

THE POLICE SERVICE ACT, 2018

(Act No. 22 of 2018)



I ASSENT

MSWATI III
King of Eswatini28th June, 2018AN ACT
ENTITLED

AN ACT to provide for the establishment and administration of the Royal Eswatini Police Service, appointment of a Police Service Commission, appointment and discipline of police officers, establishment of such necessary funds and other incidental matters.

ENACTED by the King and the Parliament of Eswatini.

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PART I
PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Police Service Act, 2018.
- (2) This Act shall come into force on the date of publication in the Government Gazette.

Interpretation.

2. In this Act, unless the context otherwise requires-

“Administrative Boards or a Board” means the board or boards referred to under section 47 to assist the National Commissioner or Commission in carrying out the administrative and disciplinary duties of the National Commissioner;

- "arms" include firearms as defined in the Arms and Ammunition Act 1964 or its successor;
- "badge" means any object or figure or design and includes badges of ranks and insignias used by the Police Service as a mark of recognition as a member of the Police Service;
- "Board" means a Board constituted in terms of section 47.
- "Commission" means the Police Service Commission established under section 18 of this Act;
- "constable" means a police officer below the rank of sergeant;
- "Constitution" means the Constitution of the Kingdom of Eswatini Act, 2005.
- "court" means, as the case may be, the High Court or the Magistrates Court;
- "Fund" means the Rewards and Fines Fund established under section 82;
- "inspectorate" means an officer of the rank of inspector;
- "junior officer" means a police officer of the rank of constable;
- "lost and found property" means property the owner of which is not known, but does not include motor vehicles as defined under the Theft of Motor Vehicles Act, 1991 or stock as defined under the Stock Theft Act, 1982;
- "member of the Police Service" means any person by whatever rank or title designated who has been appointed to and is serving in the Police Service;
- "Minister" means the Minister responsible for the Police Service;
- "office" means a police officer;
- "pay" means the salary of a police officer in that police officer's substantive rank and does not include any allowance which has not been declared to be pensionable;
- "police lines" means an area set aside for occupation by police officers;
- "police officer" means a member of the Police Service;
- "Police Service" means the Royal Eswatini Police Service established under section 3;
- "prescribed" means prescribed by Regulations;
- "secretary" means the secretary established under section 17 (4);
- "sergeant" means a member of the Police Service immediately above the rank of constable;
- "senior officer" means the National Commissioner, Senior Deputy National Commissioner, Deputy National Commissioner, Senior Assistant Commissioner, Assistant Commissioner, Senior Superintendent, Superintendent, Assistant Superintendent, or any rank as may be determined by the Minister by Notice in the Gazette;
- "special constabulary" means a constabulary appointed in terms of section 8;

"standing orders" means orders issued or approved by the National Commissioner in term of section 11;

"subordinate officer" means a sergeant or any other rank as the Minister may determine by Notice in the Gazette;

"uniform" means any article or articles of wearing apparel, being distinctive in design and colour, decorations, medals and ribbons intended to be used by members of the Police Service.

PART II

ESTABLISHMENT, CONSTITUTION AND ADMINISTRATION

Establishment of the Royal Eswatini Police Service

3. There is established a police service for the Kingdom of Eswatini which shall be known as the Royal Eswatini Police Service to provide policing and security services in and throughout the kingdom of Eswatini.

National Commissioner-in-Chief.

4. (1) The King and Ingwenyama is the Commissioner-in-Chief of the Royal Eswatini Police Service.

(2) The King shall appoint the National Commissioner of Police, Senior Deputy National Commissioner and Deputy National Commissioner.

(3) The King may make such orders and appointments as may be expedient for the administrative and operational framework of the Police Service.

Constitution of the Police Service.

5. (1) The Royal Eswatini Police Service shall consist of senior officers, inspectorate, subordinate, junior officers and, where necessary, a police constabulary as provided for in section 8 or police officers constituted in ranks as provided for in this Act or as specified in the Schedule.

(2) The constitution of the Police Service shall, from time to time, be determined by the National Commissioner after consultation with and approval by the Minister.

(3) The rank structure of the Police Service shall be in the order of seniority shown in the Schedule and the Minister on the recommendation of the National Commissioner, may, by notice published in the Gazette, amend the Schedule.

Reference to National Commissioner of Police.

6. Any reference in any written law or any other legal document to the National Commissioner of Police, or Commissioner of Police shall be read and construed as reference to the Commissioner of Police as appointed under section 189 of the Constitution.

Badges of ranks, shoulder insignia and headdress.

7. (1) The badges of ranks or shoulder insignia and headdress in the Police Service is prescribed in the Second Schedule to this Act or as the Minister may, on the recommendation

of the National Commissioner, determine by Notice published in the Gazette.

(2) Police nurses shall wear cloth epaulettes of the colour approved by the Council in terms of the Nurses and Midwives Act of 1965 or its successor and shall affix the insignia and badges of ranks as specified in subsection (1).

Appointment of a special constabulary.

8. (1) The Minister, on application by the Commission, may authorise generally or specially, the National Commissioner to appoint in writing as many fit and proper persons as may be deemed necessary to act as the special constables for a specified time, where there are not in any locality sufficient regular members of the Police Service available to perform police duties or a particular duty—

- (a) on the occurrence of any riot or disturbance of the public peace;
- (b) in any public emergency;
- (c) there are reasonable grounds for anticipating such occurrence or emergency;
- (d) it is necessary for the arrest, detention or transportation of persons liable to detention in police custody or some other place; or
- (e) the Minister believes, after consultation with and approval by the Cabinet, there is or there is likely to be an occurrence that necessitates the engagement of the constabulary.

(2) Special constable appointed under this section shall—

- (a) have the same powers, privileges and protection;
- (b) unless the letter of appointment states the duties to be or not to be performed, be liable to perform the same duties;
- (c) be amenable to the same penalties; and
- (d) be subordinate to the same authorities,

as the regular members of the Police Service.

(3) A member of the special constabulary shall be paid such remuneration or allowances as the Minister may determine after consultation with the Minister responsible for Finance.

(4) A member of the special constabulary shall wear such uniform, rank insignia and accoutrements as the National Commissioner may determine in consultation with the Minister.

Functions of the Police Service.

9. (1) The Police Service shall be employed in and throughout the Kingdom of Eswatini twenty-four hours seven days a week to—

- (a) protect life and property;

- (b) prevent, investigate and detect crime;
- (c) collect and collate intelligence likely to affect public peace and the security of the State;
- (d) render assistance to members of the public where possible or appropriate including mediation and counselling in domestic violence and other matters;
- (e) repress internal disturbances;
- (f) maintain security, peace and public tranquillity;
- (g) apprehend offenders and bring or cause offenders to be brought to justice;
- (h) duly enforce all laws of Eswatini as empowered by this Act and such other laws;
- (i) assist in relief and humanitarian efforts, as may be possible or authorised;
- (j) generally preserve the peace, order and maintain law and order in and throughout Eswatini and perform any other related duties; and
- (k) execute all lawful orders.

(2) The Police Service or part of its members may be employed outside Eswatini for the investigation of criminal cases and on peace keeping missions under such conditions as are fully set out in the Regulations, treaty, international agreement or other mutual agreement.

(3) A member of the Police Service shall have all the powers and duties which are conferred and imposed upon the Police Service by the Constitution, this Act and any other law in force in Eswatini.

(4) In the performance of their duties, where necessary, members of the Police Service may carry firearms in accordance with the provisions of the Arms and Ammunition Act, 1964, or its successor, and use such fire arms for achieving the functions conferred on the Police Service by this Act or any such other law.

(5) In carrying out its functions, the Police Service may affiliate to other internationally recognized police bodies or organizations and may enter into partnerships

Guiding principles and values of the Police Service.

10. (1) A member of the Police Service shall at all times serve the community and protect all persons against illegal acts, consistent with the high degree of responsibility required by their occupation or profession.

(2) In the performance of their duties, members of the Police Service shall respect and protect human dignity, maintain and uphold the human rights of all persons.

(3) A member of the Police Service may not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any member of the Police Service invoke superior orders or exceptional circumstances as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

(4) A member of the Police Service shall not commit any act of corruption and shall oppose and combat all forms of corruption and corrupt practices and to achieve such objectives they may join or assist other agencies set up to fight corruption and such other related corrupt practices.

(5) Every member of the Police Service shall remain loyal to the Police Service and shall provide police service as an essential service.

General powers of the National Commissioner.

11. (1) Subject to any lawful superior orders, the command and overall superintendence of the Police Service shall vest in the National Commissioner who, subject to this Act and the Constitution or any other law, shall also be responsible for the administration and discipline of the Police Service.

(2) The National Commissioner shall, subject to this Act and the general directions of the Minister, have the command, superintendence, direction and control of the Police Service and such other services where the provisions of section 15 are in operation.

(3) The National Commissioner shall be subject to the provisions of the Constitution and be responsible to the Minister or such other higher authority for maintaining peace and good order throughout Eswatini.

(4) The National Commissioner in consultation with the Minister, may establish any unit or department, issue or approve such orders including standing orders, policies and directives for the general control, administration, operation, discipline, regulation and orderly conduct of the Police Service as the National Commissioner may deem necessary.

(5) For purposes of this Act and for proper administration of the Police Service the Commission delegates to the National Commissioner the power to—

- (a) recruit, appoint, train or promote any fit and proper person to be a member of the Police Service below the rank of inspector;
- (b) subject to the Constitution, select candidates for promotion by the Commission to the rank of Inspector and above but below the rank of Deputy National Commissioner;
- (c) select and appoint any fit and proper person who possesses special skill and experience to perform a specific duty or task under such terms and conditions as may be approved by the Commission;
- (d) transfer or post police officers from one duty station to another and within sections or departments; and
- (e) take preliminary investigation or disciplinary inquiry against any officer on disciplinary offences, breaches of regulations, instructions or orders including failure to observe working hours.

(6) The National Commissioner shall, in carrying out the disciplinary powers conferred on the National Commissioner under the Constitution and under this Act, be assisted by Boards established in terms of section 47.

(7) The National Commissioner shall with diligence, honesty, professionalism and in terms of this Act or other applicable law make recommendations on appointments, promotions, confirmation of appointments, termination of appointments, removal from office of officers of the rank of inspector and above, but below the rank of the Deputy National Commissioner to the Commission for consideration.

Delegation of Powers of the National Commissioner.

12. (1) Any power conferred upon the National Commissioner under this Act may, subject to the directions of the National Commissioner, be exercised by the Senior Deputy National Commissioner or such other officer who may be duly authorised in such position.

(2) Subject to this Act, the National Commissioner may from time to time delegate to any officer of or above the rank of Inspector any function, power or duty conferred upon the National Commissioner by this Act or any other law.

(3) Any delegation of right, function, power or duty under this section shall be made in writing.

General powers and duties of police officers.

13. (1) Every police officer shall be an officer of the court with a responsibility for the service and execution of summons, warrant or other process or lawful order or directive on behalf of the King and *Ingwenyama*, National Commissioner, Attorney General and the Director of Public Prosecutions or any other appropriate authority.

(2) A summons, warrant or other process directed to the National Commissioner or any other police officer may be served or executed by any other police officer and every such other police officer shall have the same rights, powers and authority for the service or execution of such summons, warrant or process as if it was originally directed to such police officer.

(3) Every police officer shall—

- (a) promptly obey and execute all lawful orders and warrants issued to such police officer by any competent authority;
- (b) collect and communicate intelligence affecting the public peace;
- (c) protect life and property;
- (d) prevent and detect crime;
- (e) repress internal disturbances;
- (f) maintain security and public tranquillity;
- (g) apprehend all persons whom the police officer is legally authorised to apprehend and for whose apprehension sufficient grounds exist;
- (h) bring offenders to justice, enforce all written laws with which the police service is directly charged;

- (i) collect, preserve and submit evidence, manually, electronically and other acceptable or admissible means, connected with crime or intelligence to the National Commissioner, courts or such other institutions and authorities; and
- (j) generally, maintain the peace.

(4) In the performance of their functions under subsection (2) and notwithstanding the provisions of any law to the contrary, any police officer may search without warrant any person, premises, other place, vehicle, vessel or aircraft or any receptacle of whatever nature, at any place in the Kingdom of Eswatini, and seize anything found by that police officer upon such person or upon or at or in such premises, other place, vehicle, vessel, aircraft or receptacle provided it is—

- (a) stolen property or anything with respect to which any offence has been or is suspected on reasonable grounds to have been committed;
- (b) anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any offence;
- (c) anything as to which there are reasonable grounds for believing that it is intended to be used for purpose of committing an offence.

(5) Anything seized under subsection (4) shall, immediately or as soon as practicable, be taken to the nearest charge office or police station to be dealt with in accordance with section 52 of the Criminal Procedure and Evidence Act, 1938 or the relevant section of its successor.

(6) Subject to subsection (7), where a woman is searched under this section the search shall only be conducted by a female police officer and shall be made with strict regard to decency.

(7) Where there is no female police officer immediately available to conduct the search, the search shall be conducted by any female so requested or especially designated for the purpose by any police officer.

(8) For the purpose of exercising the powers conferred under subsection (3), any police officer may, by means of an appropriate indication, direction or in any other manner, order the driver of a motor vehicle or other moving object on a public road to bring it to a stop.

(9) A police officer, notwithstanding anything contained in any other law, may display, set up or erect on or next to the road such sign, barrier or object as is reasonably necessary to bring the order under subsection (8) to the attention of the driver and to ensure that the vehicle or other moving object shall come to a stop.

(10) Where an order to stop is ignored by a driver who has been ordered to stop by a police officer, such police officer or other police officers may use reasonable force or other reasonable means to bring the vehicle or other moving object to a stop.

(11) Notwithstanding the provisions of any law to the contrary, the National Commissioner or any member of the police service designated by the National Commissioner may, in the performance of any function under subsection (4) publish or cause to be published or in any other manner display or cause to be displayed any photograph or sketch of any person wanted in connection with an offence or investigation.

(12) Notwithstanding the provisions of any law to the contrary, the National Commissioner or any member of the Police Service may, if it appears expedient or necessary in the interest of public order, defence, public safety or for the purpose of protecting the rights and freedoms of other persons stop or prevent the holding of any public meeting or public procession.

(13) Members of the Police Service shall, in the performance of their duties under subsection (4), keep such books and records and render such returns as the National Commissioner may from time to time direct.

Employment of the Police Service in emergency.

14. (1) The King and *Ingwenyama* or Minister may, in a state of emergency or in such similar situations, direct the Police Service to perform emergency related duties, public service duties and other similar duties within Eswatini as may be prescribed.

(2) Where the Police Service or such members of the Police Service are so employed as provided under this section, they shall, for the purpose of administration and discipline, remain under the command of the National Commissioner or such other senior officer of the Police Service so designated by the National Commissioner.

Assistance by other Forces and Services.

15. (1) For the performance of duties under this Act, where circumstances so require, the National Commissioner after consultation with the Minister may request the assistance of the Umbutfo Eswatini Defence Force, His Majesty's Correctional Services and the Eswatini National Fire and Emergency Service or other related Services.

(2) Where the Service or Force mentioned in subsection (1) are assisting the Police Service, unless the contrary is stated, such Services or Forces shall in all respects exercise the powers and duties of police officers in terms of section 13 of the Act and shall enjoy the same protection as members of the Royal Eswatini Police Service.

(3) The Services referred to in subsection (1) shall, when so employed be under the control and direction of the National Commissioner or such other senior officer of the Police Service so designated by the National Commissioner.

Protection from legal proceedings.

16. Every member of the Police Service shall have protection in the case of an action or suit brought against that member for an act done or omitted to be done in the honest execution of the duties of that member in terms of this Act or any other law.

**PART III
POLICE SERVICE COMMISSION**

Establishment and constitution of the Police Service Commission.

17. (1) There is established an independent and impartial service commission to be known as the Police Service Commission for the better management and exercise of powers and functions conferred by the Constitution, this Act and any other law not in conflict with this Act.

(2) The Commission shall consist of a chairperson and not less than four members who shall be appointed by the King on the recommendation of the Minister after consultation with the National Commissioner, on such terms and conditions as the Minister may determine.

(3) In making the recommendations to the King for the appointment of a member of the Commission, the Minister shall proceed on basis of suitable qualifications, competence and relevant experience and the Minister shall endeavour to recommend a person who can effectively discharge the responsibilities of the office of the Commission.

(4) The Commission, with the assistance of the Minister after consultation with the National Commissioner, shall set and maintain a competent and qualified secretariat consisting of support staff and a secretary who shall be a member of the Police Service of the rank of Assistant Commissioner or above but below the rank of Deputy National Commissioner as may be seconded by the National Commissioner from time to time.

Independence of the Commission.

18. In the performance of its functions under this Act, the Commission shall be independent and such independence shall be an aspect of the exercise of any delegated powers.

Disqualification for Appointment.

19. (1) A person shall not qualify for appointment as a member of the Commission if that person—

- (a) does not qualify to be elected as a member of Parliament;
- (b) holds a public office, is a Minister, Assistant Minister, a member of Parliament or is a member of the King's Advisory Council or similar body;
- (c) is declared bankrupt either within or outside Eswatini or is an un-rehabilitated insolvent;
- (d) has been convicted of an offence involving dishonesty, moral turpitude, money laundering or has been convicted of a serious offence including, but not limited to, an offence listed in the Schedule to the Serious Offences (Confiscation of Proceeds) Act, 2001 or the Money Laundering and Financing of Terrorism (Prevention) Act, 2011 or their successors;
- (e) has been certified insane or is patently of unsound mind;
- (f) is a member of a body which, in the opinion of the Minister, is a staff association, a trade union or has as its object or one of its objects the control or influence over salaries, wages or other terms and conditions of service of any employees; or
- (g) is a member of the Police Service.

(2) A person shall not be disqualified from membership in terms of subsection (1) (b), (f) or (g) where that person resigns or retires from that occupation within a period of three months from the date of appointment.

Tenure of office and removal from office.

20. (1) The tenure of office of an inaugural chairperson and each member shall, be six and four years respectively.

(2) The chairperson and a member shall be eligible for re-appointment for a single term of four years.

(3) The chairperson or member may vacate office—

- (a) by written resignation to the Minister on notice of three months;
- (b) at the expiration of the term of appointment or such shorter appointment agreed to by the parties and contained in the letter of appointment;
- (c) on abandonment of post or absence on leave without authority and thus missing three consecutive meetings of the Commission; or
- (d) on the death of that chairperson or member.

(4) A member of the Commission shall be removed from office by the King where a tribunal appointed under subsection (5) recommends that the member ought to be removed from office for—

- (a) inability to exercise the functions of office (by reason of infirmity of body or mind or any other cause); or
- (b) misbehaviour.

(5) Where the Minister in the case of the chairperson or the chairperson in the case of any other member submits to the King that the question of removing a member of the service commission under subsection (4) ought to be investigated, then—

- (a) the King shall appoint a tribunal consisting of a chairperson (selected by the Chief Justice from persons who hold or have held or qualify to hold high judicial office) and two other persons recommended by the line Minister; and
- (b) the tribunal shall enquire into the matter and report on the facts to the King and recommend whether the member ought to be removed under subsection (4).

Vacancies and temporary appointments.

21. (1) If the office of the chairperson of the Commission is vacant or the chairperson is, for any reason, unable to perform the functions of the office, the Minister may appoint, for a period not exceeding one month, any member to act as chairperson.

(2) If the office of the member of the Commission is vacant or any member is for any reason, unable to perform the functions of the office, the Minister after consultation with the National Commissioner, may for purposes of forming a quorum appoint a person qualified to be a member for a period not exceeding one month to fill that vacancy.

(3) The provisions of section 21(2) shall not apply to a person appointed to act as chairperson or as a temporary member of the Commission.

Oath or affirmation of members.

22. (1) A member of the Commission shall not enter upon the duties of office until that member has taken and subscribed the oath or affirmation of allegiance and another for the due execution of office as set out in the Second Schedule of the Constitution.

(2) The Secretary and such other officers of the Commission as the chairperson may require so to do shall, on first appointment, take an oath or make an affirmation in such form as may be prescribed by the Minister.

(3) An oath or affirmation by a member shall be administered by a commissioner of oaths.

Powers and functions of the Commission.

23. (1) The functions of the Commission shall include appointments (including promotions and transfers) and selection of candidates for appointment, confirmation of appointments, termination of appointments, disciplinary control and removal from office of officers within the Police Service and the other employees mentioned under subsection (4), taking into account the delegation specified under section 12.

(2) The Commission may, in carrying out its duties under subsection (1), do so in consultation with the National Commissioner.

(3) The Commission shall exercise its powers as may be contained in this Act or other law and have jurisdiction, subject to section 11, over all officers of the Police Service below the rank of Deputy National Commissioner and the other employees mentioned under subsection (4).

(4) The Commission in consultation with the National Commissioner may employ, on such terms and conditions as deemed fit, other suitable persons to be employees to, or support the police service in order to achieve its objectives and consolidate its functions.

(5) The Commission shall, in consultation with the National Commissioner, appoint fit and proper persons of integrity and honesty to the employment and service of the Police Service.

(6) For the performance of its functions, the Commission may in consultation with the National Commissioner, among other things—

- (a) inspect the offices of the Police Service and other relevant offices;
- (b) examine official documents, books or other records;
- (c) obtain information and advice from any public officer or other Government employee;
and
- (d) do all such things, including the taking of evidence on oath and the administration of oaths, as are incidental or conducive to the exercise of the functions of the Commission.

(7) The Commission may require any public officer or other Government employee whose evidence appears to be material to the determination of any enquiry or investigation conducted by the Commission, to attend at such time and place as may be specified by the Commission, to give evidence or produce any official document, book or other record in the possession or control of that person which relates to a matter in question at any inquiry or investigation.

(8) In the performance of its duties, the Commission may seek advice from any person including a police officer and legal advice from the Attorney General.

(9) The Commission shall not, under subsection (7), insist on the production or submission of a document or thing where the National Commissioner states in an affidavit that the matter, document or thing falls under or might compromise the security of Eswatini and therefore should not be produced or submitted to the Commission.

(10) The Commission may hear appeals which are as a result of the operation of section 11 (5) and other appeals.

(11) Where a recommendation is made by the Commissioner to the Commission in terms of section 11, the Commission shall make its decision within fourteen (14) days or such reasonable period from date of receipt of the recommendation.

(12) The Commission may, in consultation with the Minister, make regulations for the better carrying out the functions of the Commission including the regulation of the shared responsibilities and limits thereof between the Commission and the National Commissioner.

(13) The Commission in consultation with the National Commissioner may recommend, request or agree with the Civil Service Commission on the transfer of officers between the jurisdictions of the two Commissions.

Complaints against the Police Service.

24. (1) Any person who has a complaint against a police officer or the Police Service shall first lodge such complaint to the National Commissioner who shall immediately attend to it and thereafter notify the complainant of the decision, opinion, facts of the matter or action taken or to be taken.

(2) Where the complainant under subsection (1) is not satisfied with the response or there is no response from the National Commissioner that person, after the lapse of a reasonable time, may submit the complaint to the Commission for its consideration and determination.

(3) When so requested by the Commission, the National Commissioner shall submit a comprehensive report relating to the complaint to the Commission within the time so specified on the request.

(4) A complaint shall be either, orally given or written, relating to the conduct of a police officer or the Police Service whether by commission or omission submitted by a member of the public or the representative of that member of the public.

(5) A person lodging a complaint shall, when so required by the National Commissioner or the Commission, attest under oath to the truthfulness of the facts forming the complaint.

Complaints by police officers.

25. (1) A police officer who has reasonable cause for complaint against another police officer or against any other person or thing may make a written statement and lodge it with the person who is in charge of that officer, in default of which the next superior officer, who shall immediately attend to it and thereafter notify the complainant of the decision, opinion, facts of the matter or action taken or to be taken.

(2) The person in charge of the complainant or the superior officer shall on receipt of the statement send a copy to the National Commissioner whilst attempting to solve the cause of complaint if the complaint falls within the jurisdiction of the person in charge of the complainant or the superior officer.

(3) Where the complainant under subsection (1) is not satisfied with the response or there is no response from the officer to whom the statement was given or intended for, after the lapse of a reasonable period, may submit the complaint to the office of the National Commissioner directly for the consideration and determination of the National Commissioner.

(4) Where the complainant is not satisfied with the response or determination of the National Commissioner, the complainant may submit the statement of complaint to the Commission for its determination.

(5) An officer in receipt of a statement of complaint, if that officer is to forward such statement to a superior officer or authority, may attach to the statements any observations or comments before forwarding the statement.

Delegation.

26. (1) The Commission may delegate any of its powers or functions to the National Commissioner, head of department or section, any other person, body of persons or line managers in respect of certain grades or ranks of officers.

(2) Where there is need for further delegation of functions, that delegation shall be subject to the manner prescribed in subsection (1).

(3) Except where the delegated powers are not in terms of this Act or the manner prescribed under subsection (2), the Commission shall not exercise the delegated powers under section 11.

(4) The Commission may at any time, that is, prior to the performance of such function or at any time before the final determination of the matter in question by the person to whom such function has been delegated, inform that person that it intends to exercise or is exercising such function.

(5) The Commission in agreement with the National Commissioner and after consultations with the Ministry responsible for the employment of public servants may, in the performance of any of its functions appoint any person or body of persons with the appropriate expertise to assist the Commission or the Police Service in the discharge of certain functions.

(6) A person employed under this section to assist the Police Service shall be under the direction and control of the National Commissioner and shall be governed by the General Orders and other laws applicable to public servants.

(7) The powers of direction, and control referred to under subsection (6) include the power of transfer, posting and recommendations for termination of employment.

(8) A person or body of persons mentioned in subsection (6) shall before assumption of duty be sworn to the oath of secrecy or subscribe to the oaths of allegiance (where appropriate) and due execution of office and shall enjoy the protection provided under section 28 and the privilege of communication provided under section 29.

Quorum and voting.

27. (1) The quorum for any meeting of the Commission shall be the Chairperson and two other members.

(2) The decisions of the Commission shall be the decision of the majority of votes of the members present and voting and the Chairperson shall, in addition, have a casting vote whenever there is a tie of votes.

Protection of Commission from legal proceedings.

28. Every member of the Commission shall have such and the like protection and privilege in case of any action or suit brought against that member for any act done or omitted to be done in the bona fide execution of the duties of member as is by law given to the acts done or words spoken by a judge of the High Court in the exercise of the judicial office of the judge.

Privilege of communication.

29. A person shall not in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral, which has taken place between the Commission or any member or officer of the Commission, and the Government, or the Minister, or any officer of the Government, or between any member or officer of the Commission and its chairman, or between members or officers of the Commission, in exercise of, or in connection with the exercise of, the functions of the Commission, unless a judge of a superior court orders otherwise.

Legal representation.

30. Any person appearing before the Commission shall be entitled to legal representation at the expense of that person.

Offence to unduly influence Commission.

31. (1) Without prejudice to any other law, any person who—

(a) otherwise than in the course of the official duty of that person improperly, whether directly or indirectly by that person or by any other person and in any manner whatsoever influences or attempts to influence any decision of the Commission; or

(b) in connection with the exercise by the Commission of its functions or duties wilfully gives to the Commission any information which that person knows to be false,

commits an offence and, on conviction, shall be liable to a fine not exceeding five thousand Emalangeni or to a period of imprisonment not exceeding two years.

Annual Reports.

32. The Commission shall, as soon as possible after the end of each financial year or whenever so required, submit a report to the Minister in respect of the discharge of its functions during the past year and the Minister shall lay every such report before both Houses of Parliament for consideration during budget debates or at any other time if it is so required.

Secretariat of the Commission.

33. (1) The Commission shall set up and maintain a competent and qualified secretariat consisting of a Secretary appointed in terms section 17(4) and support staff as may be determined by the Commission in consultation with the Ministry responsible for the employment of public servants.

(2) The functions of the secretariat shall include—

- (a) providing technical and administrative support to the Commission;
- (b) keeping proper files and correspondence of the Commission;
- (c) keeping proper records of minutes of the Commission;
- (d) convening and preparing for meetings of the Commission as the chairman may direct;
- (e) advertising new or vacant posts as the Commission may direct;
- (f) carrying out any other function which the Commission or chairperson may direct.

PART IV
APPOINTMENT, TRAINING AND DISCHARGE

Appointment or enlistment to the Police Service.

34. (1) A police officer employed or enlisted to the Police Service shall serve a probationary period of two (2) years or such period as may be prescribed.

(2) There shall be a fixed entry point in salary and salary grade for every person who is recruited in the Police Service as a trainee police officer.

(3) Subsection (1) shall not be construed as excluding the employment or recruitment on short or long-term contracts of persons with expert knowledge or in possession of certain academic qualifications on a salary and salary grade different from the salary scale intended under subsection (1).

(4) The Commission shall, on receipt of the recommendation from the National Commissioner and on completion of the probationary period or such extended period, either admit such police officer to the permanent and pensionable establishment of the Police Service or terminate the employment or services of that officer either on the persuasion of the recommendation or on the basis of independent findings of the Commission.

(5) The Commission shall not appoint, unless there are compelling reasons for so doing, an officer to act for a continuous period in excess of six (6) months to a vacant post but may confirm or terminate the appointment before or at the expiry of the six (6) months period.

Training.

35. (1) A person shall, upon appointment or enlistment in the Police Service, undergo training at a police training institution before that person may qualify as a police officer.

(2) A person who is appointed or enlisted to the Police Service as a police officer shall, during training, be paid a salary and such allowance as may be applicable from time to time.

(3) A person who has qualified as a police officer in terms of subsection (1), may undergo further training outside Eswatini.

Termination of appointment.

36. The Commission or National Commissioner subject to section 11, may at any time terminate the appointment of an employee or officer serving on probation if the Commission or National Commissioner considers that such employee or officer is unlikely to become an efficient police officer or fails or unlikely to meet the expected standards of fitness or proficiency.

Resignations.

37. (1) Any police officer, except the National Commissioner, Senior Deputy National Commissioner and the Deputy National Commissioner, who intends to resign from the Police Service shall—

(a) submit a written resignation letter to the National Commissioner and Commission; and

(b) serve a one month notice and in lieu of the notice shall pay to the Government an amount equal to a salary of a period of one month.

(2) A police officer may resign from the Police Service, subject to approval by the Commission or National Commissioner, at any time during the first year of service without serving a notice.

Principles relating to appointments and promotions.

38. (1) The Commission may, appoint or promote to a vacant post, in terms of this Act, an officer who qualifies for such, appointment or promotion.

(2) As soon as the National Commissioner knows that a vacant office exists or shall exist in the Police Service, the National Commissioner shall notify the secretary of the Commission and make any recommendations as may be necessary.

Acting paid appointments.

39. (1) As soon as the National Commissioner knows that an office in the Police Service which attracts acting allowance is or shall become vacant, either substantively or temporarily during the absence of the holder and the National Commissioner considers that it should be filled in an acting paid capacity the National Commissioner shall make a report to the secretary of the Commission with recommendations.

(2) The Commission may consider a recommendation for acting paid appointment on the basis of official qualifications, merit, commitment, fitness, suitability, experience and seniority.

(3) If a recommendation is made for an acting paid appointment of an officer in an office with the possibility of that officer's subsequent promotion to that same office being considered or recommended, the acting paid appointment shall be considered by the Commission on the basis of the principles applicable to promotions.

(4) If a recommendation is made that an officer who is not the senior eligible officer, should be appointed to act in a temporary vacant office, the Commission shall consider it on the basis of the principles mentioned in subsection (2).

(5) Notwithstanding anything contained in this section, where for reasons of urgency it is not in the public interest for the normal procedure for acting paid appointments to be followed, the chairperson of the Commission may approve and make such an appointment without regard to that procedure subject to approval and endorsement of the decision of the chairperson by the Commission.

(6) Where the Commission fails or refuses to endorse the decision of the chairperson under subsection (5), the acting paid appointment shall with immediate effect cease to be valid.

(7) Where for reasons of urgency it is not in the public interest for the normal procedure for acting or acting paid appointments to be followed, the National Commissioner may appoint temporarily a senior eligible officer to act in such a temporary vacant post without attracting acting paid appointment and subsection (2) shall apply.

(8) Where the National Commissioner has acted in terms of subsection (7), the National Commissioner shall immediately make a report to the secretary of the Commission for the information or determination by the Commission.

(9) The National Commissioner shall, in all cases, when making a recommendation for promotion or acting appointment, state whether the officer recommended is the senior eligible officer, and if that officer is not senior, give detailed reasons in support of the supersession of all officers' senior to the officer recommended.

(10) Nothing in this Act shall be construed as preventing the Commission from appointing an officer to act in a senior rank provided that where the officer acts for a period of fifteen (15) days or more shall be entitled to be paid acting allowance.

(11) The Commission shall not appoint an officer to act for a continuous period in excess of six (6) months to a vacant post but may confirm or terminate the appointment before or at the expiry of the six (6) months period.

Admission to the Police Service through false pretences and fraud.

40. (1) Any person who, by means of a false certificate or other document or by any false representation or statement whatsoever, obtains or attempts to obtain admission to the Police Service commits an offence, on conviction, shall be liable to a fine not exceeding three thousand Emalangeni (E3,000) or to imprisonment for a period not exceeding three (3) years or both fine and imprisonment.

(2) A person who knowingly recruits another person to the Police Service on false documents, statement, misrepresentation or knows that fraud is being committed in the recruitment exercise but does nothing to expose or stop such fraud, commits an offence and on conviction shall be liable to the same punishment specified under subsection (1).

(3) A person recruited through bribery or other form of corruption shall in addition to the prescribed punishment for bribery or corruption lose all benefits that may purportedly have accrued to that person and a person who recruits into the Police Service another person through bribery shall in addition to the punishment prescribed for bribery lose all benefits that may purportedly have accrued to that person.

Declaration on attestation.

41. (1) A person on joining the Police Service shall make and sign a declaration before a senior officer in such form as may be prescribed and simultaneously acknowledge the appointment as member of the Police Service on such form.

(2) The person shall, before making the declaration required under subsection (1), answer truly any questions put to that person in respect of previous employment or service, career and any other employment, criminal record and conviction of that person in Eswatini or elsewhere.

(3) Any person who makes a dishonest or false statement knowing it to be false in reply to any question put to that person under subsection (2) to obtain or to attempt to obtain admission to the Police Service commits an offence and shall be liable, on conviction, to a fine not exceeding two thousand Emalangeni (E2,000) or to imprisonment for a period not exceeding twelve (12) months or to both fine and imprisonment.

(4) Nothing contained in this section shall be construed as preventing the dismissal of a person from the Police Service, after conviction, of making a dishonest or false statement.

Restriction on resignation and retirement.

42. (1) In time of war, disturbance of the public peace, riot or other emergency or apprehended emergency, a police officer shall not be at liberty to resign or retire from the Police Service until the breach of peace no longer prevails or the situation has abated.

(2) Notwithstanding subsection (1), the Minister may, whether or not on application made by a police officer who intends to resign or retire, give general directions or consider each and every case on its merits or the particular circumstances of each case.

(3) Subject to subsection (4), the Commission may, notwithstanding that an officer has reached the retirement age, engage such officer for an extended period on such terms as may be agreed upon by the contracting parties and such extended period may be determined by National Commissioner in consultation with the Commission.

(4) The Commission shall not engage an officer who has reached the retirement age unless there are compelling reasons for so doing such as the circumstances mentioned under subsection (1) and other exigencies of the police service as the National Commissioner may submit to the Commission.

(5) An officer who defies the provisions of subsection (1) without a justifiable cause commits a professional misconduct and shall be subject to disciplinary proceedings which shall be determined by the Commission.

Suspensions.

43. (1) Where a police officer commits or is accused of a criminal offence under this Act or any other law or where disciplinary action or proceedings are or about to be instituted against that officer—

- (a) in the case of the Commission, the Commission may, subject to section 11, suspend such officer from duty pending the institution and determination of such action or proceedings against that officer; or

(b) in the case of the National Commissioner, the National Commissioner may suspend an officer below the rank of inspector from duty pending the institution and determination of such action or proceedings against that officer.

(2) Where a police officer is suspended and is charged with a criminal offence, the officer shall be placed on half pay or such other amount as the Commission or National Commissioner may determine.

(3) Where a police officer is suspended as a result of disciplinary proceedings emanating from a misdemeanour (excluding a criminal offence) may receive the full or such portion of that officer's salary, not being less than half, as the Commission or National Commissioner may determine.

(4) When a police officer is suspended from duty under this section, the powers, privileges and benefits enjoyed by that officer as a member of the Police Service shall, during the suspension, be held in abeyance and the officer shall continue to be subject to discipline and penalties and to the same authority as if the officer had not been suspended.

(5) Where a police officer is suspended from duty under this section and is not in custody, the Commission or National Commissioner may order that pending the institution and determination of the proceedings, the officer—

(a) is confined to the quarters or other place of residence of that officer during such hours as the Commission or National Commissioner may decide;

(b) is prohibited or restricted from certain places or areas which have relevance to the proceedings as the Commission or National Commissioner may decide.

(6) The Commission or National Commissioner shall not suspend an officer from duty for a period exceeding six (6) months.

(7) The High Court, on application on behalf of the Commission or National Commissioner, may extend, on just reasons, the period of suspension from duty with or without an order as to salary and finalisation of the proceedings or give any order it deems fit.

(8) Notwithstanding anything contained in this Act or other law, the Commission or National Commissioner may suspend a police officer from duty without pay where the officer is remanded in custody.

(9) If the Commission or National Commissioner finds that the police officer did not commit the act complained of and was suspended under subsection (3), the suspension shall be lifted, and the Police Service shall pay to the officer the difference that was withheld during the suspension.

(10) Where a police officer is suspended because the officer was remanded in custody and is subsequently acquitted of the charge and any other related charges for which the officer was placed in custody, the suspension shall be lifted, and the Police Service shall not be obliged to pay any wages or salary to the officer for the period the officer was in custody unless the High Court orders that the officer should be paid whether a portion or the full salary which was withheld.

(11) Where a police officer is remanded in custody as a result of a complaint laid by the Commission or National Commissioner in relation to the employment of that officer, naming

the officer as an accused, and is subsequently acquitted of that charge or any other related charges, the High Court shall determine and make an order whether the charge was justified in the circumstances and an order to payment or non-payment of any salary withheld during the period in custody and during the suspension.

Retirement and reduction of rank.

44. (1) The Commission subject to section 11 may in consultation with the National Commissioner retire a police officer—

- (a) on reduction of the Police Service;
- (b) on the recommendation of a Government medical officer or a board or panel of medical officers, if any, on medical findings that the police officer is mentally or physically unfit for further service and that such unfitness is likely to be permanent;
- (c) who has attained the retiring age;
- (d) who has not reached the retirement age, but fails, in the opinion of the Commission to maintain a satisfactory standard of efficiency;
- (e) upon a recommendation of a Board; or
- (f) on public interest notwithstanding a recommendation of a Board to dismiss that public officer.

(2) The Commission or National Commissioner may reduce a police officer from the officer's substantive rank to a lower rank on voluntary election by the officer in lieu of another punishment or sanctions or on other reasonable grounds.

(3) A police officer shall not be retired or reduced in rank under subsection (1) and (2) unless the officer is given notice of the intended retirement or reduction in writing.

Dismissals.

45. (1) The Commission subject to section 11, or National Commissioner may dismiss a police officer where—

- (a) the conduct or work performance of the police officer has, after written warning, been such that the Police Service or the Commission cannot reasonably be expected to continue to employ the police officer;
- (b) the police officer is guilty of a dishonest act, violence, threats or ill treatment towards the Police Service or the Commission, or towards any member of or towards a family member of the Police Service or the Commission;
- (c) the police officer wilfully causes damage to the buildings, machinery, tools, raw materials or other objects connected with the Police Service undertaking in which he is employed;
- (d) the police officer, either by imprudence or carelessness, endangers the safety of the Police Service or any person employed or resident therein;

- (e) the police officer has wilfully revealed secrets or matters of a confidential nature to another person which is, or is likely to be, detrimental to national security, the Commission and the Police Service;
- (f) the police officer has been absent from work for more than a total of three working days in any period of thirty days without either the permission of the Police Service or the Commission or a certificate signed by a medical practitioner certifying that the police officer was unfit for work on those occasions;
- (g) the police officer refuses either to adopt safety measures or follow the instructions of the National Commissioner or other authorised police officer, or the Commission in regard to the prevention of accidents or disease;
- (h) the police officer has been committed to prison and thus prevented from fulfilling the police officer's obligations under the contract of employment of the police officer;
- (i) the Police Service or the Commission is unable to continue employing the police officer without contravening this Act or any other law;
- (j) the police officer is convicted of a serious offence, in terms of police standards and expectations, by the High Court or the Magistrate's Court.
- (k) the police officer displays a habitual inattention or disregard to orders or general incompetence or fails to obey orders or fails to co-operate with other members of the Police Service or manifests a quarrelsome disposition or want or lack of courage, ability or zeal.
- (l) the police officer has been recommended for dismissal under section 60;
- (m) for any other reason which entails for the Police Service or the Commission similar detrimental consequences to those set out in this section.

Appeals against retirement, reduction and dismissal.

46. (1) A police officer aggrieved by a recommendation of the National Commissioner, a Board or other authorised person may appeal to the Commission, within fourteen (14) days after becoming aware of such recommendation, stating in writing the facts in support of the appeal.

(2) The National Commissioner, a Board or other authorised person shall, on becoming aware of the appeal, forward to the Commission any record of the proceedings and a statement in support of the decision being appealed against.

(3) The Commission shall determine the matter either on the documents before it or require the parties to appear before it to give any additional facts and answer any questions that may arise.

(4) On determining the matter, the Commission may make any order it deems fit including confirmation, dismissal or substitution of the decision of the National Commissioner, Board or other authorised person.

(5) Where the National Commissioner is aggrieved by the decision of the Commission, the National Commissioner may lodge an appeal with the Minister within fourteen (14) days after becoming aware of such decision, stating in writing the facts in support of the appeal.

(6) The Minister on receipt of the appeal may either confirm, dismiss, order a retrial or vary the decision of the Commission.

PART V DISCIPLINE

Administrative Boards.

47. (1) The National Commissioner in the exercise of the powers vested on the Commissioner by section 189 (3) of the Constitution and this Act, shall establish administrative boards in all or selected police stations including Regional Police Headquarters, Police Headquarters and at other posts as the National Commissioner deems it necessary and with similar or varying powers and responsibilities.

(2) The National Commissioner may delegate, in terms of the Constitution, general or specific powers and responsibilities to a board.

(3) Nothing in this Part shall be construed as derogating the powers and functions of the Commission of hearing appeals, reviewing proceedings, termination of appointments, disciplinary control and removal from office of officers within the Police Service.

Method of dealing with offences.

48. (1) A breach or an offence committed by a police officer in regard to which proceedings are not instituted in a court may be dealt with in accordance with this Part.

(2) A breach or an offence committed by a police officer in regard to which proceedings have been finalised in a court may, in selected and appropriate cases, be dealt under this Part.

(3) In proceedings before an administrative board or other authority under this Part, different offences may be charged in the alternative.

Disciplinary offences.

49. (1) A police officer commits a disciplinary offence if the officer—

- (a) disobeys orders, that is, if any police officer disobeys, or without good and sufficient cause omits or neglects to carry out any lawful order, verbal, written or in any other form but comprehensible;
- (b) is insubordinate or oppressive in conduct, that is, if a police officer—
 - (i) is disrespectful in word, act or demeanour to any other police officer senior in rank to that officer;
 - (ii) is oppressive or tyrannical in conduct towards an officer who is junior in rank or any other officer;
 - (iii) uses obscene, abusive or insulting language to another officer;

- (iv) assaults or indecently assaults another officer;
 - (v) intentionally or negligently makes any false complaint against another officer;
 - (vi) fails to report a complaint or report made against another officer;
 - (vii) disturbs, is inattentive or otherwise misbehaves when on parade, under instruction or receiving orders;
 - (viii) being under arrest or in confinement, leaves or escapes from the arrest or confinement before being set at liberty by proper authority or the National Commissioner; or
 - (ix) being liable to arrest or confinement evades or puts up resistance to such arrest or confinement.
- (c) neglects duty, that is, if a police officer—
- (i) having a duty to attend to, or to take action on any matter, neglects to do so, without good cause;
 - (ii) idles, gossips, sits or lies down without authority or reasonable cause when on duty;
 - (iii) without authority or reasonable cause sleeps when on duty;
 - (iv) fails to work on any patrol in accordance with orders, leaves any beat or beat point or other place of duty without permission or sufficient cause;
 - (v) permits a prisoner or a person under arrest to escape;
 - (vi) knows the whereabouts of a suspect, offender or a fugitive of law, fails to take reasonable steps to ensure that person is brought to justice or is dealt with in terms of the law;
 - (vii) having a duty to report any matter fails to do so;
 - (viii) knowing or in possession of any evidence, information or other matter relating to a criminal or disciplinary charge or investigation against any other person, or knowing or having a reasonable belief that some other person has knowledge of such matters, fails or refuses to disclose such information to the National Commissioner or other proper authority;
 - (ix) neglects or refuses to assist in the lawful apprehension or arrest of a person;
 - (x) without reasonable cause, omits to make a necessary entry in or erases from, obliterates or defaces an entry in or from an official document, book, paper, computer or other storage device or equipment;
 - (xi) refuses, or without good and sufficient cause, omits to make or send a report, return or message which it is the duty of the officer to make or send; or

- (xii) neglects to assist or without just cause refuses to assist a person injured or taken ill in public or elsewhere;

(d) is involved in discreditable conduct, that is, if a police officer—

- (i) acts in a disorderly manner or in any manner prejudicial to discipline or likely to bring discredit on the reputation of the Police Service;
- (ii) lends money or offers any present to a senior officer or borrows money from or accepts any present from any junior in rank;
- (iii) incurs or accumulates debts in or out of the Police Service without reasonable prospect or intention of repaying the same or is unable to discharge and having incurred or accumulated any debt, makes no reasonable effort to pay the same; or
- (iv) if called upon by the National Commissioner to furnish a full and true statement of that police officer's financial position, fails or neglects to do so;

(e) is absent without leave or late for duty, that is, if a police officer—

- (i) without reasonable cause or excuse is absent without leave from duty, patrol, place of duty, parade, court or from any other duty;
- (ii) being temporarily or permanently quartered, stationed or accommodated in any police camp to which the officer has been posted, is visiting or is attached for duty, leaves such camp without authority or permission; or
- (iii) being temporarily or permanently quartered in any accommodation outside any police camp to which the officer has been posted, is visiting or is attached for duty, or being quartered or accommodated in the camp of a formation or unit to which the officer is not posted for duty, is absent from such quarters or accommodation for a period of more than twelve hours without permission or justifiable excuse or leaves contrary to any local order in force or applicable.

(f) commits or is involved in falsehood or prevarication, that is, if a police officer—

- (i) knowingly makes or signs a false statement in any official book or document;
- (ii) intentionally or negligently makes any false, misleading or inaccurate statement in connection with the officer's duties;
- (iii) without good and sufficient cause destroys or mutilates any official document or record or alters or erases any entry therein; or
- (iv) prevaricates before a court, inquiry, hearing, disciplinary proceedings or other proceedings;

(g) breaches confidence, that is, if a police officer—

- (i) divulges without authority a matter which it is the officer's duty to keep it secret;

- (ii) gives notice, directly or indirectly, to any person against whom warrant, or summons has been or is about to be issued except in the lawful execution of such warrant or summons;
 - (iii) without proper authority communicates or publishes to the press, media or to an unauthorised person any matter concerning the police service;
 - (iv) without proper authority shows to any person outside the police service any book written or printed document, item or equipment, or any other thing whatsoever, the property of or in possession of the police service.
 - (v) in any manner whatsoever makes or joins in making any anonymous communication to any person or organisation relating to any matter concerning the Government or the police service;
 - (vi) makes a frivolous or vexatious complaint or makes a complaint in an irregular manner on any matter concerning the police service; or
 - (vii) signs or circulates a petition or statement with regard to any matter concerning the police service except through the proper channels of correspondence to the National Commissioner.
- (h) is involved in corrupt practices, that is, if any police officer—
- (i) fails to account for or to make a true and prompt return of any money or property received in an official capacity;
 - (ii) without the authority of the National Commissioner accepts any fee or reward for any service performed in the course of duty of that officer;
 - (iii) without the authority of the National Commissioner accepts from any company, organisation or individual other than a personal friend, a gift, entertainment or other advantage or fails to report as soon as reasonably practicable the receipt of such gift, entertainment or advantage to the National Commissioner;
 - (iv) a police officer serving at any point of entry shall not accept any gift or gratuity for that police officer or another law enforcement agent;
 - (v) fails to return as soon as practicable to the giver of the gift so received by the officer or a member of the family which may not be accepted without contravening subparagraph (iii) or fails to report forthwith to a police officer senior in rank or the National Commissioner, the gift or offer of a gift, entertainment or other advantage which may not be accepted without contravening subparagraph (iii); or
 - (vi) solicits any gift, entertainment or other advantage for the benefit of the officer or the family of the officer which may not be accepted without contravening subparagraph (iii);
- (i) unlawfully uses, or abuses, the exercise of authority, that is, if a police officer—
- (i) without good and sufficient excuse makes an unlawful, unnecessary, unjustifiable or unwarranted arrest;