

# **MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE INDEPENDENT POLICE COMPLAINTS BOARD**

**AND**

**THE OFFICE OF THE OMBUDSMAN**

## **THIS MEMORANDUM OF UNDERSTANDING**

which comes into effect on the 9<sup>th</sup> day of November, 2016, is made

### **BETWEEN**

**THE INDEPENDENT POLICE COMPLAINTS BOARD** of New England Ville, Freetown - ("IPCB")

### **AND**

**THE OFFICE OF THE OMBUDSMAN** of 23 Liverpool Street, Freetown - ("OO")

### **BACKGROUND:**

- i The IPCB is established and has responsibilities which include the investigation of allegations of police misconduct pursuant to Constitutional Instrument No. 11 of 2013.
- i The Office of the Ombudsman is established by The Ombudsman Act (No. 30) of 1997.

### **PURPOSE:**

- i This MOU:
  - i Provides a framework for the way in which the IPCB and the OO will deal with the referral of complaints which fall within the remit of both organizations.
  - i Acknowledges the preparedness of the IPCB and OO, in the public interest, to share with each other as far as is legal and practicable and with a duty of fairness towards the complainant, information in each agency's possession relevant to matters within the jurisdiction of the other.
  - i Reaffirms the commitment of the IPCB and OO to the development of a positive and constructive working relationship to achieve the shared goal of independent investigations system for complaints against the police, and the protection of human rights, in Sierra Leone.

### **i RESPONSIBILITY OF THE PARTIES**

The understandings reached between the parties are contained in this Memorandum of Understanding ("MoU"), which includes the schedules hereto signed by the parties.

**i TERM (indefinite term)**

This MoU takes effect from the above mentioned date and continues until it is either:

- i superseded by a subsequent MoU entered into by the parties, or
- i terminated, at the written request of one of the parties, provided that such termination should only occur after prior consultation with the other party.

**i REVIEW and AMENDMENT**

- i The parties agree to review this MoU every two (2) years or more frequently, if circumstances so require.
- i Any amendments to this MoU must be made in writing, signed on behalf of the parties.

**i NOTICES**

Any notice in writing pursuant to this MoU is to be given to the persons specified in the Schedules or such other person as is specified in writing to the other party.

**i DISPUTE RESOLUTION**

Disputes arising under this MoU will be resolved initially through the nominated representatives of IPCB and OO. Disputes that are unable to be resolved in this way are to be escalated to the relevant Commissioner(s) and Management of IPCB and OO.

**i THIS DOCUMENT SUPERSEDES PREVIOUS ARRANGEMENTS AND UNDERSTANDINGS**

The arrangements, understandings and protocols contained in this MoU supersede all previous arrangements in relation to the same or similar subject matter whether or not such previous arrangements were recorded or reduced into writing and signed by the parties to this MoU.

**SIGNED by:**

**Board Secretary, Emerlin George**, as the duly authorized delegate of the Independent Police Complaints Board

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Date:

9<sup>th</sup> November, 2016

in the presence of:

Althea Palmer

**SIGNED by:**

**Legal Officer, Lois Anita Kawa**, as the duly authorized delegate of the Office of the Ombudsman

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Date:

9<sup>th</sup> November, 2016

in the presence of:

**SCHEDULE 1**  
**(Address for service)**

Notices pursuant to this MoU are to be served upon the following persons or such other persons as specified, from time to time, in writing to the other party.

**In respect of the Independent Police Complaints Board**

Full Name and Title: Valentine T. Collier; Chairman - Independent Police Complaints Board

Address for Service: New England Ville, Freetown

Tel. Contact: 076 601145

**In respect of the Office of the Ombudsman**

Full Name and Title: Hon. Justice Edmond Cowan

Address for Service: 23 Liverpool Street, Freetown

Tel. Contact: 076 617343

## **SCHEDULE 2**

### **AGREEMENT BETWEEN THE INDEPENDENT POLICE COMPLAINTS BOARD AND THE OFFICE OF THE OMBUDSMAN**

- i This Memorandum of Understanding is made under section 7 of the Independent Police Complaints Board Regulations, 2013 and applies to complaints made under section 3 (1) (a) – (h) of the Independent Police Complaints Board Regulations, 2013.**

#### **i COMMUNICATION**

- i All communications in respect of the parties' obligations under this MoU will be made, in writing, to the address for service in Schedule 1.**

#### **i RESPECTIVE INVESTIGATIVE POWERS OF THE PARTIES**

##### *Independent Police Complaints Board*

- i The Independent Police Complaints Board Regulations, section 3, provide the IPCB with a mandate to investigate the following 'prescribed matters':**
  - i The death of any person while in the custody of the police;**
  - i A fatal road accident in which a police vehicle is involved;**
  - i A shooting incident where a police officer has discharged a firearm or killed a person.**
  - i Incidents of injuries, assault or wounding caused by a police officer;**
  - i Allegations of misconduct involving an officer of the rank of Superintendent or higher;**
  - i Any matter involving misconduct by the police referred to it by the Inspector-General of Police where the Inspector-General of Police thinks an independent investigation will be in the public interest;**
  - i Any matter or incident which it thinks the action or inaction of the police is likely to impact significantly on the confidence of the people in the police; and**
  - i Any matter whether remote or otherwise which gave cause of an investigation to be conducted under this Regulation.**

##### *Office of the Ombudsman*

- i The Ombudsman Act (Act No. 30 of 1997), section 7(1)(a) confers on the OO the power to investigate any administrative act of a prescribed authority in respect of which –**
  - (i) a complaint is made to him by any person who claims to have suffered injustice as a result of any maladministration in connection with such act; or**
  - (ii) information is received by him from any person or source, or otherwise than**

by complaint, concerning the matters referred to in subparagraph (i); and (3.4.b) to [inter alia] take appropriate action to remedy, correct or reverse the act complained of through such means as are fair, proper and effective, including, the facilitation of negotiation and compromise between or among the parties concerned;

- i An 'injustice' includes hardship, detriment or grievance occasioned by any inequitable treatment, whether legally or otherwise:
- i 'maladministration' includes -
  - (a) bias;
  - (b) unfair discrimination or failure to explain grounds of a decision which appears discriminatory;
  - (c) harshness or general high-handedness;
  - (d) misleading a member of the public as to his rights or deliberately withholding from him material information concerning the rights of such person;
  - (e) using powers for a wrong purpose;
  - (f) failing to consider relevant material or taking irrelevant material into account for any decision;
  - (g) losing or failing to reply to correspondence with a member of the public;
  - (h) delaying unreasonably before making a tax refund or presenting a tax demand or dealing with any application for a grant or license.

#### **i CIRCUMSTANCES IN WHICH A COMPLAINANT MAY BE REFERRED**

- i The parties agree to a common referral process between IPCB and OO in relation to referrals other than those specifically contemplated in Clauses 4 and 5 of this MoU.
- i If a complainant, or his or her representative, contacts the OO with a complaint relating to police conduct, and the complaint is *prima facie* a 'prescribed matter' as defined by the Independent Police Complaints Board Regulations, section 3, the OO will refer the complainant to the IPCB.
- i If a complainant, or his or her representative, contacts the IPCB with a complaint relating to an alleged administrative injustice which does not constitute a 'prescribed matter' pursuant to section 3 of the Independent Police Complaints Board Regulations, the IPCB will refer the complainant to the OO.
- i The IPCB and OO agree that it is the responsibility of the referring party to notify the complainant at the time of making the referral that it is the complainant's responsibility to obtain a decision from the other party on whether it can be of assistance to the complainant, and that there are specific time limits affecting any possible claim the complainant may have.

## **i REFERRAL OF ALL OTHER MATTERS**

- i If the IPCB is of the view that a complaint or matter received or under investigation, is not a 'prescribed matter', as established in section 3 of The Independent Police Complaints Board Regulations, but that the matter constitutes an act of administrative injustice that may fall within the mandate of the OO as established by section 7 (1) and (2) of The Ombudsman Act (Act no. 30 of 1997), the IPCB will refer the complaint to the OO.
- i If the OO is of the view that a complaint or other matter received or under investigation, is a 'prescribed matter' under section 3 of The Independent Police Complaints Board Regulations, the OO will refer the matter to the IPCB.
- i All referrals will be made by the parties in writing within 5 working days of the determination to refer by the referring party.
- i All referrals will include an explanatory note that sets out the reason and reason in law for the referral, and an annex that contains all documents and other evidence (written and physical) received or obtained by the referring party with respect to the complaint or matter which forms the subject of the referral.

## **i GENERAL COOPERATION**

- i The IPCB and OO agree to undertake this MoU in good faith.
- i Quarterly meetings will take place between OO and IPCB to discuss any issues arising from this MoU, its processes, and themes from eachothers' work. These meetings will be attended by relevant senior participants from both OO and IPCB.
- i Meetings will be chaired and minuted alternatively by the parties.
- i Each party will include the other in any relevant consultation exercise carried out in relation to their complaints and investigation mandates.
- i If OO or IPCB is of the view that cooperation in relation to any other aspect of their mandates is required, the parties will meet to discuss, in good faith, the development of further MoUs to facilitate such cooperation.