

Standard Operating Procedures On Investigation And Prosecution Of Serious Human Rights Violations Committed by Police Officers



IPOA Independent Policing
Oversight Authority



 **UNITED NATIONS
HUMAN RIGHTS**
OFFICE OF THE HIGH COMMISSIONER

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FOREWORD FROM DPP

I am pleased to present to you the Standard Operating Procedures (SOPs) on investigation and prosecution of serious human rights violations. These SOPs, the first of its kind in the criminal justice system will enhance collaboration, coordination and organizational partnership.

I am confident that the Tripartite Task Force - comprising the Independent Policing and Oversight Authority (IPOA), the Internal Affairs Unit (IAU) and Directorate of Criminal Investigations (DCI) which are under the National Police Service (NPS), and the Office of the Director of Public Prosecutions (ODPP) - is an exceptional approach to address the issues of human rights abuses.

In order to ensure efficiency in the investigation of human rights related offences, there is need to have a close cooperation and collaboration between the ODPP, IPOA and NPS.

The objective of these SOPs is to ensure effective coordination between ODPP, IPOA and NPS in order to optimize the use of criminal justice system in dealing with human rights violations and related offences. The SOPs are intended to provide guidelines on how the ODPP, IPOA and NPS will interact in investigation and prosecution of human rights related offences committed by police officers.

I know that the SOPs will serve as a great tool to investigators and prosecutors in addressing serious human rights violations.



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DIRECTOR OF PUBLIC PROSECUTIONS

ACKNOWLEDGEMENT

Article 244 of the Constitution of Kenya, requires the National Police Service to, amongst others, comply with the constitutional standards of human rights and fundamental freedoms.

The Standard Operating Procedures (SOPs) on Investigation and Prosecution of Serious Human Rights Violations committed by police officers will provide a clear guidance to the key agencies involved in the investigation and prosecution of serious human rights violations by police officers. The SOPs are therefore a critical mechanism in the realization of that Constitutional dictate.

We would therefore like to express thanks and appreciation to the Director of Public Prosecutions (DPP) for convening the various agencies involved in the process that has led to the development of this important document. We would also like to thank the Inspector General of the National Police Service for his support and guidance without which the development of the SOPs would not have been possible.

We would like to thank the Office of the High Commissioner for Human Rights (OHCHR), and in particular, Ms. Li Fung (Senior Human Rights Adviser, OHCHR), Ms. Beverline Ongaro (Human Rights Officer), Ms. Jemimah Terresiah Collins Aluda (Consultant, OHCHR) and Ms. Maxine Marcus (Consultant, OHCHR) for their support throughout the process by providing expert assistance.

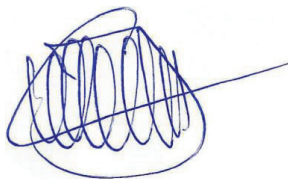
We also acknowledge the invaluable contribution of all internal and external stakeholders; their views, critique and contributions that enriched the development of the SOPs.

Last but not least, we would like to give special thanks and acknowledge the members of the Task Force on investigation and prosecution of serious human rights violations led by the Chairperson, Mr. Edwin Okello (ODPP), Mr. Victor Mule (ODPP), Mr. Alloys Kemo (ODPP), Mr. Alexander Muteti (ODPP), Mr. Charles Orinda (ODPP), Ms. Gikui Gichuhi (ODPP), Mr. Solomon Wabomba (ODPP), Ms. Linda Ndambiri (ODPP), Ms. Jackline Njagi (ODPP), Ms. Agatha Lango Abang (ODPP), Ms. Fatma Ahmed (ODPP), Ms. Caroline Ngigi Karemi (ODPP), Ms. Chrissy Mwenda (ODPP), Mr. David Nderitu (IPOA), Mr. Jeremiah Arodi (IPOA), Mr. Festus Kinoti (IPOA), Mr. Evans Okeyo (IPOA), Ms. Diana Watila (IPOA), Mr. Emmanuel Lagat (IPOA), Mr. Humphrey Khaunya (IPOA), Ms. Tabitha Kimotho (IPOA), Mr. Okal Mwangi (IAU), Mr. Wilhelm Kimutai (IAU), Mr. Aggrey Musoga (IAU), Ms. Esther Nganga (IAU), Mr. Nephath Marubu (DCI), Mr. Charles Wanjohi (DCI), and Mr. David Wafula (DCI), for their steadfast commitment and dedication in bringing this document to a successful completion.

It is our hope that the SOPs will contribute immensely not only to ensuring expeditious access to justice by victims of serious human rights violations by the police but also toward the realization of the aspiration of the Kenyan people for a professional and accountable National Police Service.



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ABBREVIATIONS

CSO	Civil Society Organisation
DCI	Directorate of Criminal Investigations
DNA	Deoxyribonucleic Acid
IAU	Internal Affairs Unit
IG	Inspector General of National Police Service
IO	Investigating Officer
IPOA	Independent Policing Oversight Authority
NPS	National Police Service
NPSC	National Police Service Commission
ODPP	Office of the Director of Public Prosecutions
SOPs	Standard Operating Procedures
SV	Sexual Violence
WPA	Witness Protection Agency

LIST OF STATUTES

- a) Constitution of Kenya, 2010
- b) Criminal Procedure Code, Chapter 75 Laws of Kenya
- c) International Crimes Act, No. 16 of 2008
- d) Independent Policing Oversight Authority Act, No. 35 of 2011
- e) National Police Service Act, No.11A of 2011 (with the Amendment No.11 of 2014)
- f) National Coroners Service Act, No. 18 of 2017
- g) Office of the Director of Public Prosecutions, No. 2 of 2013
- h) Penal Code, Chapter 63 Laws of Kenya
- i) Prevention of Torture Act, No.12 of 2017
- j) Sexual Offences Act, No. 3 of 2006
- k) Victim Protection Act, No. 17 of 2014
- l) Witness Protection Act, No.16 of 2006

INTERNATIONAL INSTRUMENTS

- a) International Covenant on Civil and Political Rights (ICCPR)
- b) United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- c) The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)

DEFINITION OF TERMS

Evidence:	“Evidence” denotes the means by which an alleged matter of act, the truth of which is submitted to investigation, is proved or disproved; and, without prejudice to the foregoing generality, includes statements by victims, witnesses, accused persons, admissions, and any other factual material which serves to prove a matter at issue.
Forensic evidence/ Exhibit:	Evidence relied upon in an investigation, usable in a court of law, obtained and examined by scientific methods such as ballistics, fingerprints, blood tests, DNA tests etc.
Police:	“The Police” means a member defined under section 2 of the National Police Service Act and includes— any person or body employed by it; or acting on its behalf, under its control or at its behest; and any other person for the time exercising Police powers under any written law. ¹ This includes special officers under section 72 of the National Police Service Act.
Sexual Violence:	Crimes of sexual violence are specifically defined and described in Kenya’s national legislation, specifically in the Sexual Offences Act, No.3 of 2006. These SOPs endorse the World Health Organization definition of sexual violence (SV) as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of relationship to the survivor, in any setting including but not limited to home and work.” ² Sexual violence includes incidents or patterns of gender-based violence encompassing any conduct of a sexual nature, including but not limited to rape, committed against women, men, girls, boys, by force, or threat of force, or

¹Section 2, Independent Policing Oversight Authority Act, No. 35 of 2011.

² https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf accessed on 12 September, 2020.

by coercion or by taking advantage of a coercive environment or the conduct was committed against a person incapable of giving genuine consent or is not limited power.³

Victims:

The Victim Protection Act, No. 17 of 2014 defines “victim” as “any natural person who suffers injury, loss or damage as a consequence of an offence” The parties to these SOPs consider victims of violations as covered by these SOPs to be persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. The Victim Protection Act also defines “immediate family” of the victim to mean “the victim’s spouse, children, parent, grandparent, stepchild, stepsister, stepbrother, or stepparent and where the victim is a child, the guardian.” It defines “dependents” as having the “meaning assigned to it under the Law of Succession, No.160 Laws of Kenya. ”

Serious Violations of Human Rights:

Serious violations of human rights include cases of death or serious injury while in Police custody, which are the result of Police action or were caused by members of the National Police Service while on duty,⁴ sexual offences, torture, cruel inhuman and degrading treatment, unlawful arrest and detention, enforced disappearance, assault and obstruction of justice, as well as any violations of international human rights norms binding on Kenya as per Article 2 of the Constitution.

³See the UN Analytical and Conceptual Framing of Conflict-Related Sexual Violence, June 2011 and the Guidance Note of the Secretary General on Reparations for Conflict Related Sexual Violence of June 2014.

⁴Section 25 (1) Independent Policing Oversight Authority Act, No. 35 of 2011.

SECTION A: MANDATES OF VARIOUS AGENCIES

1. Article 157 of the Constitution of Kenya provides for the establishment of the Office of the Director of Public Prosecutions (ODPP). Article 157(6)(a) provides that the ODPP shall exercise State powers of prosecution and may institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed.⁵
2. The Independent Policing Oversight Authority Act, No. 35 of 2011 provides for the establishment of the Independent Policing Oversight Authority (IPOA); with a mandate to: hold the Police accountable to the public in the performance of their functions; give effect to the provisions of Article 244 of the Constitution that the Police shall strive for professionalism and discipline and shall promote; practice transparency and accountability; and ensure independent oversight of the handling of complaints by the Service.
3. Article 243 of the Constitution of Kenya provides for the establishment of the National Police Service (NPS). Section 35 of the National Police Service Act, No. 11A of 2011 provides for the functions of the Directorate of Criminal Investigations (DCI) which include, among others, undertake investigations on serious crimes including terrorism, detection and prevention of crime, apprehension of offenders, and perform any other function conferred on it by any other written law.
4. Internal Affairs Unit (IAU) is a Unit within the National Police Service established under section 87 of the National Police Service Act, with the mandate of receiving and investigating complaints against police. Sub-section 7 further states that the Unit shall be located in a separate office from the rest of the service.
5. The Witness Protection Agency (WPA) is a body corporate established under the Witness Protection Act, No. 16 of 2006. The object and purpose of the Agency is to provide the framework and procedures for giving special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies as stated in Section 3B of the Witness Protection Act, No. 16 of 2006.

⁵Section 5(2) (a) the Office of the Director of Public Prosecutions Act, No. 2 of 2013.

SECTION B: RATIONALE

6. Effective partnership between the ODPP, IPOA and NPS through the DCI and IAU is crucial in the effective pursuit of their mandates more specifically in the investigation and prosecution of offences involving police officers and other serious human rights violations. The ability to conduct effective, timely and comprehensive investigations has been frustrated due to lack of teamwork and collaboration as a result of various reasons including; overlapping mandates, misunderstanding of mandates, non-cooperation and mistrust between institutions. This has led to delay in access to justice for the victims of police violations.
7. Due to the above highlighted gaps and challenges it is desirable for the ODPP, IPOA, DCI and IAU to develop and implement these SOPs to address the concerns to ensure accountability for violations and protection of victims and witnesses.
8. It is envisaged that the SOPs shall lay down necessary procedures that are consistent with high standards of uniformity and conformity in handling such kind of situations. These SOPs are subject to the Constitution of Kenya and to all prevailing legislation.

SECTION C: OBJECTIVES

9. The main objectives of these SOPs are to:
 - a) Develop a structured framework for enhancing accountability and protection of victims in investigation and prosecution of offences in relation to serious human rights violations committed by police officers;
 - b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law; and
 - c) Provide effective remedies to victims of a human rights violations with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation.
10. Particularly, these SOPs seek to:
 - a) Provide a clear understanding of each party's roles and responsibilities in the management of complaints and at the investigative and prosecution stages of a case;
 - b) Improve the efficiency of prosecutions by identifying the key goals and implementing strategies to enhance the quality of investigations and prosecutions;
 - c) Standardize and bring consistency in prosecuting offences committed by police officers;

- d) Ensure that the investigative and prosecuting agencies adhere to the principles of human rights and accountability as laid down in the Constitution and all other written laws and policies;
- e) Ensure that investigators and public prosecutors are aware of, protect and uphold the rights of victims and witnesses of offences committed by police officers; and
- f) Enhance effective and efficient cooperation, collaboration and coordination between the agencies and other stakeholders in the investigation and prosecution of offences committed by police officers.

SECTION D: GUIDING PRINCIPLES

11. These SOPs shall be guided by Chapter 4, Articles 10 and 232 of the Constitution of Kenya on the national principles and values, and the right to effective remedy which entails bringing justice against perpetrators of human rights abuses and also to provide appropriate reparation to victims.
12. Particularly, the SOPs is guided by the following principles:
 - a) Accountability for violations specifically by those committed by the very persons charged with protecting those rights;
 - b) Respect for human dignity especially victims and witnesses of serious human rights violations;
 - c) Transparency and provision to the public of timely and accurate information;
 - d) High standards of professional ethics in handling complaints and cases of serious human rights violations including cases occasioned by police officers;
 - e) Efficient, effective and economic use of resources in investigation and prosecution;
 - f) Mutual respect for each other's independence in decision making;
 - g) Recognition that all organizations exist to serve the public in the interests of justice;
 - h) Understanding the impact our work has on the wider public confidence in each organization;
 - i) Recognition that investigatory and prosecutorial work impacts directly on the lives of individuals and on other organizations;
 - j) Recognition that neither organization works in isolation but must engage appropriately with each other;
 - k) Recognition of the importance of the timely decision making;

- l) Recognition that by working together we will better serve the public, promote public confidence, manage the impact of our work on others, improve our operational effectiveness and efficiency thereby improving the value of our publicly funded work;
- m) Recognition that appropriately open and timely communication, information sharing, decision making and coordination of activities will facilitate effective partnership; and
- n) Recognition that obstruction of justice activities carried out by police must also be prosecuted, and prevented through the direct orders from senior command prohibiting any such activities which interfere in the administration of justice.

SECTION E: LEGAL FRAMEWORK

13. The Constitution of Kenya, 2010 provides for a comprehensive Bill of Rights, which guarantees Kenyan citizens fundamental rights and freedoms while protecting them from excessive use of force by the police officers. The Constitution also provides for the right to health which requires timely, affordable, non-discriminatory access to quality medical assistance for survivors. The right to health includes collection and management of forensic evidence with the aim of prosecution of sexual violence and providing effective remedies to survivors of sexual violence. Article 38 of the Constitution, read together with Article 81(e) (ii), safeguards everyone's right to exercise their political rights either as voters or candidates in free and fair elections devoid of violence.
14. According to the Constitution, international and regional human rights treaties and conventions ratified by Kenya are part of Kenyan law. Kenya is a State Party to several relevant human rights treaties including: the International Covenant on Civil and Political Rights (ICCPR), UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol).
15. Under international human rights law, Kenya must adopt and implement necessary legislative, regulatory, institutional and all appropriate measures to: prevent; protect, conduct effective and timely investigations, prosecute acts of sexual violence and all other crimes committed by security forces, provide adequate remedies and reparations to not only victims of sexual violence but also all other victims of crime by security forces. Specifically, Article 2(3) of the ICCPR imposes an obligation on countries to provide remedies and reparation for the victims of human rights violations.
16. Article 5(a) of the Independent Policing Oversight Authority Act, No. 35 of 2011 provides for the objective of the Authority which is to hold the Police accountable to the public in the performance of their functions.
17. Human rights standards should guide investigation and prosecution of cases related to police action or inaction.

18. In this regard, these SOPs is based on the following domestic laws:

- a) The Constitution of Kenya, 2010
- b) The International Crimes Act, No. 16 of 2008
- c) Criminal Procedure Code, Chapter 75 Laws of Kenya
- d) Independent Policing Oversight Authority Act, No. 35 of 2011
- e) National Police Service Act, No. 11A of 2011 (with the Amendment No. 11 of 2014)
- f) National Coroners Service Act, No. 18 of 2017
- g) Office of the Director of Public Prosecutions Act, No. 2 of 2013
- h) Penal Code, Chapter 63 Laws of Kenya
- i) Prevention of Torture Act, No.12 of 2017
- j) Sexual Offences Act, No. 3 of 2006
- k) Victim Protection Act, No. 17 of 2014
- l) Witness Protection Act, No. 16 of 2006

The SOPs are also based on the International Legal Instruments as per Article 2(5) of the Constitution of Kenya.

SECTION F: LIAISON BETWEEN AGENCIES

- 19.** The ODPP, IPOA and IAU will ensure that a liaison person is appointed in each Regional Office who will act as a point of contact for the agencies in those Regions. The liaison person shall be part of the Task Force Team.
- 20.** The liaison person will bear responsibility for ensuring contact is made with that liaison officer to arrange a face to face consultation, telephone conference or request for written advice depending on the circumstances of the case. The regional contact person shall report to the Joint Implementation Committee and ultimately to the Heads of the various agencies.
- 21.** The ODPP liaison officer in each region shall maintain appropriate contact points with all relevant investigative agencies.
- 22.** In any case referred under these SOPs that demands the involvement of any of those agencies, the liaison officer shall make contact through identified contact points as soon as practicable.
- 23.** The agency liaison officers at the region level shall operate as a Regional Joint Implementation Committee and report to the National Joint Implementation Committee.

24. The Joint Committee shall exercise discretion in communicating actions taken by respective regional committees.
25. The Regional Joint Committees shall collect data from the respective agencies on the offences and submit them as required by the agencies on a quarterly basis.
26. Where a complaint is lodged with one party that falls within the mandate of the other party (mandated party), the party where the complaint is lodged will liaise with the other party and the complainant with a view to determining the most appropriate way to manage the complaint. Where issues raised in the complaint fall under the responsibilities of both parties the parties will liaise and decide whether the issues raised require:
 - a) Management by IPOA with input from ODPP;
 - b) Management by ODPP with input from IPOA;
 - c) Management of IAU with input from IPOA;
 - d) Separation of the complaint so that ODPP and IPOA manage those parts within their own responsibilities; and
 - e) A combination of the above.
27. As appropriate the ODPP, IPOA, DCI and IAU will consult each other in relation to matters where the other party has specific expertise or qualification that is relevant to an investigation.
28. If one party becomes aware during a complaint investigation that the other party is also considering a complaint on the same matter then the first party will advise the designated contact officer of the other party, with a notification to the complainant.
29. The agencies through the National Joint Implementation Committee may from time to time develop guidelines on receiving, handling and processing of aforementioned complaints including complaints from other agencies that require cooperation between them.
30. The agencies will share the trends/patterns emanating from complaints received by each party.

i. Taking over investigations initially conducted by the National Police Service

31. Where the NPS commences investigations in a matter falling within the mandate of the IPOA, it shall immediately notify IPOA of the commencement of such investigations pursuant to section 25(2) of the IPOA Act.
32. Where IPOA deems it appropriate upon receipt of such notification it may take-over such investigations regardless of where the complaint was first reported.
33. Where IPOA decides to take over such investigations the Authority shall in writing advise the relevant agency of its decision to take over the investigations.
34. Upon receipt of such advice the relevant investigative agency shall handover the investigation file and all relevant evidence including exhibits, in the time stipulated in the advice. IPOA shall

conduct the investigation speedily to ensure that all the areas are covered and evidence is preserved.

35. If the responsible NPS officer does not comply with the requirements of Section 25 of the IPOA Act, action will be taken according to the NPS Standing Orders, and/or in accordance with IPOA Act Section 25(3), and/or in accordance with ODPP Act Section 27(2) and (3), and/or in accordance with the Penal Code.
36. Investigations taken over in accordance with this part shall be conducted in accordance with these SOPs as investigations conducted by IPOA.

ii. Parallel investigations

37. The ODPP will inform IPOA of any matters recommended for prosecution by the NPS or any other agency which fall within the ambit of IPOA's mandate before commencing such prosecution.
38. Where matters within the investigative mandate of IPOA have been registered in court by the NPS without the notice of IPOA, IPOA may request the ODPP to stay or withdraw such cases pending completion of investigations by IPOA.
39. The Authority shall fast track investigations of any cases it has sought for stay of matters in court as set out above and complete the investigations within reasonable time.

SECTION G: MAJOR CASE MANAGEMENT

40. Investigations into crimes by police officers amounting to serious violations of human rights, including obstruction of justice in relation to crimes by police officers shall be carried out by IPOA.
41. With regard to investigation of complex cases of serious human rights violations by the police, IPOA may request assistance from the ODPP in accordance with Section 50(3) of the ODPP Act. Conduct of such investigations shall be in accordance with the provisions of Part III of the ODPP Act, the IPOA Act and any other procedures to be adopted between the parties.
42. In appropriate cases IPOA may request NPS in writing to arrest a suspect pending completion of its investigations.
43. Upon arrest the Investigating Officer shall liaise with the ODPP for custodial orders.

SECTION H: DECISION TO CHARGE

44. The ODPP is guided by the Constitution of Kenya (Art 157), Fair Administrative Action Act, No. 4 of 2015, the ODPP Act and National Prosecution Policy, and Decision to Charge Guidelines in making the decision to charge. Each case considered by the ODPP must pass the prosecutorial tests set out in the National Prosecution Policy, and Decision to Charge Guidelines. It is the duty of prosecutors to review, advise, prosecute cases and ensure that the law is properly applied in accordance with the principles set out in the National Prosecution Policy. A prosecution can only start or continue when the case has passed the necessary prosecutorial tests.
45. The ODPP shall be responsible for the review of evidence and the presentation of charges in court within reasonable time. The manner in which these duties are carried out and independent prosecutorial discretion exercised are governed by the ODPP Prosecution Guidelines. The prosecutor may consult and inform the investigator of decisions made and registration of charge sheets with a view to removing any administrative barriers.

SECTION I: INTERDICTION

46. Immediately the police officer takes plea in court the Authority will immediately notify the IG in writing with a copy to the NPSC and the IAU for their relevant administrative actions to be taken according to the Service Standing Orders.
47. The IG and the NPSC will immediately cause the interdiction of the officer in accordance with the NPS Act and NPS Standing Orders.
48. After conclusion of the matter in court, the Authority will inform the IG, the NPSC and the IAU in writing of the outcome of the matter.

SECTION J: PLEA BARGAIN

49. ODPP will consult IPOA and the victims of the crime before making a decision to enter into a plea bargaining arrangement as per the ODPP Plea Bargaining Guidelines and Explanatory Notes.⁶

⁶According to the ODPP Plea Bargaining Guidelines and Explanatory Notes, 2019.

SECTION K: CONDUCT OF THE CASE IN COURT

i. Disclosure

50. The objective of this section is to develop a procedure between IPOA and ODPP in assisting the ODPP to meet its disclosure obligations.
51. In assisting the ODPP meet that obligation the IO will:
- a) Liaise with the ODPP to ensure disclosure is made immediately after plea;
 - b) Ensure strict compliance with any protective and confidentiality measures;
 - c) Prepare an inventory of all the documents supplied to the defence;
 - d) The IO will liaise with the ODPP to bring to the attention of the court and defence any evidence not yet disclosed to either the defence or the court;
 - e) Inform the ODPP as soon as reasonably practicable if additional relevant material which could assist the defence is acquired by the authority and which the prosecution may be obliged to disclose to the defence; and
 - f) Identify to the ODPP any material which appears to raise questions of privilege.

ii. Bail

52. Where bail is granted and the prosecutor is dissatisfied, the prosecutor shall:
- a) Immediately notify the court of the intention to review; and
 - b) Seek a stay on release of the suspect pending the conclusion of the review.
53. Where bail is not opposed, the prosecutor shall consider appropriate conditions that may be attached such as regular reporting to relevant agency. He/she will notify the IO of any conditions attached to bail.

iii. Pre-Trial Conference

54. Following a plea of 'not guilty', the prosecutor shall request a pre-trial mention/conference with the court, with prosecution and defence to attend. This will be in order to:
- a) Set a timetable for service of evidence not already supplied to defence and notify if any further evidence is to be obtained and served;
 - b) Confirm witness availability;
 - c) Inform the court of any special arrangements that would need to be made with regard to taking evidence from particular witnesses;

- d) Inform the court where a court visit is required to view an exhibit;
 - e) Inform the court where photographs will be used for bulky exhibits and ascertain if there is any objection;
 - f) Confirm the requirement for expert witnesses and seek admission/agreement if possible;
 - g) Inform the court of issues relating to perishable items and consider acceptable methods of production before the court; and
 - h) Address the release of exhibits to their owners and clarify obligation of owners to return to the court with exhibit as and when required.
55. The prosecution shall provide a copy of the evidence to be relied upon to the judge presiding over the pre-trial mention/conference in advance of the hearing.

iv. Orders Post Conviction

56. Upon conviction the prosecutor shall apply for:
- a) Release of exhibits to the owners or the relevant government agency where applicable; and
 - b) Compensation under the Victim Protection Act, where appropriate.
57. Where forfeiture is sought the prosecutor shall liaise with relevant government agency to apply for forfeiture of assets.
58. Upon sentence of a foreign national to a term of imprisonment, the prosecutor shall be responsible for informing the immigration point of contact as to the anticipated date of release. The immigration authorities shall bear responsibility for contact prison authorities to ensure that the suspect is deported from a place of custody without delay.

SECTION L: HANDLING VICTIMS AND WITNESSES

i. Rights of Victims

59. The Victim Protection Act provides that victims are entitled to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. Full and effective reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
60. Measures to protect witnesses and victims are essential to ensuring that critical testimony is available during criminal processes and that victims can participate. It is essential that the type and degree of victim participation are considered and that adequate structures are established for protecting those who participate.

- 61.** These SOPs recognize that a victim shall have the right:
- (i) To be informed about the judicial and trial processes as well as the rights and responsibilities of witnesses (where a victim shall be a witness for the prosecution's case);
 - (ii) To be informed upon request about the progress of investigations being conducted by police or IPOA (except where and only insofar as such disclosure might jeopardize the investigation);
 - (iii) To be advised upon request of the charges laid against the accused and of any modifications to such charges and the reasons for such modifications, and where appropriate, the reasons for charges not being laid;
 - (iv) To be advised upon request of the reasons for accepting a lesser charge and a plea agreement where appropriate;
 - (v) To be dealt with at all times in a sympathetic, constructive and reassuring manner with due regard to the victim's personal situation, rights and dignity during the conduct of the criminal trial. Where the witness is a victim she may be called upon to write a Victim Impact Statement for presentation before the court by the prosecutor;
 - (vi) To be advised upon request of the outcome of criminal proceedings and be fully appraised of the sentence when imposed and its implications; and
 - (vii) To be protected from unnecessary contact with the accused and defence witnesses during the course of the trial. To have their privacy and confidentiality respected by all actors involved in the criminal justice system. The address and other personal details and information whose disclosure is likely to prejudice the security and person of a victim shall not be disclosed unless deemed material to the defence.
- 62.** The Agencies shall strive to ensure collaboration with state and non-state actors in the protection of victims and witnesses.
- 63.** Investigating Agencies shall:
- a) Ensure that, if needed, measures are taken to ensure the protection and safety of victims from intimidation and retaliation;
 - b) Endeavor to develop victims and witnesses referral pathways by collaborating with CSOs and other entities where possible in every region for specialized support;
 - c) Inform victims without delay of the availability of health and social services and other relevant assistance;
 - d) Provide without delay specialist care for women who have suffered violence;
 - e) Develop investigative techniques that do not further degrade women who have been victims of violence; and

- f) Give particular attention to victims who have special needs because of the nature of the harm inflicted on them or because of factors such as race, colour, gender, sexual orientation, age, language, religion, nationality, political or other opinion, disability, ethnic or social origin etc.

ii. Witness Expenses

- 64. During pre-trial, the prosecutor may make arrangements for facilitation of the witness expenses under the ODPP Witness Facilitation Fund.
- 65. During the trial, the prosecutor shall make an application to the trial court for witness expenses.

iii. Vulnerable and Intimidated Victims and Witnesses

- 66. IPOA or any other Investigative Agency shall work with prosecutors to accommodate as much as is reasonably possible the special needs of potential witnesses, especially those who are vulnerable and intimidated, and accord them psychosocial support.
- 67. When dealing with a vulnerable and intimidated witness the prosecutor shall:
 - a) Make an application before the court to have proceedings heard in camera, or for the use of a witness protection box depending on the circumstances surrounding the case;
 - b) Alter the sitting arrangement to safeguard vulnerable and intimidated witnesses;
 - c) Examine the witness through an intermediary: an intermediary may be appointed by the court to assist the witness to give their evidence at court. They can also provide communication assistance in the investigation stage: approval for admission of evidence so taken is then sought retrospectively; and
 - d) The intermediary is allowed to explain questions or answers so far as is necessary to enable them to be understood by the witness or the questioner but without changing the substance of the evidence.

iv. Witness Protection

- 68. IPOA is responsible for identifying and communicating to the Witness Protection Agency the witnesses who may require their support during pre-trial and post trial.

SECTION M: DATA COLLECTION AND TRACKING OF CASES

69. IPOA shall keep proper and accurate records of all cases under investigation and awaiting decision.
70. The ODPP shall also maintain a proper register of cases forwarded from IPOA for advice with stipulated timelines for feedback.
71. The parties shall work towards an integrated system to enhance tracking of cases at every stage and decisions made by respective agencies.
72. Once a decision to charge has been made and plea has been entered, all subsequent mentions and hearings shall be documented in the court attendance sheet by the ODPP to ensure consistency in tracking of cases in court.
73. The Agencies shall keep proper records of cases according to their data collection systems.
74. The Regional Offices shall keep continuous update of their cases and present information to desk officers for ease of follow-up.
75. The Agencies shall keep a proper record of all concluded matters in order to identify trends and areas of improvement.
76. All parties will keep confidential at the investigative stage any information shared by either party that is indicated to be confidential.
77. The parties shall ensure that any information shared with the media does not affect the outcome of the investigation or prosecution.
78. The parties shall have regular meetings with the respective communications offices and organize community engagement forums to improve relations between the communities and the authorities thus enhancing evidence gathering and community support to the authorities.

SECTION N: MONITORING AND EVALUATION

79. The parties will establish a National Joint Committee to:
 - (i) Implement the provisions of these SOPs;
 - (ii) Consider and make recommendations about matters requiring action by the parties;
 - (iii) Ensure that a consistent national approach is taken to issues arising in prosecutions;
 - (iv) Deal with issues of national importance and policy;

- (v) Resolve any conflicts that may arise between the parties; and
 - (vi) Manage complex cases and cases of public interest.
- 80.** The composition of the Joint Committee will be determined by the Heads of the parties to these SOPs.
- 81.** The Joint Committee in partnership with the relevant Agencies, shall provide quarterly reports to the Heads of the various Agencies which shall include an overview of cases conciliated upon, and where appropriate highlight areas that need review in ensuring compliance with its decisions by public and individual bodies.

SECTION O: DISCIPLINARY PROCEEDINGS

- 82.** The IAU shall investigate police misconduct and make recommendations to the IG, NPSC and ODPP accordingly.
- 83.** Disciplinary proceedings against police officers shall be undertaken by the IG and NPSC respectively in accordance with the NPS Standing Orders. This shall be undertaken whether prosecution has ensued or not.

SECTION P: JOINT TRAINING

- 84.** The parties shall agree to develop and implement a joint training and development plan for investigators and prosecutors.
- 85.** The Joint Implementation Committee, shall carry out regular training needs and capacity gaps analysis that will inform development of a joint training and development plan by the parties.
- 86.** The Tripartite Task Force and the members handling the cases relating to serious human rights violations and offences committed by the police officers shall receive capacity building along the following suggested priorities:
- a) Best Practices and National and International Professional Standards and SOPs for Policing and Security Force Operations;
 - b) Ethics in prosecuting;
 - c) Ethics in policing; and
 - d) Training on criminal investigations with a focus on police violations, including *inter alia*: criminal investigation planning; risk management in investigations; witness protection; interviewing and interrogation; statement-taking; working with vulnerable victims and witnesses; evidence management ; decisions to charge in police abuse cases, sexual

violence, killings, torture, enforced disappearance, obstruction etc in the context of police violations; criminal analysis of patterns of violations.

- 87.** The Agencies shall organize workshops between former police prosecutors and current ODPP prosecutors with regard to police excesses cases to share and learn from the past and present experiences.

SECTION Q: DISPUTE RESOLUTION

- 88.** In case of a dispute or disagreement between the allocated prosecutor and investigator that cannot be resolved between the two of them, the matter should be referred to the Heads of relevant Agencies.



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