society Initiative for Southern Africa* (11 April 2012) *Smooth Transition Cause for Cheer*. <http://www.osisa.org/hrdb/blog/smooth-transition-cause-cheer>, accessed 12 June 2012

appointment of a new head, who has support from government and civil society organisations.²⁵³

The Malawi Police Service (MPS) is established by the Constitution and is mandated to protect public safety and the rights of persons in Malawi, in accordance with the Constitution and any other law.²⁵⁴ The MPS is independent of the executive, and members must exercise their functions, powers and duties as impartial officers of the Police General and the government of the day.²⁵⁵ The MPS is under the political authority of the Minister of Internal Security and Public Safety and governed by the Constitution, the Police Act, the Criminal Procedure and Evidence Code and the Penal Code.

The MPS is divided into four administration regions, which together comprise 34 police stations, 8 sub-stations, and 35 posts.²⁵⁶ The MPS has recently developed its Strategic Development Plan for the period 2011–2016, which works towards a range of outcomes intended to improve policing.²⁵⁷ In 2010, there were 9 622 police officers, of which 7 794 (81%) were men and only 1 828 (19%) were women.²⁵⁸

Notwithstanding various efforts, concern has been expressed that the MPS has not undergone the structural and institutional reform to ensure that the standards articulated in the new domestic legal framework are reflected in reality. The challenge was particularly magnified during 2011, which saw a deterioration of the overall human rights situation in Malawi, and opposition protests against the government met with police brutality, including arbitrary arrests, excessive use of force and extra-judicial executions.²⁵⁹

Methodology

This report is compiled from a desktop review of publicly available documents relevant to policing. Preliminary information was also obtained by the Catholic Commission for Justice and Peace, the Archdiocese of Lilongwe.

There were a number of challenges to data collection, including a lack of relevant legislation available online and the difficulty in accessing the websites of several key institutions. Malawi is behind on some of its reporting obligations to the UN treaty bodies, so there is a lack of official information on Malawi.

253 *All Africa* (22 May 2010) Malawi: Banda brings Malawi back from the brink. <http://allafrica.com/stories/201205220517.html>, accessed 25 May 2012

254 Constitution of the Republic of Malawi, section 153

255 *Ibid*, section 158(1)

256 Malawi Police Service, Research and Planning Unit (2011), *Annual Report of the Malawi Police Service for the year ending 31 December 2010*. Lilongwe: Malawi Police Service, p.1

257 Government of Malawi (2011) *Malawi Police Service Strategic Development Plan, 1 July 2011 to 30 June 2015*, p.1

258 Government of Malawi/United Nations Development Programme (2011) *Malawi Justice Baseline Survey 2010*, unpublished, p.14

259 Human Rights Watch (2012) *World Report 2012: Malawi*. <http://www.hrw.org/world-report-2012/malawi>, accessed 25 July 2012, p.1

Article 1: Respect for human rights

In the performance of their duties, police officials shall respect and protect human dignity, maintain and uphold the human rights of all persons.

The Constitution of Malawi enshrines the rights to life and liberty, freedom from arbitrary deprivation of liberty, freedom of assembly and association, and freedom from discrimination.²⁶⁰ Restrictions of the promotion and protection of constitutional rights are only permitted to the extent necessary to ‘ensure peaceful human interaction in an open and democratic society’²⁶¹ and in accordance with the law.²⁶² The 2010 Police Act provides that one of the general functions of the MPS is to protect the life, property, fundamental freedoms and rights of the individual.²⁶³

According to the government, 7.6% of human rights violations are perpetrated by the police, with the majority reportedly occurring between family members.²⁶⁴ There is no other quantitative data on the number and nature of cases filed against the police for human rights violations, whether internal or through external oversight agencies.

The rights of religious and ethnic minorities are generally well respected, and relations between the different groups remain largely amicable.²⁶⁵ However, there are significant concerns regarding the treatment of women (see Articles 2 and 6), crackdown on the opposition (see Articles 8, 10 and 11) and discrimination against people on the basis of their sexual orientation (see Article 2).

The Malawi Police Service Strategic Development Plan includes a focus on programmes that improve police responses to matters with gender, HIV and AIDS, and human rights dimensions.²⁶⁶ However, there are no corresponding targets or outputs to support improved police responses. Indeed, this ‘programme of work’ on the issue of discrimination and human rights receives no more than a cursory mention in the preliminary chapters.

Human rights of police officers

The MPS have been criticised for being poorly trained, which is largely attributed to insufficient funding. Over the past ten years, the government has provided training in human rights and public order management, including through

²⁶⁰ Constitution of the Republic of Malawi, chapter IV

²⁶¹ *Ibid*, article 12

²⁶² *Ibid*, article 44

²⁶³ The Police Act, No. 12 of 2010, section 4(1)

²⁶⁴ Government of Malawi/United Nations Development Programme (2011) *Malawi Justice Baseline Survey 2010*, unpublished

²⁶⁵ Freedom House (2010) *Countries at the Crossroads: Malawi*. <http://www.freedomhouse.org/report/countries-crossroads-2010/malawi>, accessed 12 June 2012. See also, Committee on the Elimination of Racial Discrimination (14 June 2006) *Written replies by the Government of Malawi concerning the List of Issues*, CERD/C/MWI/Q/5/Add.1 [19]

²⁶⁶ Government of Malawi (2011) *Malawi Police Service Strategic Development Plan, 1 July 2011 to 30 June 2016*. Lilongwe: Government of Malawi, p.3

the Staff Development Institute.²⁶⁷ Through the government's EU Rule of Law Programme, the Ministry of Justice has also trained, among others, police officers in human rights, and has mainstreamed human rights in the work of law enforcement agencies.²⁶⁸ The content of police training is not publicly available, and there is no secondary information about the curriculum. However, calls from Malawi civil society persist for the government to improve training to promote human rights protections for persons during arrest and interrogation.²⁶⁹

Violations of human rights are identified and addressed

There is no information about the internal MPS structures and procedures for identifying and addressing human rights abuses by officers.

Individuals seeking to protect the enforcement of their rights, including violations by the MPS, have a number of reporting options. A report can be made directly to the MPS, and the 2010 Police Act established the Office of the Independent Complaints Commission to receive, investigate and make recommendations regarding complaints from the public against police officers misconduct, brutality and deaths in police custody.²⁷⁰ However, at the time of writing, the Commission had not been established.

The Constitution provides that individuals are also entitled to assistance from the Malawi Human Rights Commission (MHRC),²⁷¹ the Ombudsman,²⁷² or other relevant organs of government.²⁷³

The MHRC has been the 'most active institution' with regard to examining and reporting on human rights abuses by the police.²⁷⁴ However, its effectiveness is inhibited by a mandate that is restricted to investigation, and it has limited human and financial resources.²⁷⁵ Further, the MHRC has a wide mandate to investigate human rights violations, and does not specialise in police abuses, 'nor does it necessarily prioritise investigation of complaints about police abuses'.²⁷⁶ There are also concerns about the extent to which the MHRC can function independently, with the arrest in 2012 of the chairperson, John Kapito, following a period of harassment and intimidation, which has been attributed to his 'outspoken comments on human rights violations in the country'.²⁷⁷

267 African Policing Civilian Oversight Forum (2008) *An Audit of Police Oversight in Africa*. Cape Town: African Policing Civilian Oversight Forum, p.42

268 Human Rights Committee (26 April 2011) *List of issues prepared in the absence of the initial report of Malawi*. CCPR/C/MWI/Q/1, www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.MWI.Q.1.pdf, accessed 12 June 2012, p.3

269 Human Rights Council (10 August 2010) *UPR Compilation of Stakeholder Information for Malawi*, A/HRC/WG.6/9/MWI/3,[8]

270 The Police Act, No. 12 of 2010

271 Constitution of the Republic of Malawi, articles 129-131

272 *Ibid*, section 120

273 *Ibid*, section 15

274 Freedom House (2010) *Countries at the Crossroads: Malawi*. <http://www.freedomhouse.org/report/countries-crossroads-2010/malawi>, accessed 12 June 2012

275 Human Rights Council (4 August 2010) *UPR Compilation of UN Information*, A/HRC/WG.6/9/MWI/2, [6]-[7]. See also Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.8

276 Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.108

277 *OSISA News* (19 March 2012) Malawi Human Rights Commissioner arrested. <http://www.osisa.org/law/malawi/malawi-human-rights-commissioner-arrested>, accessed 25 May 2012

The Ombudsman's role is to investigate cases of abuse of power and unfair treatment of any person by a government official. The office 'enjoys high profile and wide respect'.²⁷⁸ It has been well funded by external organisations, though it is unable to deal with the large number of cases that come to its attention, resulting in a 'considerable backlog of cases'.²⁷⁹ As with the Human Rights Commission, the Ombudsman does not have enforcement powers, and its mandate is limited to cases of injustice where judicial remedy is not available or is impracticable²⁸⁰ (requiring complainants to exhaust available court processes, which as discussed below, is costly and prone to delay).

Despite the availability of complaints mechanisms, there are low rates of reporting human rights abuses, including for violations by the MPS. The Malawi government's 2010 baseline justice survey revealed low levels of community awareness of basic human rights, freedoms and responsibilities, with less than half of Malawians aware of their basic constitutional and legal rights. Accordingly, there are low levels of reporting human rights violations to existing internal and external oversight mechanisms.²⁸¹ The report also found low levels of community awareness about the existence of oversight institutions.

The Constitution also provides that every person has access to the courts or tribunals to seek legal remedies in relation to a violation of their constitutional rights.²⁸² Courts have the power to award compensation to successful applicants, and 'to make any orders necessary and appropriate to prevent the rights and freedoms from being unlawfully denied or violated'.²⁸³ Malawian law has yet to prescribe criminal penalties for violations of non-derogable rights,²⁸⁴ which include freedom against torture and other ill-treatment.

The government has noted that the right to personal liberty has been 'enforced by courts and there have been several cases where the courts have ordered compensation for false imprisonment'.²⁸⁵ Civil suits can also be instituted against the police. However, there are significant barriers to this in Malawi, including long delays at all stages of the court process, language barriers, prohibitive costs and awards that are not commensurate to the seriousness of offences.²⁸⁶

278 Patel N (2009) *Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: The Malawi Human Rights Commission and the Office of the Ombudsman*. EISA Research Report No. 46. Johannesburg: Electoral Institute for Southern Africa

279 Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.108

280 *Ibid*, p.8

281 Government of Malawi/United Nations Development Programme (2011) *Malawi Justice Baseline Survey 2010*, unpublished, section 7

282 Constitution of the Republic of Malawi, articles 41 and 46(1)-(2)

283 *Ibid*, article 46(3)

284 *Ibid*, article 46(5)

285 Human Rights Council (21 October 2010) *National UPR Report: Malawi*, A/HRC/WG.6/9/MWI/1, [25]

286 Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.24

Article 2: Non-discrimination

Police officials shall treat all persons fairly and equally and avoid any form of discrimination.

Discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, or other status is prohibited by the Constitution.²⁸⁷ The government is also constitutionally required to take positive measures to promote gender equality, the rights of persons with disabilities, elderly people and children.²⁸⁸

There are numerous and credible reports that the police treat women less favourably than men, particularly in the context of reporting domestic and family violence²⁸⁹ (discussed further under Article 6 below). There are also reports of police harassment of female sex workers. For example, the MPS has engaged in a campaign to arrest female sex workers, many of whom were assaulted in the process.²⁹⁰ Over the past few years, there have also been numerous and credible media reports about individuals and couples being arrested, detained and ill-treated on the basis of their sexual orientation.²⁹¹ It is likely that this situation might improve after newly elected President Joyce Banda commented on a report that police in Blantyre were hunting two women lesbians who became secretly engaged in 2012, and indicated that she intends to repeal these discriminatory laws.²⁹²

There is no information regarding the percentage of complaints made about police regarding discriminatory, unfair or unequal treatment, and the nature of the complaints made. Nor was there information about the outcomes of any disciplinary, criminal, or civil claims for discriminatory treatment. Similarly, no information was available regarding whether MPS basic or in-service training covers elements of sensitivity training, equality and managing diversity.

The Malawi Police Service Strategic Development Plan includes a focus on programmes that improve police responses to matters with gender, HIV and AIDS, and human rights dimensions.²⁹³ However, the Strategic Development Plan does not provide any specific targets or outputs to support enhanced capacity to meet the needs of special groups.

287 Constitution of the Republic of Malawi, article 20

288 *Ibid*, article 13

289 Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.106

290 Centre for Development of People et al (25 October 2011) *Non-governmental Organisations' Shadow Report on the Implementation of the International Covenant for Civil and Political Rights (ICCPR) in Malawi*. Submission to the 103rd session of the Human Rights Commission, Geneva

291 *Ibid*.

292 *The Maravi Post* (21 May 2012) Malawi police hunt for two women who claim to be lesbians. <http://www.maravipost.com/mobile-scope/64-law-and-order/993-malawi-police-hunt-for-2-women-who-claim-to-be-lesbians.html>, accessed 24 June 2012. See also, *New York Times* (19 May 2012) Malawi: New President wants to repeal nations antigay laws. http://www.nytimes.com/2012/05/19/world/africa/malawi-president-wants-to-repeal-nations-antigay-laws.html?_r=1, accessed 24 June 2012

293 Government of Malawi (2011) *Malawi Police Service Strategic Development Plan, 1 July 2011 to 30 June 2016*. Lilongwe: Government of Malawi

Distribution of police resources

Since the introduction of the new policing legislation in 2010, the MPS have sought to implement a new resource management policy, with the aim of developing ‘clear strategic policies for proper allocation, utilisation, care and management of available financial, material and human resources to ensure their optimum use’.²⁹⁴ However, there is no information about current resource allocation, and whether resources are distributed fairly according to physical area, population size and crime levels.

The MPS overwhelmingly consists of male officials, with females comprising just 19% of the service, although government objectives are to achieve a 30% ratio of female staff. Women are seldom in leadership positions, as only 2% of female police officials were above the rank of inspector.²⁹⁵

Article 3: Use of force

Police officials may only use force when strictly necessary and to the extent required for the performance of their duties and adhering to national legislation and practice.

The functions of the MPS include the protection of life and fundamental freedoms.²⁹⁶ The Police Act provides that in the exercise of their functions, MPS officers can carry firearms, and the use of firearms must be consistent with the Police Act or any other law.²⁹⁷ The Police Act provides for the use of force by police and outlines the circumstances in which the police may use force:²⁹⁸

- » Against any person in lawful custody charged with or convicted of a felony when such person is escaping or attempting to escape, but force may only be used when the police officer has reasonable grounds to believe that he cannot otherwise prevent the escape and he has given the person a warning;
- » Against any person who by force rescues or attempts to rescue any other person from lawful custody; or
- » Against any person who by force prevents or attempts to prevent the lawful arrest of himself or of any other person.

Firearms may only be used in respect of the last two points when the police officer has reasonable grounds to believe that s/he or another person is in danger of grievous bodily harm and that s/he cannot otherwise make the arrest or prevent

²⁹⁴ Mr George Kainja, Deputy Commissioner of Police, *Malawi Police Service: Its Roles and Functions*, Presentation to Malawi Defence Force Military College, Salima, 8 July 2010. http://www.communitypolicing.mw/downloads/reports/mps_roles_and_functions.ppt, accessed 11 June 2012

²⁹⁵ Malawi Police Service (2010) *Annual Report of the Malawi Police Service for the year ending 31 December 2010*. Lilongwe: Malawi Police Service, p.3

²⁹⁶ The Police Act, No. 12 of 2010, section 4(1)

²⁹⁷ *Ibid*, section 4(2)

²⁹⁸ *Ibid*, section 44

the rescue. As far as possible, the use of firearms under the Police Act must be used to disable a person rather than to kill.²⁹⁹

MPS officers must sign out firearms ‘when going on special assignments’, and return the firearm to their station when off-duty. If ammunition has been used, officers are required to ‘provide an explanation’, although there is no set form for discharge reports. Officers are not issued with firearms on a permanent basis.³⁰⁰ Police stations have an armoury and a ‘designated armourer’ responsible for the station’s firearms cache (including service, maintenance and reporting to the officer-in-charge).³⁰¹ State-owned firearms (including those of the MPS) are marked with white paint in the absence of a formal marking system.³⁰²

Despite a reasonably strong legal framework, there are numerous reports of excessive use of police force and extra-judicial executions by the police.³⁰³ This was compounded by the 2011 call of former President Mutharika for the police to institute a ‘shoot to kill’ policy for individuals suspected of theft.³⁰⁴ Non-governmental organisations have documented a number of extra-judicial executions of the opposition by the police, including the death and injury of opposition protesters during anti-government protests in July 2011, and have expressed concern about seeming impunity for these acts.³⁰⁵

There is no information regarding the extent to which police have been disciplined or criminally charged for arbitrary and abusive use of force. However, in its report to the UN Human Rights Committee, the Malawi government stated that it has investigated and prosecuted cases of police arbitrarily depriving people of life, providing four examples and one case of compensation.³⁰⁶

There was no information available on the training police receive on the use of force.

Following the introduction of the new Police Act in 2010, the MPS stated that it would seek to acquire non-lethal weapons, including rubber bullets and water cannons.³⁰⁷ However, there was no information about whether non-lethal weapons are currently available to the police, and if so, whether they are used in accordance with policy. The MPS issues pistols, rifles and machine guns³⁰⁸ which

299 The Police Act, No. 12 of 2010, section 44 (1) and (2)

300 Malawi Police Service, Institute for Security Studies and Centre for Human Rights and Rehabilitation (2010) *Baseline Assessment on the Proliferation and Misuse of Firearms in Malawi*. Lilongwe: Malawi Police Service, p.11

301 *Ibid.*

302 *Ibid.*

303 Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.8; and United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Malawi*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed 4 June 2012

304 Centre for Development of People et al (25 October 2011) *Non-governmental Organisations' Shadow Report on the Implementation of the International Covenant for Civil and Political Rights (ICCPR) in Malawi*. Submission to the 103rd session of the Human Rights Commission, Geneva

305 *Ibid.*

306 Human Rights Committee (26 April 2011) *List of issues prepared in the absence of the initial report of Malawi*. CCPR/C/MWI/Q/1, www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.MWI.Q.1.pdf, accessed 12 June 2012, p.10

307 Dr George Kainja, Deputy Commissioner of Police, *Malawi Police Service: Its Roles and Functions*, Presentation to Malawi Defence Force Military College, Salima, 8 July 2010. http://www.communitypolicing.mw/downloads/reports/mps_roles_and_functions.ppt, accessed on 11 June 2012

308 Mwakasungula U and Nungu D (2004) *Country Study: Malawi*. In: Could C and Lamb G (eds) *Hide and Seek: Taking Account of Small Arms in Southern Africa*. Pretoria: Institute for Security Studies, p.84

are, according to the MPS, ‘outdated’ and unsophisticated.³⁰⁹ Police are reported to regularly audit firearm stocks, but information about inspections, storage, use, distribution, loss and theft of firearms is not publicly available.³¹⁰

Following the introduction of the 2010 Police Act, the MPS had a programme of work to ‘build capacity of firearms and the Ballistics Unit for proper control, care and maintenance of service firearms and ammunition’.³¹¹ However, there was no information about the progress of this work.

Public order policing

Despite constitutional guarantees of freedom of assembly and association, and political independence of the police, during the past four years, the MPS have used force to prevent and disperse political opposition rallies with weapons including tear gas and live ammunition.³¹² Excessive use of force was especially prominent during protests on 20 and 21 July 2011 against bad governance, fuel shortages and human rights. It is reported that 20 people, including children, were killed and 500 arrested.³¹³ Twenty-two journalists were reported to have been assaulted, and two were arrested and held for several days, during which time they allege that they were beaten by the police.³¹⁴

Police have generally denied this allegation, although the Southern Regional Police admitted to using live ammunition to ‘contain a situation which would otherwise have gotten out of hand’.³¹⁵ A Presidential Commission of Inquiry into the arrests, killings and ill-treatment of persons during the 2011 protests found the following relating to the conduct of the police:

The Commission established that the police used excessive force in certain cases in their effort to quell the situation. The amount of live ammunition used was beyond necessity and resulted in deaths and injuries that could have been avoided. Such use of excessive force is not in tandem with the laws of Malawi and applicable international law. The police also demonstrated a lack of sufficient human and material resources as well as a lack of crowd management skills.³¹⁶

309 Malawi Police Service, Institute for Security Studies and Centre for Human Rights and Rehabilitation (2010) *Baseline Assessment on the Proliferation and Misuse of Firearms in Malawi*. Lilongwe: Malawi Police Service, p.14

310 Mwakasungula, U and D Nungu (2004) *Country Study: Malawi*. In: Could C and Lamb G (eds) *Hide and Seek: Taking Account of Small Arms in Southern Africa*. Pretoria: Institute for Security Studies, p.88

311 Dr George Kainja, Deputy Commissioner of Police, *Malawi Police Service: Its Roles and Functions*, Presentation to Malawi Defence Force Military College, Salima, 8 July 2010, http://www.communitypolicing.mw/downloads/reports/mps_roles_and_functions.ppt, accessed on 11 June 2012

312 Freedom House (2010) *Countries at the Crossroads: Malawi*. <http://www.freedomhouse.org/report/countries-crossroads-2010/malawi>, accessed 12 June 2012; United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Malawi*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed 4 June 2012

313 Amnesty International (2012) *Annual Report 2012: The State of the World's Human Rights*. London: Amnesty International. <http://www.amnesty.org/en/annual-report/2012>, accessed 22 May 2012; See also, United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Malawi*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed 4 June 2012

314 *Ibid.*

315 *The Daily Times* (2 December 2011) Police admit using live bullets on July 20. <http://www.bnlntimes.com/index.php/daily-times/headlines/national/2740-july-20-inquiry-we-used-live-bulletspolice>, accessed 25 July 2012

316 Government of Malawi (2012) *Presidential commission of inquiry into the demonstrations, deaths, injuries, riots, looting, arson, public disorder and loss of property that took place on 20th and 21st July 2011 – Report of Findings and Recommendations*. Lilongwe: Government of Malawi, p.1

The Commission made a series of recommendations to the executive, the police and others, including the recommendation that victims of the above events be compensated. Recommendations to the police included the development of a comprehensive policy and operational guidelines for public order policing (including standard operating procedures); police training in crowd control techniques (basic training and in-service refresher courses), which must cover issues of human rights, negotiation skills and basic first-aid skills; and reporting by police officers to superiors in cases where deaths occur as a result of police action.

In its recommendations, the Commission of Inquiry also stated that the police ‘must strive to be an independent institution and must appreciate the fact that it was established to serve and not to intimidate the public or to act as an arm of a ruling political party’.³¹⁷

Article 4: Torture and cruel, inhuman and degrading treatment or punishment

No police official shall, under any circumstances, inflict, instigate, or tolerate any act of torture and other cruel, inhuman or degrading treatment or punishment of any person.

Torture, cruel, inhuman or degrading treatment or punishment is prohibited in terms of the Constitution,³¹⁸ and the Police Act requires the police to protect life and fundamental freedoms.³¹⁹ Despite these provisions, there are credible and persistent reports of police torture in Malawi, particularly in custodial settings.³²⁰ In 2006, the MHRC released a report indicating that the police frequently use torture and ill-treatment in the course of investigations, and against suspects in police custody.³²¹ During 2011, the police were reported to have used excessive force, and engaged in sexual abuse, against detainees.³²²

The Criminal Procedure and Evidence Code,³²³ which has been interpreted by the courts to permit the admissibility of confessions even if they are not freely and voluntarily made, contradicts the constitutional guarantee that every person has the right not to be compelled to make a confession or admission. This does not act as a deterrent to the use of torture or other ill-treatment to extract confessions, and is contrary to Malawi’s obligations under international human rights law.³²⁴

317 *Ibid.*, p.10

318 Constitution of the Republic of Malawi, article 19

319 The Police Act No. 12 of 2010, section 4(1)

320 Centre for Development of People et al (25 October 2011) *Non-governmental Organisations’ Shadow Report on the Implementation of the International Covenant for Civil and Political Rights (ICCPR) in Malawi*. Submission to the 103rd session of the Human Rights Commission, Geneva, p.13

321 Malawi Human Rights Commission (2006) *Torture Allegations against Police, Mfulu-The Malawi Human Rights Commission Bulletin: Economic, Social and Cultural Rights in Focus*, 5

322 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Malawi*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed 4 June 2012

323 The Criminal Procedure and Evidence Code, section 176(1)

324 Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.109

The government has claimed that there have been ‘no official records of complaints of torture by law enforcement officials’, although it was aware that complaints might have been lodged with the Malawi Human Rights Commission.³²⁵ The MHRC and the United States Department have reported incidents of torture, ill treatment, the arbitrary and prolonged detention of suspects, and increasing reports of deaths in police custody.³²⁶ The UN Human Rights Council has expressed its concern about the use of torture and excessive force by the police, both during arrest and in custodial settings. Non-governmental organisations have also expressed concern at the impunity enjoyed by police officers accused of acts of torture.³²⁷ According to the MHRC, while there have been some investigations into police brutality, few of the officers implicated have ever been investigated and convicted of criminal offences.³²⁸

Article 5: Protection of persons in custody

Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to ensure medical attention when required.

The Constitution outlines the rights of detained persons, which includes the right to be detained under conditions consistent with human dignity, and includes at least the provision of reading and writing materials, adequate nutrition and medical treatment at the expense of the state.³²⁹ Detainees have the right to be informed of the reason of their detention; the right to consult with a legal practitioner; the right to communicate with his or her spouse, partner, next-of-kin, relative, religious counsellor or medical practitioner; and the right to challenge the lawfulness of his/her detention.³³⁰ Arrested and detained people should also be segregated from convicted persons and subject to treatment that is appropriate to their status as unconvicted persons. Provision is also made in the Constitution for arrested persons. This includes the right to be brought to court within 48 hours of arrest.³³¹ Police are responsible for determining whether a suspect will be held upon arrest, pending appearance before a judge within 48 hours of arrest, or granted bail.³³² Arrested persons have the right not to be compelled to make a

325 Human Rights Committee (26 April 2011) *List of issues prepared in the absence of the initial report of Malawi*. CCPR/C/MWI/Q/1, www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.MWI.Q.1.pdf, accessed 12 June 2012, p.11

326 Malawi Human Rights Commission (2011) *Preliminary Report: Monitoring of Human Rights Situations of Detention in the Northern and Central Regions*, 23 to 28 December 2011, para 1.8. See also, United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Malawi*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed 4 June 2012

327 Human Rights Council, *UPR Compilation of Stakeholder Information for Malawi*, A/HRC/WG.6/9/MWI/3, 10 August 2010 [15]

328 Freedom House (2010) *Countries at the Crossroads: Malawi*. <http://www.freedomhouse.org/report/countries-crossroads-2010/malawi>, accessed 12 June 2012

329 Constitution of the Republic of Malawi, article 42(1)

330 *Ibid*, article 42(1)

331 *Ibid*, article 42(2)

332 Open Society Initiative for Southern Africa (2011) *Pre-trial Detention in Malawi: Understanding caseload management and conditions of incarceration*. Johannesburg: Open Society Initiative for Southern Africa, p.23

confession or admission which could be used in evidence against them, and have the right to the presumption of innocence.³³³ These rights can be restricted during states of emergency.³³⁴

The Constitution provides additional protections for children, including the rights to be imprisoned as a last resort and for the shortest possible time; to be separated from adults; and to be treated in a manner consistent with the promotion of his/her sense of dignity and self worth.³³⁵

All MPS officers receive basic training in detainee management, and in Mzimba, officials are given a one-month course in custody management.³³⁶ However, the content of the curriculum was not available.

Conditions of detention

Mistreatment of detainees, whether by deliberate ill-treatment by police officers, or as a result of conditions of detention that fail to meet basic minimum standards for custodial facilities has been reported to be widespread.³³⁷ An OSISA survey of five police stations in 2010 found that some of the police holding facilities were not purpose built, are old and have received little maintenance. Many of the facilities are overcrowded.³³⁸ The MPS has a programme to develop buildings, with a focus on maintaining and upgrading existing structures, and constructing new buildings.³³⁹ However, it is not clear how this will be applied to the current holding cells.

The MHRC also reported overcrowding in all police cells, and in some situations, women are being held in the reception area or offices due to the lack of separate facilities or space.³⁴⁰ During visits in December 2011, the Commission reported that there were breaches of the right to food, water and sanitation, and that there were also reports of torture in police custody. The Commission reported that physical environments breached human rights, with cells at a number of police stations having no windows and high temperatures.³⁴¹ Sanitation was reported as 'bad', with all stations visited either having insufficient, or non-

333 Note that sections 313 and 314 of the Criminal Procedure and Evidence Code require an accused person to give evidence and enter a defence. Although these sections were held by the High Court to be unconstitutional on the grounds that they violate the presumption of innocence (*Director of Public Prosecutions v Hastings Kamuzu Banda et al*), Parliament has not amended the legislation

334 Constitution of the Republic of Malawi, article 45

335 *Ibid*, article 42(2)(g)

336 Open Society Initiative of Southern Africa (2011) *Pre-trial Detention in Malawi: Understanding caseload management and conditions of incarceration*. Johannesburg: Open Society Initiative for Southern Africa, pp.55–60

337 Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.18. Also see, United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Malawi*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed 4 June 2012

338 Open Society Initiative of Southern Africa (2011) *Pre-trial Detention in Malawi: Understanding caseload management and conditions of incarceration*. Johannesburg: Open Society Initiative for Southern Africa, pp.55–60

339 Mr George Kainja, Deputy Commissioner of Police, *Malawi Police Service: Its Roles and Functions*. Presentation to Malawi Defence Force Military College, Salima, 8 July 2010. http://www.communitypolicing.mw/downloads/reports/mps_roles_and_functions.ppt, accessed on 11 June 2012

340 Malawi Human Rights Commission (2011) *Preliminary Report: Monitoring of Human Rights Situations of Detention in the Northern and Central Regions, 23 to 28 December 2011*. Lilongwe: Malawi Human Rights Commission, para 7.3

341 *Ibid*.

existent, sanitation infrastructure.³⁴² Similarly, OSISA found that some police stations had no toilet within the cell, and prisoners were supplied with buckets. The supply of fresh water in the cells was also problematic, as many cells did not have working taps.³⁴³

Regarding access to adequate nutrition, the MHRC has reported that there are no regulations or guidelines for the provision of food to persons in police custody, and in all but one police station, detainees rely on their families to provide food.³⁴⁴ The Commission found that food was generally not provided for in station budgets, and where food was provided, this was at the discretion of the officer-in-charge.³⁴⁵ It also noted that there are no regulations, or facilities, for pregnant women and nursing mothers in police custody.³⁴⁶

There are numerous reports that the procedural rights of detainees are often ignored in practice.³⁴⁷ Key challenges are identified as arrests without warrants, the use of temporary remand warrants circumventing the 48-hour rule, arbitrary arrest and frequent bribe demands to secure bail procedures.³⁴⁸

Detainees are generally not separated according to their gender, and young people are held in the same cells as adults.³⁴⁹ In some police stations, the Victim Support Unit attends to the needs of vulnerable detainees, such as women and children, though this facility is not available to all police stations or lock-up facilities.³⁵⁰ There are also reports of ‘physical and mental torture’ of detainees.³⁵¹ It is reported that children often experience prolonged pre-trial detention in police cells, are not informed of their right to bail, and held together with adult detainees.³⁵²

The MHRC has found that medical care is not available in all police stations, and that while suspects may be transferred to district hospitals, the lack of transportation in some police stations means that sick suspects do not always have immediate access to hospitals.³⁵³

342 *Ibid.*

343 Open Society Initiative of Southern Africa (2011) *Pre-trial Detention in Malawi: Understanding caseload management and conditions of incarceration*. Johannesburg: Open Society Initiative for Southern Africa, pp.55–60

344 Malawi Human Rights Commission (2011) *Preliminary Report: Monitoring of Human Rights Situations of Detention in the Northern and Central Regions, 23 to 28 December 2011*. Lilongwe: Malawi Human Rights Commission, para 7.1

345 *Ibid.*

346 *Ibid.*

347 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Malawi*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed 4 June 2012

348 *Ibid.*

349 Malawi Human Rights Commission (2011) *Preliminary Report: Monitoring of Human Rights Situations of Detention in the Northern and Central Regions, 23 to 28 December 2011*. Lilongwe: Malawi Human Rights Commission, para 11.1

350 Open Society Initiative of Southern Africa (2011) *Pre-trial Detention in Malawi: Understanding caseload management and conditions of incarceration*. Johannesburg: Open Society Initiative for Southern Africa, p.55

351 Malawi Human Rights Commission (2011) *Preliminary Report: Monitoring of Human Rights Situations of Detention in the Northern and Central Regions, 23 to 28 December 2011*. Lilongwe: Malawi Human Rights Commission, para 12.0

352 Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.18

353 Malawi Human Rights Commission (2011) *Preliminary Report: Monitoring of Human Rights Situations of Detention in the Northern and Central Regions, 23 to 28 December 2011*. Lilongwe: Malawi Human Rights Commission, para 7.2

Oversight in places of police detention

A number of institutions provide independent oversight of police custody. The new Police Act provides for the establishment of the Independent Complaints Commission to receive, investigate and make recommendations regarding complaints from the public against police officers' misconduct and brutality, and deaths in police custody.³⁵⁴ However, at the time of writing, the Commission had not been established.

The Act also established a Lay Visitors Scheme, which mandates a 'team of local people' to inspect the conditions of detention at police stations.³⁵⁵ The 2011–2016 MPS Strategic Development Plan includes the target of introducing the lay visitors' scheme in 24 police stations.³⁵⁶ According to a report by the Open Society Initiative for Southern Africa, police stations appear to be inspected on a regular basis by the Lay Visitors' committees.³⁵⁷

As reflected above, the MHRC also has a mandate to visit police cells and other places of detention.³⁵⁸

Article 6: Victims of crime

Standard: All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided when necessary.

The MPS introduced Victim Support Units (VSUs) in 2001. The VSUs are intended to establish a victim support room at each police station where victims can feel comfortable reporting their crime, and are provided with adequate services, including counselling, first aid, support and referral.³⁵⁹

Despite these efforts, the Malawi government's baseline justice survey revealed reluctance by victims of crime to make reports to the police, with only 18% of respondents having made a report.³⁶⁰ Respondents cited a lack of confidence in the police to deal with the crimes reported, fear of embarrassment and police corruption.³⁶¹

Men are more reluctant to report crime than women, and women are more likely to engage with the justice system as victims. Accordingly, the government acknowledged a need for a gender dimension in policy interventions regarding

354 The Police Act, No. 12 of 2010

355 Human Rights Council (21 October 2010) *National UPR Report: Malawi*, A/HRC/WG.6/9/MWI/1, [39]

356 Government of Malawi (2011) *Malawi Police Service Strategic Development Plan, 1 July 2011 to 30 June 2016*. Lilongwe: Government of Malawi, p.12

357 Open Society Initiative for Southern Africa (2011) *Pre-trial Detention in Malawi: Understanding caseload management and conditions of incarceration*. Johannesburg: Open Society Initiative for Southern Africa, p.61

358 Centre for Development of People et al (25 October 2011) *Non-governmental Organisations' Shadow Report on the Implementation of the International Covenant for Civil and Political Rights (ICCPR) in Malawi*. Submission to the 103rd Session of the Human Rights Commission, Geneva, p.13

359 Malawi Police Service, Community Policing Services (undated) *Guidelines for the Support and Care of Victims of Gender Based Violence, HIV and Related Abuses, and Other Human Rights Violations*. Lilongwe: The Malawi Human Rights Resource Centre

360 Government of Malawi/United Nations Development Programme (2011) *Malawi Justice Baseline Survey 2010*, unpublished, p.xiv

361 *Ibid*, pp.118–120

victims of crime.³⁶² There are high rates of violence against women in Malawi, including domestic violence, and women are discouraged from reporting because of fear of reprisals from perpetrators.³⁶³ The government reported that non-governmental organisations have produced a training manual for police to improve police support to survivors of gender-based violence.³⁶⁴ According to Malawi non-government organisations, as of October 2011, the Ministry of Gender has not itself conducted gender-based violence training with the MPS.³⁶⁵

The MPS Strategic Development Plan outlines an action plan to improve police responsiveness to crimes that impact on vulnerable groups by, amongst other things, increasing the capacity of the Victim Services Unit, improving investigation and prosecution outcomes for gender-based violence, and promptly investigating and prosecuting cases involving women, the elderly, persons with disability and children.³⁶⁶

Article 7: Respect for the rule of law and Code of Conduct

Police officials shall respect and uphold the rule of law and the present Code of Conduct.

The Constitution of Malawi provides that the legal authority of the state derives from the Constitution, and that all persons responsible for the exercise of powers of state, which includes the MPS, are limited to acting pursuant to their lawful authority.³⁶⁷ The Constitution also expressly provides that state agencies are required to observe and uphold the Constitution and the rule of law.³⁶⁸

The former government had been criticised for failing to adhere to the rule of law, particularly in relation to areas of social and political governance, due in part to a lack of political will, and to a lack of resources to implement legislation and court orders.³⁶⁹ This has arguably extended to the MPS, with concerns in relation to property rights (see Article 13), violations of human rights (see Article 1) and procedural rights afforded to detainees in police custody (Article 5), and susceptibility to political interference (see Articles 8, 10 and 11).

³⁶² *Ibid*, p.37

³⁶³ Human Rights Committee (11 November 2011) *Provisional Concluding Observations: Malawi*, CCPR/C/MWI/CO/1 [9]; and Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.19

³⁶⁴ Committee on the Elimination of Discrimination against Women (5 January 2010) *Responses to the list of issues and questions: Malawi*, CEDAW/C/MWI/Q/6/Add.1,[15]

³⁶⁵ Centre for Development of People et al (25 October 2011) *Non-governmental Organisations' Shadow Report on the Implementation of the International Covenant for Civil and Political Rights (ICCPR) in Malawi*. Submission to the 103rd Session of the Human Rights Commission, Geneva, p.9

³⁶⁶ Government of Malawi (2011) *Malawi Police Service Strategic Development Plan, 1 July 2011 to 30 June 2016*. Lilongwe: Government of Malawi, p.10

³⁶⁷ Constitution of the Republic of Malawi, article 12

³⁶⁸ *Ibid*, article 13

³⁶⁹ Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.7

Article 8: Trustworthiness

Standard: The public demands that the integrity of police officials be above reproach. Police officials shall therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undermine the public's confidence in a police force/service

Article 10: Performance of duties

Standard: Police officials shall at all times fulfil the duties imposed upon them by law in a manner consistent with the high degree of responsibility and integrity required by their profession.

Article 11: Professional conduct

Standard: Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.

In 2010, the MPS had a total of 9 655 police officers against an authorised establishment of 12 552, meaning that it was operating at 23 % less than capacity.³⁷⁰ There is a low police to population ratio of 1:1 450.³⁷¹ By the end of that year, the MPS had recruited 1 059 new officers in an effort to increase police visibility and accessibility,³⁷² and the MPS Strategic Development Plan has the aim of reducing the ratio to 1:1 000 by 2016.³⁷³

In 2010, 1 059 new recruits received training in two training schools.³⁷⁴ The Human Resources Development Branch of the MPS is responsible for developing the capacity of officers through in-service training, offered by government and other development partners. During 2010, 7% (662 members) of the MPS participated in training. The MPS noted a concern that although some officers received this training, there is rarely an adequate transfer of knowledge to the service.³⁷⁵ The MPS Strategic Development Plan states an intention to upgrade the Police College.³⁷⁶

The vision of the MPS is to 'create a secure and safe Malawi'. The values of the organisation are: independence and professionalism; impartiality; openness and accountability; responsiveness and dependability; quality in service provision; and efficient and effective use of available resources. The MPS has also established a set

370 Malawi Police Service (2010) *Annual Report of the Malawi Police Service for the year ending 31 December 2010*. Lilongwe: Malawi Police Service, p.1

371 Government of Malawi/United Nations Development Programme (2011) *Malawi Justice Baseline Survey 2010*, unpublished, p.14

372 Malawi Police Service, Research and Planning Unit (2011) *Annual Report of the Malawi Police Service for the year ending 31 December 2010*. Lilongwe: Malawi Police Service, p.vi

373 Government of Malawi (2011) *Malawi Police Service Strategic Development Plan, 1 July 2011 to 30 June 2016*. Lilongwe: Government of Malawi, p.5

374 Malawi Police Service (2010) *Annual Report of the Malawi Police Service for the year ending 31 December 2010*. Lilongwe: Malawi Police Service

375 *Ibid*, p.10

376 Government of Malawi (2011) *Malawi Police Service Strategic Development Plan, 1 July 2011 to 30 June 2016*. Lilongwe: Government of Malawi, p.13

of individual values for officers, which include carrying out duties in an empathetic manner, courteously, diligently, selflessly, fairly, decisively, without fear or favour, without engaging in corrupt practices, with honesty and integrity, with due respect for human rights, and exercising sound judgment.³⁷⁷ The mission of the MPS has a community service focus, and promotes community partnerships to provide 'quality internal security services for all'.³⁷⁸

Despite their clear mandate, there are significant structural barriers to effective implementation of the mandate, which are largely a result of a lack of funding, and more recently as a result of the deterioration of the human rights situation under the previous Mutharika administration, and increased political interference in policing. There are low levels of public satisfaction with MPS response to crime, with only 30% of respondents agreeing that the police response to crime was fast, professional and corruption-free.³⁷⁹

Performance review and discipline

The Police Act establishes the Police Service Commission, with a mandate to investigate complaints against the police, and to exercise disciplinary control over officers.³⁸⁰

Discipline of the lower ranks is dealt with by Regional Disciplinary Committees, whose cases are reviewed by the National Disciplinary Committee. In 2010, 335 cases were dealt with, pertaining to a range of matters from drunkenness, failing to report on duty and insubordination. As a result, 65 police officers of all ranks were dismissed or discharged.³⁸¹ More serious offences are dealt with by the Internal Affairs Unit, which investigates complaints against police and reviews the outcome of every formal investigation of police conducted by the police. During 2010, 76 complaints were dealt with, in matters related to corruption and bribery (47 cases) and ill-treatment by the police (23 cases). In the majority of cases, the matters were handled through disciplinary action.³⁸²

The police are not required to release public information about disciplinary processes and outcomes, or the results of internal investigations into complaints against police conduct. Internal investigations have been criticised as lacking credibility, transparency and follow-up action.³⁸³ However, the media have played a role in reporting on some more serious cases committed by the police.³⁸⁴

377 Mr George Kainja, Deputy Commissioner of Police, *Malawi Police Service: Its Roles and Functions*. Presentation to Malawi Defence Force Military College, Salima, 8 July 2010. http://www.communitypolicing.mw/downloads/reports/mps_roles_and_functions.ppt, accessed on 11 June 2012

378 *Ibid.*

379 Government of Malawi/United Nations Development Programme (2011) *Malawi Justice Baseline Survey 2010*, unpublished, p.xiv

380 Constitution of the Republic of Malawi, article 155

381 Malawi Police Service (2010) *Annual Report of the Malawi Police Service for the year ending 31 December 2010*. Lilongwe: Malawi Police Service, p.6

382 *Ibid.*, p.7

383 Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.8

384 *The Nation* (21 February 2011) Cop in, suspected of armed robbery. Vol. 18, Issue 36, p.1

Freedom from partisan political interference

The MPS is independent of the executive, and members must exercise their functions as impartial officers of the Police General and the government of the day.³⁸⁵ The Constitution also provides that no government or political party can require the MPS to act on its behalf ‘for the purposes of promoting or undermining the interests or affairs of any political party, or individual member of that party’.³⁸⁶ Any police officer that contravenes this prohibition will be subject to disciplinary measures by the Police Service Commission.³⁸⁷

These provisions notwithstanding, policing that fails to respect and protect human rights has been noted as a ‘serious and divisive’ issue in Malawi.³⁸⁸ There are numerous reports of the police restricting freedom of peaceful assembly, and harassment and arrest of journalists, academics and civil society representatives that are critical of the government.³⁸⁹ During opposition protests in July 2011, there are reports that police fired live ammunition and tear gas at unarmed demonstrators, which resulted in the death of 19 protestors and the arrest of 500.³⁹⁰ In addition, the police beat up 14 journalists, arrested three and harassed ten more as they attempted to cover the July 2011 opposition protests.³⁹¹ Progress towards establishing a promised independent commission of inquiry into the police action has been slow.³⁹²

Article 9: Corruption and abuse of power

Police officials shall not commit or attempt to commit any act of corruption or abuse of power. They shall rigorously oppose and combat all such acts.

The Malawi government’s baseline justice survey revealed that the public perception of police performance is that they are not performing to a high standard, and are both brutal and corrupt.³⁹³ In terms of public perceptions of police responses to crime, the majority of respondents said that the police were slow, unfair and corrupt.³⁹⁴ Of those respondents who reported a bribe demand, 56.8% were paid to a police officer.³⁹⁵ The report found that the Traffic Police

385 Constitution of the Republic of Malawi, section 158(1)

386 *Ibid*, article 158(3),(4)

387 *Ibid*, article 158(5)

388 Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.107

389 Human Rights Watch (2012) *World Report 2012: Malawi*. <http://www.hrw.org/world-report-2012/malawi>, accessed 25 July 2012. See also, Human

Rights Watch (23 March 2012) *Malawi: Arrests Signal of Deteriorating Rights Environment*, <http://www.hrw.org/news/2012/03/23/malawi-arrests-deteriorating-rights-environment>, accessed 3 June 2012. See also, United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Malawi* <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed 4 June 2012

390 Human Rights Watch (23 March 2012) *Malawi: Arrests Signal of Deteriorating Rights Environment*. <http://www.hrw.org/news/2012/03/23/malawi-arrests-deteriorating-rights-environment>, accessed 3 June 2012

391 Human Rights Council (10 August 2010) *UPR Compilation of Stakeholder Information for Malawi*, A/HRC/WG.6/9/MWI/3,[32]. See also, Human Rights Watch (2012) *World Report 2012: Malawi*. <http://www.hrw.org/world-report-2012/malawi>, accessed 25 July 2012, p.2

392 Human Rights Watch (2012) *World Report 2012: Malawi*. <http://www.hrw.org/world-report-2012/malawi>, accessed 25 July 2012, p.1

393 Government of Malawi/United Nations Development Programme (2011) *Malawi Justice Baseline Survey 2010*, unpublished, p.125

394 *Ibid*, p.127

395 *Ibid*, p.74

are among the worst performers when it comes to public perceptions of integrity and honesty.³⁹⁶

In 2010, the MPS stated that it sought to improve financial management and accounting systems (including the computerisation of financial accounting) to strengthen the audit system, and to create an internal procurement system.³⁹⁷

The Malawi government established the Anti-Corruption Bureau in 1988. This is an independent statutory authority with the mandate to investigate and prosecute corruption, the abuse of office and other criminal cases related to corruption.³⁹⁸ However, the Anti-Corruption Bureau has limited authority and capacity, and has experienced political interference.³⁹⁹ There are also reportedly low levels of public trust in government anti-corruption strategies, and low levels of public awareness about the Anti-Corruption Bureau, which is reflected in a preference to report corruption to the police.⁴⁰⁰

An Internal Audit Branch has also conducted a number of audits of police stations, which have revealed several problems in the accounting systems and the general operations of police stations visited. Recommendations were made to address these issues.⁴⁰¹

The government has sought to address systemic corruption in the police service, although to limited effect. The MPS reports that, in 2010, ‘scores of detectives and traffic officers were reverted to general duties on allegations of corruption and bribery’, and ten cases were investigated by various institutions. The MPS has also established an Institutional Integrity Commission that is mandated to look at ways to prevent corruption and malpractice by the police.⁴⁰²

Article 12: Confidentiality

Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of the duty and needs of justice strictly require otherwise.

Record-keeping by justice sector institutions has been criticised as being ‘generally poor’, although the MPS has been singled out as the only justice institution with an ‘effective in-house system for collecting and analysing data about its operations’.⁴⁰³ However, information sharing across the sector has been criticised as non-existent.⁴⁰⁴

396 Chinsinga B, Kayuni H and Konyani H (2010) *Governance and Corruption Survey*. Lilongwe: Centre for Social Research, University of Malawi, p.8

397 Mr George Kainja, Deputy Commissioner of Police, *Malawi Police Service: Its Roles and Functions*. Presentation to Malawi Defence Force Military College, Salima, 8 July 2010. http://www.communitypolicing.mw/downloads/reports/mps_roles_and_functions.ppt, accessed on 11 June 2012

398 Human Rights Council (21 October 2010) *National UPR Report: Malawi*, A/HRC/WG.6/9/MWI/1, [40]

399 Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.14

400 Government of Malawi/United Nations Development Programme (2011) *Malawi Justice Baseline Survey 2010*, unpublished, p.78

401 Malawi Police Service (2010) *Annual Report of the Malawi Police Service for the year ending 31 December 2010*. Lilongwe: Malawi Police Service, p.34

402 *Ibid*, p.vii

403 Kanyongolo F E (2006) *Malawi: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa, p.11

404 *Ibid*, p.10

Article 13: Property rights

In the performance of their duties police officers shall respect and protect all property rights. This includes the economical use of public resources.

The Constitution recognises the right to personal privacy, which includes the right not to be subjected to arbitrary searches and seizure of home or property,⁴⁰⁵ or the arbitrary deprivation of their property.⁴⁰⁶ One of the functions of the MPS is the protection of property.⁴⁰⁷ The Police Act deals with search and seizure. However, the police have been criticised for failing to respect property rights and to adhere to the law. In one incident it was reported that police disobeyed an order by the Lilongwe Magistrate's Court to surrender laptops, which were seized when four activists were arrested on charges of sedition and conducting a demonstration without permission. On the day of the arrest, the police searched their houses and seized laptops and cell phones, as part of their investigations.⁴⁰⁸ By December 2011, the laptops had still not been returned.⁴⁰⁹

The Malawi Criminal Procedure and Evidence Code mandates the police to obtain a search warrant before conducting a search or seizure. However, a recent amendment to the Police Act allows the police to conduct a search or seizure and to obtain a search warrant after the fact. As a result, searches are now frequently conducted without a warrant,⁴¹⁰ although the government claims that searches without a warrant are only conducted in 'special circumstances'.⁴¹¹ The government now states that section 35 of the Police Act has been referred to the Law Commission for review.⁴¹²

⁴⁰⁵ Constitution of the Republic of Malawi, article 21

⁴⁰⁶ *Ibid*, article 28

⁴⁰⁷ The Police Act, No. 12 of 2010, section 4(1)

⁴⁰⁸ *The Daily Times* (24 October 2011) Police flout court order on activist's laptops. <http://www.bnltimes.com/index.php/daily-times/headlines/national/1862-police-flout-court-order-on-activists-laptops->, accessed 12 June 2012

⁴⁰⁹ Personal communication, Mr Billy Mayaya, 8 December 2011

⁴¹⁰ Centre for Development of People et al (25 October 2011) *Non-governmental Organisations' Shadow Report on the Implementation of the International Covenant for Civil and Political Rights (ICCPR) in Malawi*. Submission to the 103rd Session of the Human Rights Commission, Geneva. See also, Human Rights Council (10 August 2010) *UPR Compilation of Stakeholder Information for Malawi*, A/HRC/WG.6/9/MWI/3,[26]

⁴¹¹ Human Rights Committee (26 April 2011) *List of issues prepared in the absence of the initial report of Malawi*. CCPR/C/MWI/Q/1. www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.MWI.Q.1.pdf, accessed 12 June 2012, p.24

⁴¹² *Ibid*.

6

Mozambique

Background

The Republic of Mozambique gained its independence from Portugal in 1975, and until 1992, suffered a civil war between the ruling Front for the Liberation of Mozambique party and the rebel Mozambique National Resistance Movement. A UN-brokered peace deal ended the civil war in 1992.⁴¹³ The 1990 Constitution, which was revised in 2004, provides for a multi-party constitutional republic, underpinned by the rule of law, democracy and respect for human rights.

The government of Mozambique has been praised (by its peers, through the African Peer Review process) for its achievements thus far in terms of attempting to institutionalise democracy and good governance, but has noted significant gaps between the policy framework and the realisation of the rights of citizens, attributing challenges in implementation to practical challenges and resource constraints.⁴¹⁴ The efforts of the country have been rewarded by significant investment from the international donor community, and Mozambique continues to be one of the largest recipients of donor aid in the world, with an estimated 50% of the country's annual government spending being financed by external aid.⁴¹⁵

The *Policia da Republica da Mocambique* (Police of the Republic of Mozambique – PRM) is established by the Constitution and is mandated to maintain law and

⁴¹³ General Peace Agreement of Rome, 1992

⁴¹⁴ African Peer Review Mechanism (2009) *Country Review Report for the Republic of Mozambique*. Johannesburg: APRM Country Review Report No.11, June 2009

⁴¹⁵ Hanlon J (March 2010) Mozambique: 'The war ended 17 years ago, but we are still poor'. *Conflict, Security and Development*, Vol. 10, Issue 1

order, safeguard security of persons and property, ensure respect for the democratic rule of law, and uphold human rights. The police fall under the political authority of the Minister of the Interior and are headed by a *Commandante General*. The PRM is subject to the Statute of Police, the Criminal Procedure Code and the Penal Process Code.

The PRM is comprised of three primary branches: the *Ordem e Seguranca Publica* (responsible for public order and security), the *Policia de Investigacao Criminal* (responsible for criminal investigations) and the *Forca Especiais* (the Special Forces). The latter has a number of sub-branches, including the *Forca de Intervencao Rapida* (the Rapid Reaction Force), *Forca de Proteccao de Responsaveis* (Forces Responsible for Protection), *Forca de Guarda Fronteira* (Border Guards) and a range of specialised task forces with a mandate to deal with various crimes.⁴¹⁶

During the civil war, the PRM were unable to operate in a number of parts of the country and, in places where they did have a presence, participated in armed conflict on behalf of the government.⁴¹⁷ After the civil war, the police were reformed as part of a broader programme of political transformation and constitutional reform.⁴¹⁸ The government also instituted a *Plano Estrategico da PRM 2003–2012* (Strategic Plan), which has nine programme areas: organisation; operations; community policing; women and minors; personnel and training; logistics and finances; international cooperation; public relations and marketing; and social assistance to the police.⁴¹⁹

However, despite what has been described as a ‘radical transformation’ of the police since the civil war,⁴²⁰ commentators have expressed concerns that the PRM has not undergone the range of structural and institutional reforms necessary to deliver on its rights obligations in practice. Factors inhibiting the realisation of rights-based and democratic policing have been identified as including insufficient staff, lack of resources, poor remuneration, corruption, extortion and a culture of impunity.⁴²¹ Where investigations into police misconduct occur, few have resulted in disciplinary proceedings or criminal convictions.⁴²²

The PRM Strategic Plan has also been criticised for failing to address issues such as resourcing, sustainability, community policing, HIV/AIDS in the police organisation, gender equality and mechanisms to address corruption and misconduct.⁴²³ A security-sector reform programme, coordinated by the United Nations Development Programme (1997–2007) sought to improve

416 Republica de Mocambique (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*. Vol.1, p.28

417 Baker B (2003) Policing and the rule of law in Mozambique. *Policing and Society*, Vol. 13, Issue. 2, p.145

418 Human Rights Council (2011) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/1, [44]–[45]

419 Republica de Mocambique (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*. Vol.1

420 African Policing Civilian Oversight Forum (2008) *An Audit of Police Oversight in Africa*. Cape Town: African Policing Civilian Oversight Forum, p.50

421 Baker B (2003) Policing and the rule of law in Mozambique. *Policing and Society*, Vol. 13, Issue. 2, p.145

422 Amnesty International (January 2011) *Submission to the UN Universal Periodic Review: Mozambique*, 10th Session of the UPR Working Group

423 Article 5 Initiative (Unpublished) *Baseline Study on Mechanisms to Address Torture and Ill Treatment in Places of Detention in Mozambique*. Cape Town: ASI/EU South Africa

training, develop a strategic plan and improve police management (particularly in relation to public order and security and criminal investigations).⁴²⁴ However, the programme has been criticised as taking a fragmented approach to police reform, failing to address issues of oversight and accountability, not challenging the militarisation of policing in Mozambique, and with the implementation of the reform measures impeded by ‘institutional weaknesses’ and ‘managerial deficiencies’.⁴²⁵

In 2003, it was reported that the PRM had 20 000 personnel,⁴²⁶ 65 police stations, 307 police posts, 128 district commands and 11 provincial commands.⁴²⁷ There is gender inequality at all levels in the PRM, with women comprising only 7% of the PRM in 2003, mainly working in traffic and administration sections.⁴²⁸

Methodology

This report is compiled from a desktop analysis of legislation, documents generated as part of Mozambique’s participation in the United Nations (UN) Universal Periodic Review (UPR), and reviews by other UN treaty body committees, reports of international and domestic human rights observers, and media reports.

An initial report was compiled by in-country researchers based on interviews with key stakeholders. Interviews were held with representatives of non-governmental organisations (NGOs), political parties, the Ministry of Justice and church leaders. Interviews were also held with 19 members of the public from three different communities (Ferroviario, Costa do Sol and Matendene in Maputo City). Researchers attempted to obtain permission to conduct interviews with the police from the Ministry of the Interior and the Police Commander, but this was not forthcoming despite repeated requests. However, the researchers did interview several police officials anonymously and on an unofficial basis.

Challenges were experienced with respect to effective data collection relating to the availability of some official documents only in Portuguese, as well as the fact that some of the information was outdated. Mozambique is also behind on its reporting obligations to the UN treaty bodies, and official information was therefore limited.

424 Global Justice Solutions (2012) *Mozambique Police Reform Project*. <http://www.global-justice.com/programs/mozambique-police-reform-project/>, accessed on 4 June 2012

425 Lalà A and Francisco L (2008) The Difficulties of Donor Coordination: Police and Judicial Reform in Mozambique. In Peake G, Scheye E and Hills A (eds) *Managing Insecurity: Field Experiences of Security Sector Reform*. Abingdon/New York: Routledge, p.79

426 Republica de Mocambique (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*. Vol.1, p.11

427 *Ibid*, p.236

428 *Ibid*, p.38

Article 1: Respect for human rights

Standard: In the performance of their duties, police officials shall respect and protect human dignity, maintain and uphold the human rights of all persons.

The Constitution of Mozambique provides broad individual and collective human rights protections, and enshrines adherence to the rule of law, the rights to life, physical and moral integrity, personal liberty and security, and prohibits torture and other cruel, inhuman or degrading treatment or punishment.⁴²⁹ The Constitution also supports a broad interpretation of rights, which must be both interpreted and incorporated in accordance with international and regional human rights treaties.⁴³⁰ Mozambique has ratified or acceded to many of the core international treaties.⁴³¹

Despite a reasonable human rights framework, there are numerous and credible reports that the PRM is responsible for a range of human rights abuses, particularly the Rapid Reaction Force, the public order police, and municipal police officers.⁴³² Key problem areas include: torture and other ill-treatment; excessive use of force, extra-judicial executions, deaths in custody; treatment of detainees and conditions of detention; and corruption. (For further discussion, see Articles 3, 4, 5 and 9 below.)

The state is legally responsible, and liable for damages, for the acts of state agents that contravene the Constitution.⁴³³

The Constitution provides that individuals have the right of complaint to government authorities (which includes the PRM) for the enforcement of rights, or a remedy or restitution, in either an individual capacity or in the public interest.⁴³⁴

The Police Regulations provide for a disciplinary body located within the central leadership of the police.⁴³⁵ There is otherwise little information about the PRM's internal structures and procedures for identifying and addressing human rights abuses by its officers.

The police have established a Public Complaints Book, and one is located at each police station for the public to lodge complaints against police misconduct.⁴³⁶ However, there are reports from civil society that the system is not working to improve oversight, with few complaints lodged in the Public Complaints Book

⁴²⁹ Constitution of Mozambique, articles 3, 40(1), 59 and 70

⁴³⁰ *Ibid.*, article 18(1)

⁴³¹ These include: the International Convention on the Elimination of all Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; The Convention on the Elimination of Discrimination against Women; the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; The Convention on the Rights of the Child

⁴³² Amnesty International (2006) *Country Reports on Human Rights Practices 2006: Mozambique*. <http://www.amnesty.org>, accessed 4 June 2012

⁴³³ Constitution of Mozambique, article 18(1)

⁴³⁴ *Ibid.*, article 18(1)

⁴³⁵ Decree No. 28 of 1999

⁴³⁶ AfriMap and Open Society Initiative for Southern Africa (2006) *Mozambique: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa

being submitted for consideration by the Public Prosecution Service.⁴³⁷ Once submitted, the Attorney-General's office, which has the responsibility of protecting human rights, has been criticised as being 'incompetent, prone to corruption and negligence', which may contribute to the overall lack of prosecutions of police officers for misconduct.⁴³⁸

The Procurator-General has a mandate to initiate a complaints process against the police, and to carry out investigations.⁴³⁹ Its investigations have led to the arrest and charging of police officers on a range of offences, including assault, extra-judicial execution, extortion and theft.⁴⁴⁰

The Constitution makes provision for the establishment of an independent Ombudsman, with a mandate to review cases submitted and to make binding recommendations to relevant bodies, with a view to improving adherence to human rights and the rule of law.⁴⁴¹ At the time of writing, the Ombudsman had not yet been appointed.⁴⁴²

The Constitution also provides for the establishment of a National Human Rights Commission, which is also not yet operational, although Parliament has introduced enabling legislation.⁴⁴³

According to civil society respondents, Parliament also plays a role in police oversight. There is an annual 'question and answer session' at which the PRM, through the Minister of the Interior, answers specific questions.⁴⁴⁴

The complaints framework described above has been criticised for failing to address a culture of impunity within the PRM.⁴⁴⁵ Despite numerous reports of human rights violations by the police, including extra-judicial executions, excessive use of force, arbitrary arrest and detention, and torture and other ill-treatment, there remains a culture of impunity.⁴⁴⁶ According to Amnesty International, despite evidence of extra-judicial executions, excessive use of force, torture and ill-treatment

437 Mozambique Human Rights League (2005) *Report on Human Rights in Mozambique 2003*, 19, cited in African Policing Civilian Oversight Forum (2008) *An Audit of Police Oversight in Africa*. Cape Town: African Policing Civilian Oversight Forum, p.50

438 *Ibid*, p.50

439 *Ibid*, p.51

440 United States Department of State (2006) *Country Reports on Human Rights Practices 2005: Mozambique*. <http://www.state.gov/documents/organization/160135.pdf>, accessed 4 June 2012

441 Constitution of Mozambique, article 259(1)

442 Amnesty International (January 2011) *Mozambique: Submission to the UN Universal Periodic Review*, AI Index: AFR 41/002/2010

443 Human Rights Council (17 September 2010) *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to the Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/3, [8]. See also, Amnesty International (January 2011) *Mozambique: Submission to the UN Universal Periodic Review*, AI Index: AFR 41/002/2010; and Joint NGO Submission to the Human Rights Committee Review of Mozambique (1 February 2011), <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MZSession10.aspx>, p.8

444 Interviews with civil society representatives, 2011

445 AfriMap and Open Society Initiative for Southern Africa (2006) *Mozambique: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa

446 United States Department of State (2010) *Mozambique: Country Report on Human Rights Practices*. <http://www.state.gov/documents/organization/160135.pdf>, accessed 4 June 2012; Amnesty International (2009) *'I can't believe in justice anymore': Obstacles to justice for unlawful killings by the police in Mozambique*, AFR 41/004/2009; Amnesty International (2009) *Human Rights in the Republic of Mozambique*, POL 10/001/2009; Amnesty International (2008) *License to Kill: Police Accountability in Mozambique*, AFR/41/001/2008; and Amnesty International (January 2011) *Submission to the UN Universal Periodic Review: Mozambique*, 10th Session of the UPR Working Group; Joint NGO Submission to the Human Rights Committee Review of Mozambique (1 February 2011), <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MZSession10.aspx>, p.8; Human Rights Council (21 October 2010) *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/2, [28]–[31]

and deaths in custody, in the majority of cases, no investigations are carried out and no disciplinary or criminal proceedings are brought against officers.⁴⁴⁷

In 2000, the *Academia de Ciencias Policiais* (Academy of Police Sciences) was established to provide ‘intensive technical and professional degree-level training’, which includes training on human rights for selected ‘high cadre officers’.⁴⁴⁸ Training for new recruits includes human rights.⁴⁴⁹ International donor agencies, such as the UNDP, UNICEF, DANIDA and the Open Society Initiative for Southern Africa (OSISA) have funded and implemented human rights training projects.⁴⁵⁰

According to civil society, the shortfall in police human rights training is filled by courses developed and delivered by non-governmental organisations, on topics ranging from respect of the rights to life and freedom, limitations on the use of force, and community-based policing practices. The courses are usually conducted for between seven and 14 days.⁴⁵¹

The PRM Strategic Plan includes a programme of work to increase human rights observance by the police and the integration of human rights into police training curricula.⁴⁵²

However the APRM review noted a ‘relative lack of knowledge of legal procedures, methods of work, and guidelines for professional action on the part of police officers’, and recommended that Mozambique ‘ensure that police training emphasises respect for fundamental human rights and a complaints mechanism is put in place for victims of rights violation together with appropriate disciplinary sanctions for violators’.⁴⁵³

Human rights and dignity of police officials is respected

According to civil society respondents, police officers can lodge complaints and grievances with their superior officers, or seek assistance from the police when charged with any crime, or if they are facing disciplinary proceedings.⁴⁵⁴ The disciplinary system has been described as ‘fair and equitable’, and officers have access to defence counsel paid for privately or provided by the state.⁴⁵⁵

Remuneration for police officers in Mozambique is reported to be inadequate to meet basic living needs. There are approximately 3 000 officers in the PRM on a base salary of USD100 – and according to civil society respondents, inadequate remuneration is a key driver of corruption and the violation of human rights by

⁴⁴⁷ Amnesty International (January 2011) *Submission to the UN Universal Periodic Review: Mozambique*, 10th Session of the UPR Working Group

⁴⁴⁸ Republica de Mocambique (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*. Vol.1, p.28

⁴⁴⁹ *Ibid.*, p.39

⁴⁵⁰ Crime and Society: A comparative criminology tour of the world. <http://www-rohan.sdsu.edu/faculty/rwinslow/africa/mozambique.html>, accessed on 7 November 2011; and UNICEF website, http://www.unicef.org/mozambique/media_4914.html, accessed on 7 November 2011

⁴⁵¹ Interviews with civil society representatives, 2011

⁴⁵² Article 5 Initiative (Unpublished) *Baseline Study on Mechanisms to Address Torture and Ill Treatment in Places of Detention in Mozambique*. Cape Town: ASI/EU South Africa

⁴⁵³ African Peer Review Mechanism (2009) *Country Review Report for the Republic of Mozambique*. Johannesburg: APRM Country Review Report No.11, June 2009, section 302

⁴⁵⁴ Interviews with civil society respondents, 2011

⁴⁵⁵ Interviews with police respondents, 2011

individual officers.⁴⁵⁶ Conditions of service have also been criticised by civil society, with poor physical working conditions, lack of transportation and communication infrastructures, and reports that police often go without meals while on duty.⁴⁵⁷

Police are not permitted to take industrial action in the form of strikes. There is some unionisation, with the Mozambican civil service represented by trade unions in so-called ‘Social Dialogue’ between the state and employees about annual wage increases. According to civil society respondents, this process works well and has resulted in annual salary increases for the police.⁴⁵⁸

Article 2: Non-discrimination

Standard: Police officials shall treat all persons fairly and equally and avoid any form of discrimination.

The Constitution enshrines the right to equality before the law, and prohibits discrimination on the grounds of colour, race, sex, ethnic origin, birthplace, religion, level of education, social position, marital status of parents, profession or political affiliation.⁴⁵⁹

According to civil society respondents, laws are not applied equally on the basis of individual economic status, with corruption reportedly the biggest challenge to the principle of equality before the law. It is reported that the economically disadvantaged experience bribery demands and ‘unjust’ sentences on account of not giving the bribes.⁴⁶⁰

There are concerns that domestic and gender-based violence is not taken seriously by the police.⁴⁶¹ However, it has been noted that there have been some important successes with the establishment of new, dedicated units to respond to these issues (refer to discussion under Article 6).⁴⁶² Mozambican civil society organisations have noted that gender issues are not mainstreamed in police training,⁴⁶³ and the UN Special Rapporteur on the Independence of Judges and Lawyers has recommended that the government provide gender and age-specific training for police.⁴⁶⁴ This matter was identified and raised again by the African Peer Review Mechanism (APRM) Committee, which further reiterated the need

⁴⁵⁶ Interviews with civil society respondents, 2011

⁴⁵⁷ Interviews with civil society respondents, 2011. See also, UN Human Rights Council (21 October 2010) *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/2, [49]

⁴⁵⁸ Interviews with civil society respondents, 2011

⁴⁵⁹ Constitution of Mozambique, article 35

⁴⁶⁰ Interviews with civil society respondents, 2011

⁴⁶¹ Joint NGO Submission to the Human Rights Committee Review of Mozambique (1 February 2011). <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MZSession10.aspx>, p.7

⁴⁶² Interviews with civil society respondents, 2011

⁴⁶³ *Ibid.*

⁴⁶⁴ Human Rights Council (21 April 2011) *Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaut, Addendum, Mission to Mozambique*, A/HRC/17/30/Add.2, [121]

for police training in relation to gender-based violence.⁴⁶⁵

The Committee on the Elimination of Racial Discrimination has noted, with concern, that access to justice is restricted for some ethnic groups due to their location, language and poverty. It has recommended that the government take steps to expand justice mechanisms, including the Institute for Legal Assistance and Aid.⁴⁶⁶

In 2009, the African Peer Review Committee heard substantial evidence of police acting in the service of the ruling party, and concluded that the conduct of the police, especially during elections, was partisan.⁴⁶⁷

Distribution of police resources

Civil society respondents stated that the equitable distribution of police resources is a challenge. Mozambique has a vast geographical area and many areas are not serviced by police stations or district courts. As a result, the majority of disputes in unserved areas are handled by community courts (*Lei dos Tribunais Comunitarios*), traditional leaders and churches.⁴⁶⁸

In 2003, it was reported that the PRM had 20 000 personnel,⁴⁶⁹ with 65 police stations, 307 police posts, 128 district commands and 11 provincial commands.⁴⁷⁰ The ratio of police to population in Mozambique is low, at 100 officers to 100 000 inhabitants across the country,⁴⁷¹ although the unequal distribution of police across the country results in some areas benefiting from a higher ratio than others.⁴⁷² The Strategic Plan notes that the PRM aims to have 40 000 personnel by 2033.⁴⁷³ There is gender inequality at all levels in the PRM, with women comprising only 7% of the PRM in 2003, mainly working in traffic and administration sections.⁴⁷⁴ However, respondents in this study reported that women who do apply, and pass the aptitude tests, are recruited.⁴⁷⁵ The government has stated that it is seeking to establish scholarships for women to improve the gender balance amongst the PRM ranks, particularly at the executive level.⁴⁷⁶

465 African Peer Review Mechanism (2009) *Country Review Report for the Republic of Mozambique*. Johannesburg: APRM Country Review Report No.11, June 2009

466 Committee on the Elimination of Racial Discrimination (17 August 2007) *Concluding Observations: Mozambique*, CERD/C/MOZ/CO/12, [15]

467 African Peer Review Mechanism (2009) *Country Review Report for the Republic of Mozambique*. Johannesburg: APRM Country Review Report No.11, June 2009, section 293

468 Interviews with civil society respondents, 2011

469 Republica de Mocambique (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*. Vol.1, p.11

470 *Ibid*, p.236

471 Reisman I and A Lalà (2012) *Assessment of Crime and Violence in Mozambique and Recommendations for Violence Prevention and Reduction*. Open Society Foundations for Crime and Violence Prevention Initiative and Open Society Initiative for Southern Africa, p.28

472 Interviews with civil society respondents, 2011

473 Republica de Mocambique (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*. Vol.1, p.11

474 *Ibid*, p.38

475 Interviews with police respondents, 2011

476 Committee on the Elimination of Discrimination against Women (14 November 2005) *State Party Report: Mozambique*, CEDAW/C/MOZ/1-2, pp.24–25

Article 3: Use of force

Standard: Police officials may only use force when strictly necessary and to the extent required for the performance of their duties and adhering to national legislation and practice.

Mozambican police law provides that an officer may ‘only use force and firearms in situations where there is a reasonably serious risk to the officer’s life or physical integrity, or those of third persons, or in circumstances in which it may be supposed that there is a serious risk to public security, and in conformity with the principles of opportunity, appropriateness and proportionality’.⁴⁷⁷

There are numerous international and domestic reports of police using excessive force, and engaging in extra-judicial executions,⁴⁷⁸ particularly the Border Security Unit.⁴⁷⁹ Between January and June 2010, the Mozambican Human Rights League filed two cases against the police in relation to extra-judicial executions.⁴⁸⁰ Amnesty International also reports that between January 2006 and June 2009, the police killed 46 people and, in some cases, police actions amounted to extra-judicial execution.⁴⁸¹ Amnesty International also expressed significant concern at the lack of thorough, prompt, impartial and adequate investigations into most of these cases.⁴⁸² During its UPR process, the government received a number of recommendations to ensure that thorough, prompt and impartial investigations are carried out in all cases of extra-judicial executions and other excessive uses of force, and that perpetrators are brought to justice.⁴⁸³

According to the respondents, the police are trained in defensive skills, such as martial arts and other physical skills that mitigate the need to use lethal weapons. Where police exceed their mandate to use force, respondents reported that this usually occurs in the context of arrest, public order management and against armed persons.⁴⁸⁴

⁴⁷⁷ Human Rights Council (17 September 2010) *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to the Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/3, [15]

⁴⁷⁸ United States Department of State (2010) *Mozambique: Country Report on Human Rights Practices*. <http://www.state.gov/documents/organization/160135.pdf>, accessed 4 June 2012; Amnesty International (2009) *‘I can’t believe in justice anymore’: Obstacles to justice for unlawful killings by the police in Mozambique*, AFR 41/004/2009; Amnesty International (2009) *Human Rights in the Republic of Mozambique*, POL 10/001/2009; Amnesty International (2008) *‘Licence to Kill: Police Accountability in Mozambique*, AFR/41/001/2008; Human Rights Council (21 October 2010) *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/2, [28]–[31]

⁴⁷⁹ United States Department of State (2011) *Mozambique: Country Reports on Human Rights Practices for 2011*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed on 4 June 2012

⁴⁸⁰ Human Rights Council (17 September 2010) *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to the Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/3, [14]. See also, Joint NGO Submission to the Human Rights Committee Review of Mozambique (1 February 2011). <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MZSession10.aspx>, p.8

⁴⁸¹ Amnesty International (January 2011) *Submission to the UN Universal Periodic Review: Mozambique*, 10th Session of the UPR Working Group

⁴⁸² Human Rights Council (17 September 2010) *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to the Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/3, [15]

⁴⁸³ Human Rights Council (28 March 2011) *Report of the Working Group on the Universal Periodic Review: Mozambique*, A/HRC/17/16 [89.47]–[89.52]. See also, Human Rights Council (2010), *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/2, [28]–[31]

⁴⁸⁴ Interviews with police respondents, 2011

The PRM has access to sticks, handcuffs, whistles, bulletproof jackets, flashlights, shields, tear gas and rubber bullets – although not in sufficient numbers to ensure access by all police officers.⁴⁸⁵ The PRM has a cache of firearms, which includes AK47s and various types of pistols, which are described by the government as inadequate to achieve a civilian policing approach to the maintenance of law and order.⁴⁸⁶

Respondents in this study were unaware of any regulations or policies governing the use, storage and distribution of firearms – although they are aware of the existence of a set of principles to this effect, and are aware that police receive training on the use of lethal weapons.⁴⁸⁷ Each police station maintains a record of arms stocks, the distribution and return of firearms, and the purpose of distribution.⁴⁸⁸ Stations may also have internal rules on the storage of weapons.⁴⁸⁹

According to respondents, the police do not always carry firearms on ordinary patrols, but may be issued with lethal weapons where the circumstances require it.⁴⁹⁰ Weapons are made available to all police officers responsible for search, arrest and criminal investigations, and firearms and ammunition must be handed in at the end of any given mission.⁴⁹¹ Respondents reported that there is little information on stock loss, and that there are some media reports that weapons have been stolen from individual police officers during the course of duty and from police stations.⁴⁹² Individual officers are liable to punishment under the law for the loss of firearms signed out to them.⁴⁹³

Police have access to ‘specific equipment for crowd control’, although not in sufficient quantities.⁴⁹⁴ Despite legal limits on the use of force and firearms, there are reports that the police have resorted to the excessive use of force during public order management operations.⁴⁹⁵ For example, during the 2010 riots over the increasing price of food, the police used tear gas, rubber bullets and live ammunition, and were responsible for the deaths of between 13 and 18 protestors, and the injury of more than 400. At the time of writing, there was no information regarding any disciplinary or criminal proceedings against the officers involved.⁴⁹⁶

485 Republica de Mocambique (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*. Vol.1, p.28

486 *Ibid.*, p.34

487 Interviews with civil society respondents, 2011

488 *Ibid.*

489 *Ibid.*

490 *Ibid.*

491 Interviews with police respondents, 2011

492 Interviews with civil society respondents, 2011

493 *Ibid.*

494 Republica de Mocambique (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*. Vol.1, p.34

495 Human Rights Council (17 September 2010) *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to the Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/3, [15]. See also Amnesty International (January 2011) *Submission to the UN Universal Periodic Review: Mozambique*, 10th Session of the UPR Working Group

496 United States Department of State (2011) *Mozambique: Country Reports on Human Rights Practices for 2011*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed on 4 June 2012. See also, Amnesty International (2011) *Annual Report 2011*. <http://www.amnesty.org/en/region/mozambique/report-2011>, accessed on 4 June 2012

The above notwithstanding, it should also be noted the country still operates in the context of what is considered ‘incomplete disarmament’ from the war. The APRM report noted that ‘the free circulation of weapons (small arms) in Mozambique aids crime and violent conflicts’, and stated that ‘the government is conscious of the menace that this constitutes to human, national and even regional security and has been collaborating with the UNDP to tackle it’.⁴⁹⁷

Article 4: Torture and cruel, inhuman and degrading treatment or punishment

Standard: No police official shall, under any circumstances, inflict, instigate or tolerate any act of torture and other cruel, inhuman or degrading treatment or punishment of any person.

The Constitution enshrines the right to life and physical integrity, and prohibits torture and other cruel, inhuman or degrading treatment or punishment.⁴⁹⁸ It further makes invalid any evidence obtained through torture or other ill-treatment.⁴⁹⁹ The Police Disciplinary Regulations require police to abstain from torture and other ill-treatment.⁵⁰⁰ However, there is no specific law prohibiting the use of torture and ill-treatment, and torture is not a criminal offence. Legislation such as the Penal Code and Criminal Procedure Code are colonial-era legislation and, despite amendments, do not reflect the prohibition against torture in the Convention against Torture. The death penalty has been abolished.⁵⁰¹

Despite some legal safeguards against the use of torture and ill-treatment, international and domestic observers note that there are numerous and credible reports of police torture,⁵⁰² including torture and ill-treatment that caused the death of a few detainees, without appropriate accountability measures being taken against the police responsible.⁵⁰³

497 African Peer Review Mechanism (2009) *Country Review Report for the Republic of Mozambique*. Johannesburg: APRM Country Review Report No.11, June 2009, section 262

498 Constitution of Mozambique, article 40

499 *Ibid*, article 65(3)

500 Human Rights Council (17 September 2010) *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to the Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/3.[15]. See also, Amnesty International (January 2011) *Submission to the UN Universal Periodic Review: Mozambique*, 10th Session of the UPR Working Group

501 Constitution of Mozambique, article 40(2)

502 Human Rights Council (17 September 2010) *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to the Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/3, [17]–[18]. See also United States Department of State (2010) *Mozambique Report on Human Rights Practices*. <http://www.state.gov/documents/organization/160135.pdf>, accessed 10 June 2012; Amnesty International (2009) *I can't believe in justice anymore: Obstacles to justice for unlawful killings by the police in Mozambique*, AFR 41/004/2009; Amnesty International (2009), *Human Rights in the Republic of Mozambique*, POL 10/001/2009; Amnesty International (2008) *Licence to Kill: Police Accountability in Mozambique*, AFR/41/001/2008; CRC/C/MOZ/CO/2, [45]–[46], and A/HRC/WG.6/10/MOZ/2, [31]

503 United States Department of State (2011) *Mozambique: Country Reports on Human Rights Practices for 2011*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed on 4 June 2012. See also, Human Rights Council (21 October 2010) *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/2, [28]–[31]

There are concerns that responses by the criminal justice system to allegations of torture have been inadequate.⁵⁰⁴ During its UPR process, the government received a number of recommendations to ensure that thorough, prompt and impartial investigations are carried out in all cases of torture and other ill-treatment, and that perpetrators are brought to justice.⁵⁰⁵

Equally, there are concerns that torture victims seldom receive civil law remedies. According to civil society organisations, over the past ten years only two out of 50 cases of compensation for torture and other ill-treatment have resulted in compensation.⁵⁰⁶

Article 5: Protection of persons in custody

Standard: Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to ensure medical attention when required.

The Constitution enshrines the right to liberty and security,⁵⁰⁷ and deprivation of liberty is only permitted to occur in compliance with the Penal Code and Criminal Procedure Code.⁵⁰⁸ The Constitution also protects the right of all persons deprived of their liberty to be informed of the reason for their arrest and detention promptly and in a language they understand.⁵⁰⁹

The PRM is the principal investigating and arresting agency, and has discretion to arrest and hold individuals suspected of committing criminal acts. Detainees must be brought before a judicial authority within five days for cases of *in flagrante delicto*, and within 48 hours if not arrested in the commission of a crime.⁵¹⁰ Detention must be legalised with a remand warrant issued by a judge, the Public Prosecution Service, or the Criminal Investigation Police.⁵¹¹ The Constitution provides that written records of those deprived of their liberty must be maintained by the PRM.⁵¹² Incommunicado detention is prohibited.⁵¹³

Suspects have the right to enjoy the presumption of innocence, the right to legal counsel⁵¹⁴ and, if required, to medical assistance.⁵¹⁵ Detainees are also entitled to receive visits from family and friends, and receive from them food and

504 Interviews with civil society respondents, 2011

505 Human Rights Council, *UPR Working Group Report, A/HRC/17/16*, [89.47]–[89.52]

506 Joint NGO Submission to the Human Rights Committee Review of Mozambique (1 February 2011). <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MZSession10.aspx>, p.4

507 Constitution of Mozambique, article 59

508 Article 5 Initiative (Unpublished) *Baseline Study on Mechanisms to Address Torture and Ill Treatment in Places of Detention in Mozambique*. Cape Town: ASI/EU South Africa

509 Constitution of Mozambique, article 63

510 Penal Code, article 42

511 Constitution of Mozambique, article 64; Criminal Procedure Code 3/1993, article 293

512 Constitution of Mozambique, articles 71 and 288

513 Article 5 Initiative (Unpublished) *Baseline Study on Mechanisms to Address Torture and Ill Treatment in Places of Detention in Mozambique*. Cape Town: ASI/EU South Africa

514 AfriMap and Open Society Initiative for Southern Africa (2006) *Mozambique: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa

515 Interviews with civil society respondents, 2011

blankets. Detainees should to be separated according to their gender and age.⁵¹⁶

The Constitution enshrines the right to counsel.⁵¹⁷ To meet the demand for legal services, the government established the Institute for Legal Assistance and Representation (*Instituto de Assistencia e Patrocinio Juridico*) in 1994 to provide free and low-cost legal assistance services to the disadvantaged.⁵¹⁸

During states of emergency, detainees' next of kin must be informed about their detention, and the law applicable to their detention, within five days, and come before a judge within ten days.⁵¹⁹

Conditions and treatment in custody

Mozambican civil society organisations report that the conditions of detention in police custody are 'inhumane', and note that detainees lack medical assistance and adequate nutrition.⁵²⁰ Overcrowding is a problem⁵²¹ and, in March 2009, overcrowding of detainees in police cells in Mongicual resulted in death by suffocation of 13 people, for which two officers were convicted of manslaughter.⁵²² Civil society respondents reported that blankets, beds and mattresses are completely lacking in many places of detention.⁵²³ Electricity supply problems across the country mean that many police stations and cells do not have electricity.⁵²⁴ Civil society respondents stated that cells have ventilation (usually a window), although it is often not enough to maintain proper ventilation. According to respondents in this study, police cells usually measure 10–15m². Depending on the category of crime for which they have been charged, detainees may not be permitted to leave police cells, except if shackled.⁵²⁵

International and domestic human rights observers have noted that despite legal safeguards, there are numerous and credible reports⁵²⁶ that the police arbitrarily arrest and detain suspects,⁵²⁷ fail to present detainees to a judicial

⁵¹⁶ *Ibid.*

⁵¹⁷ Constitution of Mozambique, article 62

⁵¹⁸ Republica de Mocambique (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*, Vol.1, p.41

⁵¹⁹ Constitution of Mozambique, article 288

⁵²⁰ United States Department of State (2010) *Mozambique: Country Report on Human Rights Practices*. <http://www.state.gov/documents/organization/160135.pdf>, accessed 4 June 2012; Amnesty International (2009) 'I can't believe in justice anymore: Obstacles to justice for unlawful killings by the police in Mozambique', AFR 41/004/2009; Amnesty International (2009) *Human Rights in the Republic of Mozambique*, POL 10/001/2009; Amnesty International (2008) *Licence to Kill: Police Accountability in Mozambique*, AFR/41/001/2008

⁵²¹ United Nations Commission on Human Rights (27 March 2006) *Report by the Independent Expert on the Effects of Economic Reform Policies and Foreign Debt on the Full Enjoyment of All Human Rights, Mission to Mozambique*, E/CN.4/2006/46/Add.1, [9]

⁵²² Human Rights Council (17 September 2010) *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to the Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/3, [15]. See also, Amnesty International (January 2011) *Submission to the UN Universal Periodic Review: Mozambique*, 10th Session of the UPR Working Group

⁵²³ Interviews with civil society respondents, 2011

⁵²⁴ *Ibid.*

⁵²⁵ *Ibid.*

⁵²⁶ United States Department of State (2011) *Mozambique: Country Reports on Human Rights Practices for 2011*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed on 4 June 2012

⁵²⁷ United States Department of State (2010) *Mozambique: Country Report on Human Rights Practices*. <http://www.state.gov/documents/organization/160135.pdf>, accessed 4 June 2012; Amnesty International (2009) 'I can't believe in justice anymore: Obstacles to justice for unlawful killings by the police in Mozambique', AFR 41/004/2009; Amnesty International (2009) *Human Rights in the Republic of Mozambique*, POL 10/001/2009; Amnesty International (2008) *Licence to Kill: Police Accountability in Mozambique*, AFR/41/001/2008

authority within the prescribed period,⁵²⁸ and hold detainees incommunicado.⁵²⁹ Reports also indicate that other legal guarantees, such as the right to be informed of the reasons for arrest and detention, are often flouted and that detainees are not aware of their basic procedural rights.⁵³⁰ During 2011, there were a number of reports in the media, and from civil society organisations, of police brutality against detainees, including sexual assault against women and children⁵³¹ and prolonged detention.⁵³² A report by Mozambican civil society organisations in 2008 noted that there has been an improvement in meeting the deadline for presenting detainees before a judicial authority following arrest within prescribed time periods.⁵³³

There are reports that juveniles are held in the same cells as adults, owing to the lack of infrastructure.⁵³⁴ There are also reports that the PRM frequently use excessive force during arrest, detention and interrogation, and violations during 2011 included sexual assault of women, beatings, denial of food, forced labour and prolonged detention.⁵³⁵ Amnesty International has also expressed concern about high rates of arbitrary arrest and detention, for which disciplinary proceedings are rarely brought.⁵³⁶ During its UPR process, the government received a number of recommendations to ensure that thorough, prompt and impartial investigations are carried out in all cases of arbitrary arrest and other excessive use of force by the police in custodial settings, and that perpetrators are brought to justice.⁵³⁷

The minimum age of criminal responsibility in Mozambique is 16 years.⁵³⁸ However, civil society organisations have reported cases of children under the age of 16 being arrested and detained in police stations.⁵³⁹

Oversight over places of detention

There are no independent institutions or bodies with a legal mandate to monitor places of detention, including police cells. Oversight agencies have been generally criticised for being subject to political interference, and for failing to properly

528 AfriMap and Open Society Initiative for Southern Africa (2006) *Mozambique: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa

529 Berg J (2005) 'Mozambique Policing Overview', *Overview of plural policing oversight in select Southern African Development (SADC) Countries*. <http://www.policeaccountability.co.za/Publications/Pub-Categories.asp?PubCatID=15>

530 Article 5 Initiative (Unpublished) *Baseline Study on Mechanisms to Address Torture and Ill Treatment in Places of Detention in Mozambique*. Cape Town: ASI/EU South Africa

531 Joint NGO Submission to the Human Rights Committee Review of Mozambique (1 February 2011). <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MZSession10.aspx>, p.21

532 Article 5 Initiative (Unpublished) *Baseline Study on Mechanisms to Address Torture and Ill Treatment in Places of Detention in Mozambique*. Cape Town: ASI/EU South Africa

533 *Mozambique News Agency* (10 July 2008). AIM Reports, No. 362. <http://www.poptel.org.uk/mozambique-news/newsletter/aims362.html>, accessed on 5 June 2012

534 Interviews with civil society respondents, 2011

535 United States Department of State (2011) *Mozambique: Country Reports on Human Rights Practices for 2011*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed on 4 June 2012. See also, Joint NGO Submission to the Human Rights Committee Review of Mozambique (1 February 2011). <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MZSession10.aspx>, p.8

536 Amnesty International (January 2011) *Submission to the UN Universal Periodic Review: Mozambique*, 10th Session of the UPR Working Group

537 Human Rights Council (28 March 2011) *Report of the Working Group on the Universal Periodic Review: Mozambique*, A/HRC/17/16, [89.47]–[89.52]

538 Penal Code, article 42

539 Article 5 Initiative (Unpublished) *Baseline Study on Mechanisms to Address Torture and Ill Treatment in Places of Detention in Mozambique*. Cape Town: ASI/EU South Africa

investigate and punish perpetrators.⁵⁴⁰ The Office of the Prosecutor has an oversight role, with a mandate to review the legality and timing of arrests and detention, although it is not clear whether the Prosecutor's mandate extends to visiting police cells.⁵⁴¹

Mozambique civil society has played a role in monitoring places of detention. The *Liga Mocambicana dos Direitos Humanos* (Mozambican Human Rights League – LDH), conducts visits to police detention facilities and makes annual reports on police abuses, including torture.⁵⁴²

The African Commission on Human and Peoples' Rights' Special Rapporteur on Torture visited Mozambique in 1997 and 2001. Although the visits were primarily designed to examine conditions of detention in prisons, the Rapporteur did meet with representatives from provincial police commands.⁵⁴³

According to Amnesty International, there are no known cases of police being subject to disciplinary or criminal procedures for arbitrary arrest and detention, nor cases where there has been compensation to victims, but rather that police officers are simply transferred from one station to another.⁵⁴⁴

Article 6: Victims of crime

Standard: All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided when necessary.

The UN Committee on the Elimination of Discrimination against Women (CEDAW) has expressed its concern about the vulnerability of women victims of violence in their interactions with the justice system.⁵⁴⁵ UNIFEM found that only 10% of all cases of violence against women were reported to the police, and that domestic violence is still treated as a private matter.⁵⁴⁶ In developing its Strategic Plan in 2003, the government noted that the 'majority' of victims are not satisfied with police performance.⁵⁴⁷

The government and donors have commendably also invested in the establishment of facilities (*Gabinetes de Atendimento*) inside police stations where victims of violence can file complaints against perpetrators. These services have

540 AfriMap and Open Society Initiative for Southern Africa (2006) *Mozambique: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa

541 Constitution of Mozambique, article 236

542 African Policing Civilian Oversight Forum (2008) *An Audit of Police Oversight in Africa*. Cape Town: African Policing Civilian Oversight Forum, p.51. See also, Article 5 Initiative (Unpublished). *Baseline Study on Mechanisms to Address Torture and Ill Treatment in Places of Detention in Mozambique*. Cape Town: A51/EU South Africa

543 AfriMap and Open Society Initiative for Southern Africa (2006) *Mozambique: Justice Sector and the Rule of Law*. [http://www.afri-map.org/eng/images/report/Mozambique%20Justice%20report%20\(Eng\).pdf](http://www.afri-map.org/eng/images/report/Mozambique%20Justice%20report%20(Eng).pdf)

544 Amnesty International (January 2011) *Submission to the UN Universal Periodic Review: Mozambique*, 10th Session of the UPR Working Group. See also, Amnesty International, *Annual Report 2011*. <http://www.amnesty.org/en/region/mozambique/report-2011>, accessed on 4 June 2012

545 AfriMap and Open Society Initiative for Southern Africa (2006) *Mozambique: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa

546 UNIFEM (2009) *Violence against Women in Mozambique*. Maputo: UNIFEM

547 Republica de Mocambique, Ministerio do Interior (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*. Vol.1, p.28

reportedly been established in all police districts. This initiative has also included the recruitment of more female police officers, and ongoing efforts to bring integrated police, health and social services required by women victims into the same locations.⁵⁴⁸

Police have received training in relation to services for victims of domestic violence.⁵⁴⁹

Mozambique civil society has played a role in providing support and counselling to victims of crime and human rights violations, including in particular the *Direitos Humanos e Desenvolvimento* (Human Rights and Development – DHD).⁵⁵⁰

Restitution and compensation for victims

There are a number of human rights violations for which victims are not entitled to seek compensation in civil proceedings, and claims for compensation in those cases can only be made as part of the criminal proceedings against the perpetrator, which require victims to have representation during that court case.⁵⁵¹ The Constitution enshrines the right of access to the court, however, it does not guarantee the right of access to a lawyer for victims, and non-governmental organisations, which have limited funding, must then provide legal assistance services to victims seeking compensation through the court system. Compounded by long distances required to travel to courts, and the cost involved in being a litigant, few civil cases are brought against perpetrators or the state.⁵⁵² According to Mozambique civil society respondents, during the past year there have been awards of compensation by the state to victims of police abuse in relation to arbitrary detention, and detention beyond the prescribed period.⁵⁵³

There are a number of other barriers to accessing justice for victims of crime, whether in the form of compensation or restitution. According to Amnesty International, these include ‘failure of police to institute investigations or inadequate investigation into complaints, rude and insulting behaviour by police officers, lack of transparency and information given to complainants regarding the progress of investigations, as well as legal and other costs’.⁵⁵⁴ Access to compensation and restitution from the courts is hampered by long delays, due to a backlog of cases.⁵⁵⁵

The APRM Committee recommended that the government facilitate the passage of domestic violence legislation; to launch an awareness campaign on domestic violence and to equip police dealing with violence against women with

548 UNIFEM (2009) *Violence against Women in Mozambique*. Maputo: UNIFEM

549 Committee on the Elimination of Discrimination against Women (11 June 2007) *Concluding Observations: Mozambique*, CEDAW/C/MOZ/CO/2, [24]

550 African Policing Civilian Oversight Forum (2008) *An Audit of Police Oversight in Africa*. Cape Town: African Policing Civilian Oversight Forum, p.51

551 Amnesty International (January 2011) *Submission to the UN Universal Periodic Review: Mozambique*, 10th Session of the UPR Working Group

552 *Ibid.* See also, Joint NGO Submission to the Human Rights Committee Review of Mozambique (1 February 2011). <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MZSession10.aspx>, p.12

553 Interviews with civil society respondents, 2011

554 Amnesty International (January 2011) *Submission to the UN Universal Periodic Review: Mozambique*, 10th Session of the UPR Working Group

555 *Ibid.*

the capacity to handle the victims; and to ensure a gender responsive police force by incorporating gender issues into police training.⁵⁵⁶

Article 7: Respect for the rule of law and Code of Conduct

Standard: Police officials shall respect and uphold the rule of law and the present Code of Conduct.

The rule of law was introduced as part of the post-conflict Constitution and transformation of Mozambique to a democratic system of government.⁵⁵⁷

According to Mozambican civil society respondents, the police have a local code of conduct, which is based on the constitutional mandate to uphold and respect the rule of law, democracy, and to guarantee fundamental human rights, including equality rights.⁵⁵⁸ Violation of the code of conduct can result in disciplinary proceedings or criminal prosecution.⁵⁵⁹ However, respondents stated that while police are required to be aware of, and implement, the code of conduct, officers may not have access to copies, and dissemination of its contents in police stations may be lacking.⁵⁶⁰ They also state that there are low levels of community awareness about the existence of a code of conduct.⁵⁶¹

The APRM review on Mozambique stated that while the legal framework to support the rule of law was in place, a range of practical problems existed, with constitutionally protected rights not being enforced and that institutions designed to protect the rule of law either do not function or their functions are severely curtailed.⁵⁶²

Article 8: Trustworthiness

Standard: The public demands that the integrity of police officials be above reproach. Police officials shall therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undermines the public's confidence in a police force/service.

Article 10: Performance of duties

Standard: Police officials shall at all times fulfil the duties imposed upon them by law in a manner consistent with the high degree of responsibility and integrity required by their profession.

556 African Peer Review Mechanism (2009) *Country Review Report for the Republic of Mozambique*. Johannesburg: APRM Country Review Report No.11, June 2009, section 430

557 Baker B (2003) Policing and the rule of law in Mozambique. *Policing and Society*, Vol. 13, Issue 2.

558 Interviews with civil society respondents, 2011

559 *Ibid.*

560 *Ibid.*

561 *Ibid.*

562 African Peer Review Mechanism (2009) *Country Review Report for the Republic of Mozambique*. Johannesburg: APRM Country Review Report No.11, June 2009

Article 11: Professional conduct

Standard: Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.

Police legislation governs the recruitment of officers. For basic level admission, the minimum academic qualification is grade 10, the candidate must be aged between 19 and 30 years, and complete two years of training. For a superior level of admission, the required minimum academic qualification is grade 12, and the candidate aged between 18 and 22 years. According to civil society respondents, since 2007 the community has been involved in the vetting of potential candidates.⁵⁶³ Candidates are also required to pass physical and psychological testing, and the recruitment processes do not discriminate against police based on their HIV status.⁵⁶⁴

However, the APRM report noted that ‘recruitment into the public service is not merit-based, and is still substantially influenced by party affiliation, and nepotism and cronyism predominate as the criteria for recruitment into the public service. It is estimated that the proportion of public servants recruited on the basis of merit is as low as 13%.’⁵⁶⁵

The 2009 APRM process established, as an objective for the coming period, the need to consolidate the process for the involvement of communities in the selection of new members for the police force, and the establishment of clear requirements for the selection of citizens for the police force, including the academic level.⁵⁶⁶

There is no specific promotion policy for the PRM. However, promotions will take into account academic experience, work experience and good behaviour. According to civil society respondents, there have been several complaints from officers about the application of the informal policy.⁵⁶⁷

The government has itself noted the following concerns relating to personnel and training in the PRM: inadequate rules for recruitment and promotion, no performance evaluation system, low levels of remuneration and other benefits, no gender or geographical equity, corruption, ill-discipline, low levels of technical qualification among recruits, and police as a vulnerable group ‘due to age and permanent transfers’.⁵⁶⁸

Ineffective and inaccessible police training has been identified as one of the biggest challenges facing the Mozambique police. The establishment of the Police

⁵⁶³ Interviews with civil society respondents, 2011

⁵⁶⁴ Interviews with police respondents, 2011

⁵⁶⁵ African Peer Review Mechanism (2009) *Country Review Report for the Republic of Mozambique*. Johannesburg: APRM Country Review Report No.11, June 2009, section 388

⁵⁶⁶ *Ibid.*

⁵⁶⁷ Interviews with civil society respondents, 2011

⁵⁶⁸ Republica de Mocambique (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*. Vol.1, p.43

Science Academy in Maputo has improved training, and new recruits undergo either a nine-month basic course, or a ‘higher level training’.⁵⁶⁹ During its UPR process, the government received a number of recommendations to take steps to improve training.⁵⁷⁰

Values of the PRM

The mission of the PRM is to ‘contribute to peace, stability and development of the country, ensuring public order and security, based on the free exercise of citizenship rights, through constant modernisation, intensive use of technological means, integration in the community and increase of the international cooperation in the prevention and fight against crime’.⁵⁷¹

The Strategic Plan lists principles that should guide the transformation of the PRM. These include respect for human rights, adherence to the rule of law, the efficient use of resources and a community service focus.⁵⁷²

The Strategic Plan outlines the PRM vision, which is to build capacity to meet a range of aims, including responding to the social and security needs of citizens; increasing efficiency in the prevention and fight against crime; promoting values of politeness, professionalism and responsibility; promoting social, regional and gender equity through a bigger and better participation and the integration of disfavoured and under-represented social groups; and fighting against corruption within the force.⁵⁷³

Mandate of the police

The mandate of the PRM is to ensure law and order, safeguard security, respect the rule of law, uphold human rights and remain non-partisan.⁵⁷⁴

Despite their clear mandate, there are significant barriers to its effective implementation. These include lack of financial resources,⁵⁷⁵ high levels of corruption and lack of cooperation and information flow between agencies across the justice sector.⁵⁷⁶ Police investigation skills have also been criticised for not meeting prosecutorial requirements.⁵⁷⁷ During Mozambique’s UPR, the government received a number of recommendations aimed at improving training and equipment to ensure that the PRM exercise their mandate effectively and

569 Article 5 Initiative (Unpublished) *Baseline Study on Mechanisms to Address Torture and Ill Treatment in Places of Detention in Mozambique*. Cape Town: ASI/EU South Africa

570 Human Rights Council, *UPR Working Group Report*, A/HRC/17/16, [89.47]–[89.52]

571 Republica de Mocambique (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*. Vol.1, p.3

572 *Ibid*, p.48

573 *Ibid*, p.48

574 Constitution of Mozambique, article 254

575 Republica de Mocambique (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*. Vol.1, p.17

576 AfriMap and Open Society Initiative for Southern Africa (2006) *Mozambique: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa

577 Lalà A and Francisco L (2008) The Difficulties of Donor Coordination: Police and Judicial Reform in Mozambique. In: Peake, G, Scheye, E and Hills, A (eds) *Managing Insecurity: Field Experiences of Security Sector Reform*. Routledge: Abingdon/New York, p.79

within the confines of the law.⁵⁷⁸ A researcher also notes that the paramilitary structure of the police during the civil war has required a radical and still unrealised shift to civilian operation, with skills needed in evidenced-based investigation and accountability to the community.⁵⁷⁹

Legal pluralism also has an impact on the ability of the PRM to effectively fulfil its mandate. The Constitution recognises the plethora of ‘normative and dispute resolution systems’ that exist in Mozambique, and permit their application to the extent that they are consistent with principles and values espoused in the Constitution.⁵⁸⁰ Access to justice and conflict resolution is therefore shared between the formal justice sector (which includes the PRM) and other organisations such as civil society, religious institutions and the *Associação dos Médicos Tradicionais de Mocambique* (Healers’ Association).⁵⁸¹ 2004 amendments to the Constitution formally recognised a community court system.⁵⁸²

In 2001, *Conselhos de Policiamento Comunitario* (Community Policing Councils) were established in response to increasing crime, vigilantism, human rights violations and a deterioration in trust between the community and the police.⁵⁸³ There are now more than 1 000 councils, comprised of community leaders and representatives from a variety of sectors (including religious organisations, non-governmental organisations, schools and private and public institutions).⁵⁸⁴ There is also a community policing programme, which has a focus on crime prevention and improving community and police relations.⁵⁸⁵

Performance review and discipline of police

Respondents noted that over the past year, approximately 2 000 employees of the PRM were sanctioned, and some expelled, for misconduct. Where sanctions are imposed, these are reportedly in relation to arbitrary detention and detention beyond the prescribed period.⁵⁸⁶ These respondents described the disciplinary system as ‘fair and equitable’, and officers have access to defence counsel paid for privately or provided by the state.⁵⁸⁷

The most common reasons for disciplinary measures include collusion with criminals, bribery, drunkenness, absenteeism and abandonment of posts.⁵⁸⁸

578 Human Rights Council, *UPR Working Group Report*, A/HRC/17/16, [89.47]–[89.52]

579 Baker B (2003) Policing and the rule of law in Mozambique. *Policing and Society*, Vol. 13, Issue 2

580 Constitution of Mozambique, article 4

581 Article 5 Initiative (Unpublished) *Baseline Study on Mechanisms to Address Torture and Ill Treatment in Places of Detention in Mozambique*. Cape Town: ASI/EU South Africa

582 *Ibid.*

583 Kyed HM (2009) Community policing in post-war Mozambique. *Policing and Society*, Vol. 19, pp.354–371

584 Human Rights Council (11 November 2011) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/1, [44]–[45]

585 Republica de Mocambique (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*. Vol.11, p.42

586 Interviews with civil society respondents, 2011

587 *Ibid.*

588 United States Department of State (2011) *Mozambique: Country Reports on Human Rights Practices for 2011*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed 4 June 2012

The sanctions vary from verbal or written warnings, pay docking, temporary suspension, to expulsion, depending on the seriousness of the infraction.⁵⁸⁹

Freedom from partisan political interference

The Constitution provides that in the course of their duties, the police must remain non-partisan and ensure the neutral application of the law to citizens and both public and private institutions.⁵⁹⁰ Despite this guarantee, there are reports that the government has exerted political influence over the police,⁵⁹¹ and that the police organisation has had difficulty transitioning from a political institution to a civilian policing agency with a focus on crime prevention and detection.⁵⁹² As noted earlier, the APRM report of 2009 also observed the police's tendency to act in a partisan fashion during elections.⁵⁹³

While the National Commission for Political Affairs (*Comissao Nacional dos Assuntos Policiais*) was established in 1992, to provide oversight for, among other things, political interference in the functioning of the police, a lack of human and financial resources has meant that the Commission has never adequately functioned.⁵⁹⁴

In its Poverty, Gender, and Social Assessment for Mozambique in 2009, the World Bank noted that 42% of households rated the quality of police services as either very bad or bad, indicating the need for far greater attention to the quality of services delivered to citizens.⁵⁹⁵

Article 9: Corruption and abuse of power

Standard: olice officials shall not commit or attempt to commit any act of corruption or abuse of power. They shall rigorously oppose and combat all such acts.

Corruption is perceived as widespread across Mozambican executive and legislative branches and institutions, and while there are criminal penalties for engaging in corruption, these have not been implemented effectively.⁵⁹⁶ The Traffic Police have been identified as restricting freedom of movement by establishing checkpoints and demanding bribes, and harassing foreigners for

589 Interviews with civil society respondents, 2011

590 Constitution of Mozambique, article 254

591 AfriMap and Open Society Initiative for Southern Africa (2006) *Mozambique: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa

592 Article 5 Initiative (Unpublished) *Baseline Study on Mechanisms to Address Torture and Ill Treatment in Places of Detention in Mozambique*. Cape Town: ASI/EU South Africa

593 African Peer Review Mechanism (2009) *Country Review Report for the Republic of Mozambique*. Johannesburg: APRM Country Review Report No.11, June 2009

594 AfriMap and Open Society Initiative for Southern Africa (2006) *Mozambique: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Southern Africa

595 The World Bank (2008) *Beating the Odds: Sustaining inclusion in Mozambique's growing economy*. Washington DC: The World Bank

596 United States Department of State (2011) *Mozambique: Country Reports on Human Rights Practices for 2011*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed 4 June 2012

alleged violations of the law.⁵⁹⁷ In the Poverty and Vulnerability Survey conducted by the World Bank in 2009, 35% of the households interviewed expected to have to pay a bribe to receive judicial services. They rated the PRM as the fourth most corrupt public institution in Mozambique, with nearly 20% of households saying they always have to pay a bribe to the police in return for a service. The Traffic Police were rated as the second most corrupt after customs officials.⁵⁹⁸

In 2010, the government held stakeholder consultations on the adoption of an anti-corruption law and policy.⁵⁹⁹ There are numerous reports of corruption and abuse of power by police officials, which occur with impunity.⁶⁰⁰ As discussed in Article 2, corruption has an impact on the ability of the economically disadvantaged to access justice.

The PRM has an independent Anti-Corruption Unit with a mandate to investigate and prosecute police corruption.⁶⁰¹ It has had some success, and in 2005 was upgraded to a Central Office for Combating Corruption, with increased human and financial resources.⁶⁰² However, respondents were concerned that it has been largely ineffective in combating corruption.⁶⁰³

The Legal Affairs and Human Rights Committee of the Mozambique National Assembly has also played a role in investigating police corruption.⁶⁰⁴ However, given the lack of implementation of anti-corruption strategies, it is reported that local NGOs and the media play the main role in reporting and investigating corruption.⁶⁰⁵

The APRM report noted that, notwithstanding anti-corruption efforts by the government, 'there is little evidence of decline in corruption in Mozambique because of the government's stranglehold on the economic and political spaces, weak legal and institutional framework, and lack of capacity of the Assembly of the Republic to carry out effective oversight of government's activities'. It stated that 'to fight corruption more effectively, the anti-corruption strategy will need to be revamped with measures such as the vigorous prosecution of cases of grand corruption to signal to Mozambicans that the government is seriously committed to combating corruption; publishing of the assets declaration of high government officials and the active verification of assets'.⁶⁰⁶

597 *Ibid.*

598 The World Bank (2008) *Beating the Odds: Sustaining inclusion in Mozambique's growing economy*. Washington DC: The World Bank

599 United States Department of State (2011) *Mozambique: Country Reports on Human Rights Practices for 2011*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed 4 June 2012

600 *Ibid.*

601 African Policing Civilian Oversight Forum (2008) *An Audit of Police Oversight in Africa*. Cape Town: African Policing Civilian Oversight Forum, p.51

602 *Ibid.*

603 Interviews with civil society respondents, 2011

604 African Policing Civilian Oversight Forum (2008) *An Audit of Police Oversight in Africa*. Cape Town: African Policing Civilian Oversight Forum, p.51

605 United States Department of State (2011) *Mozambique: Country Reports on Human Rights Practices for 2011*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed 4 June 2012

606 African Peer Review Mechanism (2009) *Country Review Report for the Republic of Mozambique*. Johannesburg: APRM Country Review Report No.11, June 2009, section 213

Article 12: Confidentiality

Standard: Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of the duty and needs of justice strictly require otherwise.

The Constitution provides that written records of those deprived of their liberty must be maintained by the PRM.⁶⁰⁷ During states of emergency, the name of detainees and the legal basis for their detention must be made public within five days.⁶⁰⁸

The Constitution provides a framework for the handling by the state and its agencies (including the PRM) of personal information. It prohibits the electronic collection and processing of personal data in respect of political, religious and other beliefs, and requires the implementation of law to regulate the collection and protection of personal data, and the restriction of access to third parties.⁶⁰⁹

Civil society respondents report that there is no policy regarding freedom of information, nor is there general freedom of information legislation. However, statistics on crime are made available to the public by the National Institute of Statistics.⁶¹⁰ The Attorney-General is also required to publish annual crime information.⁶¹¹

Article 13: Property rights

Standard: In the performance of their duties police officers shall respect and protect all property rights. This includes the economical use of public resources.

Information relevant to the use of state and public property is contained in the PRM Annual Report. However, according to civil society respondents, this report is ‘hardly available to the public’.⁶¹²

The government has acknowledged that there are several weaknesses in the property management system, including: insufficient provision of equipment and resources; no acquisition policy; no system for the management and maintenance of equipment; and a lack of PRM autonomy over financial management.⁶¹³

The police require a warrant to enter and search private property, although there are reports that this is not always followed in practice.⁶¹⁴

⁶⁰⁷ Constitution of Mozambique, articles 71 and 288

⁶⁰⁸ Constitution of Mozambique, article 288

⁶⁰⁹ Constitution of Mozambique, articles 71 and 288

⁶¹⁰ Interviews with civil society respondents, 2011

⁶¹¹ *Ibid.*

⁶¹² *Ibid.*

⁶¹³ Republica de Mocambique (May 2003) *Strategic Plan of the Police of the Republic of Mozambique, 2003–2012*. Vol.1, p.43

⁶¹⁴ United States Department of State (2011) *Mozambique: Country Reports on Human Rights Practices for 2011*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>, accessed 4 June 2012

Civil society respondents report that over the past few years, there has been an improvement in police handling of private property. This is particularly so in relation to the confiscation of goods – particularly cars and household appliances – that have reportedly been returned to private owners.⁶¹⁵ Civil society respondents also state that they have found no evidence of police mishandling private property.⁶¹⁶ Police stations maintain inventories of confiscated property, or property that is required as evidence in criminal proceedings. However, civil society respondents have reported that stations are not equipped with safes or vaults to store private property and maintain the integrity of evidence.

⁶¹⁵ Interviews with civil society respondents, 2011

⁶¹⁶ *Ibid.*

7

Namibia

Background

Namibia gained independence from South Africa in 1990. A former German colony, this territory was under South African rule after it had been seized during World War I, and was then annexed during World War II. After a 25-year fight for independence, the South West Africa People's Organisation (SWAPO) came to power, with the election of Sam Nujoma as President. He was replaced by Hifikepunye Pohamba in November 2004, who has since been re-elected.

Under South Africa's rule of Namibia, the country's police force largely mirrored that of the South African Police Force (SAP), and was controlled by the SAP. Gradually, black police officials were recruited and trained into the force. After independence in 1990, the Police Act was enacted and signed into law on 26 November 1990.⁶¹⁷ Since then, 26 November is commemorated as the Namibian Police Day.

The Namibian Police (NamPol) incorporated many men and women from the former South West Africa Territorial Force (SWATF),⁶¹⁸ Koevoet⁶¹⁹ and PLAN.⁶²⁰ NamPol was faced with the challenge of building an integrated, cohesive force under a new identity.⁶²¹

⁶¹⁷ The Police Act, No. 19 of 1990

⁶¹⁸ An auxiliary of the South African Defence Force with the objective of combating Namibian independence

⁶¹⁹ Koevoet or South West Africa Counter-Insurgency Unit was a paramilitary unit deployed against SWAPO fighters during the Namibian war of independence

⁶²⁰ People's Liberation Army of Namibia (PLAN) was the active military wing of the South West Africa People's Organisation (SWAPO) fighting for independence during the Namibian war of independence

⁶²¹ Website of the Namibian Police Force, <http://www.NamPol.gov.na/Pages/History.aspx>, accessed 20 November 2011 and 12 June 2012

NamPol falls under the Ministry for Safety and Security. It is headed by an Inspector-General who is appointed by the President. The force is divided into 13 political regions. There are currently 11 157 police officials in NamPol.

Methodology

Permission was obtained from the Inspector-General of Police to undertake the research. Due to a limitation in costs, the country researchers interviewed approximately 20 police officers, most of whom were of senior rank, including commissioners, station commanders and a unit commander. Much of the information that was sought for this study was difficult to obtain as the police do not readily collect or analyse it in the format needed for this report. Interviews were also held with individuals from civil society. Primary data obtained through interviews and from information provided by the police was supplemented by a review of the literature and media articles.

Article 1: Respect for human rights

Standard: In the performance of their duties, police officials shall respect and protect human dignity, maintain and uphold the human rights of all persons.

Namibia has ratified or acceded to the major international and regional human rights instruments.⁶²² The Constitution provides that the International Covenant on Civil and Political Rights is enforceable in Namibia by the judiciary and quasi-judicial bodies.⁶²³

The Constitution and legislation clearly provide for the powers and duties of the police. The 1990 Constitution of the Republic of Namibia (with its first amendment of 1998 and second amendment of 2010) is the supreme law of the country.⁶²⁴ It provides for the protection of life and outlaws the death penalty. The Constitution provides for the protection of liberty, human dignity and freedom from torture and other cruel, inhuman and degrading treatment or punishment, or forced labour. Discrimination is prohibited on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status. Rights may be limited by law as long as they do not negate the essential content of the right, and specify the

⁶²² These include: the International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights and its first and second optional protocol; International Convention on the Elimination of all forms of Racial Discrimination; Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; Convention relating to the Status of Refugees; Convention on the Elimination of all forms of Discrimination against Women; Convention on the Rights of the Child; Convention on the Rights of Persons with Disabilities; the African Charter on Human and People's Rights, the African Children's Charter and the Protocol to the African Charter for Human and Peoples' Rights on the Rights of Women in Africa.

⁶²³ Human Rights Council (24 January to 4 February 2011) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Namibia*. A/HRC/WG.6/10/NAM/1.

⁶²⁴ Constitution of the Republic of Namibia, 1990, as amended

ascertainable extent of the limitation.⁶²⁵ Provision is made for the derogation of rights under a state of emergency, which may include the detention of persons.⁶²⁶

The Constitution provides for the establishment of the police force, defence force and the prison service.⁶²⁷ The Inspector-General is charged with making provision for a balanced structuring of the police force, with the power to make suitable appointments, to cause charges of indiscipline among members of the police force to be investigated and prosecuted and to ensure the efficient administration of the police force.⁶²⁸ The President has the power to appoint and dismiss the Inspector-General of Police (as well as the Commissioner of Prisons and Commander-in-Chief of the Defence Force), leaving the President with ultimate control over the security forces, to the extent that it may be limited by the Constitution.⁶²⁹

The Police Act establishes the organisation and administration of the Namibian Police, and outlines their functions, which are:

- » The preservation of the internal security of Namibia;
- » The maintenance of law and order;
- » The investigation of any offence or alleged offence;
- » The prevention of crime; and
- » The protection of life and property.⁶³⁰

Other legislation related to policing includes the Criminal Procedure Act,⁶³¹ the Anti-Corruption Act,⁶³² the Security Enterprises and Security Officers Act,⁶³³ and the Prevention of Organised Crime Act.⁶³⁴

Human rights training

Basic, advanced and in-service training takes place at Namibia's two police training academies – the Israel Patrick Iyambo Police College and the Ondangwa Police Training Centre.⁶³⁵ The basic training lasts for a period of six months. The police training manual states that police are guided by the Police Act, Operational Manuals and the Namibian Constitution, and these form the basis for the training. Ad hoc human rights training is provided by external organisations such as the University of Namibia and the Legal Assistance Centre (LAC). The LAC has

625 Constitution of the Republic of Namibia, article 22

626 Constitution of the Republic of Namibia, article 24

627 Constitution of the Republic of Namibia, chapter 15

628 Constitution of the Republic of Namibia, article 116(2)

629 Amoo S and Skeffers I (2008) *The Rule of Law in Namibia*. In Horn N and Bösl A (eds) *Human Rights and the Rule of Law in Namibia*. Windhoek: Macmillan Namibia

630 The Police Act, as amended by Act 3 of 1999

631 Criminal Procedure Act, No. 25 of 2004

632 Anti-Corruption Act, No. 8 of 2003

633 Security Enterprises and Security Officers Act, No. 19 of 1998

634 Prevention of Organised Crime Act, No. 29 of 2004

635 NamPol website, <http://www.NamPol.gov.na/Pages/College.aspx>, accessed 12 June 2012

compiled a manual on human rights training. The manual for in-service training also emphasises respect for human rights. In-service training is mandatory and aspects of the basic training are repeated. Some officials also received training during 2011 at the International Law Enforcement Academy in Botswana.⁶³⁶

The importance of adhering to human rights principles is reinforced by senior management of the police. At a recent graduation ceremony of police recruits at the Ondangwa Police Training Centre, Inspector-General Ndeitunga cautioned new trainees against using force and stressed ‘that “minimal” action should be taken against offenders of those using violence’ while adhering to democratic norms and regulations. He also tested the new police officers by asking questions on the Constitution and issues of policing and human rights.⁶³⁷

According to informants, the police college gives presentations on human rights at police stations throughout the country, where practical examples are given as to how the Namibian Constitution impacts on police work. A booklet has also been developed around this, which has been distributed widely. Civil society organisations are sometimes invited to present on aspects of the police training, including on human rights.

According to respondents, a challenge exists with the ex-combatants who were integrated into the police services. Whereas they had formerly been trained on military tactics, it appears that they have not always been able to make the transition to a civilian mode of policing, and have required further training.

Oversight over the police

The Constitution established an Ombudsman to be appointed by the President on recommendation of the Judicial Service Commission.⁶³⁸ It has the mandate to investigate complaints of violation of human rights, abuse of power and unfair, harsh or insensitive treatment of an inhabitant of Namibia.⁶³⁹ It has the power to make recommendations to the Prosecutor-General or may bring court applications to force government to take action or to interdict government from continuing or taking a course of action. The powers and duties are further dealt with in the Ombudsman’s Act.⁶⁴⁰

The Ombudsman may also provide assistance to a complainant to approach a court to obtain a legal remedy.⁶⁴¹ The Ombudsman has conducted and published two reports on visits to police stations – one in 2006 and one in 2008.⁶⁴² During

636 United States Department of State (2012) *Country Reports on Human Rights Practices for 2011: Namibia*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 13 June 2012

637 *New Era* (21 February 2012) Police warned against unlawful detention. <http://www.newera.com.na/articles/43006/Police-warned-against-unlawful-detentions>, accessed 13 June 2012

638 Constitution of the Republic of Namibia, articles 89 to 94

639 The Ombudsman’s obligation to investigate allegations of corruption was removed in the 2010 amendment to the Constitution

640 Ombudsman Act, No. 7 of 1990

641 Constitution of the Republic of Namibia, article 25(2)

642 Office of the Ombudsman website, www.ombudsman.org.na, accessed 12 June 2012

2008, the Ombudsman received 1 565 complaints, 138 of which related to human rights violations. These included complaints of assault made against the police, prison officials as well as overcrowding in police cells and delays in criminal trials.⁶⁴³ A total of 263 complaints were received in 2008 relating to the police, including allegations of assault, failure to investigate reported cases, and the failure to provide information on the progress of an investigation. There were also complaints of failures to register charges against colleagues, and of personal property not being returned to a person upon release from custody.⁶⁴⁴

Complaints of assault are referred by the Ombudsman to the Namibian Police Complaints and Discipline Unit (NPCDU), which is a unit within the police command structure. The unit has the mandate to investigate complaints against the police and refer the outcomes to relevant police directorates, such as internal investigation units. The NPCDU's mandate includes the investigation of deaths in police custody, and as a result of police action and complaints against the police. There is no independent complaints mechanism to investigate complaints of misconduct levelled at members of the police by the public. There is very little information available about the functioning and effectiveness of the NPCDU, possibly because they conduct internal investigations and report internally to the police. The Ombudsman's office has complained that it has struggled to obtain progress reports on investigations referred to the NPCDU.⁶⁴⁵

It is the responsibility of the Station Commander to identify misconduct occurring at their stations. Less serious matters are dealt with through counselling and discussion, and more serious cases are referred for internal investigation. However, the Police Act provides an exemption that states that a member who acts in good faith and performs any act in accordance with the provision purporting to be from a competent legislative authority, then, notwithstanding any defect of such a provision, he will be exempt from liability.⁶⁴⁶

Sources for this study indicated that often the police refuse to accept complaints of misconduct laid against the police at the charge office. Station commanders interviewed said that they do sometimes receive complaints from members of the public, but there are also cases where the responsible officer at the charge office refuses to take up complaints against a colleague.

The Anti-Corruption Commission, the Auditor-General, the Prosecutor-General, the courts and parliamentary standing committees also have oversight over the police. However, there is no central independent body which investigates only the police. Given that a number of bodies may investigate cases, it is difficult

643 Office of the Ombudsman (2009) *Annual Report 2008*. http://www.ombudsman.org.na/attachments/069_Ombudsman%20Annual%20report%202008%20FINAL.pdf, accessed 12 June 2012, p.11

644 *Ibid*, p.15. This reflects a reduction in the number of complaints against police from 273 in 2007 and 384 in 2006

645 Walters J (undated) *The protection and promotion of human rights in Namibia: The constitutional mandate of the Ombudsman*. <http://www.kas.de/upload/auslandshomepages/namibia/HumanRights/walters.pdf>, accessed 22 June 2012

646 The Police Act, article 38(2)

to determine the number of investigations against the police. In addition, most cases are referred back to NamPol for investigation or for action to be taken against their members. Despite this, there have been several successful actions against members of the police, or against the police as a body.

The media act as another watchdog over the police, and regularly report on abuse of police power. Respondents indicated that the police sometimes find such articles threatening and have criticised members of the media for publishing these articles.

There are a number of instances where the police have been implicated for failing to observe human rights, though this has improved over the years.⁶⁴⁷ Accusations of torture and abuse of police powers was at its highest when the police, assisted by the Namibian Defence Force, rounded up and tortured members of the Caprivi Liberation Army during their secessionist struggle in 1998/1999.⁶⁴⁸ The Caprivi high treason trial is the longest criminal trial in Namibia's history and continued from 2003 to 2010. During this time, 21 of the 132 people on trial died in custody.⁶⁴⁹ Three Caprivi detainees who lodged compensation claims for torture against the Minister of Home Affairs and the Minister of Defence when they were arrested 12 years ago had their cases dismissed by the High Court. The judgment in the case was handed down, but 24 similar damages claims made by other detainees were settled out of court. Other claims are still ongoing.⁶⁵⁰

The Inspector-General has expressed concern that 'incompetent police officers' have cost government a lot of money as a result of civil claims. He indicated that most of these claims stemmed from a lack of understanding of police powers of arrest, and that there were many complaints from people that alleged they were humiliated and assaulted by the police. In 2011, the state lost several cases including an out of court settlement of NAD3.65 million in respect of a claim of torture and unlawful arrests. This included the cases brought by the detainees from the Caprivi region.⁶⁵¹

Human rights and the dignity of police officials is respected

Police respondents complained that income levels of the low-ranking officers is insufficient to qualify for housing loans from the bank or any of the government schemes for low-income housing. NamPol is trying to address this through

647 United States Department of State (2012) *Country Reports on Human Rights Practices for 2011: Namibia*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 13 June 2012; Amnesty International (2007) *Annual Report 2007*. <http://www.amnesty.org/en/region/namibia/report-2008>, accessed 13 June 2012

648 Nakuta J and Cloete V (2011) *The Justice Sector and the Rule of Law in Namibia: The Criminal Justice System*. Windhoek: Namibia Institute for Democracy and Human Rights Documentation Centre

649 Amnesty International (2011) *Annual Report 2010*. <http://www.amnesty.org/en/region/namibia/report-2011>, accessed 15 June 2012

650 *National News* (16 March 2010) Court dismisses treason suspects' claims. <http://www.namibian.com.na/news-articles/national/full-story/archive/2010/march/article/court-dismisses-treason-suspects-assault-claims/>, accessed 12 June 2012

651 *New Era* (6 October 2011) Civil claims on the increase says police chief. <http://www.newera.com.na/article.php?articleid=41024>, accessed 13 June 2012

building accommodation for the officers. However, this has limitations as a long-term solution, and such accommodation is generally unsuitable for families. Although the Constitution and Police Act do not prohibit membership of a trade union or collective bargaining, no such structure currently exists. The introduction of such a structure could help police members to negotiate for better working conditions and salaries.⁶⁵²

According to respondents, NamPol does offer psychosocial support to police officers experiencing trauma and stress. Police may consult with NamPol social workers or they may be referred to outside psychologists. Information was not available on the number of social workers providing this service, nor on the number of police making use of them.

In 2008, the Ombudsman reported that police officers complained about the application of the promotion policy, which appeared not to be applied consistently, about the payment of daily subsistence allowances, and about transfers to other stations.⁶⁵³

Article 2: Non-discrimination

Standard: Police officials shall treat all persons fairly and equally and avoid any form of discrimination.

The Constitution guarantees that all people are equal before the law and provides for freedom from discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.⁶⁵⁴

Emerging out of apartheid, the Namibian government is committed to preventing racial discrimination. The Racial Discrimination Prohibition Act⁶⁵⁵ creates criminal offences and determines punishments for certain acts and practices of racial discrimination and apartheid. Namibia is also party to the International Convention on the Elimination of all Forms of Racial Discrimination. The principle of non-discrimination therefore forms part of the legislative principles guiding policing.

However, some of the social workers interviewed indicated that there were still instances where the police do discriminate against people they come into contact with. This is particularly apparent in relation to female victims, when women are perceived to be acting outside expected gender stereotypes. For instance, where a woman is raped in a bar, she is often blamed for putting herself at risk or for what subsequently happens to her. Similarly, homosexuals are often discriminated

652 Nakuta J and Cloete V (2011) *The Justice Sector and the Rule of Law in Namibia: The Criminal Justice System*. Windhoek: Namibia Institute for Democracy and Human Rights Documentation Centre, p.12

653 Office of the Ombudsman (2009) *Annual Report 2008*. http://www.ombudsman.org.na/attachments/069_Ombudsman%20Annual%20Report%202008%20FINAL.pdf, accessed 12 June 2012, p.15

654 Constitution of the Republic of Namibia, article 10

655 Racial Discrimination Prohibition Act, No. 26 of 1991

against by the police, or subject to unfair treatment, as are sex workers. One study found that sex workers were frequently arrested by the police for petty misdemeanours and arrested for periods from one day up to two weeks without seeing a judge. Women were also beaten and threatened and forced to have sex with the police.⁶⁵⁶ According to the United States Department, this practice unfortunately still persists.⁶⁵⁷

Respondents in this study reported that casual workers and people who move around the settlements in search of work are also treated with suspicion by the police. Respondents from the Ombudsman's office indicated that they do often receive complaints regarding discrimination by the police.

Respondents indicated that these complaints against the police in relation to these matters are often not taken seriously. Respondents from civil society believe that many of the attitudes from the apartheid era still prevail in the police force, and therefore people are reluctant to report tribal or racial discrimination to the police.

NamPol respondents reported that there is some attempt to address issues of discrimination in the training of police officials. It was also reported that police engaged in the community policing programme have become more sensitised to diversity issues as they are exposed to a diverse population in the community. A course on gender sensitivity has been introduced at the police training centre, though it is not clear whether all police officials attend this course, or whether it is intended primarily for those working in the Women and Child Protection Unit. NGOs have participated in training police on gender sensitivity and gender-based violence.

There is some concern that policing resources are not distributed equitably. Although Windhoek, as the capital, is responsible for 67% of crimes reported, it is not allocated a proportionate amount of resources, though inevitably, it is the best-resourced policing region in the country. More remote police stations have complained of inadequate resources and of having to conduct investigations on foot, as a result of a lack of police vehicles. This is particularly difficult as police are required to cover vast territories. For example, in the Karas region, there are 342 police officials for a population of 69 329 – but the region covers a territory of 161 215 km². These distances also affect the ability of complainants to access the police, as they may have to walk up to 80km to the nearest police station.⁶⁵⁸ Many police stations do not have access to facilities to make phone calls, or even to proper holding facilities for suspects.

According to police respondents, women represent approximately 30% of the police force, although it is not clear how they are distributed through the ranks.

656 LeFont S (2008) *Help wanted: Sex workers in Katatura, Namibia*. Monograph No. 2. Windhoek: Legal Assistance Centre

657 United States Department of State (2012) *Country Reports on Human Rights Practices for 2011: Namibia*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 13 June 2012

658 *The Namibian* (17 May 2006) MPs want more resources allocated to police. http://www.namibian.com.na/index.php?id=28&tx_ttnews%5Btt_news%5D=27403&no_cache=1, accessed 13 June 2012

Several senior officials interviewed believed that there is still gender prejudice towards women in the force, and that it will take some time for NamPol to become a gender-neutral force. A quota system has been proposed to ensure that recruits are selected from the diverse Namibian population, but it has not been enforced. There have been concerns that people from disadvantaged communities⁶⁵⁹ and San population groups have been denied work opportunities. Regarding attempts to recruit white people into the police, the Inspector-General noted his concern that ‘white Namibians seem to lack interest in joining the force, despite efforts to have a rainbow force’.⁶⁶⁰

The current recruitment policy requirements are neutral, requiring only that the applicant be a Namibian citizen between the ages of 18 and 25 years.⁶⁶¹ Applicants have to be medically fit, and need to undergo a medical examination.⁶⁶² According to respondents, applicants who are HIV positive are excluded from being recruited, though those who become HIV positive or ill during the course of their employment are not forced to resign, but are given access to medical treatment. The police are unable to accommodate certain groups of disabled applicants, such as those with visual disabilities. Applicants must also not have a criminal record.

A policy requires that police should accept all applicants who are ‘children of the liberation struggle’, even if they do not meet the requirements. The entrance criteria are relaxed for members of the Special Field Force (SFF). This is a paramilitary unit made up primarily of former People’s Liberation Army of Namibia (PLAN) members. It was created as a remedy to the problem of unemployment of former combatants. Though their work concentrates on public order and special operations, they are also involved in general crime prevention. There is a general view that they are less educated than other members of NamPol, and they have been implicated in intimidation, beatings and torture, especially during the secessionist uprising in the Caprivi Region in 1998/1999.⁶⁶³

Article 3: Use of force

Standard: Police officials may only use force when strictly necessary and to the extent required for the performance of their duties and adhering to national legislation and practice.

The use of force in Namibia is subject to international norms and standards and the constitutional right to life, liberty and freedom from torture and other cruel,

659 *New Era* (26 May 2011) NamPol, NDF accused of prejudice. http://www.newera.com.na/article.php?title=NamPol%2C_NDF_accused_of_prejudice&articleid=38882, accessed 13 June 2012

660 *New Era* (6 October 2011) Whites shun Police Force. <http://www.newera.com.na/article.php?articleid=41033&title=Whites%20shun%20%20police%20force>, accessed 13 June 2012

661 NamPol website, <http://www.NamPol.gov.na/Pages/College.aspx>, accessed 13 June 2012

662 *Ibid.*

663 Nakuta J and Cloete V (2011) *The Justice Sector and the Rule of Law in Namibia: The Criminal Justice System*. Windhoek: Namibia Institute for Democracy and Human Rights Documentation Centre, pp.10–11

inhuman or degrading treatment or punishment. The Criminal Procedure Act⁶⁶⁴ also contains provisions dealing with the use of force. The Act allows for the use of such force as is reasonably necessary in the circumstances to overcome resistance or to prevent a suspect from fleeing. The force used must be proportional to the seriousness of the offence committed or reasonably suspected of being committed, as well as to the circumstances surrounding the resistance or fleeing by the suspect. A 'serious offence' is defined in the Act, and includes such offences as treason, sedition, public violence, murder and rape. It also includes assault when a dangerous wound has been inflicted and housebreaking with the intent to commit an offence. Under such circumstances, a person is justified in using force that is likely to cause death or grievous bodily harm only if the suspect is to be arrested for a serious offence and cannot be prevented by reasonable means in a less violent manner from fleeing. The Act also provides for the use of force for the purposes of self-defence or for the defence of another person from imminent or future death or grievous bodily harm.⁶⁶⁵

The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁶⁶⁶ stress the principle of proportionality in the use of force.⁶⁶⁷ The principles provide that law enforcement officials may not use firearms against persons except in defence of themselves or others against the imminent threat of death or serious bodily injury. The intentional use of firearms may only be made when strictly unavoidable in order to protect life. Compared with this standard, the Criminal Procedure Act does make some attempt to provide clarity on when police officers may be authorised to use force and tries to restrict its use to the threat of death or serious bodily harm. However, the category of offences included in the schedule of 'serious offence' does include some property offences as well (such as housebreaking). Offences such as treason and sedition may also include some non-violent offences.

The basic training for new police officers deals with the Criminal Procedure Act and the use of force. The basic training manual outlines the circumstances in which force may be used, and emphasises that non-violent means should be used first. It stresses that a police official should identify themselves and give a warning before using firearms, and should allow for an interval for their warning to be obeyed. When firearms have been used, the official must complete an incident report.

The Inspector-General of Police recently stressed the importance of using minimum force to graduates of police training.⁶⁶⁸ Other respondents indicated

⁶⁶⁴ Criminal Procedure Act, section 51

⁶⁶⁵ Criminal Procedure Act, section 51

⁶⁶⁶ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 1990

⁶⁶⁷ Adopted by the 8th United Nations Congress on the Prevention of Crime and Treatment of Offenders, Havana, 27 August to 7 September 1990.

⁶⁶⁸ *New Era* (21 February 2012) Police warned against unlawful detention. <http://www.newera.com.na/articles/43006/Police-warned-against-unlawful-detentions>, accessed 13 June 2012

that excessive use of force is not tolerated and that when a junior officer uses excessive force, it reflects badly on his superiors. Many units within the force call upon the Special Forces to make arrests.

According to respondents, the police have regulations stipulating who can use a firearm. Officials are trained to use firearms, and an evaluation is conducted before an official is authorised to carry one. It is estimated that half of the police officials in the force carry firearms. Firearms are stored at police stations and police officials are required to sign for them when they take them out and bring them back. Detectives are permitted to take their weapons home with them. Non-lethal weapons are made available to police for self-defence.

Despite these precautions, there are incidents of the excessive use of police force. According to sources, six police officers were reported and prosecuted in the last year. During a taxi riot in January 2011, it is alleged that police shot rubber bullets at protesting taxi drivers and beat at least one with the butt of a gun, resulting in the injuries of two protestors.⁶⁶⁹ In another incident in 2011, two policemen fired at and killed a man who failed to stop at a road block.⁶⁷⁰

Article 4: Torture and cruel, inhuman and degrading treatment or punishment

Standard: No police officer shall, under any circumstances, inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment of any person.

Namibia acceded to the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) on 28 November 1994. Torture and other ill-treatment is prohibited in terms of article 8(2)(b), and is non-derogable under article 24(3) of the Constitution.⁶⁷¹ Following submission of the first state report to the UN Committee against Torture (CAT) in 1995, the Committee noted concern that although torture and physical assaults by the Namibian police had reduced since independence, treatment which falls under this category continues to exist. It also noted a failure by the state to promptly and impartially investigate and prosecute those responsible for acts of torture and cruel, inhuman and degrading treatment, and for failing to institute disciplinary proceedings against responsible public officials.⁶⁷² The CAT recommended that Namibia should enact a law defining and prohibiting torture

669 *The Namibian* (26 January 2011) Taxi rebellion turns violent. http://www.namibian.com.na/index.php?id=28&tx_ttnews%5bt_news%5d=77169&no_cache=1, accessed 13 June 2012

670 *New Era* (22 February 2011) Cops still Free. http://www.newera.com.na/article.php?title=Cops_still_free&articleid=37481, accessed 13 June 2012; and United States Department of State (2012) *Country Reports on Human Rights Practices for 2011: Namibia*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 13 June 2012

671 Constitution of the Republic of Namibia, article 8(2)(b) and article 24(3)

672 Office of the High Commissioner for Human Rights (1997) *Concluding Observations of the Committee against Torture: Namibia*. 1997/05/06. A/52/44, paras 227–252, at para 235–240

and provide for the education and training of police, prison officers and defence personnel on the prevention of torture. The Committee further recommended that victims of torture be given standing to institute criminal proceedings against perpetrators of torture, and further that disciplinary proceedings against those alleged to have committed acts of torture should not depend on the outcome of criminal proceedings.⁶⁷³ To date, Namibia has not submitted its second report to the Committee (due in 1999), nor has any legislation been drafted to criminalise torture in compliance with the Convention.

The police training manual, which was developed with the help of the Legal Assistance Centre, now gives the police clear guidance on how to treat suspects and arrested people, and on how to manage interrogations.

A source from the Prosecutor-General's office noted that people are sometimes forced or intimidated into admitting to a crime or to lead police to a crime scene. Due to the fact that this is a violation of the right to remain silent, the courts are forced to question the admissibility of these statements, and it may result in the postponement of cases for further investigation.

There have been several recent reports of torture or ill-treatment. In March 2010, the police allegedly assaulted a suspect, Albert Shinval, during the course of his arrest. He later died of his injuries. Four police officers were arrested and charged, and then released on bail.⁶⁷⁴ In 2010, it was reported that a police officer beat John Haufila at Wanaheda Police Station until he lost consciousness. Haufila was taken to hospital and subsequently charged with preventing the police from executing their duties.⁶⁷⁵

The Inspector-General of Police recently told new graduates of the police college that they 'must not torture and mistreat suspects who are in custody'. Inspector-General Ndeitunga told the new constables, 'You should always be objective, focused and impartial in the execution of your duty. Every suspect is presumed innocent until they are proven guilty by a competent court of law.'⁶⁷⁶

Article 5: Protection of persons in custody

Standard: Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention when required.

The Namibian Constitution prohibits arbitrary arrest or detention and provides that no person who is arrested shall be detained in custody without being

673 Office of the High Commissioner for Human Rights (1997) *Concluding Observations of the Committee against Torture: Namibia*. 1997/05/06. A/52/44, paras 227–252, at paras 241–252

674 United States Department of State (2012) *Country Reports on Human Rights Practices for 2011: Namibia*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 13 June 2012

675 *Ibid.*

676 *The Namibian* (7 June 2011) NamPol's chief against torture. http://www.namibian.com.na/index.php?id=28&tx_ttnews%5bt_news%5d=82614&no_cache=1, accessed 13 June 2012

informed promptly in a language they understand of the reasons for their arrest.⁶⁷⁷ Persons so detained must be brought before the nearest magistrate or judicial officer within 48 hours of arrest, or as soon as possible thereafter, and no one may be detained beyond this period without the authority of the magistrate or other judicial authority. Illegal immigrants who are detained are excluded from this provision, although they have the right to consult confidentially with a legal practitioner.⁶⁷⁸ The Constitution does not specify the basic conditions and treatment to be accorded to detainees, but the general rights of human dignity, life, and freedom from torture and cruel, inhuman and degrading treatment apply to them. The Criminal Procedure Act deals with the procedure in respect of arrested persons and those facing trial.

An unreported judgment of *Malcom McNab and Others v Ministry of Home Affairs NO and Others* expressed concern about the violation of rights accorded to detained persons in police custody:

An arrested person has a right to be held in conditions which are not degrading. It is a violation of an arrested person's constitutional right to be held in such horrendous conditions. It is plainly unconstitutional and unlawful. We all have accepted the Constitution as our Supreme Law. We are all parties to this sacred contract. As a judge, I am oath-bound to uphold the Constitution for the benefit of all who live in Namibia. It is of no consequence to me that those who are responsible for the upkeep of holding cells say that they have no resources to maintain the holding cells in a clean and hygienic condition in compliance with the dictates of the Constitution. It has been held by this court that a lack of financial resources should not be a factor to be taken into account by a court in enforcing the fundamental rights enshrined in the Constitution. The State is constitutionally bound to find and make resources available, failing which it will be held liable for violation of the person's fundamental rights.⁶⁷⁹

Following two special visits to police cells in 2006 and 2008, the Ombudsman expressed concern about the treatment and conditions experienced by detainees in police custody.⁶⁸⁰ In 2008, the Ombudsman indicated that although there was some improvement in conditions, and that the police had responded to some of the recommendations made in 2006, the conditions remained largely unchanged. On the positive side, there was generally separation between males and females, and between adults and juveniles. Major challenges related to:

677 Constitution of the Republic of Namibia, article 11

678 Constitution of the Republic of Namibia, article 11

679 12 July 2007, cited in Walters J (2008) *Follow up report on conditions prevailing at police cells in Namibia*. Windhoek: Namibia Ombudsman

680 Walters J (2008) *Follow up report on conditions prevailing at police cells in Namibia*. Windhoek: Namibia Ombudsman

- » Long periods in police detention awaiting trial due to shortages of investigative staff – it was reported that in Karibib, two detainees had been in detention for five years;
- » Overcrowding in some police cells had worsened since 2006;
- » Mentally ill detainees were being held in police custody, in some cases for up to a year, pending transfer to a facility for psychiatric evaluation;
- » Although there were some minor changes made to the physical infrastructure, some major problems remained, especially in relation to inadequate ventilation and no or limited natural lighting;
- » While most police stations had adequate supplies of food, there were some stations where there were shortages or no food supplies at all;
- » There was a lack of cleaning materials for clothing and bedding as well as for personal hygiene;
- » Lice and cockroach infestations were found at some police stations;
- » In many police cells, there was lack of privacy when using the toilets, and toilets were often in a poor state of repair and cleanliness.⁶⁸¹

The Ombudsman recommended that many of the awaiting trial detainees be transferred to prisons to await trial there, and especially that female detainees from Wanaheda holding cells should be transferred to Windhoek Central Prison. It was also recommended that an effort be made between the relevant ministries to ensure that long outstanding cases are processed as a matter of urgency in order to reduce the overcrowding in cells.

According to the US Department of State, holding cells were severely overcrowded in Ondangwa, Swakopmund, Oshakati and Otjiwarango.⁶⁸² Although official statistics indicated that in October 2010, there were 3 456 suspects held in space intended for 3 515, indicating that there was no statistical overcrowding, Cabinet authorised the Minister of Safety and Security to provide more funding for remand prisons.⁶⁸³ More recently, detainees at the Keetmanshoop holding cells complained of cruel and degrading treatment. They alleged that they were handcuffed and beaten by officers. They also complained that conditions were poor, with toilets not working and the showers were leaking, and that their food was ‘not fit for human consumption’. Inmates also alleged that they were deprived of visits and medical attention.⁶⁸⁴ Station commanders interviewed in this study confirmed that conditions were poor in many police stations but said this was due to a lack of resources.

⁶⁸¹ *Ibid.*

⁶⁸² United States Department of State (2012) *Country Reports on Human Rights Practices for 2011: Namibia*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 13 June 2012

⁶⁸³ United States Department of State (2011) *Annual Report 2011*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 13 June 2012.

⁶⁸⁴ *The Namibian* (26 October 2011) Keetmans inmates claim ill-treatment. [http://www.namibian.com.na/index.php?id=28&tx_ttnews\[tt_news\]=89121&no_cache=1](http://www.namibian.com.na/index.php?id=28&tx_ttnews[tt_news]=89121&no_cache=1), accessed 13 June 2012

The issue of safety in police cells was highlighted when Noel Calvin Thompson was beaten to death in the holding cells at Keetmanshoop on 1 April 2007. Charges of murder were laid against a fellow detainee, while four police officers were charged with culpable homicide. The charge sheet indicated that the Station Commander had failed in his duty to ensure the safety of prisoners in the police cells. He had failed to ensure the station was adequately staffed, leaving one full-time guard to care for the 107 detainees in accommodation designed for 57.⁶⁸⁵ The Station Commander was subsequently acquitted on the grounds that he was not on duty on the night of the assault. The trial against the other police officials is ongoing.⁶⁸⁶

Article 6: Victims of crime

Standard: All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary.

A Woman and Child Protection Unit (WCPU) was established in Namibia in 1993 and was initially housed under the Ministry of Home Affairs, which then moved to the police. The Ministry of Health and Social Welfare was also brought on board to ensure that social workers were made available for counselling support, as well as medical doctors and nurses and facilities for examination. A key partner in the initiative was UNICEF, which funded training to professionals on the team.⁶⁸⁷ The WCPU is now located under the Head of the Directorate Criminal Investigation Department of NamPol.

Initially, the WCPU was intended to cater only for sexual violence, but it was later expanded to include domestic violence, violence against children and child labour.

According to respondents, there are 15 WCPUs in the country.⁶⁸⁸ There are currently 100 members of the units, of whom 60% are female and 40% are male. There is a concern that there are too few members in the units to cope with demand. It was intended that a social worker should be allocated to each unit, but there are too few social workers available in order to achieve this objective. The government operates three one-stop centres for victims of gender-based violence, offering overnight accommodation, medical examinations and space for social workers to counsel clients.⁶⁸⁹

685 *The Namibian* (12 October 2010) 'New Information' led to cell death case. [http://www.namibian.com.na/index.php?id=28&tx_ttnews\[tt_news\]=73508&no_cache=1](http://www.namibian.com.na/index.php?id=28&tx_ttnews[tt_news]=73508&no_cache=1), accessed 13 June 2012

686 *The Namibian* (18 May 2012) Station Comander not guilty over cell death. [http://www.namibian.com.na/index.php?id=28&tx_ttnews\[tt_news\]=97126&no_cache=1](http://www.namibian.com.na/index.php?id=28&tx_ttnews[tt_news]=97126&no_cache=1), accessed 13 June 2012

687 Rose-Junius H (2006) *An investigation into the functioning of the Women and Child Protection Units (WCPUs) and police stations with regards to the protection of abused women and children in Namibia: A report*. A report commissioned by UNICEF and The Ministry of Safety and Security. Windhoek: Ministry of Safety and Security, p.67

688 Opuo, Otapi, Oshakati, Eenhana, Rundu, Katima Mulilo, Tsumeb, Grootfontein, Otjiwarongo, Walvisbay, Windhoek, Rehoboth, Mariental, Ludritz and Gobabis

689 UNHCR and Refworld (2012) *2012 Trafficking in Persons Report: Namibia*. <http://www.unhcr.org/refworld/country,,,NAM,,4fe30ca837,0.html>, accessed 16 July 2012

Members of the WCPU receive special training. The Women and Child Protection Unit Course is run by the Police Training Academy using the SARPCCO training manual on Policing Violence against Women and Children. Training is augmented by NGOs and other gender-based violence organisations (such as the Legal Assistance Centre). The training curriculum on gender-based violence is currently being redeveloped in collaboration with UNICEF and NGOs.⁶⁹⁰ Despite the training of WCPU members, people are transferred out of the units to other policing units, leading to a loss of skills and knowledge.

When a victim of gender-based violence reports a case to the police station, they need to be referred to a police station which has a WCPU. Consequently, the victim's first interaction with the police is most often with an ordinary police officer who has not been specially trained, and there are concerns that officers are not always sensitive or do not act appropriately towards victims. Many respondents believed that more training and sensitisation was needed to help police officials to handle different cases.

The Criminal Procedure Act makes provision for a court to make an award of compensation or restitution to a victim after the accused has been convicted of a crime.⁶⁹¹

Article 7: Respect for the rule of law and Code of Conduct

Standard: Police officials shall respect and uphold the rule of law and the present Code of Conduct.

The principle of the rule of law seems well established. The Constitution and legislation provide clear legal guidelines outlining police powers and duties and limitations on their conduct. There is some limited oversight over the police through the Ombudsman and the internal investigation unit. The courts regularly deal with cases concerning abuse of police powers or excessive use of force, and the NamPol senior management have made efforts to bring policing in line with Constitutional principles and values.

According to police respondents, police officials are subject to disciplinary procedures. There are 13 trial officers for all regions. Less serious offences are dealt with through departmental hearings, while more serious cases may be referred for criminal prosecution. When a police officer has been charged and found guilty of an offence in a disciplinary process, s/he may appeal to the Minister within 14 days. If a person has been found guilty in a court of law, then the Police Board will have to determine whether the police official is fit for duty or should be dismissed.

⁶⁹⁰ *Ibid.*

⁶⁹¹ Criminal Procedure Act, section 326

According to respondents from the internal investigation unit, during 2010, 541 complaints were lodged against police officers by the public. Of these, 102 cases were solved or closed as unfounded, and 439 cases were still under investigation.

Senior police managers interviewed for this report indicated that they were aware of the SARPCCO Code of Conduct. Each commanding officer is expected to have a copy of the Code. It also forms part of the basic training curriculum. Police officials are also reminded of the Code of Conduct during monthly briefing meetings. However, some respondents expressed concern that although people are made aware of the Code of Conduct, many do not read its provisions, or forget or do not apply its provisions.

Article 8: Trustworthiness

Standard: The public demands that the integrity of police officials be above reproach. Police officials shall therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undermine the public's confidence in a police force/service.

Article 10: Performance of duties

Standard: Police officials shall at all times fulfil the duties imposed upon them by law in a manner consistent with the high degree of responsibility and integrity required by their profession.

Article 11: Professional conduct

Standard: Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.

The Namibian Police has struggled with its legacy of brutality and oppression inherited from the apartheid regime. It aimed to try and redress this through the establishment of a community policing approach, which aimed to bring civilians and police closer together. While this was initially unsuccessful, the police are undertaking new attempts to implement community policing. Interaction with the diverse community is sometimes made difficult as police officials are not conversant with all the languages, and many are not proficient in English, the official language.

The police are attempting to upgrade their training and professional skills. NamPol offers basic and in-service training. Training material is revised every second year, together with a review team from the University of Namibia. The review is sponsored by UNICEF. There is a criticism that basic training is

inadequate and that police have not been trained to do adequate investigations. There is also a shortage of investigators and an overload of dockets, as each investigator is expected to manage between 300 and 400 dockets.⁶⁹²

Performance management system

The police have developed a set of indicators which they use to measure performance for the police as a whole. Crime statistics are used as part of that system, although this is a flawed approach as crime rates are dependent on far more than police action. In addition, generally, only a portion of crime incidents are reported to the police, so it is unlikely to be a true reflection of the nature and extent of crime at any one point.

One of the indicators of trustworthiness is whether the police operate independently of party politics. During the election year 2010, there were several incidents where the police appeared to favour the ruling political party in denying permits to opposition parties who wanted to organise rallies. Although the NGO Forum challenged the police prohibition in the High Court, and the police decision was overturned, it was too late to hold the actual rallies.⁶⁹³

Article 9: Corruption and abuse of power

Standard: Police officials shall not commit or attempt to commit any act of corruption or abuse of power. They shall rigorously oppose and combat all such acts.

All members of the Namibian Police are required to respect and uphold the fundamental rights and freedoms set out in the Constitution, including respect for the dignity of all persons.⁶⁹⁴ According to informants, the selection process for the police college includes an evaluation of personal characteristics such as moral and mental strength. It is not clear how effective this is in practice. Informants from the police college felt that officers leaving the college are well prepared and highly motivated but become exposed to unethical and corrupt practices when they are out in the field and working with more experienced colleagues.

The Police Training Manual on Human Rights reminds members that police officers are expected to fulfil the duties imposed on them by law ‘consistent with a high degree of responsibility required by their profession’. In addition, it states that ‘Members shall not commit any act of corruption. They shall rigorously oppose and combat all such acts.’⁶⁹⁵

692 Nakuta J and V Cloete (2011) *The Justice Sector and the Rule of Law in Namibia: The Criminal Justice System*. Windhoek: The Namibia Institute for Democracy and the Human Rights and Documentation Centre, pp.1-2

693 United States Department of State (2011) *Country Reports on Human Rights Practices: Namibia*. <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154361.htm>, accessed 16 July 2012

694 Constitution of the Republic of Namibia, chapter 3

695 Legal Assistance Centre (1999) *Namibian Police Human Rights Training Manual*. Windhoek: Legal Assistance Centre, p.26

The Anti-Corruption Act establishes the Anti-Corruption Commission (ACC).⁶⁹⁶ The ACC has the mandate of combating and preventing corruption, through law enforcement, educating the public, enlisting public support against corruption and through advisory services. A recent review by the Commission found that the Ministry for Safety and Security accounts for the majority, or 22%, of all reported cases of corruption reviewed in the 2010 year.⁶⁹⁷ In a recent report, six police officers were noted to be on trial for allegedly defrauding the police of NAD2.1 million.⁶⁹⁸

According to respondents there is a tendency to blame much of the corruption on the former combatants in NamPol (those recruited from PLAN, Koevoet and SWAPO), as well as on the recruits who are ‘children of the liberation struggle’, as reported earlier. With regard to the latter group, there is pressure on government to provide these with employment, and often because of their elevated status as children of heroes of the liberation struggle, the police force find it difficult to discipline them.

Recently the Inspector-General of the Namibian Police acknowledged that NamPol does not have adequate policy in place to prevent corruption and nepotism in making promotions and appointments. He undertook to put a conflict of interest policy in place for the next promotions panel. He said that due to lack of computerisation, names of people that should not be promoted do occasionally slip through and become eligible for consideration.⁶⁹⁹

Police officials are obliged to complete registers at police stations to declare ownership of other businesses, but it is not clear whether all officials rigorously provide this information.

Officials interviewed acknowledged that there is a problem of corruption in the police. Respondents indicated that corruption was due to greed. One common form of corruption is to ‘steal time’ or not to work one’s required hours. Sometimes exhibits disappear or dockets and key evidence get lost. Police officers take bribes in order to destroy or lose evidence in criminal trials.

Article 12: Confidentiality

Standard: Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of duty and needs of justice strictly require otherwise.

⁶⁹⁶ Anti-Corruption Act, No. 8 of 2003

⁶⁹⁷ Anti-Corruption Commission (2010) *Annual Report 2009–2010*. Windhoek: Anti-Corruption Commission, p.11

⁶⁹⁸ *New Era* (11 April 2012) Police, prisons most ‘corrupt’. <http://www.newera.com.na/articles/44160/Police--prisons-most--corrupt->, accessed 13 June 2012

⁶⁹⁹ *The Namibian* (23 March 2011) Top cop free after promotion debacle. http://www.namibian.com.na/index.php?id=28&tx_ttnews%5btt_news%5d=79503&no_cache=1, accessed 14 June 2012

The courts have dealt with the issue of disclosure of information by the police in the matter of *Kauesa v Minister of Home Affairs and Others*⁷⁰⁰ where the Supreme Court had to decide on the constitutionality of Regulation 58(32) of the Police Regulations made under the Namibian Police Act. The regulations prohibited a member of NamPol from commenting unfavourably in public on the administration of the police or other government department and made such conduct an offence. The court had to consider whether the regulation constituted a permissible restriction of the right to freedom of speech and expression as provided for by the Constitution.⁷⁰¹ The court held that the limitation was not rationally connected to its objective; it was arbitrary and unfair, and failed to specify the extent of the limitation as required by article 22 of the Constitution.⁷⁰²

NamPol has a directorate for statistics, which produces an annual report. Statistics are also collected on reported crime, but this is not disaggregated and analysed according to crime type. It is difficult for an outsider to access information on the police as neither the annual report nor crime statistics are available on the police website.

Article 13: Property rights

Standard: In the performance of their duties police officers shall respect and protect all property rights. This includes the economical use of public resources.

The Anti-Corruption Act criminalises the corrupt use of an office or position for gratification.⁷⁰³ The section also prohibits the use of public property by public officials for their own gratification. According to the Anti-Corruption Commission, misuse of government property by government officials, especially of public vehicles, remains an issue of grave concern.⁷⁰⁴ Respondents to this study indicated that police property, such as vehicles, were often damaged and there was a lack of systems to properly supervise their use and to manage repairs to the vehicles.

According to the Annual Report of the Namibian Police for the 2009/2010 year, the total cost of damages caused by police vehicles amounted to NAD1 794 212; while damage reported to police vehicles was NAD2 755 480. It was also reported that firearms were stolen to the value of NAD1 095 541, and claims were received against the government to the tune of NAD8 956 551.⁷⁰⁵

700 1995 NR 175 (SC); (4) SA 965 (NmS), cited in Amoo S and Skeffers I (2008) *The Rule of Law in Namibia*. In Horn N and Bösl A (eds) *Human Rights and the Rule of Law in Namibia*. Windhoek: Macmillan Namibia

701 Constitution of the Republic of Namibia, article 21(1)(a)

702 Amoo S and Skeffers I (2008) *The Rule of Law in Namibia*. In Horn N and Bösl A (eds) *Human Rights and the Rule of Law in Namibia*. Windhoek: Macmillan Namibia, p.20–21

703 Constitution of the Republic of Namibia, section 43(1)

704 Anti-Corruption Commission (2010) *Annual Report 2009–2010*. Windhoek: Anti-Corruption Commission, p. 39–40.

705 Namibian Police Force (2011) *Annual Report 2009/2010*. Windhoek: Namibian Police Force

The Ombudsman has noted a case where the police refused to return property to an offender that was confiscated at the time of his arrest. The Ombudsman found that there was no legal basis for confiscating or retaining the property. The police released the property to the complainant after being recommended to do so by the Ombudsman.⁷⁰⁶

⁷⁰⁶ Office of the Ombudsman (2009) *Annual Report of the Ombudsman 2008*, http://www.ombudsman.org.na/attachments/069_Ombudsman%20Annual%20report%202008%20FINAL.pdf, accessed 12 June 2012

8

South Africa

Background

The South African Police Service SAPS was formed in 1994 with the integration of the South African Police (SAP) with ten other apartheid 'homeland' police services.⁷⁰⁷ Given that it was composed of institutions that formed part of the security apparatus of the former apartheid state, the 'transformation' of the SAPS was identified as a priority. In addition to ensuring that the SAPS was demographically representative of the South African population, this transformation also included measures to ensure greater adherence to human rights standards; improve police community relations, inter alia, through Community Police Forums; and to ensure more sensitive treatment of victims of crime by the police. In addition, an extensive system of oversight was introduced, providing for oversight by the national and provincial governments and legislatures, as well as the Independent Complaints Directorate (ICD) that in 2012 became the Independent Police Investigative Directorate (IPID) under revised legislation.⁷⁰⁸

The SAPS is currently one of the largest national police services in the world with a staff complement of 194 201, including 152 830 police officers.⁷⁰⁹ The SAPS also has 64 360 reservists though only 26 259 are considered active reservists (i.e. those that perform at least 16 hours duty per month).⁷¹⁰ The SAPS has expanded rapidly in size since 2001 when it numbered roughly 120 000. This

707 Bruce D, Newham G and Masuku T (2007) *In Service of the People's Democracy: An Assessment of the South African Police Service*. Johannesburg: Centre for the Study of Violence and Reconciliation and Open Society Foundation for South Africa. <http://www.csvr.org.za/wits/papers/papsaps.htm>, accessed 18 June 2012

708 Independent Police Investigation Directorate Act, No. 1 of 2011

709 SAPS National, South African Police Service, SAPS website, http://www.saps.gov.za/_dynamicModules/internetsite/buildingBlocks/basePage4/natMP.asp, accessed 12 April 2012

710 South African Police Service (2011) *Annual Report 2010/11*. Pretoria: South African Police Service, p.67

expansion by over 70 000 has meant that the SAPS had to recruit more than 10 000 new recruits each year. Between 3 000 and 4 000 staff members are lost each year due to ‘natural attrition’ including deaths, retirements and dismissals.⁷¹¹

The SAPS is not only a very large organisation by international standards, but by southern African standards it is also very well resourced, with a budget of R65 billion (US\$79 million) in 2012–2013.⁷¹² In terms of structure, the SAPS has its uniformed ‘crime prevention’ or visible policing officers and detective units, located at 1 120 police stations. There is also an intelligence division and a number of specialised units including, for example, the National Task Force, National Intervention Unit and Tactical Response Teams.

Methodology

There is a wealth of information available on the South Africa Police Service, which makes available statistics, policies, guidelines and legislation through its website and other fora. There are also numerous published studies on policing, as well as reports, opinion articles, media articles and discussion in Parliament. These secondary sources were utilised for this study.

Article 1: Respect for human rights

Standard: In the performance of their duties, police officials shall respect and protect human dignity and maintain and uphold all human rights for all persons.

The South African Constitution has a Bill of Rights, which commits the South African government to ‘respect, protect, promote and fulfil the rights in the Bill of Rights’.⁷¹³ South Africa has also ratified many of the key international instruments on human rights,⁷¹⁴ and is also party to the African Charter on Human and Peoples’ Rights and the African Charter on the Rights and Welfare of the Child. South Africa is behind on a number of its international reporting obligations.⁷¹⁵

Complaints lodged with the Independent Complaints Directorate (ICD) are an important indicator in relation to this Article.⁷¹⁶ The ICD was established in 1997 with the mandate to receive complaints regarding the police, and to investigate deaths in custody and as a result of police action, as well as the involvement of

⁷¹¹ South African Police Service (2011) *Annual Report 2010/11*. Pretoria: South African Police Service, p.204; South African Police Service (2008) *Annual Report 2007/08*. Pretoria: South African Police Service, p.234

⁷¹² Exchange rate of South African Rand and US Dollar is US\$1=R8.2 (as at July 2012)

⁷¹³ Constitution of the Republic of South Africa Act, No. 108 of 1996, article 7(2)

⁷¹⁴ These include: The International Covenant on Civil and Political Rights; the Convention on the Elimination of Discrimination against Women; Convention against Torture; Convention on the Rights of the Child; Palermo Protocol; Convention on the Rights of Refugees. South Africa is only a signatory to the International Covenant on Social, Economic and Cultural Rights and the Optional Protocol to the Convention against Torture.

⁷¹⁵ Human Rights Council (23 March 2012) *Compilation prepared by the Office of the High Commission for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21: South Africa*. A/HRC/WG.6/13/ZAF/2, p.4

⁷¹⁶ Since April 2012, the ICD has been re-established as the Independent Police Investigative Directorate (IPID) with an expanded mandate, and new legislation, the Independent Police Investigative Directorate Act, No. 1 of 2011

SAPS members in any criminal behaviour. It could also investigate misconduct by the police.⁷¹⁷ As with all information on complaints lodged by members of the public, caution has to be exercised in using information on apparent trends recorded in these reports as trends in reporting (and recording) may be affected by other factors. As indicated in Table 1, there has been a steady increase in the total number of complaints relating to non-fatal violence received by the ICD since 2000/2001.

*Table 1: Independent Complaints Directorate – National statistics of complaints relating to non-fatal police violence, 2000–2011*⁷¹⁸*

	2000/2001	2001/2002	2002/2003	2003/2004	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011
Torture	27	37	22	26	20	23	20	–	5	41
Assault GBH and attempted murder	365	298	479	592	675	728	1 080	1 200	1 245	1 320
Assault	102	81	64	127	249	251	301	378	422	421
Total	494	81	565	745	944	1 002	1 401	1 578	1 672	1 782

Source: ICD Annual Reports

* excludes 2004–2005

Data on civil claims is another indicator of the degree to which the SAPS adheres to human rights standards. Table 2 provides selected data from SAPS annual reports in respect of civil claims. The SAPS faces high levels of civil claims for ‘assault’, ‘shooting incidents’ and especially for other ‘police actions’, which could include alleged instances of wrongful arrest.

Table 2: Selected data on civil claims against the SAPS⁷¹⁹

Assault	2009–2010			2010–2011		
	Liabilities incurred during the year	Liabilities paid during the year	Liabilities cancelled/reduced during the year	Liabilities incurred during the year	Liabilities paid during the year	Liabilities cancelled/reduced during the year
	R'000	R'000	R'000	R'000	R'000	R'000
Assault	186 589	2 538	64 438	203 012	6 065	27 801
Shooting incidents	235 983	5 383	149 231	438 965	9 956	47 185
Police actions	1 707 373	51 986	1 576 934	2 666 245	52 740	547 525
Total	2 129 945	59 908	1 790 603	3 308 222	68 761	622 511

⁷¹⁷ South African Police Service Act, No. 68 of 1995

⁷¹⁸ Independent Complaints Directorate (2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011) Annual Reports 2000 to 2011. Pretoria: Independent Complaints Directorate

⁷¹⁹ Note that the table excludes data on several other categories of claims such as ‘vehicle accidents’, ‘legal expenses’ and ‘damage to property’. See also, Table 9. Data is from South African Police Service, Annual Report 2009/10, Pretoria: South African Police Service; South African Police Service, Annual Report 2010/11, Pretoria: South African Police Service

As indicated in Table 2, the SAPS received over R2 billion in claims in respect of assault, shooting incidents and police actions in 2009/2010 and over R3 billion in 2010/2011. Civil claims however typically take a number of years to resolve and in 2009/2010 civil suits in which roughly R1.85 billion was claimed from the SAPS (presumably mostly in previous years) were resolved. However, in these cases amounts of about R60 million were paid out whilst the SAPS was able to escape liability for claims worth about R1.8 billion. Claims paid out increased to roughly R69 million the following year. This suggests that the SAPS typically pays out between 3–8% of claims lodged against it for human rights violations. It is also apparent that there has been an increase by 14% in claims paid out between 2009/2010 and 2010/2011, although the subjects of those claims are likely to have originated in events that took place some time prior to this.

During the late 1990s, the SAPS undertook considerable work to incorporate human rights standards into the SAPS training curriculum. While the training curriculum has been revised on a number of occasions since then, it is assumed that there is a strong emphasis on human rights within the curriculum, and that the basic training component contains an element on human rights.⁷²⁰

Article 2: Non-discrimination

Standard: Police officials shall treat all persons fairly and equally and avoid any form of discrimination.

The Bill of Rights provides that ‘everyone is equal before the law’⁷²¹ and that ‘the state may not discriminate directly or indirectly against anyone’.⁷²² The Employment Equity Act⁷²³ is intended to remedy racial inequality in the employment arena. This is particularly important given South Africa’s history of institutionalised racial discrimination in the pre-1994 period. Despite the attention given to racial diversity, there has been little sustained research on racial discrimination by police whilst carrying out their duties. Awareness of diversity and principles of non-discrimination was incorporated into human rights training introduced in the latter 1990s and presumably remains part of the basic training curriculum.

A major investment has also been made in ensuring that SAPS officers deal with cases of violence against women in the appropriate manner. One development that was widely regarded as a step backward in this regard was the closure of specialised units responsible for dealing with violence against women

⁷²⁰ South African Police Service. *Outline of Basic Training Learning Programme*, SAPS Division Training. <http://www.saps.gov.za/training/prospectus.htm>, accessed 10 July 2012. See also, Cronje P, De Beer G, Scharf W (1997) *Human Rights and Policing: A story of how to police with the Bill of Rights and International Human Rights Principles*. Cape Town: Nolwazi Educational Publishers

⁷²¹ Constitution of the Republic of South Africa, article 9(1)

⁷²² *Ibid*, article 9(3)

⁷²³ The Employment Equity Act, No. 55 of 1998

(the Family Violence, Child Protection and Sexual Offences [FCS] Units) in 2006.⁷²⁴ However, the Minister of Police subsequently reversed this decision (see further discussion under Article 6).⁷²⁵

On a positive note, results of the South African Social Attitudes Survey (see Table 7 under Articles 8, 10 and 11) show improvements between the 2010 and 2011 surveys in perceptions regarding equal treatment. In 2010, less than half of respondents (43%) said that they thought ‘rich and poor [are] treated equally’ and ‘everyone [is] treated equally regardless of race/ethnic group’ by the police.⁷²⁶ In 2011, the numbers had increased to 50% on the first and 52% on the second of these questions.⁷²⁷

There have been consistent reports that African migrants repeatedly experience victimisation by the police. This often takes the form of being arrested for alleged violations of immigration laws even if they have a South African passport or papers. These arrests are apparently often carried out for the purpose of soliciting or extorting payments from these foreign arrestees.⁷²⁸ This has been of special concern in relation to a series of incidents where foreigners, and particularly foreign traders, have been attacked. In the most prominent of these in May 2008, more than 60 people were killed in a wave of attacks on people identified as foreigners in a number of South African communities.⁷²⁹ Allegations were that the delays in the police response to the incidents were partly motivated by xenophobic attitudes. Concerns have also been raised at the investigative response to the incidents with few, if any, prosecutions following these attacks.⁷³⁰ According to Amnesty International, in 2011 police officers in the Ramaphosa informal settlement area near Johannesburg ‘condoned or actively participated in the Greater Gauteng Business Forum’s action, including threatening non-nationals with violence and forcibly closing or removing property from their shops. In many of these attacks, local police stations failed to call in reinforcements to stop the violence from spreading.’⁷³¹

Another constituency that has raised concerns about discriminatory policing is the lesbian, gay, bisexual, transgender and intersex (LGBTI) community. Whilst the South African Constitution prohibits discrimination based on sexual

724 Frank C, Waterhouse S, Griggs R and Rontsch R (2009) *Raising the Bar: A review of the restructuring of the SAPS Family Violence, Child Protection and Sexual Offences Units*. RAPCAN Research Series No. 1. Cape Town: RAPCAN

725 Speech by the Minister of Police, N Mthethwa on Occasion of the Budget Vote No 22 and 24, 6 May 2010. http://www.saps.gov.za/_dynamicModules/internetSite/newsBuild.asp?myURL=970, accessed 13 September 2010

726 Human Sciences Research Council, South African Social Attitudes Survey, Undated Powerpoint Presentation (in PDF format). <http://www.hsrc.ac.za/SASAS.phtml>

727 *Ibid.*

728 Newham G and Faull A (2011) *Protector or Predator: Tackling Police Corruption in South Africa*. Monograph 182. Pretoria: Institution for Security Studies, p.21

729 Amnesty International (2009) *The State of the World’s Human Rights: Annual Report 2009: South Africa*. <http://report2009.amnesty.org/en/regions/africa/south-africa>, accessed 6 July 2012

730 Amnesty International (23 May 2008) *South Africa: Amnesty International calls on government to protect those at risk of xenophobic attack*. <http://www.amnesty.org/en/library/asset/AFR53/007/2008/en/faa3ac36-2bdd-11dd-9841-4945a95d6397/af530072008eng.pdf>, accessed 10 July 2012

731 Amnesty International (2012) *The State of the World’s Human Rights: Annual Report 2012: South Africa*, <http://www.amnesty.org/en/region/south-africa/report-2012>, accessed 8 June 2012

orientation, there have been consistent complaints that police conduct themselves in a discriminatory manner in relation to LGBTI people. Of particular concern has been a series of incidents in which women who are identified as lesbian have been killed or subjected to ‘corrective rape’. It is alleged that police have taken little interest in the fears of the LGBTI community about these attacks and that they have failed to investigate these cases effectively.⁷³² Amnesty International reported on the case of 24-year-old Noxolo Nogwaza who was brutally murdered in KwaThema township in April 2011. ‘An active member of the Ekurhuleni Pride Organising Committee (EPOC), she was raped, repeatedly stabbed and beaten to death. The police responsible for the investigation into her murder had made no progress by the end of the year, and no suspects had been arrested. EPOC began a campaign to have the case transferred to another police station.’⁷³³

The SAPS has 1 120 police stations. Whilst the provision of police services was historically biased strongly in favour of white residential areas, substantial efforts have been made in the post-1994 period to ensure that police services are provided in a more equitable manner. Police–population ratios vary across South Africa’s provinces. The province with the highest police–population ratio (1:170 in May 2012) is the Northern Cape, the province with the largest land area yet the smallest population. Presumably the relatively high level of police in the province is seen as necessary to ensure access to police by the highly dispersed population. Provinces with relatively low ratios include KwaZulu-Natal (1:414), with the lowest ratio being in Limpopo (1:461), the province that has consistently recorded the lowest levels of violent crime in South Africa.⁷³⁴

Table 3 shows SAPS percentages in terms of the race and gender for all employees as at 31 March 2011, as well as for recruitment and promotions (‘progression to another salary notch’) in the 2010/2011 financial year.

Table 3: Race profile of SAPS employees, recruitment and promotion in the 2010/2011 financial year

	Male					Female					Total
	African	Coloured	Indian	Total Black	White	African	Coloured	Indian	Total Black	White	
Total employees	51%	7%	2%	60%	7.5%	23%	3.6%	1%	27%	5%	193 892
New recruits	45%	8%	1%	54%	4%	34.6%	5%	0.6%	40%	1.5%	8202
Promotions	45%	6%	1%	52%	2%	32.5%	5%	1%	39%	7%	69 870

732 Breen D and Nel J (2011) *South Africa – a home for all? The need for hate crime legislation*. *South African Crime Quarterly*, No.38, pp.33–43

733 Amnesty International (2012) *The State of the World’s Human Rights: Annual Report: South Africa*. <http://www.amnesty.org/en/region/south-africa/report-2012>, accessed 8 June 2012

734 Ratios from http://www.saps.gov.za/_dynamicModules/internetsite/buildingBlocks/basePage4/BP444.asp

The SAPS implements a fairly rigid quota system in its employment practices including recruitment and promotion with the apparent intention that the SAPS, at all levels, will reflect the demographic profile of the South African population.

Women currently make up 32% of the SAPS. A high proportion of female recruits are recruited into administrative roles but the SAPS also has a very high proportion of female police officials (24.5%). This is a higher proportion than in most other countries in the world. A comparison of South Africa with ten countries including the United States, Canada, Australia, New Zealand and countries in Europe indicates that only Norway has a higher proportion of sworn female police officials at 35%.⁷³⁵

Article 3: Use of force

Standard: Police officials may only use force when strictly necessary and to the extent required for the performance of their duties adhering to national legislation and practices.

The Bill of Rights includes the right ‘to be free from all forms of violence from either public or private sources’,⁷³⁶ although this is subject to the limitations clause that allows rights to be limited by laws of general application subject to certain conditions, and by laws of general application.⁷³⁷ The Criminal Procedure Act provides for the use of lethal force by the police.⁷³⁸ This is currently in the process of being amended. Overall, the legal provisions are consistent with the provisions of this Article. Other relevant provisions include the Firearms Control Act⁷³⁹ and the Firearms Control Act Regulations.⁷⁴⁰

As indicated in Table 1, there has been a steady increase of complaints relating to cases of non-fatal violence by the SAPS over the past decade. The trends in relation to killings by police have been somewhat different. Although they resemble the figures for non-fatal violence with respect to the steady increase during the 2004/2005 to 2008/2009 period when deaths reached a high of 600, since then there has been a slight decrease although these killings remain at very high levels. During the 2010/11 year, the ICD recorded 540 deaths as a result of police action.⁷⁴¹

Although the evidence is unclear on the extent to which police are involved in violations in this regard. Two of the most prominent recent cases are the killing of Andries Tatane in 2011 by police during a demonstration in the town of Mequeng

735 <http://www.saps.gov.za/dynamicModules/internetsite/buildingBlocks/basePage4/BP445.asp>. See also, Bruce D, Newham G and Masuku T (2007) *In Service of the People's Democracy: An Assessment of the South African Police Service*. Johannesburg: Centre for the Study of Violence and Reconciliation and Open Society Foundation for South Africa, pp.154–155

736 Constitution of the Republic of South Africa, section 12(1)(c)

737 *Ibid*, section 36(1)

738 Criminal Procedure Act, No. 55 of 1977, section 49

739 Firearms Control Act, No. 60 of 2000

740 Firearms Control Act Regulations, 2007

741 Statistics from ICD Annual Reports (see www.ipid.gov.za)

in the Free State in April,⁷⁴² and allegations that the Cato Manor Organised Crime Unit in Durban was involved in carrying out extra-judicial executions.⁷⁴³ The Cato Manor Unit was subsequently closed in February 2012 and in June 20 members of the unit were arrested following a joint operation of the ICD and the Hawks (Directorate for Priority Crime Investigations in the SAPS).⁷⁴⁴ In May 2012, a press report indicated that police had shot dead a Lesotho man, Mbantjoa Khang, who was wrongly identified as a fleeing robbery suspect.⁷⁴⁵

Table 4: ICD national figures for fatal police violence, 2000–2011 (11 years)

	2000/2001	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	Total
Deaths as a result of police action	432	371	311	380	366	325	419	490	600	566	540	4 800

The likelihood of the SAPS unlawfully using force was exacerbated during 2009 by a series of public pronouncements by senior government officials and police officials that appeared to endorse excessive force.⁷⁴⁶ Since then there has been less of this type of rhetoric, although senior leaders still send confusing messages about the overall approach to the use of force that is required. There is something of a tendency to emphasise minimum force principles in relation to the policing of public protest but there continues to be references to ‘maximum force’ in relation to policing more generally.⁷⁴⁷

On 16 August 2012, South Africa experienced its worst post-apartheid incident of the use of lethal force by the police when 34 mineworkers were killed, and several others injured, as a result of police action to quell labour protests at the Lonmin mine in the Marikana area of the North West province. The incident resulted in a massive public outcry, and condemnation both locally and internationally. The actions of the police are being investigated by the Independent

742 *The Sunday Times* (24 April 2011) Only police chiefs can end it. <http://www.timeslive.co.za/opinion/columnists/article1035758.ece/Only-police-chiefs-can-end-it>; and Newham G (19 April 2011) *Arresting a few policemen will not solve South Africa's violent policing problem*. <http://www.polity.org.za/article/arresting-a-few-policemen-will-not-solve-south-africas-violent-policing-problem-2011-04-19>, accessed 12 June 2012

743 *The Sunday Times* (11 December 2011) Shoot to kill: Inside a South African Police Death Squad. <http://www.timeslive.co.za/local/2011/12/11/shoot-to-kill-inside-a-south-african-police-death-squad?service=print>, accessed 12 December 2011

744 *IOL News* (3 July 2012) ‘Death Squad’ cops to seek bail. <http://www.iol.co.za/news/crime-courts/death-squad-cops-to-seek-bail-1.1323833>, accessed 3 July 2012

745 *The Star* (30 May 2012) Cops killed wrong man, says family. <http://www.iol.co.za/news/crime-courts/cops-killed-wrong-man-says-family-1.1307635#.T9Hyn7Bqflc>, accessed 8 June 2012

746 *IOL News* (7 December 2009) ‘You cannot tell me that is a human being’. <http://www.iol.co.za/news/south-africa/you-cannot-tell-me-that-is-a-human-being-1.466971>, accessed 10 July 2012

747 See speech of the Minister of Police at the POPCRU conference, 29 May 2012 where he said, ‘The policing of community protest in a democracy needs to reflect ethos of human rights. We cannot use maximum force in a situation requiring minimum force.’ <http://www.polity.org.za/article/sa-mthethwa-address-by-the-minister-of-police-at-the-popcru-national-crime-summit-boksburg-29052012-2012-05-29>, accessed 30 May 2012; as well as his remarks at the Summit on Police Killings, 8 July 2011, to the effect that, ‘There must be a good appreciation of the distinction between the need to use maximum force against violent criminals and, minimum force in dealing with fellow citizens.’ <http://www.polity.org.za/article/sa-mthethwa-remarks-by-the-minister-of-police-at-the-summit-against-police-killings-boksburg-08072011-2011-07-08>, accessed 9 July 2011.

Police Investigative Directorate, as is required by law. The incident is also subject to a Judicial Commission of Inquiry, headed by Judge Ian Farlam. The terms of reference of the Commission include the investigation of matters relating both to the labour issues involved, as well as the actions of the police.

In 2012, it was reported that 27 329 SAPS police members had failed firearm proficiency tests but had been allowed to retain their firearms nevertheless.⁷⁴⁸ In terms of the control of access to firearms and firearm storage, the SAPS has an ongoing problem with the loss of firearms by SAPS members. In 2011, it was reported that the SAPS had lost 11 935 firearms over the previous five years.⁷⁴⁹ In February 2012, press reports indicated that a police officer that shot and killed a 16-year-old boy 'was not supposed to have been carrying a firearm because he was mentally unstable'.⁷⁵⁰

The SAPS does use less lethal weapons such as batons and pepper spray, although to some extent the culture continues to be one that places an emphasis on the use of lethal force. In addition, public order police units make use of teargas, rubber bullets, water cannons, body armour, and shields and the SAPS is considering introducing Tasers. SAPS members who are provided with specific items of equipment, such as pepper spray, are supposed to receive special training related to their use, but to what extent this requirement is adhered to is not clear. SAPS members are also equipped with handcuffs or cable ties for restraining arrested people. The SAPS also has a number of dog units.

Article 4: Torture, cruel, inhuman or degrading treatment

Standard: No police official, under any circumstances, shall inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment to any person.

The Bill of Rights includes the right 'not to be tortured in any way'⁷⁵¹ and this right is non-derogable and is not subject to the limitations clause. South Africa has also ratified the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. South Africa is also a signatory to the Optional Protocol to the Convention against Torture. A Bill was introduced in the National Assembly in March 2012 to criminalise torture and to domesticate South Africa's obligations in terms of the Convention.⁷⁵² In 1998, the SAPS introduced its 'Prevention of Torture Policy' with a number of standing orders relating to arrest and the handling of detained persons being amended to conform

⁷⁴⁸ *The Sunday Times* (4 March 2012) Menace to society: 27 000 cops fail firearm test. <http://www.timeslive.co.za/sundaytimes/2012/03/04/menace-to-society-27000-cops-fail-firearm-test>, accessed 8 June 2012

⁷⁴⁹ <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71654?oid=255543&sn=Detail&pid=71616>

⁷⁵⁰ *IOL News* (2 February 2012) Cop who shot Thato 'mentally unstable'. <http://www.iol.co.za/news/crime-courts/cop-who-shot-thato-mentally-unstable-1.1244084>, accessed 8 June 2012

⁷⁵¹ Constitution of the Republic of South Africa, section 12(1)(d)

⁷⁵² The Prevention and Combating of Torture Bill, 2012

to the policy.⁷⁵³ In 2011, the Independent Police Investigative Directorate Act was introduced, which provides that the IPID must investigate ‘any complaint of torture or assault against a police officer in the execution of his or her duties’.⁷⁵⁴

As indicated in Table 1, ICD (now IPID) statistics indicate that the ICD continues to receive cases of torture. Over much of the last decade the ICD has consistently recorded more than 20 complaints of torture a year. Over the two years there have been dramatic fluctuations in the number of cases recorded. In 2009/2010, the ICD recorded the lowest number of cases recorded since it started operating in 1997, whilst in 2010/2011 the number of cases was the highest recorded since 1998/1999 at 61.⁷⁵⁵ While these fluctuations may be as a result of the definitions applied to torture, they are currently unexplained.

A report by Forced Migration Studies has noted various incidents including the treatment of a hijacking suspect by a group of police officers (including student constables) at a police station in Gauteng that includes that they ‘smacked and punched him so that he was dripping blood’, and ‘filled plastic bag with pepper spray and wrapped it around suspect’s head’.⁷⁵⁶ Another reference is to ‘three suspects that were kicked, punched and electrocuted by about 20 police officers’.⁷⁵⁷

A briefing to Parliament’s Safety and Security Portfolio Committee by then Acting ICD Executive Director Elias Valoyi and provincial directorate heads reportedly ‘told harrowing tales of the use of third-degree methods, particularly by the organised crime and national intervention units, which in at least one instance had led to death. Methods of torture included repeated beatings, electrocution and suffocation with plastic bags’.⁷⁵⁸ In May 2012, 12 members of the SAPS’s Directorate of Priority Crime Investigation (the Hawks) appeared in the Bellville Magistrate’s Court in connection with the murder in 2009 of 24-year-old Sidwell Mkwambi and the kidnapping, assault and torture of his friends, Siyabulela Njova and Mthuthuzeli Rantaoleng as well as other witnesses.⁷⁵⁹

In the years since it published its prevention of torture policy, the SAPS has not provided information on disciplinary action taken against police members alleged to have been involved in torture.

753 South African Police Service Policy on the Prevention of Torture and the Treatment of Persons in the Custody of the Police (1998), http://www.saps.gov.za/docs_publics/legislation/policies/torture.htm, accessed 10 July 2012

754 Independent Police Investigative Directorate Act, No. 1 of 2011, section 28(1)(f)

755 Independent Complaints Directorate Annual Reports. http://www.ipid.gov.za/documents/annual_reports.asp, accessed 10 July 2012

756 Matshedisso R (2009) ‘We must fight them!’ Police violence, torture and brutality. In Vigneswaran D and Hornberger J (eds) *Beyond Good Cop/ Bad Cop: Understanding informality and police corruption in South Africa*. Johannesburg: Forced Migration Studies, University of the Witwatersrand, p.52.

757 *Ibid*, p.53

758 *Mail and Guardian* (2 March 2009) The Torture Force. <http://mg.co.za/article/2009-03-02-the-torture-force>, accessed 8 June 2012

759 Independent Police Investigative Directorate (4 May 2012) 12 Policemen to appear in court for murder and assault GBH, Western Cape. Media Advisory, http://www.ipid.gov.za/media_advisory/14052012.asp, accessed 8 June 2012

Article 5: Protection of persons in custody

Standard: Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Protection of the rights of ‘arrested, detained and accused persons’ is provided for in the Constitution.⁷⁶⁰ This includes the right ‘to conditions of detention that are consistent with human dignity including at least exercise and the provision, at state expense of adequate accommodation, nutrition, reading material and medical treatment’.⁷⁶¹ Police Standing Order 361 outlines the requirements for treatment of a person in police custody. Standing order 349, deals with the ‘medical treatment and hospitalisation of persons in custody’.

The discussion of the persistence of the use of torture under Article 4 above is one indication of the mistreatment and abuse of persons in custody. Another indicator is deaths in custody. In looking at these statistics, it should be noted that the SAPS arrests more than a million people (and perhaps over two million) every year, so the number of deaths represents a relatively small proportion of the total number of people in custody.⁷⁶²

*Table 5: ICD statistics on deaths in custody*⁷⁶³

	2000/2001	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009
Natural causes	78	75	109	124	128	121	108	126	117
Suicide	77	76	68	104	42	75	47	95	108
Injuries sustained in custody	36	25	12	81	45	28	39	25	27
Injured prior to custody	34	28	28	25	71	71	54	56	48
Possible negligence	30	10							
Total	255	214	217	334	286	295	248	302	300

⁷⁶⁰ Constitution of the Republic of South Africa, section 35

⁷⁶¹ *Ibid*, section 35(2)(e)

⁷⁶² For instance in 2006 the SAPS reported that more than 1 100 000 people were arrested in crime prevention actions and more than 2 200 000 held in custody (the discrepancy between these figures is not explained). Statistics are from SAPS annual reports as quoted Bruce D, Newham G and Masuku T (2007) *In Service of the People's Democracy: An Assessment of the South African Police Service*. Johannesburg: Centre for the Study of Violence and Reconciliation and Open Society Foundation for South Africa, p.199 (Appendix 3)

⁷⁶³ The statistics that are provided are from Independent Complaints Directorate Annual Reports except those for 2010/2011 that come from a separate statistical report produced by the Independent Complaints Directorate: Independent Complaints Directorate (2011) *Statistics for 2010/2011*. Pretoria: Independent Complaints Directorate. There are inconsistencies in the statistics on circumstances of deaths in custody in the ICD Annual Report for 2009/2010 and the separate statistical report produced by the ICD in 2010/2011. Table 9 on page 76 of the 2009/2010 report records only three sub-categories of death adding up to a total of 294 deaths and excluding the category of suicide which have consistently accounted for more than 40 deaths in custody in every other year in which the ICD has reported on the phenomenon. However the preceding Table (8) that provides ‘descriptions’ of deaths in custody and as a result of police action refers to 112 deaths from suicide. This is peculiar as ‘suicides’ are as a general rule ‘deaths in custody’ rather than ‘deaths as a result of police action’. Adding the latter to the figures in Table 9 would cause further inconsistencies in relation to other statistics as well as indicate a sudden and dramatic increase in deaths in custody and these figures must therefore be regarded as unreliable. Similar inconsistencies exist in the 2010/2011 statistical report provided by the ICD which in Table 10 records a total of 257 deaths but makes no reference to the 81 suicides recorded in Table 8.

There is very little information available on the treatment of people in custody. In 2009, the ICD conducted a study on the management of people in custody in selected police stations in five provinces.⁷⁶⁴ The study found that generally police adhered to requirements regarding the separation of different categories of inmates (males, females and children). In most cases, the police had measures to deal with overcrowding, by transferring detainees to prisons or releasing those with minor crimes on bail, but cells often became overcrowded during the festive season, over weekends and during special policing operations.⁷⁶⁵ Generally, it was reported that police complied with the requirement to furnish detainees with three meals a day.⁷⁶⁶

The Parliamentary Portfolio Committee on Police conducts ad hoc visits to police stations, which includes a visit to police cells using a specially developed tool (Station Monitoring Tool).⁷⁶⁷ Members of the Community Police Forums based at police stations are also entitled to visit police cells, although it is not clear how regular these visits are. Police station monitoring is also within the mandate of the nine provincial secretariats for police. Where stations are monitored, reports are considered internal and submitted to provincial MECs for police, and to the SAPS.

Article 6: Victims of crime

Standard: All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary.

The issue of victim empowerment has received substantial attention in South Africa since the transition to democracy. Several government departments, including the SAPS, the Department of Justice and Constitutional Development, the National Prosecuting Authority, the Department of Social Development and the Department of Health, have all taken steps to strengthen services to victims.⁷⁶⁸ Examples of steps that have been taken by the SAPS include:

- » As part of the Victim Empowerment Programme, in-service training has been provided to police to sensitise ‘police officials to the needs of crime victims’,⁷⁶⁹ and over 5 000 officers have received this training over the six years to March 2011;⁷⁷⁰

764 Independent Complaints Directorate (2009) *Custody Management of Persons in Police Custody*. Pretoria: Independent Complaints Directorate

765 *Ibid*, p.30

766 *Ibid*, p.29

767 Minutes of the Parliamentary Portfolio Committee on Police, where one such oversight visit was discussed (29 May 2012) *Committee Strategic Plan: Oversight visits to Limpopo and Port Elizabeth*. <http://www.pmg.org.za/report/20120531-committee-strategic-plan-2012-reports-oversight-visits-limpopo-and-po>, accessed 3 July 2012. Reports of oversight visits are available on <http://www.pmg.org.za/programmes/comreports#Safety>, accessed 3 July 2012

768 Bruce D, Newham G and Masuku T (2007) *In Service of the People's Democracy: An Assessment of the South African Police Service*. Johannesburg: Centre for the Study of Violence and Reconciliation and Open Society Foundation for South Africa

769 South African Police Service (2009) *Annual Report 2009*. Pretoria: South African Police Service, p.84

770 South African Police Service (2006) *Annual Report 2005/06*. Pretoria: South African Police Service; South African Police Service (2007) *Annual Report 2006/07*. Pretoria: South African Police Service; South African Police Service (2008) *Annual Report 2007/08*. Pretoria: South African Police Service; South African Police Service (2009) *Annual Report 2008/09*. Pretoria: South African Police Service; South African Police Service (2010) *Annual Report 2009/10*. Pretoria: South African Police Service; South African Police Service (2011) *Annual Report 2010/11*. Pretoria: South African Police Service

- » Training in victim support was provided: 3 764 members were trained and 3 739 of these were declared competent in Victim Support in 2011;⁷⁷¹
- » SAPS Victim Support Rooms (VSRs) are used for the consultation of victims of sexual offences, child abuse and domestic violence, interviews and statement taking. Ten additional VSRs were established at police stations in 2010/2011⁷⁷² bringing the total number to 900;⁷⁷³
- » In 2011, the SAPS reported that an automated capability to provide victims of crime with information from the SAPS crime reporting system (CAS) was ‘in the final testing phase before operationalisation’;⁷⁷⁴
- » After disbanding these units in 2006, the SAPS re-established 176 Family Violence, Child Protection and Sexual Offences (FCS) units in April 2011.⁷⁷⁵ Training provided to FCS detectives is intended to provide them with specialised skills for working with victims of these types of offences including understanding of the psychological aspects of victimisation and the function of other role-players, such as social workers, in the process;
- » The SAPS issued national instructions on the treatment of victims of sexual offences, and on domestic violence;⁷⁷⁶
- » A SAPS policy was also developed on the role of the SAPS in victim empowerment;⁷⁷⁷
- » Between 1 April 2009 and 31 March 2010, 3 181 police officers were trained on the provisions of the Domestic Violence Act⁷⁷⁸ to ensure that service delivery by the SAPS to the community complies with the provisions of the Act;⁷⁷⁹
- » During 2009/2010, 1 379 police officers were trained in the Sexual Offences First Responders Course.⁷⁸⁰

According to a report on the 2007 National Victims of Crime survey, half of those surveyed who had been victims of crime said that their interaction with the SAPS improved their opinion of the police. On the other hand, just over a quarter (27%) of respondents said the interaction resulted in them having a lower opinion of the local police.⁷⁸¹

771 South African Police Service (2011) *Annual Report 2010/11*. Pretoria: South African Police Service, p. 23

772 *Ibid.*, p.195

773 *Ibid.*, p.63

774 *Ibid.*, p.29

775 *City Press* (3 April 2011) ‘Finally, some real police intelligence’. <http://www.citypress.co.za/Columnists/Finally-some-real-police-intelligence-20110402>, accessed 6 June 2012

776 Pretorius Z and Louw B (2005) Victim empowerment and support in South Africa. In Davis L and Snyman R (eds) *Victimology in South Africa*. Pretoria: Van Schaik Publishers

777 *Ibid.*

778 Domestic Violence Act, No. 116 of 1998

779 South African Police Service (2010) *Annual Report 2009/10*, Pretoria: South African Police Service, p.83

780 *Ibid.*, p.83

781 O Donovan M (2008) *South Africans’ perceptions of the police and the courts: Results of the 2007 national victims of crime survey*. Pretoria: Institute for Security Studies, p.3

Article 7: Respect for the rule of law and Code of Conduct

Standard: Police officials shall respect and uphold the rule of law and the present Code of Conduct.

The Constitution provides that one of the founding values of the Republic of South Africa is the ‘supremacy of the Constitution and the Rule of Law’.⁷⁸² In 1997, the SAPS adopted a code of conduct that all members are expected to sign.⁷⁸³

Although the extent of selective application of the law in South Africa is not known, there have been prominent examples of this, most notably the case of Richard Mdluli referred to below (see under discussion of Article 9). In March 2012, reports indicated that the ‘broad investigation of abuses in the Crime Intelligence Service (CIS) initiated by the Hawks has been put on ice.’⁷⁸⁴ In April 2012, the Acting National Commissioner Lieutenant-General Nhlanhla Mkhwanazi told Parliament that ‘we have been told in many instances of late that we don’t have the right to investigate certain case dockets’. This was widely understood as confirmation that there was a continuing problem of political interference in investigations.⁷⁸⁵

Instances of torture, unlawful use of force and corruption reported on elsewhere in this report are clear departures from the code of conduct as are allegations of police reluctance to act in the interests of foreign or LGBTI victims of crime.

Article 9: Corruption and abuse of power

Standard: Police officials shall not commit or attempt to commit any act of corruption or abuse power. They shall rigorously oppose and combat all such acts.

On matters of corruption, the legal and policy infrastructure is defined, inter alia, by the Prevention and Combating of Corrupt Activities Act⁷⁸⁶ and the Public Sector Management Integrity Framework.⁷⁸⁷ As indicated under Articles 8, 10 and 11 below, 66% of respondents to the South African Social Attitudes Survey in 2011 said they believed that corruption is widespread amongst the police (Table 7), whilst 52 % of respondents to the Afrobarometer survey indicated that they thought that ‘almost all or most police are corrupt’ (Table 8). In both surveys the

782 Constitution of the Republic of South Africa, section 1(c)

783 Bruce D, Newham G and Masuku T (2007) *In Service of the People's Democracy: An Assessment of the South African Police Service*. Johannesburg: Centre for the Study of Violence and Reconciliation and Open Society Foundation for South Africa, p.126

784 *Mail & Guardian* (16 March 2012) Politics of paranoia: How JZ is winning the spy battle. <http://img.co.za/article/2012-03-16-fuelling-the-politics-of-paranoia/>, accessed 7 June 2012

785 *Independent online* (20 April 2012) Top cop tells of political orders. <http://www.iol.co.za/news/crime-courts/top-cop-tells-of-political-orders-1.1280432#.T9C3arBqffc>, accessed 7 June 2012

786 Prevention and Combating of Corrupt Activities Act, No. 12 of 2004

787 Public Sector Integrity Management Framework, <http://www.dpsa.gov.za/dpsa2g/documents/misc/Integrity%20Management%20Framework.pdf>

police were regarded as the most corrupt component of government.⁷⁸⁸

Table 6 below suggests that these perceptions are not without justification. According to the 2011 South African Victims of Crime Survey, 1.5% of South Africans who were surveyed indicated that police officers had solicited bribes from them.⁷⁸⁹ If these statistics are accurate, this would mean that more than 480 000 South Africans have been solicited for bribes by police officers.⁷⁹⁰

It should be noted that the fact that ‘police’ are perceived as highly corrupt is probably enhanced by the extensive involvement of metro and traffic police in corruption. In national victimisation surveys, police involved in traffic enforcement are consistently identified as the most corrupt category of public officials with ‘police’ identified as the second most corrupt category.

Table 6: Data from National Victimization Surveys on police corruption

	Percentage of respondents nationally experiencing corruption	Of those who experienced corruption: Percentage who experienced police corruption	Percentage of adult South Africans who experienced police corruption
2003 Survey 1	5.6 money, favour or a present (4.6 bribes involving money)	19.9	1.0
2007 Survey 2	2.9 money, favour or a present	18.6	0.5
2010 Survey 3	7.0 money, favour or a present (5.6 bribes involving money)	21.4	1.5

As indicated the SAPS is a very large organisation and it is therefore not clear how prevalent corruption is. Despite widespread public perceptions to this effect it may not be the case that the majority of SAPS members are corrupt. Nevertheless it is apparent that there is a substantial problem of corruption in the SAPS.

As also indicated above, one of the most concerning aspects of the problem of corruption as linked to the SAPS has been that the two most recent National Commissioners have both been linked to allegations of corruption and mismanagement.⁷⁹⁴ If senior leadership figures are linked to corruption this profoundly compromises efforts to prevent corruption, as leadership figures are supposed to set an example for the rank and file.

⁷⁸⁸ Human Sciences Research Council, *South African Social Attitudes Survey*, Undated Powerpoint Presentation (in PDF format). <http://www.hsrc.ac.za/SASAS.phtml>, accessed 12 July 2012; and Afrobarometer (2012) *Public agenda and the evaluation of government: 2012 summary of results for South Africa*. <http://www.afrobarometer.org/results/results-by-country-n-z/south-africa>, accessed 15 July 2012

⁷⁸⁹ Stats SA (2009) *Stats in Brief*. Pretoria: Stats SA, p.9

⁷⁹⁰ This is based on an estimate of South Africa's adult population (16 years and over) at over 32 million

⁷⁹¹ Burton P, du Plessis A, Leggett T, Louw L, Mistry D, van Vuuren H (2004) *National Victims of Crime Survey 2003*. ISS Monograph 101. Pretoria: Institute for Security Studies, p.112

⁷⁹² Pharoah R (2009) *Who is most at risk*. ISS Paper 182. Pretoria: Institute for Security Studies, p.5

⁷⁹³ Stats SA (2011) *Victims of Crime Survey 2011*, Statistical release – P0341. www.statssa.gov.za/publications/P0341/P03412011.pdf, p.34

⁷⁹⁴ Former Police Commissioner Jackie Selebi was convicted of corruption in 2010 and sentenced to 15 years imprisonment. In June 2012, Police Commissioner Bheki Cele was relieved of his command after a SAPS Board of Inquiry mandated to establish whether Cele acted corruptly, dishonestly, or with an undeclared conflict of interest found him unfit for office and recommended his removal from duty.

Considerations about the integrity of members of the police service and the impact of appointing individuals whose integrity is open to question were also disregarded by government in relation to the appointment of Richard Mdluli as head of the Crime Intelligence Division. In addition to allegations that he had been responsible for a 1999 murder, a secret police report alleged that ‘Mdluli’s relatives were appointed to the crime intelligence agent programme without performing any undercover operations’ and that he ‘used state vehicles, in violation of regulations, and used safe houses for himself and his family’.⁷⁹⁵ Despite the range of allegations against him, Mdluli was reinstated in March 2012 after being suspended in 2011 when charges of murder were finally brought against him. After a widespread outcry about his re-appointment, Mdluli was removed from his position in May 2012.⁷⁹⁶ Later in May he was again suspended from the police service by acting National Commissioner Mkhwanazi.⁷⁹⁷ In June 2012, Mdluli was barred from executing police duties as the result of an interdict brought by a non-governmental organisation, Freedom Under Law.⁷⁹⁸

Though evidence of corruption at senior levels of the SAPS profoundly undermines efforts to address corruption there are nevertheless some positive signs:

- » In its 2010/2011 Annual Report the SAPS indicated that ‘476 members were charged for inter alia corruption, defeating the ends of justice, fraud, aiding and abetting an escapee, bribery and extortion in terms of the department’s disciplinary regulations, and in terms of the Prevention and Combating of Corrupt Activities Act’.⁷⁹⁹ Two hundred and sixty-three officers were suspended: 215 without salary and 48 with salary; 213 members were not suspended; 479 corruption charges were brought against members (three members were charged for more than one crime).⁸⁰⁰ In May, Gauteng Provincial Commissioner, Mzwandile Petros, said that more than 600 SAPS members in Gauteng had been arrested for corruption over the past year.⁸⁰¹
- » In 2011 the SAPS reported that it had revised its Anti-Corruption Strategy to ensure compliance in terms of the Minimum Anti-Corruption Capacity requirements (MACC) as approved by Cabinet. This revision was conducted in response to an audit of the extent of compliance with the MACC as conducted by the Department of Public Service and

795 *Mail & Guardian* (18 March 2012) Mdluli ‘looted crime unit’ says top secret report. <http://mg.co.za/article/2012-03-18-mdluli-looted-crime-unit-says-secret-report>, accessed 7 June 2012

796 *SAPA* (9 May 2012) Mdluli removed from crime intelligence. <http://www.iol.co.za/news/mdluli-removed-from-crime-intelligence-1.1292811#.T9BpB7Bqflc>, accessed 7 June 2012

797 *Mail & Guardian* (28 May 2012) Mdluli cries foul over suspension. <http://mg.co.za/article/2012-05-28-mdluli-not-really-suspended-says-lawyer/>, accessed 7 June 2012

798 *IOL News* (7 June 2012) Mdluli stripped of all police powers. <http://www.iol.co.za/the-star/mdluli-stripped-of-all-police-powers-1.1313332#.T9Brq7Bqflc>, accessed 7 June 2012

799 Prevention and Combating of Corrupt Activities Act, No. 12 of 2004

800 South African Police Service (2011) *Annual Report 2010/11*. Pretoria: South African Police Service, p.26

801 *SAPA* (2 May 2012) Petros: Over 600 police arrested. <http://www.news24.com/SouthAfrica/News/Petros-Over-600-police-arrested-20120502>, accessed 7 June 2012

Administration in 2009/2010. The SAPS was assessed as being 69% compliant with the MACC. An Integrity Management Framework, which functions as a key element of the prevention pillar within the Anti-Corruption Strategy, has been developed and implemented. It focuses on improving levels of professionalism and integrity in the SAPS, increasing levels of direct managerial support to members, ensuring the necessary corruption-reporting policies are in place, for example, the Whistle-blowing Policy and establishing an anti-corruption training programme within the SAPS to augment a Sensitisation Programme that is focused on sensitising and educating SAPS members and the public on the nature, causes and consequences of corruption.⁸⁰²

- » In 2010, the SAPS reported that implementation of the Corruption and Fraud Prevention Plan by all station commanders and provincial and divisional commissioners was included in the performance agreements of top management at all levels.⁸⁰³

Article 8: Trustworthiness

Standard: The public demands that the integrity of police officials be above reproach. Police officials shall therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undermine the public's confidence in a police force/service.

Article 10: Performance of duties

Standard: Police officials shall at all times fulfil the duties imposed upon them by law in a manner consistent with the high degree of responsibility and integrity required by their profession.

Article 11: Professional conduct

Standard: Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.

For the last six years roughly 40% (between 39% and 41%) of respondents to the South African Social Attitudes Survey (SASAS) carried out by the Human Sciences Research Council have indicated that they trust or strongly trust the police (see Table 7).⁸⁰⁴ In 2008, the Afrobarometer survey produced a similar result, although 2006 and 2011 figures were slightly higher at 48% and 49% trusting the police

802 South African Police Service (2011) *Annual Report 2010/11*. Pretoria: South African Police Service, p.26

803 *Ibid*, p.61

804 Human Sciences Research Council, South African Social Attitudes Survey, Undated Powerpoint Presentation (in PDF format). <http://www.hsrc.ac.za/SASAS.phtml>, accessed 12 July 2012

respectively (Table 8).⁸⁰⁵ Other figures from the SASAS that speak to trust in the police include numbers who thought that police are doing a good job (46% in 2011), who said that police often or very often ‘make fair and impartial decisions in the cases that they deal with’ (47% in 2011). While the 71% of people who agree that ‘Police generally have the same sense of right and wrong as I do’ and 52% who agree that ‘Police stand up for values that are important to people like me’ suggest a strong sense of identification with the police, this does not translate into support for how the police act. Only 40% of people in 2011 agreed on this. Overall then data on public attitudes to the police is mixed indicating that many South Africans do not have confidence in their trustworthiness.

*Table 7: Selected responses to the South African Social Attitudes Survey (%), 2009–2011*⁸⁰⁶

	2009	2010	2011
Percent believing that corruption is widespread amongst the police			66
Trust or strongly trust the police	41	41	41
Police doing a good or very good job		43	46
Police doing a bad or very bad job		25	23
Police in South Africa treat people with respect – often or very often		47	50
Police in South Africa treat people with respect – not at all often or not very often		50	47
Police make fair and impartial decisions in the cases they deal with – often or very often		44	47
Police make fair and impartial decisions in the cases they deal with – not at all often or not very often		49	46
Police explain their decisions when asked to do so – often or very often		40	40
Police explain their decisions when asked to do so – not at all often or not very often		47	43
Police generally have the same sense of right and wrong as I do – agree or strongly agree		69	71
Police generally have the same sense of right and wrong as I do – disagree or strongly disagree		17	17
Police stand up for values that are important to people like me – agree or strongly agree		52	52
Police stand up for values that are important to people like me – disagree or strongly disagree		25	22
Police stand up for values that are important to people like me – neither agree nor disagree		20	24
I generally support how the police usually act – agree or strongly agree		42	40
I generally support how the police usually act – disagree or strongly disagree		32	31
I generally support how the police usually act – neither agree nor disagree		25	28

805 Afrobarometer (2012) *Public agenda and the evaluation of government: 2012 summary of results for South Africa*. <http://www.afrobarometer.org/results/results-by-country-n-z/south-africa>, accessed 13 July 2012

806 Human Sciences Research Council, South African Social Attitudes Survey, Undated Powerpoint Presentation (in PDF format). <http://www.hsrc.ac.za/SASAS.phtml>, accessed 12 July 2012

Table 8: Selected responses to the Afrobarometer survey (%)⁸⁰⁷

	2006	2008	2011
Almost all or most police are corrupt	48	46	52
Trust in police somewhat/a lot	48	42	49

According to the SAPS, during the recruitment process all applicants are subjected to a vetting process by Crime Intelligence, the verification of qualifications and a more detailed verification process of personal particulars and thorough reference-checking prior to enlistment, ‘in order to ensure quality, fairness, objectivity and to prevent corrupt practices in recruitment’.⁸⁰⁸ Recruitment criteria include the requirement that recruits should be in possession of a grade 12 or equivalent qualification and that they should have ‘no criminal/departmental convictions or pending actions’.⁸⁰⁹ However, it is likely that selection processes have been applied less rigorously in recent years as a result of the process of en masse recruitment and this may have negative implications for the SAPS’s ability to ensure the professionalism and integrity of its personnel in coming years.

SAPS members currently undergo 12 months of basic training at the SAPS academy, instead of the previous six months of training followed by 12 months of field training at police stations.⁸¹⁰

A set of ‘principles for promotion’ are published on the SAPS website.⁸¹¹ Although there have allegedly been examples where principles such as that ‘levels/ranks cannot be skipped’ have been ignored, allegedly linked to favouritism.⁸¹²

In addition to a code of conduct⁸¹³ the SAPS also has a code of ethics.⁸¹⁴ It is unknown to what degree SAPS members are familiar with these two codes, or to what extent they are referred to in the day-to-day management of SAPS officers.

Reports of alleged political interference in the SAPS are discussed above under Article 7.

Article 12: Confidentiality

Standard: Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of duty and need of justice strictly require otherwise.

807 Afrobarometer (2012) *Public agenda and the evaluation of government: 2012 summary of results for South Africa*. <http://www.afrobarometer.org/results/results-by-country-n-z/south-africa>, accessed 13 July 2012

808 South African Police Service (2011) *Annual Report, 2010/11*. Pretoria: South African Police Service. Pretoria: South African Police Service, p.21

809 *South Africa info* (2 December 2010) Bar raised for new recruits. <http://www.southafrica.info/news/policerrecruitment-021210.htm>, accessed 7 June 2012

810 *Ibid.*

811 <http://www.saps.gov.za/careers/promotions.htm>, accessed 7 June 2012

812 *Mail & Guardian* (20 April 2012) Zuma bodyguard put in charge of police spy unit. <http://mg.co.za/article/2012-04-20-zuma-guard-put-in-charge-of-police-spy-unit>, accessed 7 June 2012

813 http://www.saps.gov.za/saps_profile/code_of_conduct/code_of_conduct.htm, accessed 7 June 2012

814 http://www.saps.gov.za/saps_profile/code_of_ethics/code_of_ethics.htm, accessed 7 June 2012

Legislative provisions that protect the disclosure of certain kinds of information include:

- » The Promotion of Access to Information Act prohibits the ‘unreasonable disclosure of personal information about a third party’;⁸¹⁵
- » The Criminal Procedure Act prohibits publicising the identity of victims of rape and child accused and witnesses;⁸¹⁶
- » The SAPS Act prohibits the disclosure of information that ‘prejudicially affects the exercise or the performance by the Service of the powers or the functions referred to in the Constitution’.⁸¹⁷

The release of crime statistics has been a controversial issue over the years.⁸¹⁸ In the late 1990s, the SAPS used to release quarterly reports reflecting the latest crime statistics. Since 2001, however, official policy has been that crime statistics are released to the public on an annual basis, at which point they are made available on the SAPS website together with the release of the SAPS Annual Report. As a result of the policy, even provincial governments are refused access to crime statistics or other information on crime,⁸¹⁹ notwithstanding the fact that they have constitutional powers to exercise oversight over the police in terms of the Constitution.⁸²⁰ Allegations have also been made, and confirmed in some cases, that there has been a pattern of non-recording of reported crime by the police, which impacts on the reliability of crime statistics.⁸²¹

Article 13: Property rights

Standard: In the performance of their duties police officials shall respect and protect all property rights. This includes the economical use of public resources.

The relevant legal framework is partly defined by the Public Finance Management Act.⁸²² The SAPS has a good history in terms of its annual audit conducted by the Auditor-General of South Africa. In recent years it has generally received unqualified audits and the Auditor-General has identified a number of good

815 Promotion of Access to Information Act, No. 2 of 2000, section 34(1)

816 Criminal Procedure Act, No. 51 of 1977, section 154

817 South African Police Service Act, No. 68 of 1995, section 70

818 Bruce D, Newham G and Masuku T (2007) *In Service of the People's Democracy: An Assessment of the South African Police Service*. Johannesburg: Centre for the Study of Violence and Reconciliation and Open Society Foundation for South Africa, pp. 57-60

819 *Die Burger* (letter) (18 February 2012) *Wet wil alle W-Kapenaars veiliger maak*. Interview, Gideon Morris, Chief Director: Safety and Security, Department of Community Safety, Western Cape. See also, Bruce D, Newham G, and Masuku T (2007) *In Service of the People's Democracy: An Assessment of the South African Police Service*. Johannesburg: Centre for the Study of Violence and Reconciliation and Open Society Foundation for South Africa, p.60

820 Constitution of the Republic of South Africa, section 206

821 Bruce D (April 2010) 'The ones in the pile were the one's going down' – the reliability of current violent crime statistics. *South African Crime Quarterly*, No. 31

822 Public Finance Management Act, No. 1 of 1999

practice benchmarks that the SAPS has met including ‘Compliance with risk management and good internal control and governance practices’.⁸²³

The 2010/2011 SAPS Annual Report refers to ‘several functionalities and interfaces’ that ‘have been established and implemented to enhance an integrated asset management approach in the Department’.⁸²⁴ Although the audit is not qualified, the 2010/2011 Auditor-General’s report raises concerns in relation to the inadequacy of steps to ‘prevent irregular as well as fruitless and wasteful expenditure’ and about inadequacies in the management of contract performance.⁸²⁵ In earlier years the Auditor-General also raised concerns about abuse of official vehicles.⁸²⁶

The SAPS received over R60 million worth of claims in these three categories in 2009/2010 as well as in 2010/2011.⁸²⁷ Civil claims however typically take a number of years to resolve and in 2009/2010 civil suits in which roughly R91 million was claimed from the SAPS (presumably mostly in previous years) were resolved. However in these cases amounts of about R18 million were paid out whilst the SAPS was able to escape liability for claims worth about R73 million in matters where the claims were either cancelled or reduced. In the following year almost R15 million was paid out whilst claims that were finalised also involved reductions or cancellation of an amount of R20 million. This suggests that for claims lodged in respect of damage to property, the SAPS typically pays out between 20% and 40%, although it has managed to escape liability for over 50% of these claims.⁸²⁸

823 Auditor-General South Africa, Portfolio Committee on Police Strategic Planning Workshop, 12 August 2009 (Powerpoint presentation), p.4

824 South African Police Service (2011) *Annual Report, 2010/11*. Pretoria: South African Police Service, p.129

825 *Ibid*, p.134

826 Bruce D, Newham G and Masuku T (2007) *In Service of the People’s Democracy: An Assessment of the South African Police Service*. Johannesburg: Centre for the Study of Violence and Reconciliation and Open Society Foundation for South Africa, p.75

827 South African Police Service (2010) *Annual Report, 2009/10*. Pretoria: South African Police Service; South African Police Service (2011) *Annual Report, 2010/11*. Pretoria: South African Police Service, p.190

828 It may be noted that some of the claims for damage to property may follow from accidents that occurred during the performance of police duties where police actions might not necessarily have been judged to be reckless or negligent

9

Swaziland

Background

Following independence in 1968, Swaziland maintained a hybrid system of governance characterised by a fusion of traditional institutions and liberal principles of governance. Although the Swaziland independence Constitution, which was promulgated by Britain in November 1963, was progressive, King Sobhuza repealed the Constitution by decree in 1973, dissolved Parliament and assumed all powers of government. He prohibited all political activities, as well as prevented the activities of trade unions. Since then, the parliamentary system has become subsumed under the traditional system with the monarch at the helm. The Constitution of 2005 provides for certain fundamental rights and freedoms and the powers and responsibilities of law enforcement officials.⁸²⁹ While the Constitution is understood to be the supreme law, the practice of law enforcement officials has not changed significantly from their practice introduced by the 1973 decree. If anything, the situation has become worse with the introduction of the Suppression of Terrorism Act.⁸³⁰

Constitutionally, the Royal Swaziland Police operates under the office of the Prime Minister, with the Commissioner of Police being responsible for the administration and discipline of the police. The Commissioner of Police is directly accountable to the King, who acts as the Commissioner-in-Chief of the Police.⁸³¹ After independence, the police became known as the Royal Swaziland Police (RSP).

In 2010, the RSP had 4 409 members in the service.⁸³²

829 Constitution of the Kingdom of Swaziland, Act No. 1 of 2005

830 Suppression of Terrorism Act, No. 3 of 2008

831 Berg J (2005) *Overview of Plural Policing Oversight in Select Southern African Development Community (SADC) Countries*. Cape Town: Institute of Criminology, University of Cape Town

832 Royal Swaziland Police Service (2010) *Annual Report 2010*. Mbabane: Royal Swaziland Police Service

Methodology

The data for this research was collected by the Swaziland Coalition of Concerned Civic Organisations. Information was obtained through a combination of interviews with several police members from the Police Headquarters in Mbabane and the Police College in Matsapha. Additional interviews were held with the government spokesperson, representatives of the Anti-Corruption Commission, Commission on Human Rights and Public Administration and the Motor Vehicle Accident Fund, attorneys and members of civil society organisations, as well as some prominent individuals.

This information was supplemented by an analysis of legal texts, and by a desktop review of information available on the internet and other available sources.

The study was limited by the time frame that was available to conduct the research (two months). To some extent, the mistrust that exists between government bodies and civil society organisations also impacted on the study.

Article 1: Respect for human rights

Standard: In the performance of their duties, police officials shall respect and protect human dignity, maintain and uphold the human rights of all persons.

The Swazi Constitution holds that law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.⁸³³ These include a range of rights such as the right to life, which allows for the imposition of the death penalty; protection of the right to personal liberty; equality before the law; the right to fair hearing; and protection against arbitrary search or entry. For each of these rights, the Constitution outlines instances in which they may be limited. These articles establish societal expectations of police conduct and relationships with the individual and society.

Swaziland is party to several key international human rights instruments.⁸³⁴ During the Universal Periodic Review (UPR) process in Swaziland in November 2011, the Human Rights Council noted that Swaziland should ratify and take steps to implement a number of additional treaties. It also noted that Swaziland had failed to take steps to ensure that the Constitution was in line with international treaties, and that legislation must be adopted to domesticate various provisions. Swaziland was also overdue on several of its international reporting obligations.⁸³⁵

⁸³³ Constitution of the Kingdom of Swaziland, Act No. 1 of 2005, chapter 3

⁸³⁴ The International Convention on the Elimination of all Forms of Racial Discrimination, acceded to on 7 May 1969; Convention on the Rights of the Child, ratified on 6 October 1995; Convention on the Elimination of all forms of Discrimination against Women, acceded to on 25 April 2004; the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 25 April 2005; International Covenant on Economic, Social and Cultural Rights, acceded to on 26 June 2004; and the International Covenant on Civil and Political Rights, acceded to on 26 June 2004

⁸³⁵ Human Rights Council (25 July 2011) Compilation prepared by the Office of the High Commission of Human Rights in accordance with paragraph 15(b) of the annex to the Human Rights Committee resolution 5/1: Swaziland. A/HRC/WG.6/12/SWZ/2

The Constitution establishes the Royal Swaziland Police Service (RSP), which is responsible for ‘preserving the peace, for prevention and detection of crime and the apprehension of offenders’.⁸³⁶ The King has the ultimate authority over the police, with power to appoint, discipline and remove the Commissioner and Deputy Commissioner of Police acting on the advice of the minister responsible for policing.

With all these constitutionally enshrined rights there seems to be a gap in commitment to protecting or rather adhering to those human rights – with allegations that trade unionists, human rights activists, political party members and civil society leaders are subject to arbitrary search as well as interference with their rights.⁸³⁷ Some legislation is contrary to the spirit of the Constitution, such as the Suppression of Terrorism Act.⁸³⁸ This legislation provides for sweeping powers to arrest, detain and charge activists. Amnesty International and the International Bar Association have claimed that this Act threatens human rights and is inherently repressive. It breaches Swaziland’s obligations under international law and regional human rights law and is also in contradiction with the Constitution.⁸³⁹ There are claims that freedom of movement, which is provided for in the Constitution, is also violated regularly.⁸⁴⁰ Activists have reported that they are routinely arrested by the police on their way to political meetings or rallies, and either forced to turn back, or are driven around for hours so that they miss the meeting.⁸⁴¹

The Constitution provides for the establishment of a Commission for Human Rights and Public Administration (CHRP) with the mandate to investigate allegations of human rights violations and injustice, corruption, abuse of power and unfair treatment by a public officer, and to investigate complaints regarding the functioning of any public service.⁸⁴² The CHRP is mandated to take appropriate action to remedy these instances by publicising the findings, negotiation, bringing the matter to the attention of the person’s superior or reporting it to the Director of Public Prosecutions. The Commission may also bring proceedings to challenge the validity of legislation. Apart from the appointment of some Commissioners, and the official launch of the Commission in 2009, there has been little progress in making this structure operational until very recently.⁸⁴³ The Commission for Human Rights and Public Administration Operation Bill (2011) and a budget were approved for the 2011/2012 financial year. Cases that have been brought

836 Constitution of the Kingdom of Swaziland, section 189(1)

837 Swazi Media Commentary (20 July 2010) Activists at Risk in Swazi Police Crackdown. <http://swazimedia.blogspot.com/search?q=activists+arbitrary+search>, accessed 20 July 2012

838 Suppression of Terrorism Act, No. 3 of 2008

839 Amnesty International (8 January 2009) *Swaziland: Suppression of Terrorism Act undermines Human Rights in Swaziland*. <http://www.amnesty.org/en/library/info/AFR55/001/2009>, accessed 21 July 2012

840 Constitution of the Kingdom of Swaziland, article 26

841 Interview with civil society member

842 Constitution of the Kingdom of Swaziland, article 163

843 *Swaziland News* (5 September 2009) Human rights commission launched. http://www.swazilive.com/Swaziland_News/Swaziland_News_Stories.asp?News_id=440, accessed 20 July 2012

before the Commission have not been processed due to the absence of the operationalising legislation, insufficient budget and a lack of personnel. However, some of its other duties have been carried out, such as ensuring that Members of Parliament, the Prime Minister and other ministers have declared their assets to the Integrity Commission; though these declarations have not been made public.

There is limited provision made for human rights training of police officials. According to the Curriculum Design and Examinations Units Officer, police training in human rights is still in its infancy, although not completely absent. He maintained that human rights is a broad subject, and as such some issues of human rights were dealt with during police training, such as executing a lawful arrest. Recently, in an attempt to incorporate human rights training into the police curriculum, the SARPCCO Code of Conduct has been used with trainees for the two past academic training periods. There is also in-service training for those who graduated before the Code came into effect. Meanwhile, the RSP is in the process of formulating a module on human rights. While there is no involvement of civil society and experts in the formulation of the module, the training officer responsible indicated that input from such stakeholders will be sought after a basic 'working document' had been produced.

On reports of escalating human rights abuses, the training officer suggested that police are driven by external pressure to abuse human rights, for example from the media, victims and the public, such that when police finally apprehend a suspect they vent their frustrations on them.

Protection of the human rights of police officials

The Employment Act⁸⁴⁴ prohibits police and security forces from forming or belonging to trade unions, as does the Industrial Relations Act⁸⁴⁵ and the Police Regulations,⁸⁴⁶ which also prohibit police from belonging to political organisations. However, police are permitted to belong to an association consisting solely of police members.⁸⁴⁷ In 2005, RSP members attempted to form a police union to protect their rights and interests. The International Council of Police Representative Association (ICPRA) recommended in 2008 to the government that unionisation should be allowed to substitute for autocratic management systems and arbitrary disciplinary systems which often make police feel intimidated and powerless, rendering the relationship with police managers/employers conflictual rather than constructive.⁸⁴⁸ In response, the government drafted the Police Service Bill (2010), which bans police officers from joining trade unions.⁸⁴⁹ The Bill will allow police

844 Employment Act, No. 5 of 1980 (as amended)

845 Industrial Relations Act, 2000 (as amended)

846 Police Regulations, 1957, section 19

847 *Ibid.*

848 Grant J, Kinnear D and Marks M (2008) *Report of Recommendations for a new labour relations framework for the Royal Swaziland Police*. International Council of Police Representative Associations, <http://icpra.org>

849 Police Service Bill, article 62(2)

members to establish an association to be called the Royal Swaziland Police Service Association, which would have bargaining powers and be able to represent police officers in their social and economic interests while they remain on duty and provide essential services.⁸⁵⁰

Housing for the RSP is problematic, as there are situations where two families are required to share one small house, resulting in overcrowded conditions. This issue was raised during the trade union strike organised and staged by the Swaziland Federation of Trade Unions (SFTU) in 1995, dubbed the '27 demands', where the demand for decent accommodation and improved living conditions for the police was included. Conditions have not changed since, although the Commissioner of Police has acknowledged that accommodation arrangements are dire and accommodation sharing is 'out of the ordinary'.⁸⁵¹

Article 2: Non-discrimination

Standard: Police officials shall treat all persons fairly and equally and avoid any form of discrimination.

Although Swaziland is a homogenous country with regard to language and nationality, differences are apparent at social levels. The country's ethnic composition is predominantly Swazi.⁸⁵²

The Lesbian, Gay, Bisexual, Transgendered and Intersex (LGBTI) community has reported incidents of discrimination, humiliation and ill-treatment at the hands of the police. Thuli Rudd, a lesbian woman who was on trial for the murder of her partner, told the court that she was verbally assaulted, tied to a bench and suffocated with a plastic bag by the police during interrogation. She told a Manzini magistrate that she was tortured to admit to a crime she did not commit and insulted on the basis of her sexual orientation. Magistrate Mazibuko responded by saying that he was aware that suspects were sometimes tortured by the police because he was a former policeman himself.⁸⁵³

The government has failed to take a protective stance for LGBTI people. During the UPR process before the UN Human Rights Council in October 2011, Swaziland stated that while consensual same-sex relationships are not allowed in Swaziland, no one had been prosecuted for their sexual orientation.⁸⁵⁴ However, NGOs making representations to the UPR process raised a number of concerns,

850 Police Service Bill, article 62(3)

851 Comm. Magagula (2 December 2011) Remarks by the Commissioner of Police during the end of year conference for senior police officers and civilian staff. <http://www.gov.sz/commissioner%20of%20police-%20senior%20officers%2001.pdf>, accessed 25 June 2012, p.5

852 Swaziland's ethnic population is constituted as follows: Swazi (82.3%), Zulu (9.6%), Tsonga (2.3%), Afrikaans (1.4%), mixed white and other African (1%), other (3.4%). www.worldstatesmen.org/Swaziland.html

853 *Swazi Media Commentary* (16 December 2010) Cops Torture Murder Confession. <http://swazimedia.blogspot.com>, accessed 16 June 2012 and *Swazi Solidarity Network Canada* (16 December 2010) 'I was tortured, degraded' - T Rudd. <http://swazilandsolidaritynetworkcanada.wikispaces.com/I+was+tortured,+degraded+%E2%80%93+Thuli+Rudd+Dec+16,+2010>, accessed 16 June 2012

854 Human Rights Council (12 December 2011) *Report on the Working Group on the Universal Periodic Review: Swaziland*. A/HRC/19/6, at para 49

including failure to decriminalise same-sex relationships and the state needing to provide extensive health care services to the LGBTI community. They also claimed that LGBTI people were discriminated against by the clergy, public and law enforcement agents.⁸⁵⁵

Police training on discrimination

Sources indicated that the RSP do not receive comprehensive training on diversity or non-discrimination. The only training offered on non-discrimination is on gender, which targets a certain unit within the force. Such training is undertaken by senior management, particularly those dealing with gender issues. Internally, issues of gender equality have received attention in recent years such that the RSP has even formed a Gender Networking Forum, which seeks to promote gender equality within the work place.⁸⁵⁶ Issues of gender equality have apparently improved within the force over recent years, according to sources.

There is some unevenness in the distribution of resources and personnel across the country. This is justified by specific policing needs in each region, for example, Hhohho is the leading area for marijuana production; Lubombo is troubled by stock theft and shares a border with Mozambique; Shiselweni is gaining momentum in marijuana cultivation as well as people with dual citizenship⁸⁵⁷ while Manzini is an economic centre and is known as a crime hub.⁸⁵⁸ Accordingly, these areas have been allocated a higher number of police personnel and resources.

*Table 1. Distribution and accessibility of services in selected areas*⁸⁵⁹

Region	Police stations	Police posts	Officers	Civilians	Population	Motor vehicles	Motorcycles
Hhohho	3	5	576	27	263 761	69	14
Manzini	8	7	860	40	293 260	102	29
Shiselweni	5	4	449	25	202 686	68	12
Lubombo	11	8	415	25	193 817	72	18

Country area: 17 360km², with a population density of 68.90⁸⁶³

855 Human Rights Council (22 July 2011) *Summary prepared by the Office of the High Commission of Human Rights in accordance with paragraph 15(c) of the annex to the Human Rights Committee resolution 5/1: Swaziland*. A/HRC/WG.6/12/SWZ/3, para 42

856 Interview with the Curriculum Design Officer, 10 May 2012

857 Royal Swaziland Police (2010) *Annual Report 2010*. Mbabane: Royal Swaziland Police

858 *Ibid.*

859 *Ibid.*

860 Population is based on national census cited in United Nations (2010) *2010 World Population Census and Housing Programme*. http://unstats.un.org/unsd/demographic/sources/census/2010_phc/swaziland/swaziland_more.htm, accessed 10 July 2012

861 Royal Swaziland Police, *Annual Report 2010*. Mbabane: Royal Swaziland Police

862 The number of police stations and police posts for Lubombo was ascertained from a source at the Mbabane Police Headquarters (19 April 2012)

863 *Ibid.*

Article 3: Use of force

Standard: Police officials may only use force when strictly necessary and to the extent required for the performance of their duties and adhering to national legislation and practice.

The Police Act does not contain any provisions relating to the use of force, which is governed by the Constitution. In terms of this section, a person ‘shall not be regarded as having been deprived of life ... if death results from the use of force to such extent as is reasonably justifiable and proportionate in the circumstances’, where a) for the defence of any person from violence or for the defence of property; b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; c) for the purpose of suppressing a riot, insurrection or mutiny; or d) in order to prevent the commission by that person of a serious criminal offence.⁸⁶⁴ The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials stress the principle of proportionality in the use of force.⁸⁶⁵ Compared with this principle, the Swazi Constitution extends the right to lethal force for the protection of property and for making any arrest or preventing a person escaping from custody. This has far reaching consequences.

Over the years the police have been accused of excessive use of force on a number of occasions, including beatings of suspects, torture and the use of lethal force.⁸⁶⁶ In 2011, two deaths were recorded in a matter of weeks.⁸⁶⁷ In April 2011, a 66-year-old woman was confronted by three armed police regarding the wording on her T-shirt and headscarf. The police allegedly pulled off her T-shirt, throttled her, banged her head against a wall, sexually molested her, kicked her and threw her against a police truck. She needed hospital treatment. In September of the same year, it is alleged that police used excessive force to break up a rally in the town of Siteki, where they threw a woman to the ground, kicked her and dragged her by the arms for about 100m. She also required hospital treatment for her injuries.⁸⁶⁸ On 14 February, 2011, Sifiso Nhlabatsi was allegedly shot by police while he was handcuffed and in their custody. He had been removed from Mbabane police station and taken to Thembelihle forest where he was interrogated, allegedly assaulted and shot. The police publicly stated that they had shot him in the buttocks while he was trying to escape arrest.⁸⁶⁹ Many such stories

864 Constitution of the Kingdom of Swaziland, article 15(4)

865 Adopted by the 8th United Nations Congress on the Prevention of Crime and Treatment of Offenders, Havana, 27 August to 7 September 1990

866 Berg J (2005) *Overview of Plural Policing Oversight in Select Southern African Development Community (SADC) Countries*. Cape Town: Institute of Criminology

867 Amnesty International (2011) *The State of the World's Human Rights*, 2011. <http://www.amnesty.org/en/annual-report/2011>, accessed 13 July 2012

868 Amnesty International (2012) *Annual Report 2012: The State of the World's Human Rights*. <http://www.amnesty.org/en/region/swaziland/report-2012>, accessed 16 June 2012

869 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Swaziland*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 10 July 2012

have been recorded by the media, especially those involving the use of fire arms.⁸⁷⁰

Another concern is that the Game Act gives game rangers unbridled authority to respond to transgressions of game conservation.⁸⁷¹ A number of extra-judicial killings by game rangers have been reported.⁸⁷² A parliamentary committee was appointed to investigate the alleged brutality of game rangers, but no game rangers have been prosecuted as yet.⁸⁷³

Article 4: Torture and cruel, inhuman and degrading treatment or punishment

Standard: No police officer shall, under any circumstances, inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment of any person.

The Constitution protects individuals from inhuman or degrading treatment, slavery and forced labour.⁸⁷⁴ It provides that law enforcement officials may not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances as a justification of torture or other cruel, inhuman or degrading treatment or punishment.⁸⁷⁵ However, this is contained under the 'guideline principles' section of the Constitution and is not regarded as legally enforceable in any court or tribunal.⁸⁷⁶ Swaziland has not yet implemented legislation to criminalise torture or to domesticate the other provisions of the UN Convention against Torture.

Allegations of torture and degrading treatment committed by the police continue to appear in the local press. In Mbabane, police were alleged to have tortured a 15-year-old boy after his mother had reported him for stealing SZL85. The boy alleges that he was beaten with a slasher (tool for cutting grass) and a knobkerrie (club) for five hours. While enduring this pain, he was told that instead of crying, he must count the strokes aloud for the police to hear. At some point he was threatened with a gun. Instead of being charged, the boy was physically assaulted and made to sit in a chair for thirty minutes before he was sent back home.⁸⁷⁷ Amnesty International reported on the death of a political activist, Phumelela Mkhweli, who died after apparent assaults by the police after they

870 *Pambazuka News* (12 July 2012) Swazi police 'shoot-to-kill' victims mount up. <http://www.pambazuka.org/en/category/features/83549>, accessed 17 July 2012

871 Game Act, No. 51 of 1953

872 Human Rights Council (22 July 2011) *Compilation prepared by the Office of the High Commission of Human Rights in accordance with paragraph 15(c) of the annex to the Human Rights Committee resolution 5/1: Swaziland*. A/HRC/WG.6/12/SWZ/2, paras 23 and 24

873 Amnesty International (2012) *Annual Report 2012: The State of the World's Human Rights*. <http://www.amnesty.org/en/region/swaziland/report-2012>, accessed 16 June 2012

874 Constitution of the Kingdom of Swaziland, section 14(1)(e)

875 Constitution of the Kingdom of Swaziland, section 57(3)

876 United States Department of State (2010) *Country Reports on Human Rights Practices for 2009: Swaziland*. <http://www.state.gov/j/drl/rls/hrrpt/2009/af/135979.htm>, accessed 13 July 2012

877 *Swazi Media Commentary* (1 April 2012) Swaziland: Police Torture Boy, 15. <http://allafrica.com/stories/201204010225.html>, accessed 16 June 2012

arrested him.⁸⁷⁸ The US Department of State reported on many allegations of torture and ill-treatment by police during 2011, including ‘beatings and temporary suffocation, using a rubber tube tied around the face, nose, and mouth, or plastic bags over the head’.⁸⁷⁹ No convictions or punishment of police officers for these offences was reported during the year.⁸⁸⁰

The United Nations’ Country Team (UNCT) working on the UPR process noted that while the Constitution provided protection against inhuman and degrading treatment, there were allegations of the police using interrogation methods in contravention of this provision with some of them resulting in death. It also noted that there has been no successful case holding police responsible for brutality.⁸⁸¹

Article 5: Protection of persons in custody

Standard: Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention when required.

The Constitution protects individuals from inhuman or degrading treatment.⁸⁸² Section 16 deals with the rights of a person under arrest, detention and trial. This includes the right to be informed as soon as reasonably possible of the reasons for the arrest, and the right to legal representation. The right to be brought before a court within 48 hours is framed in negative terms, so that anyone alleging there is a violation is expected to prove it.⁸⁸³ Detention for a further period must be by order of the court. A detained person is allowed visits by a next of kin, legal representative or doctor, as well as reasonable access to medical treatment.

Not much information is available on the conditions in police custody. Two recent court cases illustrate concerns, however. In the matter of *Tsela v The Commissioner of Police and Others*,⁸⁸⁴ Tsela was arrested by police officers during 2001 and placed in police cells at Mbabane police station for two days. The court noted that he complained that ‘the living conditions in the police cells were terrible. The cell was too small and he had to sleep or sit curled up. He was given food once a day at about 3pm. He had to use a bucket to relieve himself otherwise he was allowed out of the cell once a day to relieve himself.’⁸⁸⁵ A plaintiff in another case complained that he was deprived of basic amenities in police cells,

878 Amnesty International (2012) *Annual Report 2012: The State of the World's Human Rights*. <http://www.amnesty.org/en/region/swaziland/report-2012>, accessed 16 June 2012

879 United States Department of State (2012) *Country Reports on Human Rights Practices for 2011: Swaziland*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 10 July 2012

880 *Ibid.*

881 Human Rights Council (22 July 2011) *Compilation prepared by the Office of the High Commission of Human Rights in accordance with paragraph 15(c) of the annex to the Human Rights Committee resolution 5/1: Swaziland*. A/HRC/WG.6/12/SWZ/2, paras 23 and 24

882 Constitution of the Kingdom of Swaziland, section 14(1)(e)

883 Constitution of the Kingdom of Swaziland, section 14(1)(e)

884 *Tsela v Commissioner of Police and Others* [2009] SZHC 258

885 *Ibid.*, para 9

including clean blankets, good food and reasonable sanitation. He was kept in a poorly ventilated, dirty, smoky, overcrowded cell, with 13 other occupants. He also alleged that the police took him out of the cell at night, beat him up and ‘stomped on his feet’ while attempting to extract information.⁸⁸⁶ These cases illustrate that there are some instances where civil claims have been brought against the police for wrongful arrest and treatment in custody. The latter plaintiff was successful in his claim.

Other sources indicate that there is no separation between adults and children in police cells or prisons. The US Department of State reported that prisons and detention centres are overcrowded, but that there is separation between female detainees and convicts; female juveniles are also held in adult correctional facilities but they sleep in different quarters.⁸⁸⁷ Overcrowding in prison and detention centres exposes inmates and officers to diseases and illness. In 2010 alone, a total of 1 173 inmates were referred to government hospitals for treatment, and 14 died due to illness.⁸⁸⁸ The government does not permit independent monitoring of prison conditions by local human rights groups or the media. The living conditions and management of detention centres and prisons are very poor and inmates complain that their grievances are censored and sometimes do not even reach the appropriate authorities.⁸⁸⁹

Another concern is for the number of deaths in police custody. A political activist, Siphon Jele, died in Sidwashini Remand Centre in 2010 several days after being arrested. He was not represented by a lawyer and there were no records of his court proceedings. It later emerged that he had asked the court not to be remanded back into police custody for fear of being tortured. It also emerged that Jele had been previously detained in 2005, tortured before being charged with treason, for which he was never brought to trial.⁸⁹⁰ There is no comprehensive information available relating to deaths in custody.

Article 6: Victims of crime

Standard: All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary.

Legislatively, Swaziland lacks any instrument that specifically relates to victims of crime and it has no national crime victim assistance office. It does not provide monetary compensation to crime victims, nor do the courts have the authority to order the perpetrator to pay restitution. Nonetheless, organisations such as

⁸⁸⁶ *Dlamini v Commissioner of Police and Another* [2009] SZHC 169

⁸⁸⁷ United States Department of State (2011) *Country Reports on Human Rights Practices for 2010: Swaziland*. <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154372.htm>, accessed 10 July 2010

⁸⁸⁸ *Ibid.*

⁸⁸⁹ *Ibid.*

⁸⁹⁰ *Ibid.*

the Swaziland Action Group Against Abuse (SWAGAA), and Save the Children Swaziland do provide psychosocial services to victims. The Social Welfare Office, working with the police, does provide assistance to children who have suffered abuse in terms of the Social Welfare Act. Such assistance would include temporary accommodation in a government facility in the care of trained personnel. In cases of child abuse, the court hears evidence in camera in order to minimise trauma to the child. This, service however, is only available to children who are victims of abuse, particularly sexual abuse and excludes adults who might be in need of such services.

Swaziland established a Domestic Violence, Child Protection and Sexual Offences Unit in the RSP, which ‘monitors trends and emerging issues in domestic violence’ and promotes compliance with policies and helps develop referral pathways for victims. The unit deals with rape, abduction and murder resulting from domestic violence and human trafficking.⁸⁹¹ A Domestic Violence and Sexual Offences Bill was tabled in Parliament in 2009, but it is still pending three years later.⁸⁹² Several organisations submitted to the UPR process that although domestic violence was rife against women, the state had few mechanisms to deal with it, and that the police do not take these matters seriously, believing them to be family matters.⁸⁹³

There recently has been a move towards the protection of witnesses through the Witness Protection Bill of 2011,⁸⁹⁴ which can be seen as positive step towards the strengthening of the justice system in Swaziland.

The RSP has a Service Charter wherein they undertake to serve a person seeking information or support at a police station, ‘promptly, politely and courteously’ within five minutes of arrival. Customers are to be treated with privacy. Police should arrive at the scene of a crime or road accident within ten to 20 minutes of a report and within 30 minutes in a rural area. They also undertake to give regular feedback to the public in response to reported cases within seven days and thereafter at intervals of seven days.⁸⁹⁵ The RSP Annual Report does not indicate to what extent the police are able to meet these goals, though interviews with members of the public indicate that the police frequently fall short of these objectives.

891 Royal Swaziland Police (2010) *Annual Report 2010*. Mbabane: Royal Swaziland Police, p.48

892 Human Rights Council (3–14 October 2011) *National Report submitted in accordance with paragraph 15(a) of the annex to the Human Rights Council Resolution 5/1: Swaziland*. A/HRC/WG.6/12/SWZ/1, para 51

893 Human Rights Council (22 July 2011) *Summary prepared by the Office of the High Commission of Human Rights in accordance with paragraph 15(c) of the annex to the Human Rights Committee resolution 5/1: Swaziland*. A/HRC/WG.6/12/SWZ/3, para 24

894 *Swaziland Government Gazette*, Vol. 49, Issue 58, Mbabane

895 Royal Swaziland Police (2010) *Annual Report 2010*. Mbababe: Royal Swaziland Police, p.7

Article 7: Respect for the rule of law and Code of Conduct

Standard: Police officials shall respect and uphold the rule of law and the present Code of Conduct.

Over the years there have been a number of occasions when Swaziland has failed to adhere to the rule of law. For example, in 2002 and 2003 the then Prime Minister defied a court ruling to re-instate evicted families back to their land. The police facilitated the evictions and provided security for the area to prevent re-settlement.⁸⁹⁶

The Constitution and law provide some degree of legal certainty, although, as illustrated earlier, they do not comply with international human rights norms in all respects. The Constitution now requires law enforcement officials, in the performance of their duty, to respect and protect human dignity and maintain and uphold the human rights of all persons.⁸⁹⁷ The Police Act spells out the duties and functions of the force, and holds that every member of the force shall promptly obey and execute all orders and warrants lawfully issued to him by any competent authority, collect and communicate intelligence affecting peace, and prevent the commission of offences and public nuisances, and ‘bring offenders to justice’.⁸⁹⁸ However, the King has the power to declare a state of emergency which may restrict certain rights.⁸⁹⁹ Certain rights such as the right to life, equality before the law and security of the person; freedom from torture and ill treatment; and the right to a fair hearing are non-derogable under a state of emergency.⁹⁰⁰

In many instances, the police act outside of the law, and through excessive use of force, torture and brutality, are in violation of legislation, as has been described in relation to other Articles of the SARPCCO Code of Conduct.

There is scope for improvement now that the Constitution has established the CHRPA, which also must function as the Integrity Commission. The Integrity Commission must receive the declaration of assets and liabilities of those holding public office.⁹⁰¹ Although the body is currently not fully functional, they have however begun the process of collecting declarations.

The Director of Public Prosecutions (DPP) is required to ‘institute and undertake criminal proceedings against any person in respect of any alleged offence’ which must be ‘with regard to the public interest, the interest of the administration of justice and to the need to prevent abuse of legal process’.⁹⁰² These

⁸⁹⁶ Interview with civil society leader, 18 May 2012

⁸⁹⁷ Constitution of the Kingdom of Swaziland, section 57(2)

⁸⁹⁸ The Police Act, section 7(3)

⁸⁹⁹ Constitution of the Kingdom of Swaziland, sections 36 and 37

⁹⁰⁰ Constitution of the Kingdom of Swaziland, section 38

⁹⁰¹ Constitution of the Kingdom of Swaziland, section 243

⁹⁰² Constitution of the Kingdom of Swaziland, section 162(4) and (6)(a)

functions complement the expectations of the police Internal Investigation Unit, who refer some unresolved cases to the office of the DPP. As an accountability mechanism, the office of the DPP indicated that there were no cases reported in 2011 which have a bearing on police officials, and another source said that there were no cases referred in 2010 either, despite there having been numerous allegations of police abuse in that time period. No member of the RSP has been held accountable for brutality.⁹⁰³

Article 8: Trustworthiness

Standard: The public demands that the integrity of police officials be above reproach. Police officials shall therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undermine the public's confidence in a police force/service.

Article 10: Performance of duties

Standard: Police officials shall at all times fulfil the duties imposed upon them by the law in a manner consistent with the high degree of responsibility and integrity required by their profession.

From interviews with members of the pro-democracy movement, it appeared that there was a lack of trust in the police, while ordinary Swazis had a more mixed response. Lack of trust was attributed mostly to criminal cases that remain unsolved. Victims also felt aggrieved that the police did not give them feedback, nor follow up on leads provided by victims to the police.

Those in the progressive movement felt that police officers were not trustworthy because of the increasing number of deaths in police custody, the treatment they often receive at the hands of the police during protest marches and that the police abuse human rights in the guise of maintaining safety and security.

The RSP's Director of Human Resources and Training pointed out that training is necessary to enable a competent work force to adapt to the dynamic needs of their working environment and to broaden their skills, knowledge and behaviour. During 2010, 79 training courses were conducted and attended by 893 participants. Out of 119 self-development courses, only 36 had some relevance to enhancing the performance of duties within the force. These include courses like Policing, Criminal and Justice Forensic Investigation, Records Management, Diploma in Law and LLB. The Curriculum Design and Examinations Units Officer felt that the current economic situation in the country has frustrated efforts relating to some training courses resulting in a focus on the basic recruitment

903 Human Rights Council (22 July 2011) Summary prepared by the Office of the High Commission of Human Rights in accordance with paragraph 15(c) of the annex to the Human Rights Committee resolution 5/1: Swaziland, A/HRC/WG.6/12/SWZ/3

training programme to the detriment of advanced or specialised training.

The performance of the police is hampered by a lack of human and other resources. There is a serious shortage of specialised transport to perform certain tasks as well as a shortage of personnel. For instance, the Operational Support Service Unit (OSSU) has 253 officers instead of the approved 539.⁹⁰⁴ This predicament has led to departments cross-subsidising one another – with for instance the Correctional Staff working with the OSSU for their escort/operation management duties. This has resulted in different departments engaging in policing activities leading to human rights abuses.⁹⁰⁵ This has an inherent danger in that the training of each department is specific, and does not easily make the cross-over to another departments' area of speciality – even though, for instance, the Department of Correctional Services should also be trained and mandated to act in accordance with human rights norms and standards.

Budgetary constraints have affected the RSP over the last couple of years. The budget allocation was said to be inadequate and not commensurate with operational activities. Balances of allocated funds are reportedly not released to the relevant departments.⁹⁰⁶ The RSP Annual Report of 2010 is riddled with the statement 'funds not released for budgeted item'.⁹⁰⁷ A combination of declining revenues and increased spending led to significant budget deficits in Swaziland, plunging it into economic crisis during 2011.⁹⁰⁸ Budget deficits caused the police to hold a strategic planning session at the end of 2011 to develop policing strategies under conditions of fiscal crisis. The Commissioner of Police noted that the budgetary problems affected transport, utilities, working equipment and staff accommodation.⁹⁰⁹

Article 11: Professional conduct

Standard: Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.

According to the 2009 RSP Annual Report, there has been an 8.43% increase from the previous years in the number of cases reported emanating from police violations of legal procedures, which hampers efficiency and effectiveness.⁹¹⁰ In 2010, 83 civil suits were lodged against the police amounting to SZL30 149 174 (USD3 605 986).

904 Royal Swaziland Police (2010) *Annual Report 2009*. Mbabane: Royal Swaziland Police

905 *Swazi Media Commentary* (13 June 2012) Riot police block teachers' march. <http://swazimedia.blogspot.com/2012/06/riot-police-block-teachers-march.html>, accessed 12 July 2012

906 Royal Swaziland Police (2010) *Annual Report 2009*. Mbabane: Royal Swaziland Police, p.17.

907 *Ibid.*

908 Index Mundi. *Swaziland Economic Profile*, 2012. http://www.indexmundi.com/swaziland/economy_profile.html, accessed 10 July 2012

909 Comm Magagula (2 December 2011) Remarks by the Commissioner of Police during the end of year conference for senior police officers and civilian staff. <http://www.gov.sz/commissioner%20of%20police-%20senior%20officers%2001.pdf>, accessed 25 June 2012

910 Royal Swaziland Police (2010) *Annual Report 2009*. Mbabane: Royal Swaziland Police, p.18.

The claims related to unlawful detention, assaults and torture of suspects, unlawful shooting and accidents caused by police vehicles.⁹¹¹ However, the process of dealing with these claims is very slow, and only two were finalised during 2010.

On a different note, police have also been reportedly involved in criminal activities, with 52 charged for various offences in 2010. These offences ranged from drunken driving to theft, murder and assault.⁹¹²

During the 2010 year, the police dealt with 20 cases of indiscipline within the police service, of which four were finalised. The small number of disciplinary cases seems at odds with the high number of complaints and civil cases laid against the police, and seems to indicate that discipline is not taken seriously within the police. According to the Internal Investigation Unit (IIU) housed at the police headquarters in Mbabane, there were 40 disciplinary cases reported in 2011; 21 of which were finalised and 19 are still pending. From all these cases, the officer-in-charge at the legal affairs department mentioned that there were no appeals in 2011, meaning that no cases were referred to the Director of Public Prosecutions. For complaints, there were 14 complaints reported, 13 of which were finalised and 1 is outstanding.

Forty-five such cases were brought forward from previous years, some of which dated back to 1997.⁹¹³ The delay in processing these cases is ascribed to the lengthy processes of the criminal justice system.⁹¹⁴ The Police Act provides for different disciplinary systems for officers and those below the rank of inspector.⁹¹⁵ A police official may be tried by a senior officer, a Board, or a magistrate. Senior officers are dealt with in terms of provisions for public officials.⁹¹⁶ The Police Service Bill seeks to establish a Police Service Commission that is meant to specifically deal with police hiring, firing and discipline, and thereby create better systems of accountability.⁹¹⁷

To mitigate the disciplinary concerns, the legal affairs department of the RSP conducted lectures at police stations across the country, and the department further made presentations in various courses held at the Police College in Matsapha.

Article 9: Corruption and abuse of power

Standard: Police officials shall not commit or attempt to commit any act of corruption or abuse of power. They shall rigorously oppose and combat all such acts.

Under the Schedule of Offences contained in the Police Act, a range of acts are criminalised. These include the acceptance or soliciting of bribes and accepting

911 *Ibid*, p.18.

912 *Ibid*, pp.20–21

913 *Ibid*.

914 *Ibid*.

915 Police Act, No. 29 of 1957

916 Police Act, section 12

917 Police Service Bill, 2010

directly or indirectly any gratuity, present or reward from any member of the public in respect of anything done in the discharge of duties. An officer may accept rewards, gratuities and presents if reported and permitted by the Commissioner.⁹¹⁸

However, one senior officer said that there is a glaring gap between the legislation and practice, and that police do not comply with the legislation. There is often nepotism in terms of recruitment, promotions and, to a lesser extent, discipline. The political climate allows for people to be rewarded for obedience to the instructions of superiors regardless of whether the actions are lawful or unlawful. Sources indicated that there is also corruption.

Remuneration for the RSP was said to be low and not competitive as compared to some of their counterparts in the region. Officers can barely afford expenditure beyond the basic needs, which may exclude owning a car and a house in urban or peri-urban areas. Moreover, the Police Regulations holds that no member of the force shall contract debts which he is unable or unwilling to discharge, and that the Commissioner may call upon any member of the force to satisfy himself that the liabilities of a member of the force will not interfere with the performance of his duties. Failure to comply with this regulation will lead to a discharge for general incompetence. As a result, many police officials may be motivated to engage in corrupt activities in order to supplement their meagre salaries.⁹¹⁹

In Swaziland, civil servants, including the police, are not allowed to own private businesses. However, there is no mechanism to check on this, and some members of the RSP are known to run private businesses. One of the respondents, an ex-police officer, owned an electrical company which he registered under his spouse's name. The company had been awarded numerous tenders by government, including a tender to service police stations and police accommodation quarters. When the ownership of the company was questioned and investigations were launched, the officer in question then resigned from the RSP.⁹²⁰

The Anti-Corruption Commission and the Office of the Ombudsman are two offices in Swaziland mandated to deal with cases of corruption and the abuse of power, but the researcher could find no cases concerning the police. The Office of the Ombudsman has not been in operation since 1985 after the death of the Ombudsman then in office, even though it maintains a website as if the office is operational.⁹²¹

The CHRPA is mandated to investigate complaints of injustice, corruption, the abuse of power in office and unfair treatment of any person by a public officer in the exercise of official duties, but it is not clear whether it has acted on any cases against the police.⁹²²

918 Police Act, articles 8 and 9

919 Police Regulations, 1957, article 14

920 Interview with a senior police officer

921 Interview with the government spokesperson, Mr P Simelane

922 Constitution of the Kingdom of Swaziland, section 164(b)

Article 12: Confidentiality

Standard: Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of duty and needs of justice strictly require otherwise.

Many police stations display a poster guaranteeing confidentiality. The Police Service Bill provides for the protection of information given to the police.⁹²³ Similarly, police in executing their duties, are expected to divulge certain information which alerts the public about crime trends. Such information is intended as a crime prevention function in that it raises public awareness. The challenge for the police is the ability to balance confidentiality and transparency, and to draw the line between what can and cannot be made public.

Much as there is no measure of the relationship between the RSP and the public, there are visible ways in which such cooperation is motivated. The police regularly communicate with the public on a radio programme called *Nawe Ulipboyisa* ('you are also policing') on the Swaziland Broadcasting and Information Services (SBIS). They also run a 999 phone service where the public can report crime and suspicions. The emphasis here has been on acting on the information and maintaining the confidentiality of the person who provided it.

Article 13: Property rights

Standard: In the performance of their duties police officers shall respect and protect all property rights. This includes the economical use of public resources.

The Police Regulations, the Police Act, and the Swazi Constitution contain clauses that relate to 'property rights'.⁹²⁴ The Police Regulations indicate that uniforms and equipment provided to police officers remain the property of the government and that members of the force who may have lost and/or damaged such property will be held liable.⁹²⁵ The Police Act introduces another dimension to the care of government property, and forbids the legal attachment of government property in possession of a member of the force who is being sued.⁹²⁶

923 Police Service Bill, article 73(1) and (2)

924 Constitution of the Kingdom of Swaziland, sections 19 and 34

925 Police Regulations, articles 8 and 13

926 Police Act, articles 32 and 33

10

Zambia

Background

Zambia achieved independence from Britain in 1964. Its first Constitution was passed in 1973 entrenching the dominance of the one-party state. Multi-party democracy was introduced after protest action, which led to the adoption of a new Constitution, enacted in 1991 and amended in 1996. Zambia has been in the process of Constitutional Review since 2007, but following the election of a new President, Michael Sata, the latest draft for 2012 has been circulated for discussion.⁹²⁷

Zambia is served by the Zambia Police Service (ZPS). This is headed by an Inspector-General of Police, and his two Commissioners of Police, appointed by the President.⁹²⁸ The Zambian Police Service falls under the authority of the Ministry of Home Affairs. The ZPS is supplemented by a Paramilitary Division which serves in disturbed areas and along the international borders. There is also a Mobile Unit which responds to riots and demonstrations. Both the Paramilitary Division and Mobile Unit have independent command structures.⁹²⁹ The Zambia Police Act also provides for a Zambia Police Reserve, comprised of Zambian residents who are older than 18 years who have volunteered for service.⁹³⁰

In 2009, it was reported that the ZPS was operating at less than half of its approved capacity: there is an approved establishment of 27 000 officers, but only

927 Constitution of the Republic of Zambia (first draft), 30 April 2012. <http://zambianconstitution.org/downloads/First%20Draft%20Constitution.pdf>, accessed 21 June 2012

928 Zambia Police Service website, http://www.zambiapolice.gov.zm/index.php?option=com_content&task=view&id=41&Itemid=66, accessed 22 June 2012

929 Robbins S (2009) *Addressing the challenges of law enforcement in Africa: Policing in Sierra Leone, Tanzania and Zambia*. ISS Policy Brief No. 16, October 2009

930 Police Act, No. 15 of 2008

approximately 13 000 police officers were employed.⁹³¹ Slow recruitment and training of police officials is one of the contributory factors in this shortfall.

Methodology

The information for this study was collected through several different sources. This included semi-structured questionnaires used in interviews with key stakeholders, including members of the police. This was supplemented by a desktop review of information, which included a search of the parliamentary library, internet searches, a review of various annual reports and research reports, as well as a review of media articles.

Article 1: Respect for human rights

Standard: In the performance of their duties, police officials shall respect and protect human dignity, maintain and uphold the human rights of all persons.

Law and institutional arrangements to secure human rights

Zambia has ratified or acceded to major international treaties.⁹³² The Zambian Constitution is the supreme law of Zambia and any other law which is inconsistent is void to the extent of the inconsistency.⁹³³ The fundamental rights and freedoms of the individual are dealt with in the Bill of Rights, including the right to (a) life, liberty, security of the person and the protection of the law; (b) freedom of conscience, expression, assembly, movement and association; (c) protection of young persons from exploitation; (d) protection for the privacy of homes and other property and from deprivation of property without compensation.⁹³⁴

The Constitution provides for the Zambia Police Force (now called the Zambia Police Service). The functions of the Zambia Police Force include: (a) the protection of life and property; (b) the preservation of law and order; (c) the detection and prevention of crime; (d) cooperation with the civilian authority and other security organs established under the Constitution and with the population generally.⁹³⁵

The mandate of the police is more explicitly outlined in the Zambia Police Act.⁹³⁶ It sets out the duties of a police officer, which are to exercise such powers and perform such duties as are by law conferred or imposed on a police officer,

931 Institute for Security Studies and African Human Security Initiative (2009) *The Criminal Justice System in Zambia: Enhancing the Delivery of Security in Africa*. ISS Monograph 159. Pretoria: Institute for Security Studies, p.45

932 These include: The International Covenant on Civil and Political Rights; the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; the International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of the Child; African Charter on Human and Peoples' Rights; and African Charter on the Rights and Welfare of the Child

933 Constitution of Zambia, Act No. 1 of 1991, as amended by Act No. 18 of 1996, Chapter 1 of the Laws of Zambia, section 1

934 Constitution of Zambia, section 3

935 Constitution of Zambia, section 104

936 Zambia Police Act, No. 43 of 1965, as amended in 1974, 1985, 1994 and 1999

and to obey all lawful directions in respect of the execution of his officers. Duties include the collection and communication of intelligence affecting the public peace; preventing the commission of offences and public nuisances; detecting and bringing offenders to justice; and apprehending all people they are legally authorised to apprehend.⁹³⁷

The institutional values of the police reflect those of the Constitution. The Zambian Police Mission Statement commits the police to providing high quality service, and upholding the law firmly and fairly for all. It also commits the police to establishing a partnership with the community and to upholding human rights.⁹³⁸

Oversight over the police

The Constitution establishes the Zambia Human Rights Commission (ZHRC), which is an autonomous body with the mandate to investigate human rights abuses.⁹³⁹ This body regularly inspects police stations and prisons and writes reports and recommendations on treatment and conditions in custody. It has also conducted follow-up visits to places visited previously to report on the extent to which recommendations have been implemented. The Commission is hampered by limited resources and funding for field visits and other expenses. The Human Rights Commission lacks sufficient independence as Commissioners are appointed by the President, opening the potential for the appointment of ‘sweetheart’ commissioners.⁹⁴⁰

In 1999, the Zambia Police Act was amended and the Police Public Complaints Authority (PPCA) was established. It receives and can investigate complaints relating to police action, and police action which results in serious injury, or death of a person. However, the investigative power of the PPCA is limited in that a complaint can only be made to the Secretary of the Authority, the officer-in-charge of a police station post or the Inspector-General of Police, and it will only be investigated if it occurred less than two years prior to making the report.⁹⁴¹ The ZHRC has noted that ‘in practice the Authority has not been effective because of poor funding, lack of adequate personnel, lack of transport, insufficient accommodation and resistance from the police’.⁹⁴² Other accountability bodies include parliamentary oversight structures and the Police Professional Standards Unit (PPSU), an internal police body that was established in 2003 to investigate

937 Zambia Police Act, section 14(3)

938 Zambia Police Service Five-Year Development Plan. http://www.zambiapolice.gov.zm/index.php?option=com_content&task=view&id=35&Itemid=49

939 Constitution of Zambia, section 125

940 Human Rights Council (5–16 May 2008) *Summary prepared by the office of the High Commissioner for Human Rights in Accordance with paragraph 15(c) of the annex to Human Rights Council Resolution: Zambia*. A/HRC/WG.6/2/ZMB/3

941 Human Rights Commission (2008) *Constitutionalism & Human Rights: Perspectives on the Judiciary and the Police in Human Rights. Individual Rights & Democracy governance Zambia*, Simplified Version. New York: United Nations Development Programme

942 Human Rights Watch (25 June 2010) Letter to Inspector General Kabonde of the Police. http://www.hrw.org/sites/default/files/related_material/2010_HHR_PoliceBrutalityLetter1.pdf, accessed 13 June 2012

corruption, arbitrary arrests and other unprofessional behaviour.⁹⁴³

Oversight structures are generally weak. By 2009, it was reported that the PPSU had only dealt with three cases since its inception. The PPCA had received 825 complaints and made 45 rulings and dismissed 13 officers for abuse of authority.⁹⁴⁴ The Anti-Corruption Commission (ACC) is an autonomous institution with a mandate to investigate corrupt practices by public servants, but it has managed to achieve only low levels of convictions.⁹⁴⁵

Police training

The ZPS runs three training schools, namely Lilayi Training College; Kamfinsa School of Ordinance (Mobile Unit); and Sondera Training School for the Paramilitary Unit. The curriculum contains generic core courses, while each college also has its own speciality: 'Kamfinsa specialises in rapid response services. Lilayi trains regular police, while Sondera trains paramilitary officers. The general course runs for six months, while additional time is allowed for paramilitary and CID duties.'⁹⁴⁶

In-service training has been provided by the ZPS since 1994. A former Police Chief for Lusaka Province, Mr Chendela Musonda, noted in an interview that the fulcrum Police Reforms involved, among other things, training and re-training of police officers, fighting corruption in the police, improving transport, accommodation and perks. The police have acknowledged the need for 'further intensive training from the police top brass to the reserve police'.⁹⁴⁷

The Zambia police training colleges include a module on human rights. This is intended to help police officers to promote and respect the human rights of all Zambians, residents and visitors, including the police.⁹⁴⁸ A representative of the Southern African Centre for Resolution of Conflicts and Disputes (SACCORD) expressed concern that the human rights module needed to be raised to international standards, and should include training on international human rights norms and standards, and the constitutional presumption of innocence until proven guilty. All law enforcement officials should be able to understand these principles and how this affects their interactions with suspects and the community.⁹⁴⁹

The ZPS has invited a number of external organisations to participate in the training of police officials. For example, on human trafficking, the government

943 Robbins S (2009) *Addressing the Challenges of Law Enforcement in Africa: Policing in Sierra Leone, Tanzania and Zambia*. ISS Policy Brief No. 16

944 *Ibid.*

945 *Ibid.*

946 Interview with graduate from Sondera Training School (Lusaka), 16 October 2011

947 *Times of Zambia* (17 October 2011) Former Lusaka Police Chief welcomes police reforms. <http://www.lusakatimes.com/2011/10/17/lusaka-police-chief-welcomes-reforms/>, accessed 13 July 2012

948 Interview with Mr Musole Byemba, Director, Criminal Investigations Department, Zambia Police Service, 18 November 2011

949 Interview with Obby Chibuluma, Information Officer, SACCORD, 22 November 2011

worked with NGOs to train police nationwide,⁹⁵⁰ and SACCORD was involved in an initiative driven by civil society to conduct training on human rights in preparation of the country's Tripartite Elections in 2011. SACCORD worked closely with the police in 'sensitising them on understanding the public order act which partly affects the right to assemble and hold processions'.⁹⁵¹

Are human rights upheld in the police?

The Zambian government maintains a policy that supports respect for human life by condemning extra-judicial killings, and the former President, Mr Rupiah Banda, reminded the ZPS that shooting unarmed people was not government policy. However, reports of the ZHRC,⁹⁵² and other bodies refer to numerous human rights abuses committed by the police.⁹⁵³

A number of complaints have been lodged against the police. In 2009, the PPCA received 254 complaints against police, but evidently very few of these have resulted in sanctions against the police. The perpetrators were punished or a settlement mediated in only 27 cases.⁹⁵⁴ Human Rights Watch was concerned that complainants are threatened or pressurised by the police into withdrawing their complaints.⁹⁵⁵ There is probably a high level of underreporting of abuse by police. Many ordinary Zambians may be too intimidated by the police to make a report and are not sufficiently confident to stand up for their rights. There is also a need to share more information about the PPCA so that people are more willing to report complaints.⁹⁵⁶

Human dignity of police officials

The ZHRC has frequently noted the appalling state of accommodation and working conditions for police in Zambia. Police stations often lack basic communication facilities such as telephones, faxes and computers, and many police stations have no forms of transport. Police officials must often walk to places to conduct their investigations, or use bicycles. Accommodation for police officers

950 United States Department of State (2009) *Trafficking in Persons Report*. <http://www.state.gov/g/tip/rls/tiprpt/2009/index.htm>, accessed 13 July 2012

951 Statement by Obby Chibuluma, Information Officer. SACCORD, 22 November 2011

952 Zambia Human Rights Commission (2004) *Prison and Police Cells Inspection Report: Lusaka Province*; Zambia Human Rights Commission. Lusaka: Zambia Human Rights Commission; Zambia Human Rights Commission (2005) *Prison and Police Cells Inspection Report: Central Province*. Lusaka: Zambia Human Rights Commission; Zambia Human Rights Commission (2008) *State of Human Rights Report in Zambia: Perspectives on the Judiciary and the Police in Human Rights Protection, Individual Rights and Democratic Governance in Zambia*. Lusaka: Zambia Human Rights Commission; and Zambia Human Rights Commission (2009) *Prison and Police Cells Inspection Report: Northern Province*. Lusaka: Zambia Human Rights Commission

953 Aids Rights Alliance for Southern Africa, Prison Care and Counselling Organisation and Human Rights Watch (2010) *Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons*. New York: Human Rights Watch; and Human Rights Watch (25 June 2010) *Letter to Inspector General Kabonde of the Police*. http://www.hrw.org/sites/default/files/related_material/2010_HHR_PoliceBrutalityLetter1.pdf, accessed on 13 June 2012

954 United States Department of State (2010) *Country Reports on Human Rights Practices: Zambia*. <http://www.state.gov/j/drl/rls/hrrpt/2009/af/135983.htm>, accessed 13 June 2012

955 Human Rights Watch (25 June 2010) *Letter to Inspector General Kabonde of the Police*. http://www.hrw.org/sites/default/files/related_material/2010_HHR_PoliceBrutalityLetter1.pdf, accessed 13 June 2012

956 Response to written query by Obby Chibuluma, Information Officer, SACCORD, 22 November 2011

is also very poor.⁹⁵⁷ Consequently, in 2011 the former Ministry of Home Affairs announced that government intended to construct 500 police houses during the Fifth National Development Plan implementation period, which ran for the period 2006 to 2011. It is not clear how many houses were in fact constructed during this period.⁹⁵⁸

Article 2: Non-discrimination

Standard: Police officials shall treat all persons fairly and equally and avoid any form of discrimination.

The Constitution prohibits discrimination based on race, place of origin, political opinion, colour, creed, sex or marital status.⁹⁵⁹ There are concerns of police discrimination towards sex workers⁹⁶⁰ and people with mental disabilities. The outdated Mental Disorders Act provides that the police may arrest a person suspected of having a mental disability and keep them behind bars for 14 days until that person is certified normal or abnormal.⁹⁶¹ This creates the potential for abuse by members of the community in collusion with the police and other criminal justice officials. For example, it was reported that on the Copperbelt when a husband wanted to divorce his wife ‘he just went to the police and reported that his wife was mad and that woman was arrested and put behind bars for 14 days. After 14 days, it was discovered that the woman did not even have a mental problem. When you are mad, it does not mean that you are not a human being.’⁹⁶² It also results in people with mental disabilities being subject to the same harsh conditions of police custody as suspects held for criminal offences.

Like many other countries in the region, the country does not prohibit discrimination based on sexual orientation. Homosexuality is still illegal in Zambia, and people can receive sentences of up to 15 years imprisonment for committing ‘unnatural’ acts. The police are involved in enforcing these discriminatory laws.⁹⁶³

The ZPS has made some attempts to protect vulnerable groups. A Victim Support Unit is responsible for dealing with matters such as crimes against the elderly, girl children and the underprivileged.⁹⁶⁴

957 See reports of the Zambia Human Rights Commission

958 Hon. Mkhondo D Lungu (MP) Minister of Home Affairs, Statement on the Process made on the Housing Scheme for Police Officers, June 2011, p.3

959 Constitution of Zambia, article 11

960 *Zambia Watch Dog* (2011) African sex workers to march for their day as zambia says no immorality here. <http://zambianwatchdog.com/?p=11696>, accessed 14 July 2012

961 Mental Disorders Act, 1951

962 Mr Kambwili, Daily Parliamentary Debates for the 5th Session of the 10th Assembly, 1 June 2011

963 United States Department of State (2011) *Country Reports on Human Rights Practices Produced: Zambia*, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 13 June 2012

964 Zambia Police Service website, http://www.zambiapolice.gov.zm//index.php?option=com_content&task=view&id=23&Item, accessed on 22 June 2012

Article 3: Use of force

Standard: Police officials may only use force when strictly necessary and to the extent required for the performance of their duties and adhering to national legislation and practice.

The Constitution guarantees the right to life, but allows for the death penalty handed down by a court for a criminal offence.⁹⁶⁵ It also provides for the justifiable use of force which may result in the loss of life:

- » In the event of defence of any person from violence or for the defence of property;
- » In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- » For the purpose of suppressing a riot, insurrection, mutiny or if he dies as a result of a lawful act of war;
- » In order to prevent the commission by that person of a criminal offence.⁹⁶⁶

These provisions are problematic as they are so widely drawn that they do not prohibit the disproportionate use of force, and justify the use of lethal force in the defence of property, and the arrest of a person regardless of the nature of the offence which they are alleged to have committed.

The Zambia Police Act outlines a similar set of circumstances in which a police officer may use firearms, which also potentially allows for the disproportionate use of force. These include:

- » The use of firearms against a person in lawful custody who is charged or convicted of a felony when that person is escaping or attempting to escape;
- » Against a person trying to rescue by force a person from lawful custody; and
- » Against a person using force to prevent his or her lawful arrest or the arrest of another person.⁹⁶⁷

The Act does require that when a police officer uses a firearm against a person escaping from lawful custody, s/he must have reasonable grounds to believe that s/he cannot otherwise prevent the escape, and must give a warning that firearms are about to be used against the person. In the circumstances described above, the police officer must have reasonable grounds to believe that s/he or another

⁹⁶⁵ Constitution, article 12(1)

⁹⁶⁶ Constitution of Zambia, article 12(3)

⁹⁶⁷ Zambia Police Act, section 24

person is in danger of grievous bodily harm and that s/he cannot otherwise effect such an arrest or prevent an escape.⁹⁶⁸ A police officer may not use a firearm in the presence of a superior officer against any person except under the orders of that superior officer. In terms of this section, firearms must, as far as possible, be used to disable, and not to kill.⁹⁶⁹

The ZHRC has noted several incidents where individuals were unlawfully deprived of their life. For example, in 2008, the police opened fire on a charcoal truck as it left a police checkpoint. The driver of the truck was killed and another person injured. In this instance, the police officer was held accountable, and was sentenced to seven years imprisonment.⁹⁷⁰

It is a disciplinary offence for a police officer to use any unnecessary violence against any prisoner or person with whom he may be brought into contact in the execution of his duty.⁹⁷¹ This section fails to give guidance to police officers on what would constitute 'necessary' or 'minimum force', leaving it open to interpretation by individual police officers.

The paramilitary units of the ZPS (the Mobile Unit and Police Paramilitary Battalion) have been criticised for their excessive use of force and their ill-treatment and brutality towards non-violent protestors. One aspect of the problem is said to lie in the separate accountability structures of these police units.⁹⁷² As a result of these criticisms, it has been reported that the government intends to phase out these units and to retrain their officials.⁹⁷³

The police have been criticised for the use of force in public demonstrations. In response, the Inspector-General of Police has publicly ordered police officers not to use firearms on unarmed civilians when quelling riots.⁹⁷⁴ He has also instructed them to use minimum force.⁹⁷⁵ Zambian organisations feel there is still a need for the police to be trained on human rights and the principles of minimum use of force.⁹⁷⁶ The police maintain that they are revising police training so as to include elements of crowd control instead of focusing on the use of firearms.⁹⁷⁷ The ZPS is collaborating with the South African Police Service (SAPS) and conducted 'riot containment' training for 46 police officers in 2011.⁹⁷⁸

968 *Ibid.*

969 Zambia Police Act, section 24(3)

970 Zambia Human Rights Commission (2008) *State of Human Rights Report in Zambia: Perspectives on the Judiciary and the Police in Human Rights Protection, Individual Rights and Democratic Governance in Zambia*. Lusaka: Zambia Human Rights Commission, p.47

971 Constitution of Zambia, chapter 107 and the Police Act, section 29(ii)

972 Institute for Security Studies and African Human Security Initiative (2009) *The Criminal Justice System in Zambia: Enhancing the Delivery of Security in Africa*. ISS Monograph 159. Pretoria: Institute for Security Studies, p. 48.

973 *Ibid.*

974 *Sunday Times of Zambia* (11 December 2011) IG Bans Use of firearms. <http://www.ukzambians.co.uk/home/2011/12/11/zambia-ig-bans-police-use-of-live-ammunition/>, accessed 14 July 2012

975 *MidMorning Show*, Zambia National Broadcasting Corporation, 10 December 2011. www.znbc.co.zm

976 Interview with Obby Chibuluma, Information Officer, SACCORD, 22 November 2011

977 *The Post* (4 April 2011) Police to restrict handling of guns. http://www.postzambia.com/post-read_article.php?articleId=19573, accessed 14 July 2012

978 Trinity Broadcasting Network-Zambia, 9 November 2011

Article 4: Torture and cruel, inhuman and degrading treatment or punishment

Standard: No police officer shall, under any circumstances, inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment of any person.

Zambia is party to the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT). The Constitution prohibits torture and other forms of ill-treatment.⁹⁷⁹ Despite this, torture has still not been criminalised in terms of domestic law, and the government has not taken other steps to implement its commitments in terms of the UNCAT.

Torture and other forms of ill-treatment occur with alarming frequency. The ZHRC has noted many instances of police torture and ill-treatment. This occurs against suspects and against detainees in police detention.⁹⁸⁰ In 2009 and 2010, Human Rights Watch and PRISCA interviewed 249 inmates in prison for a study on the health of inmates. They found that ‘testimony provided by prisoners indicated an ongoing widespread and systematic pattern of brutality’ by the police while they were in police custody.⁹⁸¹ Prisoners reported that they had been repeatedly beaten by police in order to extract confessions. Some of the beatings resulted in serious injury, with some even sustaining permanent injury.⁹⁸² Police from the Criminal Investigations Directorate (CID) were particularly implicated in ‘systematic abuse, including binding and hanging prisoners from the ceiling to force confessions’.⁹⁸³ Civil society organisations have also noted widespread torture and abuse by police, even for ‘petty crimes such as stealing cell phones’.⁹⁸⁴

According to SACCORD, politically motivated torture, especially verbal and psychological torture, is not uncommon. According to one member, ‘I remember a few years ago when the police rampantly tortured individuals believed to have been behind a shadowy movement allegedly fanning social unrest codenamed the “Zero Option”. Many individuals were tortured. Some have since died.’⁹⁸⁵

According to one police official, internal disciplinary mechanisms do hold police accountable for acts of torture. Some officers have been sentenced to imprisonment, while others have been demoted or dismissed from service.⁹⁸⁶ Many victims have successfully brought civil claims against the Minister and the state.

979 Constitution of Zambia, article 15.

980 Zambia Human Rights Commission (2008) *State of Human Rights Report in Zambia: Perspectives on the Judiciary and the Police in Human Rights Protection, Individual Rights and Democratic Governance in Zambia*. Lusaka: Zambia Human Rights Commission

981 Human Rights Watch (25 June 2010) *Letter to Inspector General Kabonde of the Police*. http://www.hrw.org/sites/default/files/related_material/2010_HHR_PoliceBrutalityLetter1.pdf, accessed 13 June 2012.

982 *Ibid*, p.3

983 *Ibid*, p.3.

984 Interview with Debbie Kang’ombe, Programme Officer, Young Women Christian Association, 7 July 2011

985 Interview with Obby Chibuluma, Information Officer, SACCORD, 6 July 2011

986 Interview with Mr Musole Byemba, Director CID, Police HQ, 18 November 2011

Article 5: Protection of persons in custody

Standard: Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention when required.

The Constitution deals with the rights of arrested and detained persons, but it does not spell out the required conditions of detention.⁹⁸⁷ New amendments to the Zambia Police Act have taken some steps to recognise the special requirement of providing for the needs of detained persons. It added the provision that the officer-in-charge of a police station/post should designate one or more custody officers.⁹⁸⁸ In addition, at least one male and one female officer is required to be on duty at all times, presumably with the assumption that a female officer should handle the needs of female detainees. The duties of a custody officer are to ensure that:

- » A person in police custody is treated in a decent and humane way;
- » A person in police custody who requires medical attention has access to medical facilities;
- » Police cells or other places used for the custody of persons are in clean and habitable conditions;
- » Necessary provisions and other facilities used by a person in custody are in a hygienic condition.

The law provides that a person must be presented to the custody officer on being brought into the cells, and s/he must record their details. The custody officer can make recommendations concerning their well-being. If a detainee is in need of health care, s/he should be transferred to a clinic or hospital. However, shortages in personnel and the lack of transportation sometimes result in delays in such referral.⁹⁸⁹

The law loosely provides that for less serious offences, a person must be brought before a court within 24 hours or released,⁹⁹⁰ and the police have some capacity to release a person on bond. Information is not available on the number of people who are arrested by the police on an annual basis. However, a recent study by the Community Law Centre, Zambia Human Rights Commission and Open Society Initiative for Southern Africa (CLC, ZHRC and OSISA) on pre-trial detention found that many of the people found in custody in police stations have been there for longer than 24 hours, with some having been in police

987 Constitution of Zambia, article 13

988 Zambia Police Act, section 18A(1)

989 Community Law Centre, Zambian Human Rights Commission and the Open Society Initiative for Southern Africa (2011) *Pre-trial Detention in Zambia: Understanding caseflow management and conditions of incarceration*. Johannesburg: Open Society Initiative for Southern Africa, pp.68–69

990 Criminal Procedure Code, section 33

detention for days, weeks or months. In one case, a detainee had been in police custody for two years. The study suggested that, on average, people granted police bond spend 22 days in police detention while those taken to court spend 17 days. However, half of the people released from police detention are released within one to three days.⁹⁹¹ The ZHRC, in a number of its reports, has found people unlawfully detained by the police,⁹⁹² and has also noted that the police appear to be reluctant to grant police bond.⁹⁹³

The ZHRC regularly visits police stations, police posts and prisons to inspect and report on conditions and treatment of inmates. The reports on the police detention facilities are routinely poor, noting congestion, inadequate ventilation and lighting, dirty cells, and a lack of blankets. Food is often insufficient, or is not provided at all, and there is a lack of fresh water. There are often no facilities to separate different categories of detainees, such as the separation of males, females and children. Women are often kept at the front desk of the police station until they can be transferred to a remand prison. The lack of proper hygiene and sanitation is a frequent complaint among detainees, with toilets often being without water, or they are pit toilets, and often are located inside the cell with no privacy provided for inmates. In one cell in Westwood Police Station in Lusaka Province, there was no toilet in the cell. A heap of sand had been piled up in the corner and detainees were required to use this as a toilet. In other places, a bucket was used, and was only removed when full. Consequently, the cells smelled heavily of urine and faeces, with this often spilling onto the floor and walls of the cell.⁹⁹⁴ These conditions violate the right to dignity and compromise the health of detainees.

The CLC, ZHRC and OSISA study found that most police cells were overcrowded. For example, at Nkonde, the cells were occupied to 273%, and in most cases the available floor space fell way below internationally accepted minimum floor space standards. In most cases, detainees were not allowed even one hour outside of their cells per day (as required by international norms) unless it was to use the toilet (if outside) or for washing or cleaning duties. The study found that there was generally a lack of hygiene and cleanliness in the cells, and no regular measures in place to control lice and mosquitoes. Due to the unhygienic conditions, poor ventilation and lack of separation of inmates or health screening,

991 Community Law Centre, Zambia Human Rights Commission and the Open Society Initiative for Southern Africa (2011) *Pre-trial Detention in Zambia: Understanding caseload management and conditions of incarceration*. Johannesburg: Open Society Initiative for Southern Africa, pp.63-65, and p.98

992 Zambia Human Rights Commission (2008) *State of Human Rights Report in Zambia: Perspectives on the Judiciary and the Police in Human Rights Protection, Individual Rights and Democratic Governance in Zambia*. Lusaka: Zambia Human Rights Commission, pp.49-50

993 Zambia Human Rights Commission (2009) *Prison and Police Cells Inspection Report: Northern Province*. Lusaka: Zambia Human Rights Commission, p.35

994 Zambia Human Rights Commission (2008) *State of Human Rights Report in Zambia: Perspectives on the Judiciary and the Police in Human Rights Protection, Individual Rights and Democratic Governance in Zambia*. Lusaka: Zambia Human Rights Commission; Zambia Human Rights Commission (2009) *Prison and Police Cells Inspection Report: Northern Province*. Lusaka: Zambia Human Rights Commission; Zambia Human Rights Commission (2004) *Prison and Police Cells Inspection Report: Lusaka Province*. Lusaka: Zambia Human Rights Commission; Zambia Human Rights Commission (2005) *Prison and Police Cells Inspection Report: Central Province*. Lusaka: Zambia Human Rights Commission

some detainees complained that they had contracted tuberculosis whilst in police custody.⁹⁹⁵

Neither the police nor any other government agency provides food for detainees, who are therefore completely reliant on family members for food. This is particularly problematic when the detainee does not have family, is the family breadwinner, or is not in contact with family members.⁹⁹⁶ In many instances, conditions in detention constituted a violation of international norms and standards regarding detention, and this is exacerbated when people stay in detention for excessively long periods.

Despite the prohibition on torture, the ZHRC in its routine visits has recorded many detainees' complaints of torture by the police, mainly during the course of investigation. Detainees are also sometimes abused or assaulted by their fellow detainees, which is a further violation of the state's obligation to prevent torture and ill-treatment of detainees.⁹⁹⁷

Article 6: Victims of crime

Standard: All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary.

An amendment to the Zambia Police Act in 1996 introduced a Victim Support Unit at all levels of the police to address the needs of special groups such as women and children. The unit spearheaded a campaign to sensitise the police and public towards the needs of vulnerable groups.⁹⁹⁸ The unit is organised at headquarters, division, district and station level.⁹⁹⁹ The unit provides counselling services to offenders and coordinates with civil society and professional bodies to carry out its duties.

Article 7: Respect for the rule of law and Code of Conduct

Standard: Police officials shall respect and uphold the rule of law and the present Code of Conduct.

995 Community Law Centre, Zambian Human Rights Commission and the Open Society Initiative for Southern Africa (2011) *Pre-trial Detention in Zambia: Understanding caseload management and conditions of incarceration*. Johannesburg: Open Society Initiative for Southern Africa, pp.66–73

996 *Ibid*, pp.66–73

997 Zambia Human Rights Commission (2008) *State of Human Rights Report in Zambia: Perspectives on the Judiciary and the Police in Human Rights Protection, Individual Rights and Democratic Governance in Zambia*. Lusaka: Zambia Human Rights Commission; Zambia Human Rights Commission (2009) *Prison and Police Cells Inspection Report: Northern Province*. Lusaka: Zambia Human Rights Commission; Zambia Human Rights Commission (2004) *Prison and Police Cells Inspection Report: Lusaka Province*. Lusaka: Zambia Human Rights Commission; Zambia Human Rights Commission (2005) *Prison and Police Cells Inspection Report: Central Province*. Lusaka: Zambia Human Rights Commission

998 Robbins S (2009) *Addressing the Challenges of Law Enforcement in Africa: Policing in Sierra Leone, Tanzania and Zambia*, ISS Policy Brief No. 16. <http://www.issafrica.org/uploads/NO160CT09.PDF>, accessed 11 June 2012

999 Institute for Security Studies and African Human Security Initiative (2009) *The Criminal Justice System in Zambia: Enhancing the Delivery of Security in Africa*. ISS Monograph 159. Pretoria: Institute for Security Studies, p.47

The Constitutional and legislative provisions governing the police comply with the basic requirements of the rule of law, but this is threatened by the Preservation of Public Security Act of 1960 which gives the President the extraordinary powers to detain any individual indefinitely,¹⁰⁰⁰ and gives the courts limited authority to challenge the detention of a person.

As indicated by the reports of the ZHRC and other actors, there are frequent occasions when the police fail to adhere to the law, resulting in human rights violations. The police have also been known to arrest and detain the female partner or relative of a male suspect to compel his cooperation in an investigation by the police.¹⁰⁰¹

According to one mid-ranking officer, the SARPCCO Code of Conduct is not very well known in the ZPS, especially by junior officers and the general public. Although some senior officers may be aware of the Code of Conduct, they do not necessarily know of the specific provisions.¹⁰⁰²

Article 8: Trustworthiness

Standard: The public demands that the integrity of police officials be above reproach. Police officials shall therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undermine the public's confidence in a police force/service.

Article 10: Performance of duties

Standard: Police officials shall at all times fulfil the duties imposed upon them by law in a manner consistent with the high degree of responsibility and integrity required by their profession.

Article 11: Professional conduct

Standard: Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.

There is a widespread perception that the police in Zambia are corrupt. According to an Afrobarometer perception survey in 2008, respondents had lower levels of trust in the police than in some other institutions, such as the courts and traditional leaders. Of those surveyed, 27% did 'not trust the police at all'; 22% trusted them

¹⁰⁰⁰ *Ibid.*

¹⁰⁰¹ *Inter Press News Agency* (14 January 2010) Zambia: Police breaking the law to prevent crime. <http://www.ipsnews.net/2010/01/zambia-police-breaking-the-law-to-prevent-crime/>, accessed 21 June 2012

¹⁰⁰² Interview with police officer, September 2011

‘a little’, and 22% trusted them ‘somewhat’, while 29% trusted them ‘a lot’.¹⁰⁰³

A perception survey conducted by the African Human Security Initiative in 2009 found that the majority of respondents rated the police as ‘fairly efficient’. This was based on factors such as ‘the lack of timely response to crime calls, lack of professionalism in handling offenders, use of unnecessary violence in dealing with suspects, and violation of the rights of persons in police custody’.¹⁰⁰⁴ Among members of the general public, 80% of respondents said police were ‘somewhat effective’, reporting that the police lack vigour and innovation.¹⁰⁰⁵ However, factors such as lack of resources for effective policing (such as vehicles), and a concentration of police in urban areas, were also cited as concerns.¹⁰⁰⁶

The performance of the police is hampered by the shortage of human and physical resources. There is also a lack of investigative capacity. As a result of inadequate investigative skills and techniques, many cases are unable to be prosecuted successfully.¹⁰⁰⁷ The shortage in human resources also results in delays in trials, and suspects are held for longer periods in detention awaiting trial.

Given the numerous challenges facing the police, there is a low level of faith in the ability of the police to deal with crime. According to the Afrobarometer survey conducted in 2008, respondents thought that the government was responding very badly (41%) or badly (20%) to reducing the rate of crime.¹⁰⁰⁸ However, the African Human Security Initiative study found that new initiatives that make attempts to reach out to the public, such as the Victim Support Unit and the Police Public Complaints Authority, had a positive impact on public perception.¹⁰⁰⁹

The Zambia Police Act contains measures designed to improve the skills and requirements of police officers. It requires that new police officials make a declaration before a magistrate or superior police officer regarding their previous service in the military, navy or air force or other police force, as well as regarding any criminal conviction.¹⁰¹⁰

The Zambia Police Act requires all new police recruits to undergo professional training at one of the three training schools. Recently, the newly appointed Inspector-General of Police, Dr Martin Malama, reported on a programme of police reforms aimed at ensuring professionalism and the improvement of service delivery. One of the areas to be included in the programme was refresher courses for those in service, police competence examinations and the use of information

1003 Afrobarometer (2009) *Summary of Results: Round 4 – Survey in Zambia*. <http://www.afrobarometer.org/results/results-by-country-n-z/zambia>, accessed 13 July 2012

1004 Institute for Security Studies and African Human Security Initiative (2009) *The Criminal Justice System in Zambia: Enhancing the Delivery of Security in Africa*. ISS Monograph 159. Pretoria: Institute for Security Studies, p.58

1005 *Ibid.*

1006 *Ibid.*, p.59

1007 *Ibid.*, p.46

1008 Afrobarometer (2009) *Summary of Results: Round 4 – Survey in Zambia*. <http://www.afrobarometer.org/results/results-by-country-n-z/zambia>, accessed 13 July 2012

1009 Institute for Security Studies and African Human Security Initiative (2009) *The Criminal Justice System in Zambia: Enhancing the Delivery of Security in Africa*. ISS Monograph 159. Pretoria: Institute for Security Studies, p.57.

1010 Zambia Police Act, section 8

communication technologies in enhancing police work.¹⁰¹¹

The Zambia Police Act spells out the powers, duties and privileges of police officers, and includes the requirement that they exercise all duties that are conferred on them by law and all lawful directions.¹⁰¹² The Act outlines the duties of a police official in respect of search and seizure and other responsibilities of the police.¹⁰¹³ Police officials may not, without the permission of the Minister, engage in any employment or office outside that of the police.¹⁰¹⁴

The ZPS has a disciplinary process that is outlined in the Zambia Police Act. The Act defines the disciplinary offences and possible sanctions, as well as outlining the procedure to be followed against different ranks of police officers and for different classes of offences. Between 2008 and 2010, 32 police officers were dismissed on disciplinary grounds for offences including manslaughter, trafficking in psychotic substances, corruption, robbery, murder, theft and defilement.¹⁰¹⁵ Averaging at 16 dismissals a year, it would appear that there are few officials who experience the consequences of committing crimes and misdemeanours.

Article 9: Corruption and abuse of power

Standard: Police officials shall not commit or attempt to commit any act of corruption or abuse of power. They shall rigorously oppose and combat all such acts.

The Zambian government has taken a strong stance towards the eradication of corruption. Corruption is not defined as a separate offence in the disciplinary code of the Zambia Police Act. However, according to the Inspector-General of Police, Dr Martin Malama, ‘the law is blind and police officers are subjected to the same laws [on corruption] as the general public. No one is thus above the law.’¹⁰¹⁶ Corruption is dealt with by other legislation, including the Anti-Corruption Commission Act,¹⁰¹⁷ the Drug Enforcement Act¹⁰¹⁸ and the Zambia Integrity Committee,¹⁰¹⁹ an inter-agency initiative to help combat corruption and prescribe penal sanctions against erring officers. The Anti-Corruption Commission defines corrupt acts by public officials,¹⁰²⁰ and outlines the offences, penalties and recovery of money and gratification obtained through corruption in respect of public officials. However, the capacity and performance of the ACC remains fairly

1011 *Times of Zambia* (9 October 2011) Malama Unveils Ambitious Re-training Programmes. www.times.co.zm, accessed 13 July 2012

1012 Zambia Police Act, part IV

1013 *Ibid.*

1014 Zambia Police Act, section 1.

1015 Daily Parliamentary Debates for the 5th Session of the 10th Assembly, 31 May 2011

1016 Interview with Dr Martin Malama, Inspector General, Zambia Police Service, 10 December 2011

1017 Anti-corruption Commission Act, chapter 91

1018 Narcotic Drugs and Psychotropic Substances Act

1019 Maravi (24 May 2007) Integrity committee will ensure accountability – ACC. <http://maravi.blogspot.com/2007/05/integrity-committee-will-ensure.html>, accessed 13 July 2012

1020 Anti-Corruption Act, sections 29 to 31

weak without the capacity to deal adequately with corruption, and the number of convictions for corruption across the sector is low.¹⁰²¹

The ZPS, especially the Traffic and CID sections, are perceived to be very corrupt. The 2008 Afrobarometer survey found that 33% of respondents were of the view that ‘most’ or ‘some’ (36%) police were involved in corruption. However, it seemed that few people had actual experience of police corruption. When asked whether they had had to pay a bribe, give a gift or provide a favour to police in the last year in order to avoid a problem with the police, 75% indicated that they had not had to give a bribe, gift or do a favour. Five percent of respondents said they had had to bribe, give a gift or favour ‘once or twice’, 4% a few times, and 3% answered that they ‘often’ had to give a gift, bribe or do a favour for police.¹⁰²² The later report by Transparency International Global Corruption Barometer in 2010, found that 42% of respondents reported paying a bribe. It is not clear whether these were lifetime experiences or reports of incidents in the past year. The report indicated that the police were perceived to be the most corrupt of all the sectors canvassed.¹⁰²³

Corruption is frequently attributed to low salaries paid to public servants. According to one NGO, the police ‘remain one of the most corrupt institutions in the country despite several statements and appeals against engaging in corruption targeted at the police. This partly is as a result of the economic situation. Police have very poor remuneration and they are vulnerable to vices of corruption and manipulation. While not all police are involved in corruption, traffic police and those involved in criminal investigations are most involved in the vice.’¹⁰²⁴ According to a ZHRC report of 2008, while ZMK1 100 000 (USD212) is considered barely sufficient for a household of six people, the salaries of police officials are just barely able to support this. The middle to lowest ranking officers receive from about ZMK2 300 000 (USD444) to ZMK1 170 000 before deductions, but take home around ZMK1 900 000 to ZMK1 200 000. In addition, housing allowances are paid ranging from ZMK360 000 (USD70) to ZMK200 000. ‘These allowances lead to suffering by police officers in most urban and bigger rural stations as they are below the rental prices for good accommodation. This is worsened by the lack of adequate accommodation within police camps.’¹⁰²⁵

1021 Institute for Security Studies and African Human Security Initiative (2009) *The Criminal Justice System in Zambia: Enhancing the Delivery of Security in Africa*. ISS Monograph 159. Pretoria: Institute for Security Studies

1022 Afrobarometer (2009) *Summary of Results: Round 4 – Survey in Zambia*. <http://www.afrobarometer.org/results/results-by-country-n-z/zambia>, accessed 13 July 2012

1023 This includes public officials, judiciary, NGOs, police, media, religious bodies, military and education. Transparency International (2011) *Global Corruption Barometer 2010/2011*. http://www.transparency.org/research/gcb/gcb_2010, accessed 11 June 2012

1024 Response to query on corruption in the police by Obby Chibuluma, Information Officer, SACCORD, 22 November 2011

1025 Human Rights Commission (2008) *Constitutionalism & Human Rights: Perspectives on the Judiciary and the Police in Human Rights. Individual Rights & Democracy governance Zambia* Simplified Version. New York: United Nations Development Programme, pp.24–25

The poor salaries of police officials and prison warders has been queried in Parliament, where questions have been raised around the quality of policing that can be expected from an underpaid person: ‘Can a person survive on ZMK600 000 or ZMK700 000 per month? Can a person survive with the current harsh economic conditions on such pay?’ Further, one member asked, ‘Are [people] happy to go to bed because they are being guarded by an officer. However, this officer has not even eaten. Do you think that when thieves come to your home he will chase them?’¹⁰²⁶

Article 12: Confidentiality

Standard: Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of duty and needs of justice strictly require otherwise.

Police are required to deal sensitively with confidential information and, in particular, with information regarding investigations of cases. Police regulations often rigorously restrict the communication on any matter in relation to the police, as seems to apply in the case of the ZPS. In terms of the Zambia Police Act, it is a disciplinary offence to divulge any matter which is to be kept secret; to communicate without proper authority to the public, press or any unauthorised person any matter concerning the force; or to show any person any book or document in the property of the Service. It is also an offence to make any anonymous communication to a police officer superior in rank to the police officer making the communication.¹⁰²⁷ This provision discourages police from communicating any information on their experiences as police officers, and the researchers in this project found that police officers preferred to remain anonymous. Internal tribunals are held against police officials who have breached these disciplinary regulations from time to time, and some officers have even been dismissed summarily for gross violation of the code of confidentiality.¹⁰²⁸ Despite these provisions, it is not unknown for police officers to leak information to the media and other third parties.

Article 13: Property rights

Standard: In the performance of their duties police officers shall respect and protect all property rights. This includes the economical use of public resources.

According to police informants, measures have been put in place to manage the use of police property. Only ‘responsible police officers’ are allowed allocated

¹⁰²⁶ Minister of Home Affairs, Mr Mkhondo, Lungu, Daily Parliamentary Debates for the 5th Session of the 10th Assembly, 2 June 2011

¹⁰²⁷ Zambia Police Act, section 30(1)(g)

¹⁰²⁸ Interview with a police officer

police vehicle permits.¹⁰²⁹ A Firearm Register is also maintained.¹⁰³⁰ In addition, 'all Zambia Police property is entered in an inventory and managed by responsible officers under the direction of the Ministry of Transport, Roads, Communication Works and Supply'.¹⁰³¹

In practice however the police have been found wanting in this regard. There have been reported incidents of police vehicles used to run personal and private errands. According to sources, some police officers have been implicated in 'loaning' state firearms, or using these to commit criminal offences. But, according to a former official, this misuse of property is limited and the ZPS usually moves swiftly to combat such abuse.

The Zambia Police Act provides for the handling of private and non-state property by the police.¹⁰³²

1029 Interview with transport control officer

1030 Interview with Firearms Registry staff

1031 Interview with Mr Musole Byemba, Director, CID Zambia Police, 18 November 2011

1032 Zambia Police Act

11

Zimbabwe

Background

In 1980, the Republic of Zimbabwe achieved independence from the United Kingdom.¹⁰³³ Since then, although the country has held regular elections,¹⁰³⁴ it has been led by President Robert Mugabe of the Zimbabwe African National Union-Patriotic Front (ZANU-PF). Bad governance, the disregard of the rule of law and the abuse of human rights have plunged the country into significant political and economic upheaval, characterised by hyperinflation, corruption and unemployment.¹⁰³⁵

The 2000 elections saw the emergence of the Movement for Democratic Change (MDC), led by Morgan Tsvangirai, which secured 46% of the vote. The economic and political situation continued to deteriorate during the 2000s,¹⁰³⁶ with the government clamping down on civil society and opposition parties.¹⁰³⁷ Since 2000, elections have been criticised as not being free and fair,¹⁰³⁸ and the period preceding the 2008 elections was marred by politically motivated violence, with the Zimbabwe Republic Police (ZRP) accused of taking a highly politicised role in support of ZANU-PF. There have been numerous reports that ZANU-PF,

¹⁰³³ Human Rights Council (19 July 2011) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Zimbabwe*, A/HRC/WG.6/12/ZWE/1, [3]

¹⁰³⁴ Elections have always been held at regular intervals until after the formation of the Government of National Unity in February 2009, which has resulted in general uncertainty as to when the next election will be held

¹⁰³⁵ Meredith M (2006) *The State of Africa: A history of the continent since independence*. London: Free Press, p.635; Amnesty International (2012) *Annual Report 2012: Zimbabwe*. <http://www.amnesty.org/en/region/zimbabwe/report-2012>, accessed 29 June 2012

¹⁰³⁶ Human Rights Council (19 July 2011) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Zimbabwe*, A/HRC/WG.6/12/ZWE/1, [75]

¹⁰³⁷ African Police Resource Network, 'Zimbabwe'. http://www.aprn.org.za/countries/CountryDetail.asp?Cnt_ID=26, accessed 29 June 2012

¹⁰³⁸ United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Zimbabwe*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 3 July 2012; See also, Amnesty International (2012) *Annual Report 2012: Zimbabwe*. <http://www.amnesty.org/en/region/zimbabwe/report-2012>, accessed 29 June 2012

and security-sector agencies acting in support of the party, have been responsible for the deaths of up to 200 people, the torture and ill-treatment of 5 000, and the displacement of 36 000 people.¹⁰³⁹

The elections in 2008 resulted in the negotiated power-sharing agreement, the Global Political Agreement (GPA), being signed by the three political parties, ZANU-PF and two MDC factions. In February 2009, a Government of National Unit (GNU) was established. The GPA mandated the GNU to undertake a constitutional reform process by 2011. Other significant reform required included freedom of the media, upholding the rule of law and strengthening public accountability.¹⁰⁴⁰ The GPA has been criticised for falling short of a genuine power-sharing agreement, and for facilitating the concentration of power with Mugabe, including absolute control over the security-sector apparatus.¹⁰⁴¹ The GPA has not resulted in inclusive government, with the reform required to, among other things, depoliticise the security sector and improve human rights observance.¹⁰⁴²

The date of the next election, and the role of security forces during the election period, is subject to significant contestation between ZANU-PF and the MDC.¹⁰⁴³ Announcements by ZANU-PF of possible elections in 2011 triggered violence, including numerous reports of continued arbitrary arrests, detention, selective application of the law, harassment, ill-treatment and torture, amongst other human rights violations, of MDC members and others critical of ZANU-PF.¹⁰⁴⁴

The ZRP is the agency primarily responsible for the maintenance of internal security, law and order in Zimbabwe and is established under the Constitution.¹⁰⁴⁵ It is under the authority of the Ministry of Home Affairs and is also subject to significant direct and indirect control by the President.¹⁰⁴⁶ The ZRP is under the command of the Commissioner-General of Police, who is appointed by the President.¹⁰⁴⁷ The organisation is comprised of a regular force, a constabulary and ancillary members.¹⁰⁴⁸

1039 Human Rights Watch (2008) *Bullets for Each of You: State-Sponsored Violence since Zimbabwe's March 29 Elections*. New York: Human Rights Watch; See also, Human Rights Council (22 July 2011) *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1*, A/HRC/WG.6/12/ZWE/2.[36]

1040 Global Political Agreement, section 19

1041 Musavengana T (2011) *Security Sector: No transition without transformation*. Open Society Initiative for Southern Africa. <http://www.osisa.org>, accessed 29 June 2012, p.29; See also, International Crisis Group (16 November 2011) *Resistance and Denial: Zimbabwe's Stalled Reform Agenda*, Crisis Group Africa Briefing No. 82, Johannesburg/Brussels. <http://www.crisisgroup.org>, accessed 29 June 2012

1042 Human Rights Council (22 July 2011) *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1*, A/HRC/WG.6/12/ZWE/3, [5]; See also Human Rights Watch (2012) *Perpetual Fear: Impunity and Cycles of Violence in Zimbabwe*. New York: Human Rights Watch, <http://www.hrw.org>, accessed 29 June 2012

1043 Human Rights Watch (2012) *Country Summary: Zimbabwe*, <http://www.hrw.org>, accessed 29 June 2012

1044 Human Rights Watch (2012), *Perpetual Fear: Impunity and Cycles of Violence in Zimbabwe*. New York: Human Rights Watch. <http://www.hrw.org>, accessed 29 June 2012

1045 Constitution of Zimbabwe, as amended at 14 September 2005 (up to and including Amendment No. 17), section 93(1)

1046 Berg J (2005) *Police Accountability in Southern African Commonwealth Countries*. Cape Town: Institute of Criminology

1047 Constitution of Zimbabwe, section 93(2)

1048 The Police Act, No. 2 of 1995 (as amended), section 4, Chapter 11:10

ZRP headquarters and central command are in the capital, Harare, with provincial centres throughout the country, which are responsible for up to seven police stations each.¹⁰⁴⁹ The ZPR is comprised of the Duty Uniform Branch, the Police Protection Unit (a paramilitary unit), the Criminal Investigation Department, the Staff Branch and the Technicians' Branch.¹⁰⁵⁰ The size of the ZRP is reported at between 23 000 and 25 000¹⁰⁵¹ police officers, with the police to population ratio estimated to be 1:573.¹⁰⁵² Women comprise 11% of the ZRP.¹⁰⁵³

Generally, the approach to policing in Zimbabwe has been described as 'blatantly partisan', with police responsible for routinely violating the rights of opposition political party members during policing operations.¹⁰⁵⁴ Partisan policing is particularly magnified during elections, which have been routinely criticised as not being free and fair.¹⁰⁵⁵ To date, reform processes in Zimbabwe have largely been silent on the issue of reform of the security sector, including the police.¹⁰⁵⁶ The failure by the government to consult on, engage with, and sequence the transitional justice mechanisms – particularly accountability and institutional reform (of security agents) – has contributed to the endless cycle of human rights violations.¹⁰⁵⁷

Methodology

This report is compiled from a review of Zimbabwe legislation relevant to policing, documents generated as part of Zimbabwe's participation in the United Nations (UN) Universal Periodic Review (UPR) process, and reviews by other UN treaty committees. Significant reference was also made to publications and other research reports produced by domestic, regional and international human rights organisations. Case law was also referred to. Information was also drawn from a preliminary report prepared by the African Public Policy and Research Institute (APPRI).¹⁰⁵⁸ Further data for the report was provided by Zimbabwe Lawyers for Human Rights (ZLHR).

1049 Berg J (2005) *Police Accountability in Southern African Commonwealth Countries*. Cape Town: Institute of Criminology; See also, *International Bar Association (2007) Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.23

1050 *Ibid.*

1051 Hendricks C and Musavengana T (eds) (2010) *The Security Sector in Southern Africa*, Monograph 174. Pretoria: Institute for Security Studies

1052 African Police Resource Network, *Zimbabwe*. http://www.aprn.org.za/countries/CountryDetail.asp?Cnt_ID=26, accessed 29 June 2012

1053 Committee on the Elimination of Discrimination against Women (22 November 2010) *Combined 2nd to 5th periodic reports of States parties: Zimbabwe*, CEDAW/C/ZWE/2-5,137]

1054 International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.8

1055 *Ibid.*

1056 African Public Policy and Research Unit (unpublished) *An overview of the Zimbabwe Republic Police (ZRP) and the Southern African Regional Police Chief's Cooperation Organisation (SARPCCO) Code of Conduct*

1057 Hanzi R (2010) *Reparations and the African Commission: Experiences from Zimbabwe*. http://www.transitionaljustice.org.za/docs/2010workshop/10_Hanzi.pdf, accessed 25 July 2012

1058 *Ibid.*

Article 1: Respect for human rights

Standard: In the performance of their duties, police officials shall respect and protect human dignity, maintain and uphold the human rights of all persons.

The Constitution of Zimbabwe, as amended by Constitutional Amendment No. 19, has a Bill of Rights enshrining various civil and political rights. There are a number of claw-back clauses, with rights limited if it is in the public interest, or to guarantee the rights and freedoms of others.¹⁰⁵⁹ The Constitution does not ensure that non-derogable rights such as freedom from torture are not subject to limitations. The right to life, liberty, equality, freedom from discrimination, fair trial rights, and freedom from torture and other ill-treatment, arbitrary deprivation of liberty, and the right to privacy are all mentioned.¹⁰⁶⁰ The rights to freedom of conscience, expression, assembly, association, movement, political rights and privacy are also recognised.¹⁰⁶¹ There are significant gaps in existing laws and also the absence of some laws guaranteeing critical rights.¹⁰⁶²

Every public officer has a duty to uphold the Constitution.¹⁰⁶³ In their capacity as law enforcement agents, members of the ZRP are public officers. The legal framework mandating the functions of the police in pursuance of promoting law and order does not have adequate provisions to ensure that the police protect and promote human rights during the discharge of their duties. The Police Act, Public Order and Security Act (POSA),¹⁰⁶⁴ Criminal Procedure and Evidence Act (CPEA), and some provisions of the Criminal Law (Codification and Reform) Act (Criminal Code) have been widely criticised for restricting rights, and are often relied upon by the police to justify brutal and partisan policing. There are numerous and credible reports that the ZRP is responsible for a broad range of human rights abuses, including violations of the rights of persons in detention, torture and other ill-treatment, excessive use of force, arbitrary detention, denial of procedural rights of persons in custody, and partisan policing that limits freedom of expression and association.¹⁰⁶⁵ These issues are discussed in more detail throughout this chapter.

The lack of accountability of members of the ZRP for human rights violations is a critical issue in Zimbabwe.¹⁰⁶⁶ The Constitution permits the enforcement of constitutional rights by application to the Supreme Court of Zimbabwe for

1059 Constitution of Zimbabwe, section 11

1060 *Ibid*, sections 12, 13, 15, 16, 17, 18 and 23

1061 *Ibid*, sections 19, 20, 21 and 22

1062 Hanzu R (2011) *Zimbabwe's status of compliance with human rights instruments vol. 1*. Harare: Zimbabwe Lawyers for Human Rights

1063 Constitution of Zimbabwe, section 19

1064 *Ibid*, chapter 11:17

1065 International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, pp.7, 19 and 49

1066 Human Rights Council (22 July 2011) *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1, A/HRC/WG.6/12/ZWE/3*, [37]

redress.¹⁰⁶⁷ However, officers are rarely prosecuted, even for the most serious human rights violations, including torture and enforced disappearances.¹⁰⁶⁸ In 2009, members of the ZRP were active participants in subjecting human rights defenders, including civil society leaders, to enforced disappearances.¹⁰⁶⁹ In a rare case, in June 2012, a high-ranking police officer was convicted by the High Court of murder.¹⁰⁷⁰ In 2012, Zimbabwe Lawyers for Human Rights (ZLHR) filed a number of court applications seeking remedies for relatives of victims of extra-judicial killing in police custody.¹⁰⁷¹ However, despite the fact that human rights violations committed by the ZRP have been well documented by domestic and international organisations, and the availability of ‘some’ procedures and remedies,¹⁰⁷² the authorities continue to ignore and in a few instances take minimal action against human rights violations perpetrated by police officers.¹⁰⁷³

One procedure that lawyers have relied on has been formalising complaints against the police before the magistrate or judge, when the victims of police brutality appear in court for the first time after being detained in custody. In most cases the courts have ordered the police to investigate allegations of human rights violations, such as incidents of torture, but these have been largely ignored.¹⁰⁷⁴ Where investigations have occurred, it is reported that senior ZRP officers loyal to ZANU-PF have impeded investigation efforts, and have also tried to resist prosecution.¹⁰⁷⁵ Rather than rely on the criminal courts, some activists have resorted to filing civil suits claiming damages against the Minister of Home Affairs and the police officers responsible for violations such as wrongful arrest and detention that result in pain, suffering and loss of dignity.¹⁰⁷⁶ Another source of contention has been the fact that while victims of human rights violations have sought protection of the law through the courts, police have not enforced the resulting court orders. In some cases, police have repeatedly defied court orders that have been issued against them, especially in cases relating to the denial of pre-trial rights of detained human rights defenders and political activists.¹⁰⁷⁷

Members of the ZRP have also not protected MDC party supporters and

1067 Constitution of Zimbabwe, section 24(1)

1068 International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.7

1069 Zimbabwe Lawyers for Human Rights (24 December 2008) *Recent developments relating to individuals subjected to enforced disappearances*. http://www.kubatana.net/html/archive/hr/081224zlhhr.asp?orgcode=ZIM007&year=2008&range_start=1, accessed 26 July 2012

1070 *The Standard* (22 July 2012) Killer cop could face more charges. <http://www.thestandard.co.zw/local/36797-killer-cop-could-face-more-charges.html>, accessed 22 July 2012

1071 See the cases of *Dorothy Chiwaridzo v Co-Ministers of Home Affairs*

1072 The police complaints desk is one such procedure

1073 *Ibid*, p.49; See also, Human Rights Watch (2012) *Perpetual Fear: Impunity and Cycles of Violence in Zimbabwe*. New York: Human Rights Watch. <http://www.hrw.org>, accessed on 29 June 2012

1074 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Zimbabwe*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 3 July 2012

1075 *Ibid*.

1076 Human Rights Watch (2012) *Perpetual Fear: Impunity and Cycles of Violence in Zimbabwe*. New York: Human Rights Watch. <http://www.hrw.org>, accessed 29 June 2012, p.32

1077 See the case of *Masaiti v Minister of Home Affairs and Ors*, unreported judgment High Court Harare 2381/08; See also Zimbabwe Lawyers for Human Rights (2010) *Zimbabwe geared up for another election? Then and now: 2008 elections in retrospect*. Harare: Zimbabwe Lawyers for Human Rights, p.116

other human rights activists who have sought to enforce court orders protecting their rights. In the case of *MDC v Commissioner General of Police and Others*, after the High Court granted an order barring the ZRP from disrupting MDC-T rallies, the police did not take any actions against ZANU-PF youth militia who assaulted MDC-T supporters and openly defied this court order.¹⁰⁷⁸

The Zimbabwe Human Rights Commission (ZHRC) was established in 2009, following Constitutional Amendment No. 19. The ZHRC has a mandate to investigate conduct that violates the constitutional declaration of rights.¹⁰⁷⁹ The ZHRC is not yet fully operational, as the enabling legislation has not yet been passed. The ZHRC has not been accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), with concerns regarding its political independence, technical and financial capacity and lack of enabling legislation.¹⁰⁸⁰

The Office of the Public Protector is another institution that is established by the Constitution. This office has the mandate to investigate the abuse of power and maladministration by government officers, and can investigate allegations of human rights violations where there are no reasonably available remedies through the courts.¹⁰⁸¹ There is no information regarding the extent to which this Office has played an effective oversight role, especially over the police.

Parliament is also vested with oversight authority, and may make inquiries and recommendations into issues concerning human rights through a portfolio committee, and the Portfolio Committee of Home Affairs and Defence has in the past summoned officials such as the Commissioner-General of Police to give evidence or provide further information on the operations of the police. In the past, this Committee has held some enquiries into the conduct of the police. The Senate Thematic Committee on Human Rights is also supposed to provide oversight on human rights issues that arise in government departments. The Parliamentary Legal Committee has the function of ensuring that all draft bills are consistent with the Constitution.¹⁰⁸² The parliamentary committees have exercised their oversight role by calling upon the police chief to give oral submissions on the operations of the police, however there has been no meaningful follow-up.

1078 Zimbabwe Lawyers for Human Rights (2010) *Zimbabwe geared up for another election? Then and now: 2008 elections in retrospect*. Harare: Zimbabwe Lawyers for Human Rights, p.117

1079 Constitution of Zimbabwe, section 100R

1080 Committee on the Elimination of Discrimination against Women (23 March 2012) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Zimbabwe*, CEDAW/C/ZWE/CO/2-5, [18]; See also, Amnesty International (15 March 2012) *Public Statement: Amnesty International regrets that Zimbabwe rejected recommendations to review and amend the Public Order and Security Act and to investigate reports of human rights violations related to the Presidential elections in 2008*, AFR 46/004/2012

1081 Constitution of Zimbabwe, section 107; See also, Human Rights Council (19 July 2011) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Zimbabwe*, A/HRC/WG.6/12/ZWE/1, [19]

1082 Human Rights Council (19 July 2011) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Zimbabwe*, A/HRC/WG.6/12/ZWE/1, [17]

In terms of internal accountability, police stations have internal processes that are supposed to deal with alleged human rights violations perpetrated by the police referred to as ‘complaints desks’ at which members of the public can make complaints about the conduct of officers.¹⁰⁸³ There is very little evidence as to how effective these procedures have been and what proceedings, if any, have been instituted against accused officers.¹⁰⁸⁴ The Commissioner-General of Police is also required to provide an annual report to the Ministry of Home Affairs, which is then presented to Parliament.¹⁰⁸⁵ In the past, the ZRP has produced reports documenting, and in many cases, misrepresenting the activities of NGOs, charging that they are carrying out activities intended to overthrow the government.

The Constitution of Zimbabwe establishes a Police Service Commission, chaired by the chair of the Public Service Commission, and comprised of between two to seven other members appointed by the President.¹⁰⁸⁶ The Commission’s mandate is to make recommendations relating to salaries and conditions of service; to receive and investigate complaints from police members; and any other functions conferred upon it. The Commission is endowed with coercive powers in order to fulfil its mandate.¹⁰⁸⁷ There is no information relating to the extent to which the Commission has carried out its mandate.

Within the ZRP, there is evidence of discrimination on the basis of political affiliation (see further discussion relating to political interference in policing below).¹⁰⁸⁸

Article 2: Non-discrimination

Standard: Police officials shall treat all persons fairly and equally and avoid any form of discrimination.

The Constitution of Zimbabwe prohibits discrimination on the grounds of race, tribe, place of origin, political opinion, colour, creed, sex, gender, marital status or physical disability.¹⁰⁸⁹ It also enshrines the rights to conscience, expression, assembly, association and movement.¹⁰⁹⁰

However, there are numerous and credible reports on the selective application of the law and the implementation of negative administrative practices, fuelling violations of human rights. Arbitrary arrests and detention, and ill-treatment of

1083 *Ibid*, [30] and [87]

1084 International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.7

1085 The Police Act, section 13

1086 Constitution of Zimbabwe, section 94

1087 The Police Act, section 55

1088 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Zimbabwe*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 3 July 2012

1089 Constitution of Zimbabwe, section 23

1090 *Ibid*, sections 19–22

suspects in custody and violations of pre-trial rights have been reported. Members of the ZRP have also increasingly targeted human rights defenders, including lesbian, gay, bisexual, transgender and intersex (LGBTI) people, trade unionists, lawyers, civil society leaders and members, teachers, religious leaders, women's rights activists, students and political activists.¹⁰⁹¹ Discrimination has also been experienced by LGBTIs as the Criminal Code prohibits sexual activity between people of the same sex.¹⁰⁹²

Female commercial sex workers and women have also been arbitrarily arrested for loitering more than men and detained without charge, denied legal representation and access to medical assistance, and become exposed to torture, abuse and harassment by the police.¹⁰⁹³ In applying the law, the ZRP has also selectively targeted members of the MDC and other human rights activists through arbitrary arrests and detention.¹⁰⁹⁴ Politically motivated arrests have been prevalent particularly in the electoral periods.¹⁰⁹⁵

It is reported that ZRP leaders that support ZANU-PF have generally been responsible for obstructing investigations into violence by the police, other state actors, or civilian supporters of ZANU-PF against persons and organisations that support the MDC.¹⁰⁹⁶ There have been very few cases however where police have carried out these investigations.¹⁰⁹⁷

There is no information on whether police still receive training on human rights as part of their training curriculum. Before 2002, a number of police officers were trained by NGOs on human rights with the intention that they would train other police officers.

In an attempt to provide services to one vulnerable group, the government reports that it has established a One-Stop Centre for Victims of Domestic Violence, which integrates a number of services – including health, legal and psychosocial – and facilitates an Anti-Domestic Violence Council to monitor domestic violence across the country.¹⁰⁹⁸ However, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has criticised the

1091 Committee on the Elimination of Discrimination against Women (23 March 2012) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Zimbabwe*, CEDAW/C/ZWE/CO/2-5, [23]; See also, Human Rights Council. (22 July 2011). *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1*, A/HRC/WG.6/12/ZWE/3, [19] and [23]; and Human Rights Council (22 July 2011) *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1*, A/HRC/WG.6/12/ZWE/2,[30]

1092 Human Rights Council (22 July 2011) *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1*, A/HRC/WG.6/12/ZWE/3,[44]

1093 Zimbabwe Civil Society's Shadow Report to the CEDAW Committee (January 2012) www2.ohchr.org/english/bodies/cedaw/docs/.../ZCS_Zimbabwe51.pdf, accessed on 29 June 2012, p.5

1094 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Zimbabwe*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 3 July 2012

1095 Zimbabwe Lawyers for Human Rights (2010) *Zimbabwe geared up for another election? Then and now: 2008 elections in retrospect*. Harare: Zimbabwe Lawyers for Human Rights, p.125

1096 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Zimbabwe*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 3 July 2012

1097 Zimbabwe Lawyers for Human Rights has followed up on some cases and in a few cases police officers have been charged with assault and convicted

1098 Human Rights Council (19 July 2011) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Zimbabwe*, A/HRC/WG.6/12/ZWE/1,[88]

government for failing to provide the necessary human and budgetary resources to make these programmes effective, and to address politically motivated violence against women.¹⁰⁹⁹

The size of the ZRP is reported at between 23 000 and 25 000 police officers, with the police to population ratio estimated to be 1:573, which is close to expectations in terms of international good practice.¹¹⁰⁰ It is not known how these services are distributed nationally. Women comprise 11% of the total number of persons employed by the ZRP.¹¹⁰¹ The government reports that in recent years, there have been more women recruits, which will 'pave the way' for a higher representation of women in senior ranks.¹¹⁰²

Article 3: Use of force

Standard: Police officials may only use force when strictly necessary and to the extent required for the performance of their duties and adhering to national legislation and practice.

The Constitution of Zimbabwe provides for the right to life, except where a person dies as a result of the use of force that was reasonably justified in the following circumstances:¹¹⁰³

- » For the defence of any person from violence or for the defence of property;
- » In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- » For the purpose of suppressing a riot, insurrection or mutiny or of dispersing an unlawful gathering; or
- » In order to prevent the commission by that person of a criminal offence.

These provisions do not meet the requirements of international human rights law and standards, as set out in the United Nations Code of Conduct for Law Enforcement Officials.¹¹⁰⁴

There are numerous and credible allegations that the ZRP use excessive force.¹¹⁰⁵ International human rights organisations have documented excessive force, unlawful killings, and torture and other ill-treatment by the ZRP,

1099 Committee on the Elimination of Discrimination against Women (23 March 2012) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Zimbabwe*, CEDAW/C/ZWE/CO/2-5,[23]

1100 African Police Resource Network, *Zimbabwe*, http://www.aprn.org.za/countries/CountryDetail.asp?Cnt_ID=26, accessed 29 June 2012

1101 Committee on the Elimination of Discrimination against Women (22 November 2010) *Combined 2nd to 5th periodic reports of States parties: Zimbabwe*, CEDAW/C/ZWE/2-5,[137]

1102 *Ibid*, [138]

1103 Constitution of Zimbabwe, section 12(2)

1104 United Nations Code of Conduct for Law Enforcement Officials, UNGA resolution 34/169 of 17 December 1979

1105 International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.7

particularly in relation to human rights defenders and political activists, with flashpoints for violence against these groups during the 2008 elections and in the months immediately following the announcement of the 2011 elections.¹¹⁰⁶ It has also been noted that the ZRP and government have failed to conduct prompt, thorough, and impartial investigations into allegations of excessive use of force, and other human rights abuses.¹¹⁰⁷

No information is available on the training the police receive relating to the use of force.

Public order policing

Public order policing, particularly in the context of the 2008 elections and the announcement of elections in 2011, is of significant concern. Police have routinely used excessive force to disperse peaceful demonstrations, including the use of live ammunition, which resulted in the death of an MDC supporter, Gift Tandare, in 2007.¹¹⁰⁸ Lawyers have also been abducted and tortured by police officers in the full view of the public during peaceful protest, while human rights activists have repeatedly been victims of police brutality.¹¹⁰⁹ There are numerous and credible allegations of torture and ill-treatment against protestors once in police custody.¹¹¹⁰ It is also reported that there have been no explanations as to why the police have used live ammunition at peaceful demonstrations.¹¹¹¹

The legal framework on the use of force in a public order context is very wide and open to abuse. In addition to the broad provisions on the use of force, powers in the Constitution (as noted above) and the Public Order and Security Act (POSA) have been used by police to justify the use of force, as have some provisions of the Criminal Code. POSA makes it an offence to take any actions to subvert the government, which includes any action whether inside or outside the country to set up a group, or assisting a group, with a view to overthrowing or attempting to take over the government in contravention of the Constitution.¹¹¹² It also provides for offences against public order, including public violence, and gatherings which are conducive to a 'riot, disorder, or intolerance'.¹¹¹³ The Act also makes it an offence to undermine police authority in a public place.¹¹¹⁴ It

1106 Human Rights Council (22 July 2011) *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1, A/HRC/WG.6/12/ZWE/3*, [21]

1107 *Ibid.*, [23]

1108 Press Statement (9 April 2011) *ZLHR condemns police abuses in suppressing prayer for peace*. <http://www.swradioafrica.com/pages/zlhr090411.htm>, accessed 12 June 2012

1109 Tsunga A et al (2007) *Persecution of Lawyers in Zimbabwe: Self-regulation at a crossroads*. Harare: Law Society of Zimbabwe and Zimbabwe Lawyers for Human Rights, p.15

1110 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Zimbabwe*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 3 July 2012

1111 International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.31

1112 Public Order and Security Act, section 5

1113 *Ibid.*, sections 18 and 19

1114 *Ibid.*, section 21

reiterates the requirement to notify police of a public gathering¹¹¹⁵ and permits the police to ban or disband a public gathering if there are ‘reasonable grounds for believing’ that it will result in public disorder, a breach of the peace or an obstruction of any thoroughfare.¹¹¹⁶ Police officers are permitted to do ‘all things reasonably necessary’ to disperse unlawful public gatherings, and use ‘such force as is reasonably justifiable in the circumstances’ for overcoming resistance to arrest.¹¹¹⁷ If a person is killed as a result of the justifiable use of force, the killing will be lawful.¹¹¹⁸ In the enforcement and preservation of public order and security, the Act also permits the police to arrest any person who refuses to produce an identity document on request.¹¹¹⁹

There are numerous and credible reports that requests by civil society to hold public events are routinely denied if the request is made by individuals or organisations that oppose ZANU-PF.¹¹²⁰ In 2011, police disrupted another peaceful prayer meeting in Harare, severely tortured congregants, fired teargas canisters indiscriminately in the high-density neighbourhood, and arrested 12 people including four pastors.¹¹²¹

Human Rights Watch has reported that the ZRP and private security guards working with the police routinely beat and arrest miners in the Marange diamond fields, and police have used live ammunition against fleeing miners, with no investigations or criminal sanctions brought against the perpetrators of the violence.¹¹²²

Article 4: Torture and cruel, inhuman and degrading treatment or punishment

Standard: No police official shall, under any circumstances, inflict, instigate or tolerate any act of torture and other cruel, inhuman or degrading treatment or punishment of any person.

Zimbabwe is one of the few southern African states that has not ratified the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, nor is it a party to its Optional Protocol. The Constitution prohibits torture, inhuman or degrading punishment, or other punishment.¹¹²³ This right is limited to the extent that ‘treatment reasonably

1115 *Ibid*, section 23

1116 *Ibid*, section 25

1117 *Ibid*, section 29(1)

1118 *Ibid*, section 29(2)

1119 *Ibid*, sections 32 and 33

1120 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Zimbabwe*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 3 July 2012

1121 Zimbabwe Lawyers for Human Rights (9 April 2011) *ZLHR condemns police abuses in suppressing prayer for peace*. www.kubatana.net/html/archive/hr/110409zlhhr.asp?orgcode=ZIM007&year=2011&range_start=91, accessed 28 July 2012

1122 Human Rights Watch (January 2012) *Country Summary: Zimbabwe*. <http://www.hrw.org>, accessed 29 June 2012

1123 Constitution of Zimbabwe, section 15(1)

justifiable in the circumstances' to prevent the escape of a person from lawful custody shall be considered derogable.¹¹²⁴ Despite the constitutional prohibition on torture, it is not a criminal offence in domestic laws.

There are numerous reports on torture, harassment, ill-treatment and arbitrary arrests against human rights activists, opposition party supporters and ordinary citizens.¹¹²⁵ Police, state security agents, and ZANU-PF supporters have been implicated in this violence. Torture and ill-treatment have been particularly rampant during and around Zimbabwe's elections.¹¹²⁶ During the 2008 election period, Human Rights Watch reported that more than 5 000 people were tortured by the ZANU-PF-led government.¹¹²⁷ Although three political parties now share responsibility over government affairs, and the Ministry of Home Affairs is now controlled by ZANU-PF and MDC-T ministers, challenges relating to the continued use of torture remain. In one incident in February 2011, the police arbitrarily arrested Munyaradzi Gwisai and 45 other International Socialist Organisation (ISO) activists. The ISO activists were detained beyond the 48-hour period prescribed by law, and denied access to their lawyers and medical treatment. At least nine of them were reportedly tortured by the police.¹¹²⁸ Charges of treason were subsequently dropped in respect of 39 of the activists, one person turned state witness and another six were prosecuted and convicted.¹¹²⁹

A study by the Institute for Democracy in Africa (IDASA) and the Research and Advocacy Unit (RAU) found that women activists are particularly vulnerable to ill-treatment and harassment. From a sample of 1 983 members of Women of Zimbabwe Arise (WOZA) in 2007, 42% indicated that they had been assaulted by the police, 33% reported they had been tortured, 64% reported experiencing humiliating and degrading treatment, and 78% reported political threats. Seventy percent of these violations were reportedly perpetrated by police. These assaults took place during protest meetings and while the women were in custody.¹¹³⁰

There is no information on what procedure is in place to prevent torture by police officers and whether police officers receive training on preventing torture. Prior to 2002, members of the ZRP participated in human rights training which

1124 *Ibid*, section 15(2)

1125 Amnesty International (2011) *Zimbabwe: Continued clampdown on dissent*. Amnesty International submission to the Universal Periodic Review. <http://www.amnesty.org/en/library/info/AFR46/016/2011>, accessed 28 June 2012; See also, Human Rights Watch (2012) *World report: Zimbabwe*. <http://www.hrw.org/world-report-2012/world-report-2012-zimbabwe-0>, accessed 28 June 2012

1126 Zimbabwe Lawyers for Human Rights (2010) *Zimbabwe geared up for another election? Then and now: 2008 elections in retrospect*. Harare: Zimbabwe Lawyers for Human Rights

1127 Human Rights Watch (2012) *Perpetual Fear: Impunity and Cycles of Violence in Zimbabwe*. New York: Human Rights Watch. <http://www.hrw.org>, accessed on 29 June 2012, p.4

1128 *The Zimbabwe Situation* (21 February 2011) Zimbabwe activists tortured after meeting on Egypt, lawyers say. http://www.zimbabwesituation.com/feb22_2011.html#Z2, accessed 28 July 2012

1129 Zimbabwe Lawyers for Human Rights (19 March 2012) *Setback as Munyaradzi Gwisai and others convicted while court postpones Glenview residents' bail hearing once again*. http://www.kubatana.net/html/archive/hr/120319zhr.asp?sector=LEGISL&year=0&range_start=1, accessed 28 July 2012; See also, *Reuters* (19 March 2012) *Zimbabwe convicts 6 of plot to unseat Mugabe*. <http://www.reuters.com/article/2012/03/19/us-zimbabwe-verdict-idUSBRE82100720120319>, accessed 28 July 2012

1130 IDASA and Research and Advocacy Unit (2011) *Women and Law Enforcement in Zimbabwe*. http://www.idasa.org/media/uploads/outputs/files/women_and_law_enforcement.pdf, accessed 28 June 2012

included a focus on torture.¹¹³¹ The ZRP received financial, technical and other assistance in this regard from external partners, such as the Legal Resources Foundation (LRF)¹¹³² and other NGOs. It is currently unclear as to what extent police continue to receive training in this regard, either during basic training for new recruits, or in the context of continuing education. Indeed, the ZLHR reported that in May 2011, police in Matabeleland North arrested two activists for convening a workshop on torture.¹¹³³

In 2009, the United Nations Special Rapporteur on Torture, and other Cruel, Inhuman or Degrading Treatment was deported from Zimbabwe following an invitation from the MDC Prime Minister to investigate cases of torture in the country.¹¹³⁴ The Special Rapporteur had expressed his concerns about serious and credible allegations of torture and ill-treatment in Zimbabwe.¹¹³⁵

According to local organisations that provide assistance to victims of police brutality, there has been very little redress for these victims, as the government has made no 'genuine' effort to investigate or prosecute those involved in acts of torture, save for in very few cases.¹¹³⁶ In 2008, the police were involved in the enforced disappearances of MDC members, and the victims were also tortured. In one case, a civil society leader, Jestina Mukoko, was tortured after she was subjected to an 'enforced disappearance'. Due to this, the Supreme Court ordered the Attorney-General to stop the criminal proceedings against her in the case *Mukoko v Attorney-General and Others*. Despite this court ruling that acts of torture had been committed, and the identification of those responsible, none of these officials has been held accountable.¹¹³⁷

Even where police are not direct perpetrators or are not directly involved in violence, they are complicit by failing to take action against the actual perpetrators. In respect to the abuses of 2008, very few cases of political violence and other related violations perpetrated against MDC supporters have been investigated by the police. Consequently, impunity has resulted where allegations of torture, killings or abuse have not been acted upon.¹¹³⁸ Where the criminal law has failed,

1131 Zimbabwe Lawyers for Human Rights (2009) Policing and Human Rights in Zimbabwe (unpublished report)

1132 The Legal Resources Foundation supported human rights training programme ran from 1989 to 1997, and about 1 500 serving members of the ZRP received training. The ZRP has also worked with NGOs that focus on gender and policing issues (e.g. domestic violence) like Women in Law in Southern Africa (WILSA) and the Women's Action Group (WAG)

1133 Zimbabwe Lawyers for Human Rights (23 May 2011) *Police arrest ZimRights employees over torture as Magistrate frees WOZA*. http://www.kubatana.net/html/archive/hr/110523zhr.asp?orgcode=ZIMO07&year=2011&range_start=91, accessed 28 July 2012

1134 *Reuters* (29 October 2009) UN rights expert Nowak deported from Zimbabwe. <http://uk.reuters.com/section/2009/10/29/idUKWEA7394>, accessed 28 June 2012

1135 Human Rights Council (22 July 2011) *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1, A/HRC/WG.6/12/ZWE/2*, [21]

1136 Human Rights Watch (2008) *Bullets for Each of You: State-Sponsored Violence since Zimbabwe's March 29 Elections*. New York: Human Rights Watch

1137 Human Rights Watch (2011) *Perpetual Fear: Impunity and cycles of violence in Zimbabwe*. New York: Human Rights Watch. <http://www.hrw.org>, accessed 29 June 2012, p.4 and International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.28

1138 Human Rights Watch (2011) *Perpetual Fear: Impunity and cycles of violence in Zimbabwe*. New York: Human Rights Watch; See also, Amnesty International (2012) *Annual Report 2012: The State of the World's Human Rights: Zimbabwe*. <http://www.amnesty.org/en/region/zimbabwe/report-2012>, accessed 28 June 2012

victims have brought civil claims for damages against the Minister of Home Affairs and police officials. In 2009, the ZLHR filed a number of civil claims on behalf of political and human rights activists who had been subjected to enforced disappearances and torture in 2008.¹¹³⁹

Due to the fact that local remedies are often significantly delayed, some victims have sought assistance from regional organisations such as the Southern Africa Litigation Centre and the Zimbabwe Exiles Forum, who have since filed a case against the government for crimes against humanity (specifically torture) in South Africa's North Gauteng High Court.¹¹⁴⁰ Crimes against humanity under the Rome Statute are subject to universal jurisdiction, and the collapse of the rule of law in Zimbabwe prompted the decision to file this case in South Africa.¹¹⁴¹

Article 5: Protection of persons in custody

Standard: Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to ensure medical attention when required.

The Constitution provides that no one shall be deprived of their liberty, except in circumstances outlined in the Constitution and other laws.¹¹⁴² These include where a person has been sentenced for a criminal offence; in execution of an order of court; for the purposes of bringing a person before the Senate or House of Assembly; on reasonable grounds of having committed, or being about to commit, a criminal offence; if a person is suspected of being of unsound mind, addicted to drugs or alcohol, for his rehabilitation and care; and for preventing unlawful entry into Zimbabwe.¹¹⁴³

Persons deprived of their liberty are afforded the following procedural rights: to be informed, as soon as reasonably practicable and in a language that he or she understands, of the reason for his or her arrest or detention; and that of access to a legal representative of their choice at their own expense.¹¹⁴⁴

The Constitution provides that a person detained and charged with a criminal offence should be brought before a court without undue delay', but does not specify a time period. If a person is not tried within a reasonable time period, they must be released conditionally or unconditionally.¹¹⁴⁵ The Constitution also provides that a person who is unlawfully arrested or detained is entitled to compensation from that person or from the authority for which he is working,

1139 Zimbabwe Lawyers for Human Rights (20 September 2010) *Legal Monitor*, Edition 63. www.kubatana.net/docs/hr/zlhr_legal_monitor_63_100920.pdf, accessed 24 July 2012

1140 *Open Society Initiative for Southern Africa, Law News* (28 March 2012) Hearing begins in Zimbabwe torture case. <http://www.osisa.org/law/zimbabwe/hearing-begins-zimbabwe-torture-case>, accessed 29 June 2012

1141 *Ibid.*

1142 Constitution of Zimbabwe, section 13

1143 *Ibid.* See also, Hanzu R (2011) *Zimbabwe's status of compliance with human rights instruments vol 1*. Harare: Zimbabwe Lawyers for Human Rights

1144 Constitution of Zimbabwe, section 13

1145 *Ibid.*, section 13(4)

except where such person is acting reasonably and in good faith.¹¹⁴⁶

The Constitution provides that personal searches of women can only be carried out by other women, except those that are carried out by a medical practitioner, with 'strict regard to decency'.¹¹⁴⁷

The government states that it has enacted legislation that gives effect to the International Standard Minimum Rules on the Treatment of Prisoners, which has facilitated, amongst other things, health delivery systems in prisons and rehabilitation and reintegration services. It also states that it houses inmates according to their age and gender. However, it is not clear whether these provisions also extend to other places of detention, including police cells.¹¹⁴⁸

The right not to be deprived of liberty is one of the rights that may be derogated from in a public emergency.¹¹⁴⁹ Schedule 2 of the Constitution provides for preventive detention when a resolution regarding a public emergency is made. A tribunal must consider the case for detention within 14 days, and thereafter at intervals of 30 days. During a public emergency, a person's detention is only subject to review after 180 days, and after each subsequent 180 days.¹¹⁵⁰ This provision effectively allows indefinite detention with very little provision for review.

Treatment in police custody

Despite constitutional prohibitions against arbitrary arrest and detention, the effect of the Public Order and Security Act, coupled with weak oversight and partisan policing practices, have resulted in numerous and credible allegations that the police repeatedly use torture and ill-treatment against persons in their custody.¹¹⁵¹

The ZLHR noted that police continue to disregard detainees' right to prompt and regular access to their lawyers especially in cases where human rights activists are involved. As a result, the Law Society of Zimbabwe and the ZLHR, amongst others, filed a court application against the ZRP.¹¹⁵² There have also been claims that police have denied access to family or medical assistance, and that detainees have frequently been held incommunicado.¹¹⁵³ Detainees are also reportedly moved from one police station to another to prevent contact with lawyers or families.¹¹⁵⁴

1146 *Ibid*, section 13(5)

1147 *Ibid*, section 17(3)

1148 Human Rights Council (19 July 2011) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Zimbabwe*, A/HRC/WG.6/12/ZWE/1, [61]

1149 Constitution of Zimbabwe, section 13

1150 Constitution of Zimbabwe, section 2 of schedule 2

1151 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Zimbabwe*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 3 July 2012; See also, International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.7

1152 *Ibid*.

1153 International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, pp.36–37. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 3 July 2012

1154 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Zimbabwe*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 3 July 2012

There are numerous and credible reports that the ZRP are responsible for a high number of arbitrary arrests, including against human rights lawyers, civil society activists, human rights defenders generally and political opposition supporters.¹¹⁵⁵ It is reported that there is a pattern of arrest and being released without charge.¹¹⁵⁶ There are also cases where charges are brought and then withdrawn by prosecutors who find that they are without merit.¹¹⁵⁷ The ZRP has also targeted members of the judiciary and others within the criminal justice system who attempt to carry out their duties professionally.¹¹⁵⁸

The Legal Aid Act¹¹⁵⁹ provides that persons who are not able to afford a lawyer can receive free legal assistance from Legal Aid after their case has been assessed, and the government provides pro bono services for persons accused with death penalty offences.¹¹⁶⁰ The government has acknowledged that access to legal services is too expensive for most people, and that infrastructure and budgetary constraints present significant justice challenges.¹¹⁶¹

Conditions in police custody

There were no detailed reports on conditions in police custody. However, media reports, as well as those of human rights groups and court records, allege that conditions in police cells are poor. In a proactive judgment in 2005, the Supreme Court declared that ‘police holding cells at police stations in Zimbabwe are degrading and inhumane and unfit for holding criminal suspects’.¹¹⁶² In the *Kachingwe* case, the court ordered the Minister of Home Affairs and the Commissioner of Police to take all the necessary measures and steps to improve conditions. Amongst other issues, they were ordered to ensure that police cells were of a reasonable size; that they had good ventilation and lighting; and that detainees were issued with clean mattresses and blankets. In addition, it was ordered that: holding cells should have clean and decent flush toilets and toilet paper; that menstruating women had access to sanitary provisions; and that cells should have adequate washing facilities. Most importantly, the court ordered that there should be good drinking water available in cells, and that detainees should be given wholesome food at appropriate times, and also be able to buy their own

1155 Amnesty International (2012) *Annual Report 2012: The State of the World's Human Rights: Zimbabwe*. <http://www.amnesty.org/en/region/zimbabwe/report-2012>, accessed 28 June 2012; See also, Amnesty International (26 January 2012) *Public Statement: Zimbabwean authorities must stop abusing the law to curtail the work of human rights activists*, AFR 46/001/2012

1156 Amnesty International (2012) *Annual Report 2012: The State of the World's Human Rights: Zimbabwe*. <http://www.amnesty.org/en/region/zimbabwe/report-2012>, accessed 28 June 2012

1157 International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.27

1158 *Ibid*. See also, Human Rights Council (22 July 2011). *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1*, A/HRC/WG.6/12/ZWE/3, [34]

1159 The Legal Aid Act, chapter 7:16

1160 Human Rights Council (19 July 2011) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Zimbabwe*, A/HRC/WG.6/12/ZWE/1, [52] and [122]

1161 *Ibid*, [116]

1162 *Kachingwe and Others v Minister of Home Affairs NO and Another* (17/03)[2005] ZWSC 134; SC 145/04 (18 July 2005)

food. Detainees should also have access to medical treatment.¹¹⁶³ The Supreme Court further ordered the Minister and Commissioner-General to publish regulations governing the treatment of persons detained in police holding cells, as well as to publish regulations permitting and regulating the inspection of police cells by magistrates and official visitors.¹¹⁶⁴

It appeared that cells at the two police stations, Matapi and Highlands, that were the subject of the *Kachingwe* case, had not been improved several years later. In 2011, the Minister of State, Jameson Timba, campaigned for the closure of Matapi police cells.¹¹⁶⁵

In April 2010, four members of WOZA were detained after a protest relating to high electricity charges, and were detained in Harare Central Police Station for six days in ‘filthy conditions’.¹¹⁶⁶ The organisation subsequently petitioned the Supreme Court for an order to compel government to ensure that the holding cells meet basic conditions of hygiene, with beds and bedding, sufficient drinking water and adequate ventilation and lighting. Five justices of the court conducted an inspection of the cells in June 2012. Justice Ziyambi reported in court:

One of the cells on the first floor had a stench but the floor appeared to have been cleaned. In that cell there were six blankets lying on the built-in concrete beds. In each cell that we inspected there were six built-in beds with no mattresses. Around each of the toilets there was a concrete block, which was about a metre high but without a door.¹¹⁶⁷

At the time of writing, judgment had not yet been delivered.

Oversight over places of police detention

It is not clear what oversight mechanisms exist relating to pre-trial detention by the police. In the past, however, magistrates and judges have conducted routine visits at prisons. This has not extended to police cells unless as an inspection as part of court proceedings. The Zimbabwe Prison Act, as amended, makes provision for a range of visitors, including judges of the Supreme or High Court and magistrates.¹¹⁶⁸ The Act also makes provision for the appointment of ‘official visitors’ by the Minister.¹¹⁶⁹ More recently, the Parliamentary Portfolio Committee on Justice Legal Affairs and Constitutional and Parliamentary Affairs

¹¹⁶³ *Ibid.*

¹¹⁶⁴ *Ibid.*

¹¹⁶⁵ *Radio VOP* (28 July 2011) Minister calls for closure of condemned prison. <http://www.radiovop.com/index.php/national-news/6783-zim-minister-calls-for-closure-of-condemned-prison.html>, accessed 28 June 2012

¹¹⁶⁶ *WOZA* (16 June 2012) Bittersweet victory at the Supreme Court. <http://wozazimbabwe.org/?p=1275>, accessed on 28 June 2012

¹¹⁶⁷ *Radio VOP* (15 June 2012) Police cell stink: Judges. <http://www.radiovop.com/index.php/national-news/9154-police-cells-stink-judges.html>, accessed 28 June 2012

¹¹⁶⁸ Zimbabwe Prison Act of 1956

¹¹⁶⁹ Hettinger B, Mandlate A and Muntingh L (2011) *Survey of Detention Oversight Mechanisms Provided for in the Laws of SADC Countries*. Cape Town: Civil Society Prison Reform Initiative, p. 55

has produced a damning report on the state of the country's prisons.¹¹⁷⁰

There is no information available on whether the training provided to police recruits also addressed treatment of detainees, or whether police officers receive continuous education on the management and treatment of detainees.

Article 6: Victims of crime

Standard: All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided when necessary.

The government describes the Criminal Procedure and Evidence Act¹¹⁷¹ as providing a 'victim friendly court to all vulnerable witnesses who are called upon to give evidence in court'.¹¹⁷² The government also reports that a 'Justice Delivery System' has been established to provide support to 'vulnerable witnesses and survivors of crime in the form of Victim Friendly Courts and Victim Friendly Units at police stations and hospitals'.¹¹⁷³

However, it is reported that there are significant challenges to the proper treatment of victims of crime, particularly those who were victims of politically motivated violence.¹¹⁷⁴

Zimbabwe civil society organisations and the UN Committee on the Elimination of Discrimination against Women (CEDAW) have recommended that the government provide training to police officers on procedures for dealing with victims of domestic violence and to provide training on the effective protection against violence and discrimination against lesbian, bisexual, transgender and intersex women.¹¹⁷⁵ Zimbabwean civil society organisations have also recommended that the government prioritise the sensitisation of, among others, the police, to improve the protection of women against violence.¹¹⁷⁶ They report that girls who are victims of violence do not have effective access to justice as 'justice through the police system is often delayed or cases just never take off' and that the 'general attitude of male police officers discourages [women who have experienced domestic violence] from reporting cases'.¹¹⁷⁷

1170 Parliament of Zimbabwe (March 2011) *First Report of the Parliamentary Portfolio Committee on Justice Legal Affairs and Constitutional and Parliamentary Affairs on the State of the Prison System in Zimbabwe*

1171 Criminal Procedure and Evidence Act, chapter 9:07

1172 Human Rights Council (19 July 2011) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Zimbabwe*, A/HRC/WG.6/12/ZWE/1.[13]

1173 *Ibid.*, [29] and [83]

1174 Human Rights Council (22 July 2011) *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1*, A/HRC/WG.6/12/ZWE/2, [27]

1175 Committee on the Elimination of Discrimination against Women (23 March 2012) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Zimbabwe*, CEDAW/C/ZWE/CO/2-5, [23]; See also, Zimbabwe Civil Society's Shadow Report to the CEDAW Committee, January 2012. www2.ohchr.org/english/bodies/cedaw/docs/.../ZCS_Zimbabwe51.pdf, accessed 29 June 2012

1176 Zimbabwe Civil Society's Shadow Report to the CEDAW Committee, January 2012. www2.ohchr.org/english/bodies/cedaw/docs/.../ZCS_Zimbabwe51.pdf, accessed on 29 June 2012

1177 *Ibid.*

Article 7: Respect for the rule of law and Code of Conduct

Standard: Police officials shall respect and uphold the rule of law and the present Code of Conduct.

In 2007, the International Bar Association (IBA) found that the ZRP consistently failed to act in accordance with the SARPCCO Code of Conduct. The report, amongst other things, made a recommendation that SARPCCO investigate ZRP breaches of several articles of the Code of Conduct. These include, but are not limited to, Articles 1, 2, 3, 4, 5, 7, 9 and 10.¹¹⁷⁸ However, the ZRP's membership of SARPCCO has not stopped them from persistent violations of the Code of Conduct, particularly in relation to political independence, human rights and the rule of law.¹¹⁷⁹

As is apparent from the discussion of previous articles, there are numerous and credible reports that the ZRP are responsible for serious violations of the rule of law.¹¹⁸⁰ According to the IBA, this includes showing 'disrespect and contempt for the law, lawyers and judicial authorities to an extent that has seriously imperilled the administration of justice and the rule of law'.¹¹⁸¹ There are reports that officers failed to uphold or enforce court orders, which has resulted in a 'serious loss of public confidence in the justice system and an increase in lawlessness'.¹¹⁸² The IBA reported that lawyers have been told by the ZRP that the Constitution and legislative framework is 'not the law of the country' and that 'the President has stated what the law is'.¹¹⁸³

There are also reports that the ZRP have attempted to 'usurp' the powers of the Attorney-General by coercing prosecutors into prosecuting cases rather than allowing the Attorney-General to freely undertake his or her mandate to make decisions on which cases to prosecute.¹¹⁸⁴ This is in direct contravention of the Police Act, which requires the Commissioner of Police to comply with directions issued by the Attorney-General regarding the investigation and prosecution of criminal matters.¹¹⁸⁵

It is reported that attempts to initiate investigations or take disciplinary action against officers who violate the rule of law have been met with 'judicial inaction'.¹¹⁸⁶

1178 International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.12

1179 Musavengana T (2011) *Security Sector: No transition without transformation*. Open Society Initiative for Southern Africa. <http://www.osisa.org>, accessed 29 June 2012, p.31

1180 Human Rights Council (22 July 2011) *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1, A/HRC/WG.6/12/ZWE/2*, [27]

1181 International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.7

1182 *Ibid.* pp.8–9

1183 *Ibid.* p.31

1184 *Ibid.* p.8

1185 The Police Act, section 12

1186 International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.8

Article 8: Trustworthiness

Standard: The public demands that the integrity of police officials be above reproach. Police officials shall therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undermine the public's confidence in a police force/service.

Article 10: Performance of duties

Standard: Police officials shall at all times fulfil the duties imposed upon them by law in a manner consistent with the high degree of responsibility and integrity required by their profession.

Article 11: Professional conduct

Standard: Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.

The Commissioner-General of Police is appointed by the President,¹¹⁸⁷ in consultation with a board that consists of the chairperson of the Police Service Commission, the retiring Commissioner and a Secretary of Ministries appointed by the President.¹¹⁸⁸ The Commissioner is appointed for four years and the President can extend his/her term by 12-month periods, providing it is in the public interest and the Commissioner is medically fit and not at retirement age.¹¹⁸⁹ The Commissioner has command and control of the ZRP, including the power to promote, suspend, reduce rank or discharge members other than an officer.¹¹⁹⁰ The Commissioner, in consultation with the Minister, can make Standing Orders regarding discipline and orderly conduct.¹¹⁹¹

The Police Act provides that the President can provide general directions of policy to the Commissioner in any matter relating to the ZRP, including in respect of the appointment, promotion, training and disposition of officers.¹¹⁹² The President can appoint any person to a commissioned rank, and promote, reprimand, suspend, demote, or discharge any officer of any rank.¹¹⁹³ Officers can be discharged on the grounds of ill-health,¹¹⁹⁴ or on the grounds of redundancy.¹¹⁹⁵

It is reported that ZRP officers who rise to the highest ranks are ZANU-PF supporters, who are themselves tasked with recruiting ZANU-PF supporters

1187 Constitution of Zimbabwe, section 93

1188 The Police Act, section 5

1189 The Police Act, section 6

1190 The Police Act, section 8

1191 The Police Act, section 9

1192 The Police Act, section 11

1193 The Police Act, section 18

1194 The Police Act, section 20

1195 The Police Act, section 21

to make up the lower ranks of police without consideration of training or qualifications.¹¹⁹⁶

Despite constitutional provisions that require the political independence of the ZRP, there are numerous and credible allegations that the ZPR function as the enforcement arm of the political executive, and more specifically, the Office of the President.¹¹⁹⁷ There is an overt partisan approach to policing in Zimbabwe, with senior ZRP officers providing public support to Mugabe.¹¹⁹⁸ It is reported that it is difficult for rank-and-file members to remain impartial due to the politicisation of the senior ranks of the ZRP, with members who support or sympathise with the MDC being threatened with demotion, suspension or transfer.¹¹⁹⁹ At a recent passing-out parade of new police recruits, it is reported that Police Commissioner-General Augustine Chihuri called for the police to uphold policies and programmes initiated by the Zanu-PF government such as the indigenisation and land-reform programmes.¹²⁰⁰

Impunity has been demonstrated to be rampant. For example, according to Human Rights Watch, the MDC sent a letter to the Attorney-General listing 183 victims of political killings, including the name and location of the killings, and called on the Attorney-General to order the Commissioner-General of Police to investigate. However, the MDC has not received a response from the Attorney-General, nor have the police followed up.¹²⁰¹

Police training and mandate

During the Universal Periodic Review (UPR) process, there were recommendations that Zimbabwe improve human rights training for security-sector personnel.¹²⁰² It is reported that the lower ranks of the ZPR are poorly trained.¹²⁰³

The Constitution provides that the ZRP have a mandate to preserve internal security and maintain law and order.¹²⁰⁴ The Police Act further provides that officers must perform their duties in accordance with the law and lawful directions.¹²⁰⁵

1196 Berg J (2005) *Police Accountability in Southern African Commonwealth Countries*. Cape Town: Institute of Criminology

1197 Musavengana T (2011) *Security Sector: No transition without transformation*, Open Society Initiative for Southern Africa. <http://www.osisa.org>, accessed 29 June 2012, p.30; and Human Rights Watch (2012) *Perpetual Fear: Impunity and Cycles of Violence in Zimbabwe*. New York: Human Rights Watch. <http://www.hrw.org>, accessed 29 June 2012, p.4

1198 Musavengana T (2011) *Security Sector: No transition without transformation*, Open Society Initiative for Southern Africa. <http://www.osisa.org>, accessed 29 June 2012, p.30

1199 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Zimbabwe*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 3 July 2012

1200 *The Zimbabwean* (29 June 2012) Chihuri calls for patriotism in the police force. http://www.thezimbabwean.co.uk/news/zimbabwe/59131/chihuri-calls-for-patriotism-in.html?utm_source=thezim&utm_medium=homepage&utm_campaign=listsection&utm_content=readmorelink, accessed 3 July 2012

1201 Human Rights Watch (2012) *Perpetual Fear: Impunity and Cycles of Violence in Zimbabwe*. New York: Human Rights Watch. <http://www.hrw.org>, accessed 29 June 2012, p.33

1202 Human Rights Council (19 December 2011) *Report of the Working Group on the Universal Periodic Review: Zimbabwe*, A/HRC/19/14,[14]

1203 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Zimbabwe*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 3 July 2012

1204 Constitution of Zimbabwe, section 93

1205 The Police Act, section 19

It is reported that the ZRP is poorly trained, underpaid and ill-equipped in terms of both operational and administrative resources, which has impacted on its ability to fulfil its mandate.¹²⁰⁶ Also, given the level of political interference and lack of effective accountability structures discussed elsewhere in this paper, confidence in the ZPR is low.¹²⁰⁷

Performance review and discipline

It is an offence for any member of the ZRP to contravene any provision of the Police Act, or to breach any of the offences specified in the schedule to that Act.¹²⁰⁸ The Police Act establishes a set of procedures for the investigation of unlawful conduct by members of the ZPR, and commensurate sanctions.¹²⁰⁹ The Commissioner-General of Police, in consultation with the Minister of Home Affairs, must establish Standing Orders in relation to the discipline, regulation and conduct of the ZRP.¹²¹⁰ The Police Act Schedule sets out the offences relating to discipline.¹²¹¹

A trial regarding a contravention of the Act can be presided over by the High Court, a magistrate's court, a board of officers, or an officer of or above the rank of superintendent.¹²¹² Trial proceedings will be 'as near as may be [or] be the same as those prescribed for criminal cases in the courts of Zimbabwe'.¹²¹³ The officer, or board of officers, can exclude all except legal representatives if they deem it necessary or expedient in the circumstances if publicity would be against the interests of justice, public safety, public order, morality or the protection of the privacy of those involved.¹²¹⁴ Trials before a magistrate will be held in a police camp or police station.¹²¹⁵

Article 9: Corruption and abuse of power

Standard: Police officials shall not commit or attempt to commit any act of corruption or abuse of power. They shall rigorously oppose and combat all such acts.

Corruption is criminalised, however, it is reported that the government has not implemented anti-corruption laws effectively or impartially, and that corruption

1206 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Zimbabwe*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 3 July 2012

1207 International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.50

1208 The Police Act, Part 5

1209 *Ibid.*

1210 *Ibid.*, section 9

1211 *Ibid.*

1212 *Ibid.*, section 29A

1213 *Ibid.*, section 35

1214 *Ibid.*, section 35

1215 *Ibid.*, section 46

is practised by officials with impunity.¹²¹⁶ Corruption is reported at ‘every level’ of the police force, with lower ranks tending to extort bribes from the public, and arbitrarily seizing goods at roadblocks for their own consumption.¹²¹⁷

The Constitution establishes an Anti-Corruption Commission with a mandate to take measures to address corruption, the abuse of power and other misconduct in both the private and the public sector.¹²¹⁸

The Police Act Schedule sets out the disciplinary offences, which include ‘moonlighting’.¹²¹⁹

There are numerous and credible reports that the ZRP are responsible for serious abuses of power without there being appropriate judicial action to address this alleged systemic abuse of power, or the consequences thereof.¹²²⁰

Article 12: Confidentiality

Standard: Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of the duty and needs of justice strictly require otherwise.

No information was available regarding police legislation or policy regarding confidentiality of information.

Article 13: Property rights

Standard: In the performance of their duties police officers shall respect and protect all property rights. This includes the economical use of public resources.

The Constitution provides protection against arbitrary search or entry.¹²²¹ Property searches and entry can be done in the interests of ‘defence, public safety, public order, public morality, public health or town and country planning’, where there are reasonable grounds to believe that the search or entry is necessary to prevent, investigate or detect a crime, the acquisition of property authorised under Article 16 of the Constitution, or for the purpose of enforcing a court judgment.¹²²²

1216 United States Department of State (2011) *Country Reports on Human Rights Practices for 2011: Zimbabwe*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 3 July 2012

1217 *Ibid.*

1218 Human Rights Council (19 July 2011) *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Zimbabwe, A/HRC/WG.6/12/ZWE/1*, [32].

1219 The Police Act, schedule 2

1220 International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.8

1221 Constitution of Zimbabwe, section 17(1)

1222 *Ibid.*

There are significant concerns about the ZRP treatment of private property, including in particular their actions during Operation Murambatsvina in 2005.¹²²³ During that Operation, international and domestic human rights standards governing evictions were set aside, and the ZRP was the agency responsible for the execution of the plan, which involved the demolition of high-density urban areas, resulting in a humanitarian crisis for the thousands who had lost their homes and livelihoods.¹²²⁴ Amnesty International reports that the evictions had a disproportionate impact on women.¹²²⁵

There are also reports that the police seized goods without providing a receipt, and looted shops as part of the government's policy of prescribing price controls on goods and services.¹²²⁶ Lawyers acting on behalf of the shop owners reported being threatened and intimidated by the police officers.¹²²⁷

Under the POSA, the police can stop, search and seize without a warrant if there are 'reasonable grounds' for believing the action is necessary in the interest of 'public safety, public order or public health, or for the prevention, investigation or detection of a criminal offence'.¹²²⁸

1223 Amnesty International (February 2011) *Zimbabwe: Briefing to the Pre-Session Working Group of the UN Committee on the Elimination of Discrimination against Women, 51st Session*, AFR 46/O14/2011, p.5

1224 Kajumulo Tibaijuka A (2005) *Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Murambatsvina, UN Special Envoy on Human Settlements Issues in Zimbabwe*. ww2.unhabitat.org/documents/ZimbabweReport.pdf

1225 Amnesty International (February 2011) *Zimbabwe: Briefing to the Pre-Session Working Group of the UN Committee on the Elimination of Discrimination against Women, 51st Session*, AFR 46/O14/2011, p.5

1226 International Bar Association (2007) *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*. London: International Bar Association, p.33

1227 *Ibid.*

1228 Public Order and Security Act, section 34

12

Conclusion

This review sought to gain an understanding of how the SARPCCO Code of Conduct is being implemented in countries in the region. Of the ten countries reviewed, it appears that the Code of Conduct has had little traction. Though the policing institutions in most countries were more or less aware of the Code of Conduct, there were often no copies publicly accessible, and it appeared that individual police officials were not fully aware of its provisions. Several countries have taken steps to incorporate the Code into their training materials, though this seems to be mainly where the training forms part of a training course or material that is arranged by SARPCCO itself. There is little evidence to suggest that the Code of Conduct provides a core guiding instrument for the countries or establishes a path for transformation and accountability.

On the other hand, international principles, treaties and guidelines and regional and international accountability mechanisms appear to have had a greater impact on systems of policing. Most of the countries surveyed had taken steps to ratify the key instruments. The international instruments are more detailed and specific, and are associated with direct accountability mechanisms and reporting requirements. These then, create a far more direct obligation on state parties to implement the international principles, with much clearer guidance on how to go about it. Where states do report to the regional or international mechanisms, they are required to do so in a particular format, against each of the key international principles. The Universal Periodic Review of the United Nations Human Rights

Commission is the only reporting obligation which each state under review has regularly conformed to and it provides a general overview of adherence to human rights principles, and recognises challenges and areas of concern. However, since it is a general review of all human rights obligations, it has only limited information relating to policing obligations specifically.

The SARPCCO Code of Conduct is a reflection of international law as regards policing, and it is an attempt to synthesise these principles into 13 key articles. Yet, these principles are not clearly articulated nor reduced to specific guidelines or principles. The indicators which APCOF developed were an attempt to distil these principles into specific aspects of policing and to link them to human rights principles. It is difficult to assess a country's progress with regard to these indicators for a number of reasons.

- » States are not required to report to SARPCCO or to any other regional body in terms of its performance against the articles, so there is no readily available information produced by states on each article. Nor does the SARPCCO Code of Conduct appear to provide a structure for police strategic planning or assessment of programme performance.
- » There is very little information available from most of the states under review. South Africa was the only country where it is easily possible to obtain information on the police. Legislation, policy, strategic plans, crime information and annual reports dating back more than a decade are available on the website, from which the researcher can draw conclusions regarding most of the SARPCCO Code of Conduct articles. In addition, there are numerous scholarly articles written about the police and police transformation. In contrast, though most of the other countries have a website for their police ministries or departments, these are seldom up to date and seldom contain archived and current information on the police and their performance. Nor were country researchers often able to obtain detailed information directly from the police. Police are often reluctant to provide this information due to a culture of secrecy regarding information pertaining to state apparatus, but more particularly, the police do not systematically collect information on police performance.
- » Because information was not always available, researchers often have to rely on information which is a few years old or on articles or assessments written some years ago. Accordingly, an assessment of this nature will inevitably be lagging behind recent developments or changes in policy.

Notwithstanding the limitations of the SARPCCO Code of Conduct, we have been able to gain more understanding of policing in each country and have identified some of the major achievements and challenges. Each country has

a unique history and development trajectory, and consequently the challenges facing the police service are different. However, many similar challenges exist. These include:

- » Many of the countries are dealing with the legacy of emerging from recent conflict or civil war, and have the challenge of changing mindsets and adapting from a militarised to professional mode of policing. In addition, many countries have incorporated former combatants into their police, often without sufficient re-training.
- » Many countries are struggling with inadequate funds and resources, and this has an enormous impact on the quality of policing, the provision of equitable services across the country, and on working conditions for police.
- » Insufficient funding also affects the quality and extent of independent, as well as internal, monitoring and oversight over the police. Several countries, for instance, have human rights institutions, but do not have the funds to provide for ongoing investigation or oversight.
- » Excessive use of force and abuse by police officials is a concern affecting all the countries in the region. Arbitrary arrest, excessive use of force during public demonstrations, the use of lethal force, and torture and abuse during investigation and interrogation of suspects are widespread practices. Though most countries have ratified the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, torture is not a criminal offence in any of the countries under review. Few of the countries have adopted legislative or other measures to prevent torture and ill-treatment.
- » There are generally widespread perceptions of corruption in the police. Several of the countries have adopted anti-corruption strategies, and some have instituted high-profile prosecutions of senior members of police. However, sustained measures are needed to combat corruption throughout the police, and successes need to be well publicised.

Angola

Angola has only recently emerged from a sustained period of civil war, and the democracy is new and still fragile. The Angolan National Police (PNA – *Polícia Nacional de Angola*) is a militarised force which operates according to the 2010 Constitution and policing legislation in which it is entrusted to ‘promote and respect the fundamental rights and freedoms’ of citizens. The PNA’s role is a challenging one where it is required to ensure safety and security despite low levels of insurgency in the Cabinda region, as well as to improve conditions for reconciliation and reconstruction to support the rebuilding of state institutions. A

legacy of civil war and people's negative experiences of uniformed forces have led to a low level of trust in the police. Yet, within this context, there are attempts to fulfil human rights commitments and establish a professional policing body. This is evident through improved police pay and training for police, though police are still required to work under poor conditions, especially in the rural areas.

One of the difficulties is the level of oversight and accountability structures for the police. The political elite retain a high level of influence over the police. There are no internal oversight mechanisms over the police, and the Ombudsman can only respond to complaints made to it. There is poor interaction between police management and oversight institutions. There are numerous allegations of abuse of force, torture and ill-treatment by the police, but no information is available on how many police are prosecuted for these violations. Angola needs to ratify the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, and take measures to domesticate its provisions into legislation.

Botswana

The Botswana Police Service (BPS) has, following independence, evolved from a paramilitary force to a more professionalised service. The police are guided by the Constitution, which protects fundamental rights and freedoms, and police receive regular basic and in-service training, which includes an element of human rights training. However, there are numerous complaints against the police, ranging from negligence and ill-handling of suspects, to abuse of force and unlawful killings of suspects. There have been more recent indications that public order policing has become less reliant on force and more professional, but operations together with the military forces have the worrying tendency to result in excessive use of force. Torture and ill-treatment of suspects during investigation is rife, particularly where suspects have been involved in high priority crimes such as diamond smuggling, narcotics and armed robbery.

Levels of trust in the police have increased over the years, though still less than half of the population reported trust in the police. There have been some prosecutions of police for abuse of power, though many officials are able to act with impunity. Botswana has fairly weak oversight mechanisms in the Directorate on Corruption and Economic Crime (DCEC) and the Ombudsman. There is a need to strengthen independent oversight and accountability of the police.

Lesotho

The Lesotho Mounted Police Service (LMPS) is the smallest police service in the region, and has adjusted to the transition from military rule and militaristic policing to a more professionalised service with apparent ease.

The LMPS suffers from severe financial constraints, which affect working conditions, uniforms and accommodation for police officials, and the distribution of motor vehicles and horses throughout the country. Conditions for detainees in police custody are very poor. There is a Child and Gender Protection Unit, which offers services for victims of gender-based violence.

There are several oversight mechanisms that include a mandate over the police, as well as the Police Complaints Authority (PCA) to monitor abuse of power and human rights violations. The PCA is limited in that it can only receive complaints from the Commissioner of Police, and can only make recommendations. The Ombudsman conducts police station visits and investigates complaints, though is constrained by a lack of resources and autonomy. Legislation regarding the use of force by police is very wide, and there have been several instances of excessive use of force, during public gatherings, as well as during arrest, as well as torture and ill-treatment during interrogation of suspects. Lesotho needs to ensure that torture is made a criminal offence in domestic law, and steps are taken to prevent torture and ill-treatment. Few police are charged or prosecuted for abuse of power, though several civil actions are brought against the state for compensation.

The LMPS has a vision of reducing corruption, but clear strategies need to be put in place to ensure this happens, and although prosecutions of senior members can reinforce widely held beliefs of corruption within the police, it also sends a clear message that corruption is not tolerated.

Malawi

The Malawi Police Service (MPS) was transformed by the 1995 Constitution into a more accountable and transparent police service operating within a human rights framework. Notwithstanding constitutional imperatives, in the last decade under the regime of President Mathurika the police were associated with brutality and political partisanship. New legislation was only adopted specifically for the police in 2010. Strategic plans have been developed to guide the MPS through its institutional reform into a more democratic police service, but there is a lot to be done with respect to putting these plans into effect. As one of the most poorly resourced countries in the region, Malawi experiences difficulties in translating its objectives into operation.

There is some attempt to instil human rights values into policing activities. There are a number of reporting procedures and mechanisms with oversight over the police created by the Constitution and legislation, but whose effectiveness is constrained by a lack of resources and funding. There have been few prosecutions of police for abuse of power or for human rights violations, despite there being numerous reports of torture, excessive use of force and other abuses by the police.

The Independent Complaints Commission still needs to be established to ensure proper investigation of allegations concerning the police.

There is some optimism for policing under the new presidency of Joyce Banda. However, significant financial investment in policing infrastructure, training, recruitment and oversight mechanisms, is required if the MPS is to achieve minimum standards under domestic law, the SARPCCO Code of Conduct and its international human rights obligations.

Mozambique

The *Polícia da República da Mocimboa* (Police of the Republic of Mozambique – PRM) has undergone significant reform since the end of the civil war in 1992, though it has been criticised for failing to fully actualise its constitutional, international and human rights obligations in daily operations. It has been constrained by shortages of resources, human rights violations, corruption and the culture of impunity. Although not all police are equipped with firearms on a regular basis, these are provided for special operations. There are numerous reports of police using excessive force during public demonstrations and of extrajudicial killings. Strategic reforms have also been criticised for not challenging the militarisation of police and for failing to address the lack of oversight and accountability of the police. The UN Human Rights Council has urged Mozambique to ensure that impartial and independent investigations are carried out in respect of allegations of torture and abuse.

A special unit was established to provide services to victims of gender-based violence, which is supported by civil society organisations. However, there is little to support victims of other crimes, and only civil remedies exist for victims of police abuse. The government has strengthened the training programme for police, but needs to ensure that human rights aspects are fully integrated into all aspects of training.

Mozambique is a large country with an extensive rural population, so more equitable distribution of personnel and resources across the country is required. An investment is needed to ensure humane detention of suspects in custody. A sustained investment is needed from the international and regional community to ensure that adequate resources and assistance is available for the implementation of PRM strategic plans.

Namibia

Namibia has taken steps to ensure compliance with international standards and instruments. The Police Act establishes the functions of police officers and governs their duties and responsibilities. Limitations on the use of force are established

by the Constitution, which also guarantees fundamental rights and freedoms. Working conditions for police officials have improved markedly over the last years, though there is still some difficulty fully assimilating former ex-combatants into the police service of the democracy. The Namibian Police Force (NamPol) has worked to transform itself from the brutal police associated with the apartheid regime into a more democratic and community orientated service. This is constrained to the extent that NamPol experiences shortages in resources, which curtail its ability to extend effective services throughout the country.

The laws and policies provide regulations regarding the use of force by police which are substantially in line with international principles, and police management has sent a clear message stating that excessive force is not tolerated. There have been several incidents of excessive use of force and torture of suspects, but there is limited impartial investigation and prosecution of these abuses. Several independent mechanisms do exist, but the Namibian Police Complaints and Discipline Unit (NPCDU) has yet to prove itself as an independent and effective oversight body over the police. Despite more selective recruitment policies, corruption remains a problem in the force, which the police need to address in a more systematic way. Namibia needs to adopt laws specifically to prevent and prohibit torture.

Conditions for people in custody are inadequate and overcrowded, even though the situation is closely monitored by the Ombudsman. A unit has been established to improve policing of women and child victims, but it is understaffed and poorly resourced.

Some uncertainty prevails over what police information may be shared with the public, and basic information on the police is not always available.

South Africa

South Africa has the largest and most well-resourced police service in the region with the result that it has been able to put in place a number of measures to promote policing that is democratic and based on human rights. These include extensive basic and in-service training, demographic transformation of the police service, the renovation of police cells to appropriate standards, and the establishment of special units to deal with victims of gender-based crimes.

Several oversight bodies exist, including the Independent Police Investigative Directorate, which documents allegations of police crime and misconduct and conducts investigations. Yet, faced with a challenge of extremely high crime rates, extensive violence and the use of firearms during the commission of crimes, South Africa has adopted something of a heavy-handed approach to dealing with suspects and police use of force remains at unacceptably high levels. Greater measures need to be taken to monitor the use of police weapons and to take action against those found to be in violation of the law or human rights standards. There are several

high profile prosecutions against police implicated in abuse, and the state pays a high cost for civil claims against the police.

Ongoing concerns of lack of integrity and corruption in the police have been exacerbated by the implication of the two most recent police commissioners in corruption. The implementation of the national Anti-Corruption Strategy and the Corruption and Fraud Prevention Plan at each police station needs to be closely monitored.

Swaziland

The Swazi King has ultimate authority over the Royal Swaziland Police (RSP) and consequently the police are frequently used to uphold the King's authority and to undermine opposition. The Police Act dates back to 1957 and is completely outdated and wholly inadequate. Although a new Police Bill was promulgated in 2010, this needs to be fully debated and enacted. Other legislation, such as the Suppression of Terrorism Act grants police extensive powers of arrest and detention, and the constitutional provisions on the use of lethal force does not comply with international standards. Police frequently prevent activists from attending public gatherings through unlawfully arresting them and driving them around or diverting them from their meetings, and have used excessive force in trying to disperse gatherings. Swaziland has not yet made torture a criminal offence, and there are frequent allegations that police use torture and other ill-treatment during interrogation of suspects. The police are seldom sanctioned for these excesses, and disciplinary processes are slow. There are, however, frequent civil claims brought against the state.

There is limited oversight over the police, as the Commission for Human Rights and Public Administration functions without a budget or adequate resources. There is some attempt to incorporate human rights standards into the training for police, and to professionalise policing through specialised training.

A Domestic Violence, Child Protection and Sexual Offences Unit has been established, and the police work together with civil society organisations to provide services to victims, but much work needs to be done to cater for the needs of victims of gender-based violence.

The police are severely affected by the national economic crisis with a shortage of funds affecting service delivery, resources and accommodation for police personnel.

Zambia

In the 48 years since independence, Zambia has adopted a constitutional and legal framework that largely conforms with international human rights principles, and

the police have adopted a framework supportive of professional policing. Much of these good intentions are hampered by lack of resources. The Zambia Police Service operates with only half its intended personnel strength, and police officials are poorly paid. Lack of resources affects day to day operations of the police, and result in severe overcrowding and poor treatment of people in custody. The rights of arrested and detained people are provided for in the Constitution, but are threatened by the Preservation of Public Security Act, which provides for indefinite detention under certain conditions.

Zambia has a well-established oversight system in the Human Rights Commission, which actively monitors police treatment and conditions in police custody, and the Police Public Complaints Authority (PPCA). The effectiveness of these bodies is unfortunately constrained by lack of funding and resources, and the PPCA has finalised few complaints pertaining to the police. There are very low levels of public trust in the police, who are widely perceived to be corrupt and ineffective. The Anti-Corruption Commission has largely failed to live up to its promise of tacking action against corrupt officials.

The legal framework regarding the use of force by police is weak and too permissive, and Zambia needs to adopt a law to criminalise torture or take steps to prevent it. There are numerous allegations of abuse of force and torture by police, but there appears to be some attempt to discipline and prosecute offenders, and complainants have access to civil claims for wrong doing.

A unit was established to deal with victim support, but little information is available regarding its implementation and impact.

Zimbabwe

The Zimbabwe Republic Police (ZRP) has been described as blatantly partisan in support of the ZANU-PF government, especially during election periods, and is responsible for numerous human rights abuses against opposition members and leaders, human rights defenders as well as ordinary civilians. The Constitution establishes several oversight bodies, including the Human Rights Commission and the Office of the Public Protector, but these seem to have little or no impact on curbing human rights abuses. Reports also suggest that the police operate with near impunity, and there is no discipline or criminal prosecution for police officials who violate human rights, with even some reports suggesting that police hinder any investigation into their actions or allegations of abuses by other state actors.

The police are discriminatory in the exercise of their functions. Arbitrary arrest, torture, harassment and detention are tools frequently used to oppress dissident voices, and women are particularly vulnerable to abuse.

Legislation, such as the Law and Order Maintenance Act and the Public Order Security Act, grants police extensive powers to use force and suppress

public gatherings. Torture is not a criminal offence, and Zimbabwe has not yet ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The courts have found that conditions in police custody are ‘degrading and unfit for holding criminal suspects’.

During the period of the Government of National Unity (GNU) there has been talk of security-sector reform, but, by and large, this has excluded the police. The ZRP are urgently in need of drastic reform, but this needs to occur within a political context that upholds human rights and values democracy, and within a democratic constitutional framework.

Recommendations at the regional level

In addition to the responsibilities of each country to ensure compliance with human rights and the SARPCCO Code of Conduct, there is also an important role for the Southern African Development Community (SADC) in promoting human rights compliant policing in the region, in particular, through the SADC Organ on Politics, Defence and Security Cooperation (OPDSC), which aims to promote peace and security in the region.

The Inter-State Politics and Diplomacy Committee (ISDSC), one of the Organ’s subcommittees, recognises SARPCCO as the vehicle for policing matters in the region.¹²²⁹ In 2011, SARPCCO was incorporated under the political authority of the OPDSC. The work of the OPDSC is guided by the Strategic Indicative Plan (SIPO), which provides an ‘enabling environment’ for a regional security framework.¹²³⁰ The core objective is ‘to create a peaceful and stable political and security environment through which the region will endeavour to realise its socio-economic objectives’.¹²³¹ In 2009, the SIPO expired and a revision is currently being developed for the next five-year period from 2010–2015.¹²³²

Among its objectives, the SIPO seeks to promote the development of democratic institutions and practices within the territories of state parties and to encourage the observance of universal human rights as provided for in the charters and conventions of the African Union and the United Nations.¹²³³

In a commentary of the revision of the SIPO, APCOF proposed that it be expanded to include a focus on articulating a vision for a desired form of policing

1229 SARPCCO (1999) *The Southern African Police Chiefs Cooperation Organisation*. Monograph No.43. Pretoria: Institute for Security Studies. <http://www.iss.co.za/pubs/Monographs/No43/TheSAPolice.html>, accessed 20 July 2012

1230 Southern African Development Community (2004) *Strategic Indicative Plan of the Organ on Politics Defence and Security Cooperation*. Gaborone: Southern African Development Community

1231 *Ibid.*

1232 Tait S (2010) Strategic Indicative Plan 2010–2015 for the Organ on Politics, Defence and Security Cooperation: Considerations for Policing in the Region. In Tait S and van der Spuy E (eds) *Cooperation and accountability in the Cross-border Policing in Southern Africa*. Cape Town: African Policing Civilian Oversight Forum and the Centre for Criminology, University of Cape Town, pp.97–104

1233 Southern African Development Community (2004) *Strategic Indicative Plan of the Organ on Politics Defence and Security Cooperation*. Gaborone: Southern African Development Community

in the southern African region.¹²³⁴ This can be supported by a code of conduct which articulates clear guidelines for its application, and which incorporates regular reporting responsibilities. The OPDSC can encourage greater regional cooperation on the crime and security threats that are overtly of a transnational nature (such as trafficking), but also on how the region can support local national policing efforts to promote greater safety and security. It can also play a vital role in promoting policing that is democratic and compliant with human rights. This can be supported by sharing best practice, and by training that supports transnational policing operations as well as addresses local domestic crime in an effort to develop a common standard of policing across the region.

APCOF recommended that the OPDSC could achieve this objective through:

- » Encouraging compliance with the SARPCCO Code of Conduct by developing clear guidelines for application and regular and institutionalised mechanisms for reporting on compliance;
- » Encouraging sustained cooperation between oversight agencies with both state and non-state actors, including the role of structures such as the SADC Parliamentary Forum, to share best practice and build knowledge and skills;
- » Promoting dialogue between the OPDSC, civil society and police on policing and security issues in the region; and
- » Encouraging the development of African knowledge and practice on policing and police oversight.¹²³⁵

¹²³⁴ Tait S (2010) Strategic Indicative Plan 2010–2015 for the Organ on Politics, Defence and Security Cooperation: Considerations for Policing in the Region. In Tait S and van der Spuy E (eds) *Cooperation and Accountability in the Cross-border Policing in Southern Africa*. Cape Town: African Policing Civilian Oversight Forum and the Centre for Criminology, University of Cape Town. pp.97–104

¹²³⁵ *Ibid*, p.102

African Policing and Civilian Oversight Forum

The African Policing and Civilian Oversight Forum (APCOF) is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF believes that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community. APCOF achieves its goals through undertaking research; providing technical support and capacity building to state and non-state actors including civil society organisations, the police and new and emerging oversight bodies in Africa. APCOF was established in 2004, and its Secretariat is based in Cape Town, South Africa.

This study reviews ten southern African countries' compliance with the Southern African Police Chiefs Cooperation Organisation (SARPPCO) Code of Conduct for Police Officials, and includes analyses of Angola, Botswana, Lesotho, Malawi, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe.

The SARPPCO Code of Conduct was approved in 2011 and is intended as a minimum standard for policing in the region. It is founded on principles such as respect for all human life, reverence of the law, integrity, respect for property and service excellence. It recognises that human rights norms and ethical practices are essential aspects of professionalising the police services in the region. The Code of Conduct outlines 13 articles, which are intended to guide police organisations in terms of achieving these objectives.

The African Policing Civilian Oversight Forum (APCOF) recognises that policing and policing policy in many countries in the region continue to be in processes of development. This study is therefore intended as a progress report, reviewing positive developments in countries towards the achievement of the standards set by the Code of Conduct, as well as noting the key problems and challenges that remain.

This report is the product of collaboration between a range of civil society organisations, academic institutions and police organisations in the region. It is intended for police organisations, policy-makers, civil society organisations and donors with an interest in strengthening policing and police accountability in the reviewed countries and in the region.

The Open Society Initiative for Southern Africa (OSISA) and the Open Society Foundation for South Africa (OSF-SA) are acknowledged for their support to this study.

