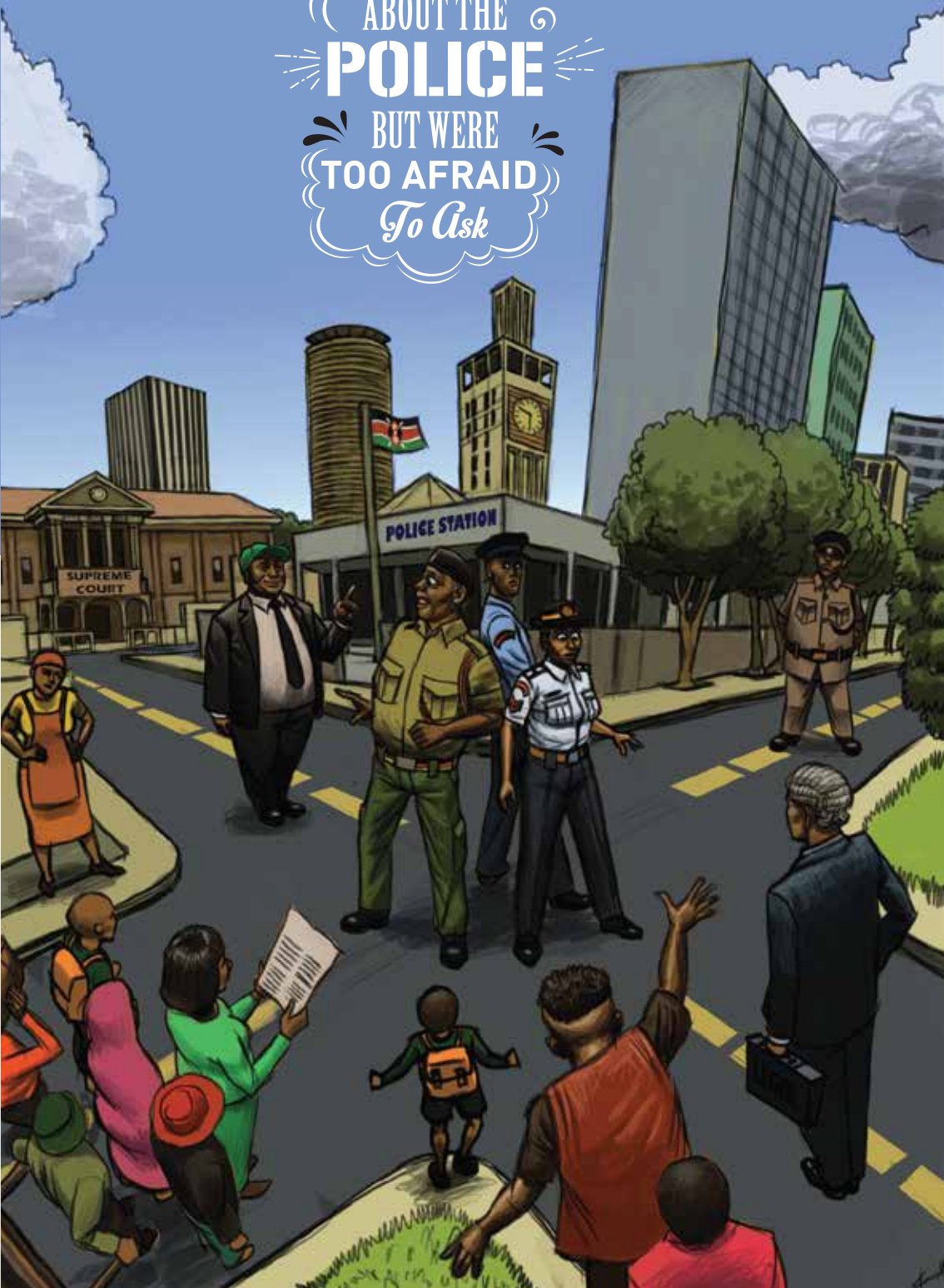


# 101 THINGS

*You wanted*  
**TO KNOW**  
*ABOUT THE*  
**POLICE**

*BUT WERE*  
**TOO AFRAID**  
*To Ask*



## Introduction to the 101 pocketbook

The primary purpose of *101 Things You Wanted to Know About the Police But Were Too Afraid to Ask* (101 Things) is to improve relations between the police and the public. The police are regarded by the public as suppressing them in order to promote the interests of the rich and the powerful. The police are regarded as being extremely corrupt, especially in extracting money from the less well off. Public opinion polls for several years put them at the top of the list of the most corrupt state institutions. We consider that better understanding between the police and the public would come about if both of them have a better understanding of the obligations of the police and the rights of the people. *101 Things* focuses largely on the authority of the police and the rights of the people that they must respect. We believe that the full benefits of the pocket book will be achieved if both the public and the police carefully study and follow it.

The relationship between the police and the public goes back to the time of the colonisation of Kenya, when the primary purpose of the police was to suppress Africans in the interests of the colonial power and European settlers. To a considerable extent this continued after independence—and with this the uneasy and often tense relationship between the people and the police. Both those in authority and the police considered that the main role of the police was to protect the interests of those who controlled the state. There was little accountability of the police for their conduct.

A fundamental change in the structure and functions of the police was set out in the 2010 Constitution in accordance with its principles and values of protecting the rights and security of the people and the accountability of state institutions. The police will no longer be under the absolute authority of the government, their independence being a fundamental constitutional principle.

We hope that both the public and police will study *101 Things* with care, will learn, and even enjoy.

Yash Ghai

## Acknowledgments

The Inspiration for this pocketbook came from the work of the Commonwealth Human Rights Initiative (CHRI), which had successfully developed 101 Things for India, and then adapted it for Ghana, Uganda and Tanzania. Katiba Institute (KI) and CHRI were able to work closely during the preparation of the pocketbook. The main responsibility for drafting of the pocket book was taken by Uladzimir Dzenisevich of CHRI and Jill Cottrell Ghai of KI, and while the expenses for its preparation were provided by DIGNITY: The Danish Institute Against Torture, using funds from the Danish government, available through DANIDA. The team benefited from the advice of IMLU (The Independent Medico-Legal Unit), who organised two validation forums of draft versions at national level, which included comments by the National Police Service, the National Police Service Commission, and a number of civil society organisations including members of the Police Reform Working Group. The team also benefited from advice of Mid-Rift Human Rights Network who organised a validation forum at county level, which included both senior police officers and civil society actors in Nakuru County. Katiba Institute is also grateful to the following individuals for their assistance: Maja Daruwala (of CHRI), Finn Kjærulf and Catrine Shroff (DIGNITY), Peter Kiama (from IMLU), NPSC Commissioner Murshid Mohamed, John and Alice Migwi (from Jacaranda Africa), and several KI staff. Colour Print Printers converted our print into the pocketbook in record time

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Illustrations by (Kenneth Omollo)

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# A. Introduction to the National Police Service

## 1 Why do we have a police service?

It is the duty of every government to make sure that all the people can live their lives in a safe and peaceful environment. The police are a public service created to maintain order, prevent and detect crime and provide assistance to those in need. According to the Constitution (Article 238), the police must protect Kenyans, their rights, freedoms, property, peace, stability and prosperity.

## 2 What else does the Constitution say about the police?

Articles 243-247 are about the police. The Constitution talks about National Police Service, not Police Force. The drafters of the Constitution felt that to call the police a “force” seems to emphasise one aspect of their work too much.

Also the Constitution lays down high standards for policing. It says that all police officers must aim at the highest standards of professionalism and discipline (Article 244). The police must prevent corruption. And they must practice transparency and accountability. Very importantly, they must respect and uphold human rights. All police officers must be specially trained to respect these standards. Also, because the police are part and parcel of our society, the National Police Service should develop good relations with the broader society.

## 3 What are the police supposed to do?

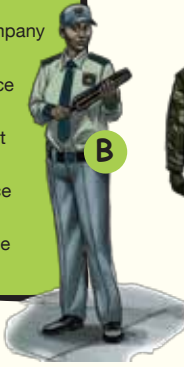
The police service must prevent and control crime, and detect and investigate it properly. When necessary, the police must prepare an honest case, based on evidence, for the prosecutor to present to a court. They are responsible for maintaining overall law and order, including traffic control, handling assemblies and general protection services. Also, they should provide assistance to those in need.

## 4 Can the police show favour to anyone?

Police must not show special favour to anyone. The law applies to everyone equally. In fact, the Constitution strictly prohibits the police from acting in a biased manner, or supporting or acting against any political party or cause (Article 239). It would be equally wrong to favour people of a particular religion or community. It would not be wrong to give preference to dealing with crimes against particularly vulnerable groups, like women and children.

**Quiz: Match the service or unit to the person**

- Private security company
- Kenya Defence Force
- General Service Unit
- Administration Police
- Kenya Police Service



## 5 Are the police same as the military or security companies?

No. The military defends the country from foreign aggression, but the police are a civilian service whose duties lie in protecting the public against threats to peace and order within the country. The military cannot do police work, and the police cannot be used as the military. The military can help the police to restore peace if there is unrest or instability, but only after the National Assembly votes in favour of this (Article 241). A security company is a private business. It employs security guards, who have no special powers under the law, unlike the police. They are not allowed to carry guns.

## 6 What laws govern the police?

The police must follow all the laws of Kenya just like you and me. The Constitution and the National Police Service Act explain internal police structures, how top level police officers are selected, and what their responsibilities are. Other important laws include the National Police Service Commission Act, the Independent Police Oversight Authority Act, laws on criminal procedure and evidence as well as the Police Service Standing Orders. Various other laws give specific powers and responsibilities to the police.

## 7 Does this mean we don't have the Kenya Police Service and Administration Police Service any longer?

No. Kenya Police Service (KPS) and Administration Police Service (APS) still exist, but now they are two wings of the police united under a single National Police Service, headed by the Inspector-General of the Police. Each service has its own Deputy Inspector-General. Their functions overlap sometimes, but, in general, the two services are responsible for different tasks. Both KPS and APS have to maintain law and order, keep peace, and protect life of all people in Kenya and their property all over the country. The KPS is in charge of general policing and are the officers you see every day on their patrols or enforcing traffic rules. KPS officers are also responsible for detection, prevention and investigation of crimes.<sup>1</sup> The APS is a more specialised branch of the police. They protect government installations such as the Parliament building. they also participate in protecting Kenya's borders, and where necessary the APS officers can step into help local police in highly dangerous conflict situations. But they must also go a step further and help to build peace.<sup>2</sup>

## **8** What does the Directorate of Criminal Investigations (CID) do?

The CID investigates crime, especially serious crimes like murder, drug trafficking, human trafficking, money laundering, terrorism, economic crimes, torture, piracy, organized crime, and cyber-crime. After investigation, it hands the case file over to the DPP for prosecution. It has several units. For instance, the Anti-Narcotics Unit fights drug trafficking and investigates drug crimes. CID personnel are chosen from the Kenya Police and Administration Police. Its headquarters are Nairobi but its detectives may serve in any part of the country.

## **9** Is it right that I can go to the CID to get a certificate of good conduct

You can apply to the CID headquarters in Nairobi or a Divisional CID office for a certificate saying you have no criminal convictions (if that is true, of course). You have to go with your second generation ID card, and a copy. It will cost you KShs 1000.

## **10** What are the paramilitary services?

The paramilitaries are armed special units. The General Service Unit (GSU) is part of the Kenya Police Service and the Rapid Deployment Unit (RDU) is part of the Administration Police Service. They are specially trained to deal with certain types of situations like fighting terrorists and controlling serious disorder. There is also an Anti-Terrorism Police Unit. But being paramilitary does not mean they are free to use any level of force they like, as we explain later.

## **11** Don't counties have their own police?

No. A county may not set up its own police service (county “askaris” are not police). But each police service will have an officer who is appointed County Commander in every county, and there are committees at the county level to ensure coordination between the police and the other authorities in the county.

## **12** What is the National Police Service Commission (NPSC)?

The Constitution created the NPSC to take charge of recruitment of police officers, their promotions and transfers,<sup>3</sup> but it may pass responsibility for recruitment of officers below the level of sergeant to the head of the relevant police service. The Commission develops disciplinary procedures, and hears appeals from officers against disciplinary measures taken against them. In Part D we explain the police vetting that the NPSC has been carrying out.

The members of the NPSC are the Inspector-General and the two deputies, a lawyer with considerable experience, two retired police officers of each Service, and three people of “integrity who have served the public with distinction.” (Article 246) These people are nominated by a panel including members of several independent commissions.<sup>4</sup>

## 13 Who can be a police officer?

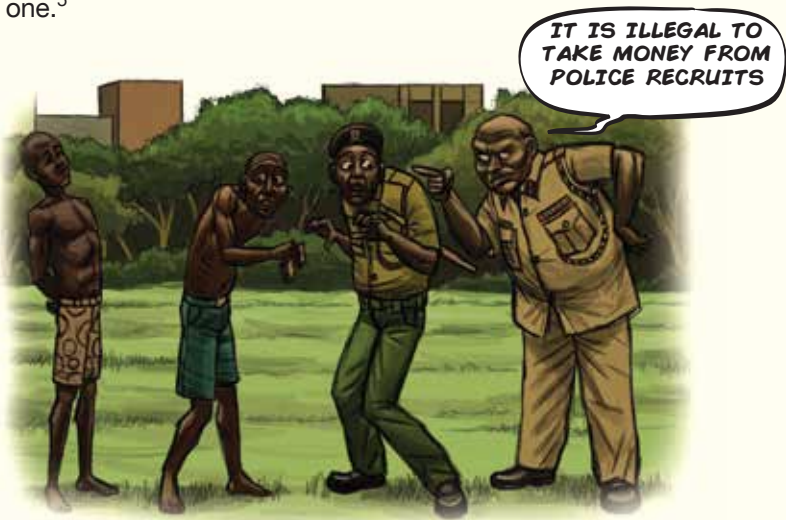
Any Kenyan can apply, and there must be no discrimination in recruitment. But there are some requirements and qualifications, about age, education, health and not having been convicted of a crime.

## 14 How can I apply to join?

Look out for an announcement about recruitment in the newspapers or the National Police Service or the Commission's websites. This will give the procedures for application. There may be some changes from the past procedures.

## 15 Would I have to pay anyone to get into the police?

No one should be expected to pay a bribe to become a police officer or to do any job. In fact it is a crime to pay a bribe, as well as to ask for one.<sup>5</sup>



## 16 What training would I get as a police officer?

The KPS and APS have several training colleges, with different specialisations. You would take classes and do physical and first aid training and, at the end of the process, complete an examination before being admitted to the service. There would also be refresher courses as you go up the ranks.

## 17 How are police officers promoted from one rank to another?

All promotions are done by the NPSC.<sup>6</sup> Service Standing Orders set the requirements for every rank. So for example for a Constable to be promoted to Corporal, she or he must have served in the police for at least four years and have not committed any disciplinary offence in the last two.<sup>7</sup>

Sometimes a candidate may have to go back to a police college for additional training before being promoted. Training is designed to suit the work of each rank. For example, to become Inspector of the KPS you must sit for the Police Law examination, where your knowledge of criminal law, criminal procedure and police regulations is tested.<sup>8</sup>





## 18 Can a police officer get a second job?

Policing is a full time job and officers should not generally be involved in a trade or business or outside occupation. If any officer wants to be involved in a trade or business, she or he must get permission from the NPSC. Permission is given only if there is no conflict of interest.<sup>9</sup>

## 19 Do we have enough police officers?

Kenya has about 83,000 police officers. That is one police officer for 500 people. There is no clear standard about how many police officers there ought to be for a given population. In Europe one officer to 300-400 people is about the average (but this sometimes includes civilian staff). It depends on how well equipped the police are, how many civilian support staff they have, and how large the terrain is. The skill, responsiveness and credibility that police bring to their work are more important than numbers.<sup>10</sup> Rather a lot of Kenyan police are now used doing work like protecting prominent people.

## 20 Can women join the police service?

Yes, they can and they do. They do most of the same jobs as men. As well as standard police work, women officers may work with female and child victims of sexual abuses, and are responsible for searching and escorting female and child prisoners.<sup>11</sup>

They can join at any level just like men and with the same qualifications. The National Police Service Act is very progressive about this: it says that no more than two-thirds of the appointments shall be of the same gender.<sup>12</sup> This means that eventually women should make up at least one-third of Kenyan police officers at every rank. Unfortunately there are fewer women than the law requires and very few senior women officers.

## 21 What about people from different communities, religions, backgrounds ?

The Constitution (Article 238) and the Police Service Act say that the make-up of the police must reflect Kenya's diversity – the Act just mentions ethnicity and region. But there should be a good mix of men and women of different religions, regions, ethnic groups and class in the police. This will help the police to understand the behaviour and attitudes of different communities and their culture better, help to remove prejudices, and ensure that people in all communities get good service from the police and are treated fairly. Diversity in the police also means that the police have a great many more natural contacts amongst different communities at the grassroots.

Failure to respect this principle of diversity was one of the reasons a court cancelled a whole recruitment exercise in 2014.

## 22 How can I tell if a person is a police officer and not some other official?

Different units have distinct and different uniforms. A police officer's rank can usually be made out by the badge on the shoulder. Every police officer in uniform must always wear a badge giving the officer's name or number.<sup>13</sup> A police officer has a "Certificate of appointment" that looks like this:



Whenever police officers stop anyone, they should first identify themselves. If you ask an officer, he or she must provide identification.

## 23 Is a police officer always on duty?

No. But a police officer must uphold the law at all times even when off duty – as we all have to. Off-duty police officers have the same authority as they have when on duty<sup>14</sup> and will be held to account for their actions. While they need not get involved in stopping petty crimes (they should call their on-duty colleagues instead!), they must step in to prevent or stop serious crime. Off-duty officers do not wear uniform and therefore must identify themselves as police officers and show their Certificate of Appointment.<sup>15</sup> A police officer must never, whether on or off duty, take advantage of their powers, say in family quarrels or in their other relationships.

**YOU KNOW I'M A POLICE OFFICER. IF YOU DON'T TURN THAT WRETCHED MUSIC OFF, I SHALL ARREST YOU. YOU'RE KEEPING MY KIDS AWAKE!**



## 24 Who is a beat constable?

A police officer's beat is a regular, specific area or route that the officer patrols – sometimes with another police officer – they check if everything is in order and that nothing suspicious is going on. Because they are familiar with the area, they are more likely to notice problems or trouble early on, as well as build good relationships with the people who live and work in that area.



## 25 How is the Inspector-General chosen?

In Kenya the Inspector-General is appointed by the President with the consent of Parliament.<sup>16</sup> Though it is good that the President does not have a totally free hand, it is actually a step back from the previous procedure when many stakeholders used to be involved in the selection process. The process of selection of the Inspector-General should be a fair and transparent process, so that the person most qualified for the job is appointed. And it is important that the IG does not feel personally indebted to anyone for being appointed because this might interfere with his or her independence of mind and judgment.

## 26 Who tells the police what to do?

The Constitution says that the Inspector-General has “independent command” over the police. The police are supposed to decide for themselves, on the basis of their professional judgment, what needs to be done, within the law. There are only two people in Kenya who may give directions to the Inspector-General on policing decisions. The Cabinet Secretary assigned responsibility for police can direct the Inspector-General about policy matters, but not about particular offences or particular criminals.<sup>17</sup> The DPP – who is also supposed to be independent of any political or other interference – can direct the Inspector-General to look into any information about a possible crime.<sup>18</sup> Both must put their directions to the Inspector-General in writing, so that everything is on record. The National Police Service Commission and the Independent Police Oversight Authority cannot direct the Inspector-General how to carry out the policing work. But in carrying out their oversight responsibilities they can make recommendations, and may even be able to insist that the police supply some information, or respond to recommendations, for example.

LOOK HERE, WE'VE BEEN FRIENDS FOR MANY YEARS. NOW YOU'RE THE IG CAN'T YOU CHARGE THIS FELLOW WHO'S GOING TO STAND AGAINST ME NEXT YEAR? I'M SURE HE IS INVOLVED IN CORRUPTION.

IF YOU HAVE ANY INFORMATION I SUGGEST YOU REPORT HIM TO YOUR NEAREST POLICE STATION OR EACC. YOU CAN'T TELL ME WHAT TO DO

## **27** Can the President fire the Inspector-General any time he wants to?

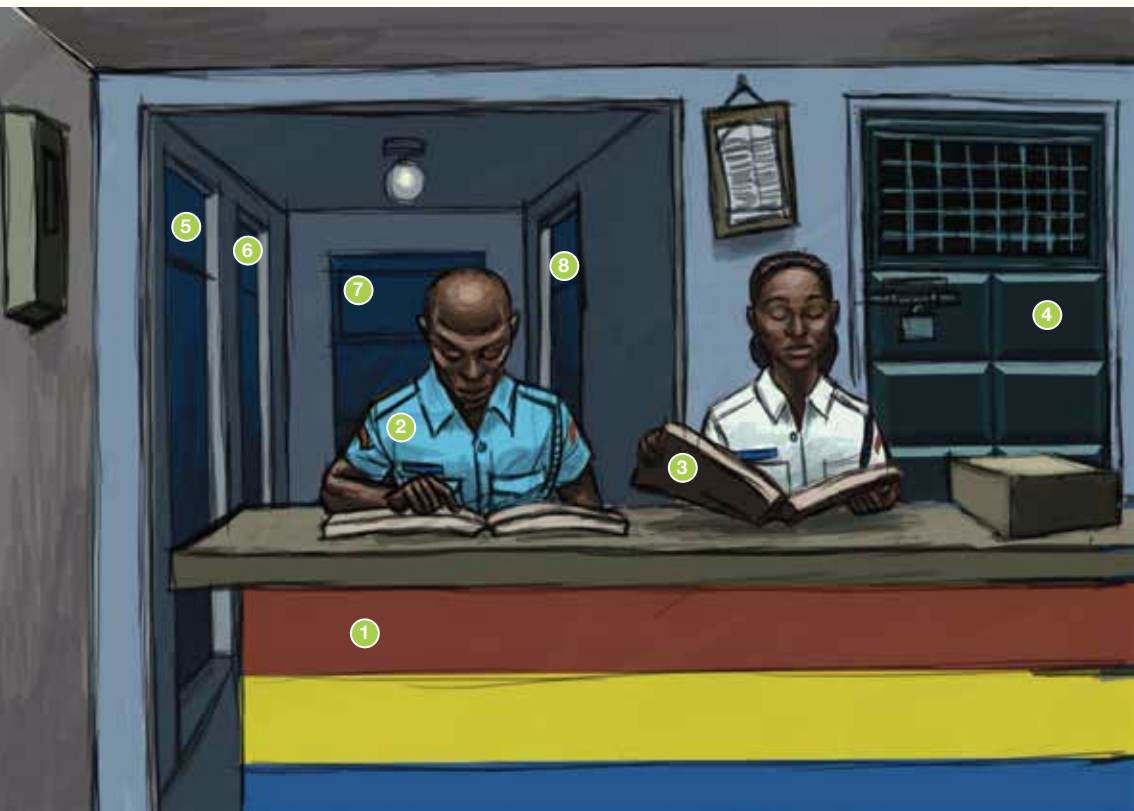
No, he cannot. The Inspector-General can only be fired for reasons mentioned in the Constitution. These are serious violation of the Constitution or any other law, gross misconduct, physical or mental incapacity to perform the duties, incompetence, bankruptcy or “any other just cause.”<sup>19</sup> Now the President alone can remove the IG, but would have to do so only for good reasons and the procedure would have to be fair. This means especially that the IG must have a chance to know what allegations have been made, and time to respond.

## **28** Can a person or private organisation hire a police officer for their own security?

Yes. If the Inspector-General of Police gives permission. Police officers can only be deployed for private use for the protection of public good or interest. Any payment must go to the Treasury.

# Know The Police Station

- 1 Reception,
- 2 Officers on duty
- 3 Occurrence Book (OB),
- 4 The Cell



- 5 Officer in Charge of the Station (OCS)
- 6 Exhibit store
- 7 Armoury
- 8 Office in charge of criminal cases

## B. Rights and Duties that You and the Police Have

### 29 Can police officers do just what they want?

No, absolutely not. A police officer who does not act according to the law and the specific rules about the police should be disciplined or brought before the courts.

### 30 So, what powers do the police have?

The two special powers the police have are to arrest people and to use force. It is the possibility of their exercising these powers that supports the police when they investigate or prevent crime or disorder. Stopping people, asking questions, searching them, collecting evidence, ordering people to come to the police station, dispersing crowds, or directing traffic are all backed up by the possibility of the use of those special powers. But they must use these powers only when the law allows, and must strictly follow the law's procedures. Reasonable suspicion that a crime has been committed, the need to prevent a crime, a reasonable belief that disorder is likely, suspicion that a driver has taken alcohol, or that a person may be carrying a weapon are examples of things that may justify the police taking certain action.

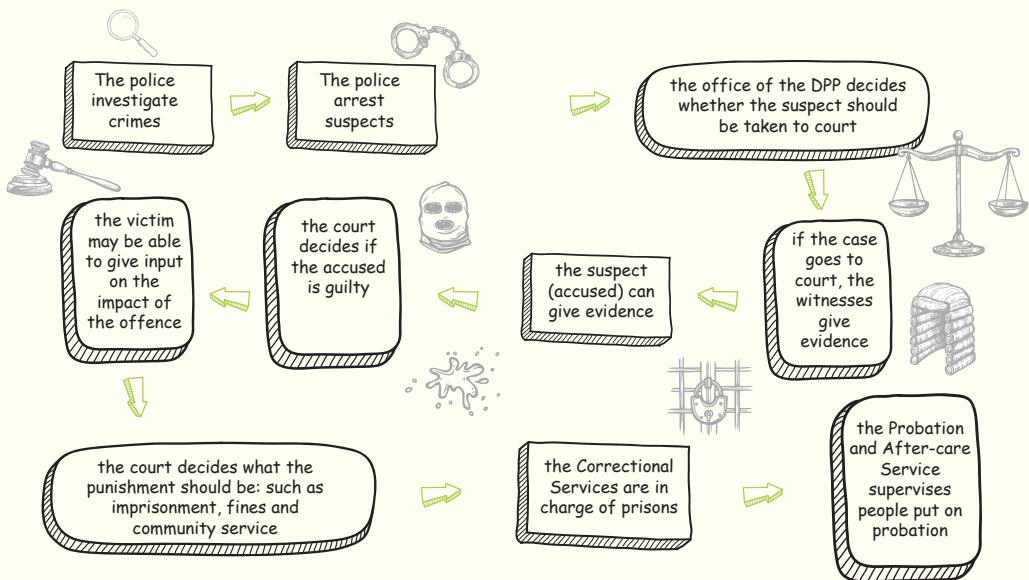
**THAT'S JOHN THE THIEF BEING CHASED. WE SHOULD ARREST HIM.**

**NO, WE DON'T HAVE ANY PROOF THAT HE HAS STOLEN ANYTHING. WE'D BETTER STOP THE ONE WITH THE PANGA; HE SEEMS TO BE THREATENING VIOLENCE.**



### 31 How does the system of criminal justice work?

The Constitution and the Criminal Procedure Code set out the steps to be taken to bring a suspect to justice and how each person in the justice system – the police, prosecutor, defence lawyer, and judge – must act. A person suspected of crime must be treated as innocent until either a court is convinced by evidence that he or she is guilty, or the person pleads guilty. The Code is designed to be fair to suspects – and to make sure that victims get justice. The procedures and rules laid down in the Criminal Procedure Code must be carefully followed by everyone including the police, the lawyers and the judges.



### 32 Do I have to obey every order from a police officer?

If it is a lawful order that is related to his or her duties, it should be obeyed. It is always good to cooperate with the police, unless they order you to do something that is clearly wrong. You can complain afterwards about an order that was wrong.

### 33 Do ordinary people have duties about law enforcement?

In some situations it is actually an offence not to take reasonable steps to prevent a serious crime that you know is about to happen.<sup>20</sup> This however would not include putting your life in danger, but at the very least you should call the police.

### 34 Suppose a police officer asks me to come to the police station, do I have to go?

It depends. You cannot be forced to go to a police station merely because a police officer says you must. If a police officer has a reasonable suspicion you may have some information that can help to solve a crime or they want to question you, they can ask you to go to the police station – but they must put this in writing.<sup>21</sup> You also have to go if the police are arresting you, which often requires a warrant.



Quiz: Who's behaving most sensibly within the law (1, 2 or 3)?

## 35 What is an arrest warrant?

A warrant is a permission that a court gives to the police to arrest a suspect. The correct procedure is for a police officer who has collected enough evidence to link the crime to a particular suspect to go to the court and ask for a warrant.<sup>22</sup> The warrant must describe the alleged offence, have a name of the suspect and the police officer(s) who can make the arrest.<sup>23</sup> Courts cannot issue vague or broad warrants that allow for the arrest of unnamed persons. There must be enough evidence against every named suspect to justify arrest.



## 36 Can I be arrested without warrant?

There is a list in the Criminal Procedure Code of offences under the Penal Code stating for each whether you can be arrested without a warrant if you are suspected. The list of offences for which the answer is “Yes” is long; mostly serious offences. There are many other laws under which a person can be arrested without warrant, usually because there is a possible risk the person suspected may run away.





### 37 Can the police just walk into my home, office or field and search it?

No, they normally require a search warrant. People's homes and offices are private places and cannot be open to police searches without some really good reason. The police therefore have to go to a magistrate and explain their reasons for thinking that there are goods, papers or people hidden in the premises that will help them solve a crime. A search warrant gives the name and rank of the particular officer allowed to enter that particular place.<sup>24</sup> Unless the court explicitly allows it, a search must not be carried out at night.

A police officer can enter private property without a warrant only in special circumstances; for example, if taking time to apply for a search warrant would make an ongoing investigation much harder.<sup>25</sup> The officer must record the reasons for this decision before doing the search, and if you are a victim of a wrongful search you can complain, and even get compensation.



### 38 What happens next when the police have a search warrant?

If the police come into your house, they must identify themselves before entering, make a record of the incident, make a record of any things taken from the property and take the property recovered to a magistrate without delay.<sup>26</sup>

### 39 Can an ordinary person arrest or punish a person he or she suspects of having committed an offence?

Anyone can arrest a person he or she suspects of having committed a serious offence, and hand that person over to the police as soon as possible.<sup>27</sup> But it is a bit risky for an ordinary person, because the rules about what is a sufficiently serious offence are rather technical. Even if you do arrest someone, you cannot beat up or otherwise harm the suspect. The only situation when members of the public can use force is to defend themselves or others, but that too must be reasonable. It is a serious offence for the public to beat up or even kill a person – even if they are right that the person has committed a crime. Rather, they should hand the person over to the police for further investigation.

## 40 Can the police punish or abuse a suspect?

Absolutely not. The police cannot punish a suspect, even if it is obvious that he or she is the one, who committed the crime. It is not the business of the police to punish people. Punishment comes only after the courts have fairly decided that a person is guilty.

The law says the police must treat suspects humanely and cannot use physical force if the suspect does not resist.<sup>28</sup> No officer must hit a suspect, unless it is necessary in self-defence, or to prevent an escape, or to prevent injury to another person.<sup>29</sup> No officer should verbally abuse arrested persons or suspects.<sup>30</sup>

## 41 How do the police arrest a person?

The police can arrest a suspect simply by saying so. There is no need to touch him or her at all unless the suspect is resisting arrest.<sup>31</sup> But they must tell the person that they are under arrest, and why.



## 42 When can the police use physical force?

According to the law, a police officer must always attempt to use non-violent means first (for instance warnings), and may use physical force only when non-violent means are ineffective.<sup>32</sup> The force used must be reasonable and necessary for what the officer is trying to achieve, whether an arrest or any other lawful purpose like stopping a crime.

## 43 When can the police use guns?

The use of guns is strictly regulated by details in the law. Police officers must make every effort to avoid using guns – this should be a last resort. Basically, they can be used to save life or serious injury, prevent a person who is charged with a serious offence escaping.<sup>33</sup> Whenever a police officer uses a gun he or she must report to the superior officer. If the gun causes death or serious injury, there must be a report to IPOA. The police regulations also say that the police can carry guns only when it is necessary for the duty they are going to perform.<sup>34</sup> For example, if a police officer patrols an area where violent crime is likely, then it is reasonable to take a gun, while a traffic police officer does not need to carry a deadly weapon around.

## 44 What happens if a police officer arrests me?

If the police are trying to take you to the police station and you are not sure if you are under arrest, ask them “Are you arresting me?”. As soon as you are arrested, you must be told why you are being arrested. The police should tell you your rights under Kenya law – at the very least, the right to remain silent; (see next question).<sup>35</sup> After you have been arrested, you are taken to the police station, where your statement is taken and your arrest is recorded in to a special register – the Occurrence Book. The police will keep you until they decide to release you or bring you before the court (within 24 hours).

## 45 What does the right to remain silent mean?

People may “admit” to things that are not true if they are tricked or tortured. This is one of the reasons for the right to silence. Anyone suspected of a crime does not have to say anything other than give their name and address to the police. If you do not know something, the police officer cannot force you to make any statement, or put words in your mouth. The fact that you choose to use your right to remain silent must not be treated as non-cooperation with the police, or an admission of guilt. This is part of what we call the “presumption of innocence” – unless and until a person is proved to be guilty, they must be treated as innocent.

But if you have been asked, in writing, to go to the police station to answer questions, not as a suspect but as a witness, refusing to answer is a criminal offence, and so would be telling lies in response to those questions.<sup>36</sup> But if the police realise that what you are saying may show that you have committed a crime, they must stop the questioning and treat you as a suspect with the right to silence (see question 47).

## 46 If I answer police questions, will the officer write my answers down?

Yes, whether you are a suspect or a witness, who has been called to the police station, the police have to write down what you say as a “statement”, but they must warn you before you answer any question, that the statement may be used as evidence if the matter goes to court.<sup>37</sup> A statement cannot be what the police want it to be; it has to be something that you agree to and have really said. That is why the statement must be read out to you, and you can make any corrections you may wish to make.<sup>38</sup> The police officer should give you a copy of your statement.<sup>39</sup>

## 47 Suppose I do confess to a crime?

If you are a suspect, or even if you were invited as a witness, and you say anything that is evidence of being guilty to crime, what you have said cannot be used in court against you unless a strict procedure is followed. Your confession can only be used if you make it in front of a judge (that is in court) or a magistrate or before a police officer who is an Inspector or above – and not the officer who is investigating the case. Also a private person of your choice (who could be a lawyer), must be present.<sup>40</sup> As soon as a person says he or she wants to confess, the questioning must be handed over to the officer who will record the statement, and strict rules must be followed to protect the person confessing. Those rules are supposed to be displayed in the police station.<sup>41</sup>

The idea of the private person being there is to guard against unfair pressure on you. If a confession is forced out of you through intimidation and beating or any other threat it cannot be used in court.



## 48 If I'm arrested, where will they keep me and what should this place be like?

You can only be held in a place that has been officially declared as a place of detention<sup>42</sup> – usually a cell at the police station. The police cannot hold you in any other place and cannot hold you in a secret place that other people do not know about.

Though you are not free to leave, you are presumed to be innocent and cannot be treated as a criminal.



## 49 What happens to my belongings when I am arrested?

Police officers are responsible for keeping your personal property safe. When you are arrested everything that is taken from you, including cash, must be listed in a special document – Property Receipt. You will be asked to check if the Property Receipt names all the items that are taken from you. If everything is all right you will need to sign the Receipt.<sup>45</sup> All your items must be kept safely in the police station. Cash will be put in an envelope and sealed and a police officer will note on the outside of the envelope your property receipt number and the amount of money inside. The envelope will be kept in a safe or a special cash box. All your belongings must be returned to you when you leave the police station. You will need to show your Property Receipt to claim them back.<sup>46</sup>

## 50 Can the police search me when they arrest me?

Yes, if this is reasonably necessary. The police must respect your dignity as they search you, including that the person who searches must be of the same sex as you.<sup>47</sup>

## 51 Do I have a right to have a lawyer?

Yes. If you have been arrested you have a right to be represented by a lawyer.<sup>48</sup> From the moment of your arrest, you have a right to contact a lawyer of your choice, and any other person who can legally help you, including a paralegal or member of another organisation that could provide assistance such as the Kenya National Commission on Human Rights.<sup>49</sup> Before your lawyer comes, you do not have to answer any of the police's questions. Police must tell you about this right when they arrest you.<sup>50</sup> The police must not deny you the right to talk to your lawyer or prevent him or her from visiting you.<sup>51</sup>

## 52 What if I do not have money to pay for a lawyer?

Rich or poor, everyone should have equal access to justice.

The Constitution guarantees you a right to have a lawyer at the state's expense, "if substantial injustice would otherwise result"<sup>52</sup>. But free legal aid services need committed lawyers, institutions and most of all funding. It is difficult to create such a system at once. Therefore, at the moment only people who are charged with murder are guaranteed to get a lawyer paid by the government.<sup>53</sup>

This does not mean that you shouldn't ask for a free aid lawyer if you are charged with a less serious offence. But it means that there is no guarantee you will get a lawyer. If you think that a substantial injustice can happen to you if you do not have a lawyer, but you were denied one, do bring this issue up when you first appear before the magistrate.

Nevertheless, Kenya is moving forward and law has just been passed to provide legal aid to many more people charged with crime.<sup>54</sup>

## 53 Can I tell other people that I have been arrested?

Yes. It is your right to inform any person that you have been arrested and where you are held.<sup>59</sup> You can inform anyone you want straight away after you are arrested.

While you are held (by police or in a remand centre or prison) you have a right to have one visitor a week).<sup>60</sup> They can even bring you food. But it will be checked to make sure there is nothing that would help you escape, or a weapon, drugs, a mobile phone etc. hidden there.<sup>61</sup> The right to have visitors can be restricted, but only when really necessary,<sup>62</sup> for example, to prevent a suspect from sending out messages that will help others interfere with the investigation.



## 54 If the police arrest me, can they keep me for as long as they like?

Absolutely not. The police must produce you before a magistrate within 24 hours.<sup>55</sup> The only exception is if the 24 hours will end outside ordinary court hours.<sup>56</sup> For example, if the police arrest you on Friday night, because the magistrates do not sit on weekends, the police can detain you until Monday. But you should always try applying for a police bond when you are arrested (see question 56). In the magistrate's court you will usually be charged with an offence. If the police can persuade the court that it is essential to do more investigations to solve the crime, the magistrate may prolong your police detention, but to no more than 90 days in all (unless you are detained under the Prevention of Terrorism Act).<sup>57</sup> Otherwise, you will be held, usually in a remand prison, until your trial, unless the magistrate releases you on bail or bond. If you are detained, you must be held separately from people who are serving a sentence.<sup>58</sup>

## 55 What is habeas corpus?

This is a very old remedy to get the release of a person being wrongly held – by anyone, not just officials.<sup>63</sup> The High Court deals with a habeas corpus application on an urgent basis. If it is satisfied that a person is being held, it will ask whoever is holding the person to produce him or her before it within a short period (a few days) and release the person if the detention cannot be justified.<sup>64</sup> If you are detained anybody can apply for habeas corpus to challenge your detention.<sup>65</sup>

## 56 Will a person who is arrested have to remain locked up until their trial is finished?

Some people will be detained until their trial is finished. But most people are released by the police or by the court before that, even though the trial will continue. This is called being released on bail or on bond.

## 57 But people who are arrested are criminals! Why do we ever release them?

This is part of the rule that every accused person is innocent until proved guilty in a court. The Constitution says that a person arrested (for any offence) should be released unless there are “compelling reasons” not to do so.<sup>66</sup>

### CASH BAIL

The police may allow you to go, in return for a cash payment (not a bribe). you should receive an official receipt. if you turn up in court, you will get your money back. if the police refuse bail, you can ask the court.

### BOND

Either the police or the court could allow you to go in return for signing a document promising to pay if you do not show up for your trial, instead of paying a cash sum straight away. the promise is called a bond.

### BOND WITH SURETIES

If the court releases you, it could ask for you to get someone else – relatives, friends or someone who can vouch for you – to sign promising to pay if you fail to turn up. they are called sureties. this could be the only condition or it could be in addition to your own undertaking or to cash bail.



## 58 So what are compelling reasons?

This means very strong reasons. Courts have said that bail can be refused if there is reason to think you will run away, you will interfere with witnesses, destroy evidence, or commit another crime. You may be refused if you may be at risk from others – maybe someone who wants revenge for the crime they believe you committed. Seriousness of the offence is also taken into account. But the bail and bond guidelines published by the judiciary say that bail is not to be refused only because the offence is serious.<sup>67</sup> Remember it is the responsibility of the prosecutor to prove that there are reasons not to release you on bail.

## 59 If I am arrested and am released on bail or bond is that the end of the matter?

No. You will still have to face the trial during which the court will decide whether you are guilty or innocent. If you do not appear for a trial or fail to comply with the conditions of bail or bond in any other way, the court may order that you are arrested, and you may lose the money you deposited, or promised – and so might the other people who promised to pay if you did not turn up.

## 60 Can I pay police officers to let me go?

No. This is bribery and paying a bribe is a criminal offence – you could be prosecuted.<sup>68</sup> Equally, it is illegal for a police officer to demand money or other valuables from you.<sup>69</sup> If you are arrested, police can only release you on bail or – if they decide not to proceed with the case – they will just let you go.



## 61 Are there special rules to protect vulnerable people, including women if they are in custody?

Yes. By law, women in detention should be kept separate from men.<sup>70</sup> Service Standing Orders make it clear how the police must treat women suspects. Women should be detained as a last resort, and for as short a time as possible. Many of the rules are to protect women from assault and abuse of their dignity by police or male detainees. A woman must be searched only by a woman, and it should not be possible for one male police officer acting alone to get access to a woman in a police cell.<sup>71</sup>

A new law provides for respectful treatment for intersex prisoners, including being kept apart from male or female prisoners, and having a choice as to the sex of officer to search them.<sup>72</sup>



## 62 What about children?

Yes, the Penal Code, Children Act and the Service Standing Orders have special rules about child offenders. A child should always be kept separate from adults.

A child cannot be prosecuted and found guilty for something they did when aged under eight.<sup>73</sup> The child can be dealt with if he or she needs of care and protection (maybe taken away from parents who are leading the child into crime or neglecting the child). A child between the ages of eight and twelve years can only be found guilty of a crime if the court decides the child committed the act and understood that it was wrong.<sup>74</sup>

A child must never be detained for longer than 24 hours without a court's permission, even at the weekend.<sup>75</sup> A child must be told directly what he or she is charged with, and be given help in preparing a defence if he or she cannot find a lawyer (even if an adult would not have this help).<sup>76</sup> The child's parents or guardians must be informed as soon as possible about the arrest.<sup>77</sup> The police must also inform the Director of the National Council for Children's Services, an official body responsible for children's welfare and care.<sup>78</sup> A child must not be questioned unless a parent, guardian or children's officer is present.

A child must be released on bond or bail unless it is necessary to remove a child from a bad influence,<sup>79</sup> for example, from an adult who might have incited him or her to commit a crime. Children must be detained separately from adult detainees and prisoners. A child must be detained separately from any adult who is not a relative.<sup>80</sup> Female children must be taken care of by a female police officer.<sup>81</sup>

## 63 My rights were violated by the police during arrest and detention. What should I do?

If you find yourself in a situation where these rules are not followed by the police, bring it up in the court during your first court appearance. If you have any sign of injury from police mistreatment, tell the magistrate. If you have a lawyer, make sure she or he knows about your mistreatment, as soon as possible. You can also complain to a number of organisations (see table at the end of this booklet).

## 64 Do the police have any rights?

Police officers have most of the same rights as others. They must be treated with dignity. They have the right not to be treated violently or inhumanly. It is a crime to assault an officer in the performance of his or her duty. If they obey the rules they should not get in trouble.

But they do not have all the rights of others. They do not have the right to strike or join a trade union. The Constitution (Article 24) allows the law to prevent these, and to restrict police right to privacy, and their freedom of association and assembly. It even allows the law to restrict the police's right to education, health, food, water and housing under Article 43, which seems rather harsh. For other people any limit on these rights must be reasonable.

## C. Asking The Police For Help

### 65 Who can report a crime to the police?

A victim, a witness or any other person who knows something that might be a crime can report to the police. For instance, you have noticed that your neighbour regularly receives goods and sends stuff out at the middle of the night. You can report this to the police. They will then start investigation to find out if what is happening is really a crime.



### 66 Who will I find in the police station?

The person in charge of the police station is often called the OCS (Officer in Charge of the Station). OCSs have a number of police officers under their command who are responsible for different tasks – receiving complaints and keeping registers, patrolling, guarding the police weapons, guarding suspects, etc. Some police stations have gender desks, where there should be an officer dealing with gender based violence.

## 67 If a woman or a child goes to the police with a problem, will they receive any special treatment?

They are entitled to talk to a woman police officer. It is a special duty of female police officers to address concerns of women and children reported missing, found, injured, destitute or homeless, and those who have been the victims of sexual offences.<sup>82</sup>

## 68 Suppose a person from a minority or marginalised community goes to report, or a person who does not speak English or Kiswahili?

It does not matter where you are coming from. You must not be discriminated against for any reason including your tribe, language, religion or disability.<sup>83</sup> All state organs and public officers, including the police, have the duty to address the needs of vulnerable groups within society including minority or marginalised communities.<sup>84</sup> It means that, although English or Kiswahili are the official languages of Kenya, the police cannot refuse to take your complaint just because you do not speak these languages or belong to a particular community. But it would be sensible to take a friend along who speaks your language and English or Kiswahili and can help tell your problem to the police.



WE ARE ALL EQUAL IN THE EYES OF LAW

## 69 Don't people feel scared about going to the police for help?

The law makes it clear that all police officers must conduct any interview with a victim or a witness or suspect in an ethical and fair manner, respecting the equality of everyone, and treat them with dignity and respect, be patient and open minded and compassionate.<sup>85</sup> Therefore, a police officer should not threaten you, laugh at you, humiliate or intimidate you. He or she cannot call you a liar or blame you, as a victim, for what had happened.

If you believe that the police officer, who is interviewing you, is not behaving correctly you have a right to speak to the Officer in Charge and to demand a different police officer. You can also lodge a complaint against this officer (see question 84).

## **70** When should I go to the Chief and when to the police?

It is always better to report crime to the police. However, you can also go to the chief. Chiefs have power to arrest wrongdoers and hand them over to the police.

## **71** How should I report a crime?

If it is emergency situation and you require help you can call number 999 or the local police station's number if you know it. Otherwise, you should go to the police station in person to report a crime. Always try to report the crime to the police station, nearest to the place where it was committed.

Only use the 999 number in case of real emergency. The police have complained that the number was swamped with "prank calls". That is very irresponsible of people: blocking the line and wasting the time of the operators.

## **72** What happens when I report a crime?

A police officer will question you about what happened to decide whether the situation that you are describing is likely to be a crime. If so, he or she will record your complaint in the Occurrence Book, and will help you to fill out one or more forms and record your statement of what happened. This will trigger the investigation and give initial direction to it. All the forms are free of charge, including the P3 form (medical examination report that proves that you suffered harm, for instance, as a result of assault or rape), and must be given to you if you ask. You don't have to pay for registering your complaint.

If your complaint is about corruption you can report it directly to The Ethics and Anti-Corruption Commission.

## **73** Can I get in trouble for reporting a crime?

If you tell the police honestly about something you should not get into trouble. But if you tell them something you know is not true to get someone else in trouble that is a crime.<sup>86</sup>

Only suspects can be arrested. Any practice of rounding up anyone who may be connected, however remotely, with a criminal investigation and detaining them in the police station just to be questioned is unlawful.<sup>87</sup>

## **74** What should be recorded in a statement?

It is always better if you know the facts first-hand, but to make a complaint it is not necessary that you have seen the offence actually being committed. Whichever it is, you must only give the correct information as far as you know it. Remember that the statement is evidence, and it is in your own interest to describe events fully and correctly.

**GIVE YOUR NAME AND ADDRESS, THE DATE AND TIME OF THE INCIDENT. TELL YOUR STORY CLEARLY. EXPLAIN WHAT HAPPENED. WHO DID WHAT - AND IN WHAT ORDER? WAS THERE ANY KIND OF INJURY OR DAMAGE TO PROPERTY?. DID ANYONE USE A WEAPON?**



## **75** How can I be sure that the police have written down exactly what I told them?

The police are there to write down accurately what you say without adding anything or leaving anything out. You should read anything you are asked to sign, or it should be read out to you first and you must agree with it before signing. If you believe that the police officer recorded your account of events incorrectly ask for the statement to be corrected before you sign.<sup>88</sup>

**I JUST READ YOUR STATEMENT TO YOU. IS EVERYTHING CORRECT?**

**YES SIR, EXCEPT THE PERSON THAT I SAW WASN'T TALL; HE WAS MORE LIKE YOU - A BIT SHORT'**



## **76** Can the police refuse to register my complaint?

Not if what you are complaining about is a crime under Kenyan law, like a murder, rape, robbery, police neglect or abuse, etc. Even if the police are busy and for some reason do not want to take your complaint, they have to.<sup>89</sup> You can insist on this. They should register your complaint about the crime and give you a reference number of your complaint.

If the police still refuse to register your complaint, ask to see the Officer in Charge (OCS) and insist that the complaint is registered. If a police officer does not register your complaint he or she commits a disciplinary offence.<sup>90</sup> Therefore, you can complain to the Internal Affairs Unit (see table at the end).

However, if the act you are complaining about is not a crime according to the criminal law, the police will not be able to register your complaint, but should advise you what to do.

## 77 What happens once my complaint is made to the police?

The police start investigating the complaint. The police may speak to victims or witnesses, record statements, visit the crime scene, send articles for examination and bodies for post-mortem as necessary and with each lead go on to make further investigations. The Kenya Police Service Charter says that they will visit the scene of a crime within two hours.<sup>91</sup> If the investigation reveals that a crime has been committed and a suspect identified, all of the investigations and evidence are recorded, and the suspect will be arrested and taken to court.

But remember, just because someone is named in the complaint is not enough reason to arrest them. The police can only arrest a person if there is evidence to link that person to the crime. If the police have made their own inquiries and found that there is not enough evidence to prosecute the suspect, or that no crime was committed at all, they will close the case after recording why they have closed it.<sup>92</sup>

## 78 What can I do if I am not satisfied with the way the police are investigating my complaint?

If the police refuse to move forward or undertake investigations very slowly or wilfully disregard obvious lines of inquiry, you can certainly complain to a senior officer. The senior officer can then direct his subordinates to investigate and call for the record of investigation. If you are not satisfied, you can always complain to the Internal Affairs Unit or IPOA (see table at the end).

## 79 Will I be kept informed about the progress of the investigation?

There is nothing in the law that requires the police to keep you informed about the progress of the investigation. However, it is a good practice for the police to tell a complainant how the investigation is going – provided telling you does not interfere with the investigation. If you want to be updated about a crime you have reported you should contact the investigating officer.

## 80 Can I call the police whenever I want?

Yes. The police are there to serve and to act promptly and respond efficiently when approached by the public. This is the law. However, of course you can call the police if you are in trouble, if a crime has occurred or is occurring, if some people are fighting and there is likelihood of disorder or a riot, or if you have serious information to give them. But you should not call the police for things that are not connected with their job, or waste their time with frivolous information and allegations that have no foundation.



## D. Police Accountability

### 81 Can a police officer be punished if he or she has done something wrong?

Yes. A police officer, just like anyone else, can be punished for breaking the law.. For example, if an officer tortures a person, or takes a bribe he or she can be prosecuted in court just like any other suspect.<sup>93</sup> If the officer breaks a rule, but this does not amount to crime, he or she may suffer a disciplinary punishment. If an officer behaves very badly, he or she may be fired.



### 82 But what if a police officer was following orders from his boss?

Usually an officer must obey orders, and it is a disciplinary offence not to. But the duty to obey applies only to lawful orders.<sup>94</sup> Officers will be held responsible for their own acts if someone told them to do something that is clearly unlawful.<sup>95</sup> And the law says an officer must not be punished for disobeying an unlawful order

### 83 Who makes sure that the police do their work and do it right?

Within the police it is the leadership that must make sure that the police function efficiently, honestly and are reliable and responsive to the community. There is also a special unit within the police – Internal Affairs Unit (IAU) – that investigates complaints and makes recommendations on punishment of guilty officers.<sup>99</sup>

Also the Independent Policing Oversight Authority (IPOA) and National Police Service Commission (NPSC) and were created to make sure the police are accountable to the people and the human rights commissions also have a role to play in this.



## 84 Suppose I want to complain against a police officer. What should I do?

Anyone can complain about misbehaviour of a police officer.

You can complain to his or her senior to one of the special bodies: the Internal Affairs Unit, the National Police Service Commission, IPOA, or a human rights commission. Take a look at who these bodies are, what they do and how to complain to them on page 36.

You may be confused that there are so many bodies dealing with complaints, but you should not worry: even if you complain to a body that cannot deal with the matter, staff will transfer your complaint to a proper authority.<sup>99</sup> In fact, all these bodies are encouraged to work together.

If you have a complaint about abuse of powers (such as unlawful detention or beating up) it is also possible to take a case to the courts, asking for compensation.

## 85 What information should I provide?

You should try and provide as much information as you can, including:

- Your name and contact details
- What happened – and the date, time and place
- Name and rank of member of police
- Names of the people involved or people that might help with the investigation
- Details of any documents or information that might help with the investigation
- What you would like the body to do about your complaint
- Photographs, or audio or video recording that show what happened, if you have something like that.

The organisations will have a complaint form as well.

## 86 Can I remain anonymous?

You can make an anonymous complaint some of the commissions, including the Ethics and Anti-Corruption Commission. With the IPOA, you can tell them who you are but ask them to keep your identity confidential. If you are worried about your safety the agency you complain to may be able to help you access witness protection services. This means you might, for example, get police protection, or a place to stay while the case goes on.<sup>100</sup>





## **87** So can I go to the police station and file a complaint there?

Yes, you can make a complaint at any police station or with any police officer. You can even approach a police officer on the street and complain to him. He is obliged to write down your complaint in a notebook and then officially register it at the police station.<sup>101</sup> But as was mentioned above, it is always better to complain in writing and get a receipt, so it is better if you complain at the police station in person.

## **88** What happens after I make my complaint at the police station?

The police will record the complaint and report it to the IPOA and the Internal Affairs Unit.<sup>102</sup> If it is a serious complaint the IPOA will investigate it. Otherwise the Internal Affairs Unit will investigate and then, if necessary, make a recommendation for action to be taken against the police officer.<sup>103</sup>

## **89** What happens to an officer who IPOA finds guilty of an offence?

IPOA has power to recommend that an officer who seems to have done something wrong should be taken to court and charged with a crime, or that he or she should be disciplined through police procedures. Both may happen.

IPOA may also recommend a change in processes or procedures of the police. IPOA's recommendations cannot be ignored and the Authority can go to court to make the police comply with them.

## **90** But can a police station refuse to accept a complaint against their own officer?

That is absolutely illegal. A police officer who refuses to record a complaint commits an offence.<sup>104</sup> If this happens to you, it means that now you have two complaints to make: your original complaint and the complaint against the officer who refused to record your first complaint. You can take them either to the IPOA or directly to the Internal Affairs Unit.

## **91** What happens if the IAU takes too long to investigate?

The IPOA can take over if they think the Unit is taking a very long time to investigate, or that the investigation is obviously unreasonable in some way.<sup>105</sup> You can tell IPOA about your concerns if they are not looking already into it themselves.

## **92** Will I be informed about the results of the investigation?

Yes. The Service Standing Orders make it very clear that the police must inform you about the results of their investigation.<sup>106</sup> They may, but they don't have to, tell you how exactly the delinquent officer was punished.

### 93 How can the police officer be punished?

Depending on the seriousness of the offence, one or a combination of disciplinary measures can be applied to the police officer. If the police officer is considered to have broken the criminal law, eventually the case will be referred to the Director of Public Prosecutions, who will decide whether the police officer should be taken to court.



YOUR COMPLAINT WAS INVESTIGATED. THE OFFICER WAS FOUND IN VIOLATION OF SERVICE REGULATIONS AND PUNISHED ACCORDINGLY.

### 94 We've heard about police vetting: what is it?

In general 'vetting' is a process of scrutinising people to see that they meet certain standards.

The NPSC vets applicants when they are recruiting.

And the NPSC has also been given the responsibility of vetting every single officer already in service. This is a short term programme not a permanent arrangement. The NPSC can probe into important questions like: is the police officer corrupt? Has he or she abused anyone? Is the officer professional and competent? As a result, some corrupt, abusive and unprofessional officers have had to leave the police,



SO OUR INVESTIGATION SHOWS THAT THIS OFFICER VIOLATED POLICE REGULATIONS. WHAT SHALL WE RECOMMEND?

HE CAN BE:

- REPRIMANDED;
- SUSPENDED;
- MADE TO PAY MONEY;
- CONFINED TO THE BARRACKS OR POLICE RESIDENTIAL QUARTERS;
- REDUCED IN RANK; OR
- DISMISSED.<sup>107</sup>

### 95 Does the public have any role to play in vetting?

Yes. Before considering particular officers, in the ongoing vetting of existing officers, the NPSC will put out an advertisement asking for information about them. You can give any relevant information that you have. The NPSC will follow up and may even ask you to come and give evidence in person, or give any relevant material that you may have (audiotapes, photographs, any kind of written materials), or name witnesses who saw what had happened. But do not worry, the identities of witnesses can be protected. The NPSC also accepts anonymous complaints.<sup>108</sup> That way the vetted police officer will never get to know who complained against him or her.

## E. Community and county policing

### 96 What is community policing?

This is a policy that allows the police and the community to work together to identify and solve problems of crime and insecurity in the community. In this way the police and the community together work out local solutions for local problems.

It is internationally recognised practice that has worked in many places around the world. In Kenya, local police oversight institutions – County Policing Authorities – are responsible for implementing community policing in all parts of the country at the county level.<sup>109</sup>

**COMMUNITY POLICING IS A WAY FORWARD. IT IS A GREAT WAY FOR THE COMMUNITY AND THE POLICE TO GET TO KNOW EACH OTHER AND DISCUSS CONCERNS THAT THEY MIGHT HAVE ABOUT POLICING AND SAFETY IN OUR AREA.**



97

### How can I get involved in community policing?

There are two ways to get involved in community policing in your area:

- By being part of a Community Policing Committees and forums;
- By being part of a County Policing Authority.

Under the NPS Act, the police officer in charge of an area must set up a community policing committee, in consultation with stakeholders.<sup>110</sup> The committee will create a partnership between the community and police, improve communication between them and therefore improve the police services in the community. The committee will also help to improve police accountability to the community for their actions. Local communities can set up policing forums, and can elect a delegate to the community policing committee. The station commander will be part of the committee. The Chairperson of the Committee will be elected by other members and must be a non-police officer. The Vice-Chairperson is also elected by other members, and must be a police officer.

98

### How can I become a member of the Committee?

Someone who is interested in being on the Committee must get involved at the forum level first and then try to get elected to the Committee.

The Committee can, when necessary, appoint other members, experts and community leaders to the Committee in an advisory role only.

## **99** What are County Policing Authorities?

The County Policing Authorities (CPA) are a key part of implementing community policing in each County, created under the NPS Act.<sup>111</sup> The CPAs do not interfere with police day-to-day work or the work of the NPSC, but provide broader policy direction and input. They develop proposals on police priorities, in the county, monitor trends in crime, and oversee the policing budget. They report annually to the Cabinet Secretary on policing in the county. They have an important role in community policing, and ensuring police accountability to the public. They create structures to implement community policing in all parts of the county, facilitate training of people involved in community policing, and report on county community policing.<sup>112</sup>

## **100** Can I join the CPA?

The very purpose of community policing is to get ordinary citizens like you involved. A CPA is made up of representatives of the County Executive and County Assembly, security agencies and the police, with six people from the local business sector, community based-organisations and religious organisations, women, persons with special needs, and youth.<sup>113</sup> Thus, as a civilian you can join your CPA as one of these 6 members through a competitive process organised by the county public service board. After the names are chosen, the county security committee vets them. The county security committee is chaired by the county commissioner; the county commissioner is the representative of the national government in the county (instead of the old District Commissioners). Finally the County Assembly approves them, which means they can reject a name, and then another name must be supplied.

## **101** Are there any requirements to be a member of the CPA?

Yes. A person cannot be part of the CPA if he or she:

- Has violated the Constitution;
- Has been declared bankrupt (this means having been declared by a court as not being able to pay one's debts) ;
- Is not of good character or moral standing;
- Has been convicted of a felony (serious criminal offence); or
- Has not been resident or employed in the county for a continuous period of three years or more.<sup>114</sup>

| Where can I go?                                   | What can I complain about?  | How can I complain?  | What can this body do if it finds that the officer was wrong?   |
|---|---|--|---|
| National Police Service Commission                | Any misconduct  | Complain through <ul style="list-style-type: none"> <li>• Website</li> <li>• Telephone,</li> <li>• Send letter / e-mail</li> </ul>                                     | Inquire and discipline officer. Refer case to IPOA, a human rights communication etc  |
| Independent Policing Oversight Authority (IPOA)   | Any misconduct from rude behaviour to torture   | <ul style="list-style-type: none"> <li>• Visit IPOA offices</li> <li>• Give them a call,</li> <li>• Complain online</li> <li>• Send letter / e-mail</li> </ul>         | Recommend: <ul style="list-style-type: none"> <li>• Criminal prosecution</li> <li>• Disciplinary action</li> </ul> IPOA can enforce its recommendations through courts  |
| Internal Affairs Unit of the Police (IAU)         | Any misconduct from rude behaviour to torture   | File a complaint at the police station against the officer. The police cannot refuse to register your complaint  | Recommend to the Inspector-General to fire, suspend, demote the officer or any other lawful action  |
| Kenya National Commission on Human Rights (KNCHR) | Any violation of a human right, such as unnecessary use of force, unlawful detention or discrimination  | <ul style="list-style-type: none"> <li>• Visit KNCHR offices</li> <li>• Give them a call,</li> <li>• Complain online</li> <li>• Send letter / e-mail</li> </ul>        | Order: <ul style="list-style-type: none"> <li>• The release of any unlawfully detained person</li> <li>• The payment of compensation</li> <li>• Any other lawful remedy</li> </ul>  |
| Ethics and Anti-Corruption Commission (EACC)      | Any form of corruption such as bribery  | <ul style="list-style-type: none"> <li>• Visit EACC offices</li> <li>• Give them a call,</li> <li>• Complain online</li> <li>• Send letter / e-mail</li> </ul>         | Recommend criminal prosecution or any other appropriate action. Go to court to ensure that compensations are paid or disciplinary measures applied  |
| National Gender and Equality Commission (NGEC)    | Any form of discrimination, especially on the basis of gender, disability, ethnicity or religion  | <ul style="list-style-type: none"> <li>• Visit NGEC offices</li> <li>• Give them a call,</li> <li>• Complain online</li> <li>• Send letter / e-mail</li> </ul>         | Recommend criminal prosecution or any other appropriate action. Go to court to ensure that compensations are paid or disciplinary measures applied.   |
| Commission on Administrative Justice (Ombudsman)  | Misuse of office, unethical conduct, breach of integrity, maladministration, delay, injustice, discourtesy, inattention, incompetence, misbehaviour, inefficiency or ineptitude | <ul style="list-style-type: none"> <li>• Visit Ombudsman's offices</li> <li>• Give them a call,</li> <li>• Complain online</li> <li>• Send letter / e-mail"</li> </ul> | Formally determine that the officer breached the Constitution or any other law. Declare the officer ineligible to hold office. Recommend officer's removal from office or issue a formal caution. Award compensation or recommend any appropriate remedy. |

## Contact details

### Kenya Police Service Commission (KPSC)

P.O. Box 47363 – 00100 Nairobi  
Sky Park Plaza  
Westlands, Nairobi  
Tel: 0709 09 90 00  
E-mail: info@npssc.go.ke  
Website: www.npssc.go.ke

**IPOA:** 1st Ngong Avenue,  
ACK Garden Annex, 2nd floor,  
P.O. Box 23035 – 00100 Nairobi  
Tel: +254 20 490 6000  
E-mail: info@ipoa.go.ke  
Website: www.ipoa.go.ke

**IAU:** Any police station

### OR

Jogoo House A  
City Square  
Nairobi

### EACC head office:

(others are in Mombasa, Kisumu, Eldoret, Nyeri, Garissa)  
Address: Report Center, Ground Floor, Integrity Centre,  
Valley Road/Milimani Road Junction,  
P.O. Box 61130 00200, Nairobi  
Tel.: 020 2717468  
E-mail: report@integrity.go.ke  
Website: www.eacc.go.ke/

### KNCHR head office:

(others are in Kitale, Wajir, Mombasa and Kisumu)  
Address: CVS Plaza 1st Floor, Kasuku Lane ,Off Lenana  
Road, P.O. Box: 74359-00200 Nairobi  
Tel: +254-020-2717908/00/28  
Mobile: 00733 78 00 00 / 0736 78 00 00  
E-mail: complain@knchr.org  
Website: www.knchr.org

### NGEC head office

(others are in Kisumu, Nakuru and Garissa)  
Address: Solutions Tech Place, Upper Hill,  
P.O. Box 27512-00506, Nairobi

Tel.: +254 20 2727778

E-mail: info@ngeckkenya.org, Website: www.ngeckkenya.org/

### Ombudsman's head office

(others are in Kisumu and Mombasa)  
Address: 2nd Floor, West End Towers, off Waiyaki Way –  
Westlands, P.O. Box 20414 – 00200, Nairobi.  
Tel: +254-20-2270000/2303000/2603765/2441211/8030666  
Email: complain@ombudsman.go.ke  
Website: http://www.ombudsman.go.ke/

# Endnotes

- 1 NPS Act, 2011, s.24;
- 2 NPS Act, 2011, s.27;
- 3 The Constitution, 2010, art. 246(3)(a);
- 4 NPSC Act, 2011, s. 6;
- 5 Anti-Corruption and Economic Crimes Act, 2003, s. 39;
- 6 Constitution, 2010, art. 246(3)(a);
- 7 Draft Service Standing Orders, Chapter 33 Promotions (Consultation Draft of February 2014. Service Standing Orders have been in development since 2011 and are expected to be adopted by the Inspector-General of NPS soon).
- 8 Draft Service Standing Orders. Chapter 33,
- 9 NPS Act, 2011, s. 71;
- 10 Osse, A. (2006). Understanding Policing. Amnesty International, p. 88
- 11 Draft Service Standing Orders, Chapter 37, s. 15
- 12 NPS Act, 2011, s. 5(a);
- 13 NPS Act, 2011, 6th Schedule, Part A, s.10;
- 14 Draft Service Standing Orders, Chapter 51, s. 5
- 15 Draft Service Standing Orders, Chapter 43, s. 12(b)
- 16 NPS Act, 2011, s. 12;
- 17 The Constitution, 2010, art. 245(4);
- 18 The Constitution, 2010, art. 157(4);
- 19 The Constitution, 2010, art. 245(7);
- 20 Penal Code, 1948, s. 392;
- 21 NPS Act, 2011, s. 52;
- 22 Criminal Procedure Code, 1948, ss. 89-90;
- 23 Criminal Procedure Code, 1948, ss. 102, 118;
- 24 Criminal Procedure Code, 1948, s. 118;
- 25 NPS Act, 2011, s. 60;
- 26 NPS Act, 2011, ss. 57(5)(a), 60(3)(a);
- 27 Criminal Procedure Code, 1948, ss. 21, 34 and 35;
- 28 NPS Act, 2011, 6th Schedule, part A, s. 2;
- 29 Draft Service Standing Orders, Chapter 14, s. 5 .
- 30 Draft Service Standing Orders, Chapter 14, s. 5.
- 31 Criminal Procedure Code, 1948, s. 21;
- 32 NPS Act, 2011, 6th Schedule, part A, s. 1;
- 33 NPS Act, 6th Schedule, part B, s. 3;
- 34 Draft Service Standing Orders, Chapter 13, s. 19.
- 35 The Constitution, 2010, art. 49;
- 36 NPS Act s. 52(2);
- 37 NPS Act, 2011, s. 52(4);
- 38 NPS Act, 2011, s. 52(5);
- 39 Evidence Act, 1963, s. 20A(2);
- 40 Evidence Act, 1963, s. 25A;
- 41 Evidence (Out of Court Confessions) Rules, 2009
- 42 NPS Act, 2011, 5th Schedule, s 10;
- 43 NPS Act, 5th Schedule, s.5;
- 44 Draft Service Standing Orders, Chapter 60, s. 15
- 45 Persons Deprived of Liberty Act, 2014, s. 9;
- 46 Draft Service Standing Orders, Chapter 60, s. 29.
- 47 Persons Deprived of Liberty Act, 2014 s. 10(2);
- 48 The Constitution, 2010, art. 49(1)(c); 50(2)(g);
- 49 Persons Deprived of Liberty Act, 2014, s. 8;
- 50 The Constitution, 2010, art. 49(1)(c); 50(2)(g);
- 51 Persons Deprived of Liberty Act, 2014, ss. 7(j) and 8(3);
- 52 The Constitution, 2010, 2010, art. 50(2)(h);
- 53 *David Njoroge Macharia v. Republic* [2011] eKLR;  
*John Swaka v Director of Public Prosecutions & 2 others* [2013] eKLR;
- 54 The Legal Aid Act, 2016;
- 55 The Constitution, 2010, art. 49(1)(f)(i);
- 56 The Constitution, 2010, art. 49(1)(f)(ii);
- 57 Criminal Procedure Code, 1948, s. 36A(7) and (10);
- 58 The Constitution, 2010, art. 49(1)(e);
- 59 NPS Act, 2011, 5th Schedule, s. 9(b); Persons Deprived of Liberty Act s. 8;
- 60 NPS Act, 2011, 5th Schedule, s. 9(a); Persons Deprived of Liberty Act, 2014, s. 24(1);

61 Draft Service Standing orders, Chapter 60, s. 24.  
62 NPS Act, 2011, 5th Schedule, s. 9(a);  
63 The Constitution, 2010, art. 51(2);  
64 Criminal Procedure Code, 1948, s. 389;  
65 Criminal Procedure (Directions in the Nature of Habeas Corpus) Rules, 1948, s. 2;  
66 The Constitution, 2010, art. 49(1)(h);  
67 Judiciary, Bail and Bond Policy Guidelines (2015) pp. 26-7.  
68 Anti-Corruption and Economic Crimes Act, 2003, s. 39;  
69 Anti-Corruption and Economic Crimes Act, 2003, s. 39;  
70 Persons Deprived of Liberty Act s. 12(3)(a).  
71 Draft Service Standing Orders, Chapter 31, ss. 7, 11.  
72 Persons Deprived of Liberty Act, 2014, s. 8 and s. 12;  
73 Penal Code, 1948, s. 14(1);  
74 Penal Code, 1948, s. 14(2);  
75 Children Act, 2001, 5th Schedule, s. 4(1);  
76 Children Act, 2001, s. 186;  
77 Children Act, 2001, s. 186; 5th Schedule, s. 4(2);  
78 Children Act, 2001, s. 186; 5th Schedule, s. 4(2);  
79 Children Act, 2001, 5th Schedule, s. 5;  
80 Children Act, 2001, 5th Schedule, s. 6(1);  
81 Children Act, 5th Schedule, s. 6(1) and (2);  
82 Draft Service Standing Orders, Chapter 37, s. 15.  
83 The Constitution, 2010, art. 27(4);  
84 The Constitution, 2010, art. 21(3);  
85 Draft Service Standing Orders, Chapter 21, s. 11.  
86 Penal Code s. 129.  
87 Shimechero v Republic, Criminal Appeal No. 119 of 1974 (unreported);  
88 NPS Act, 2011, s. 52(5);  
89 NPS Act, 2011, s. 50;  
90 NPS Act, s. 40(6) and 50(4);  
91 <http://www.kenyapolice.go.ke/downloads/category/1-service-charter.html> (in Kiswahili, too).  
92 Draft Service Standing Orders, Chapter 65, III. Charge Register, ss. 5-9.  
93 NPS Act, 2011, ss. 49(13) and 88(3);  
94 NPS Act, 2011, s. 51(1)(a);  
95 NPS Act, 2011, ss. 49(13) and 88(3);  
96 The Constitution, 2010, art. 245(2); NPS Act, 2011, ss. 8, 8A, 10;  
97 NPS Act, 2011, s. 87;  
98 NPS Act, 2011, s. 49(13); 6th Schedule, Part A, s. 10;  
99 IPOA Act, 2011, s. 6(d);  
100 Witness Protection Act, 2006.  
101 Draft Service Standing Orders, Chapter 29, s. 14(a).  
102 IPOA Act, s. 6(d); NPS Act, 2011, s 50(3);  
103 NPS Act, 2011, s. 87(6);  
104 NPS Act, 2011, s. 50(4);  
105 IPOA Act, 2011, s. 7(1)(b);  
106 Draft Service Standing orders, Chapter 29, s. 14(i).  
107 NPS Act, 2011, s. 89(1);  
108 The National Police Service (Vetting) Regulations, 2013, s. 16;  
109 NPS Act, 2011, s. 41(9);  
110 NPS Act, 2011, s. 98;  
111 NPS Act, 2011, s. 41(9);  
112 NPS Act, 2011, s. 41(9) and (13), 97(2);  
113 NPS Act, 2011, s. 41(1);  
114 NPS Act, 2011, s. 41(7).

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**101**  
**THINGS**  
*You wanted*  
**TO KNOW**  
*ABOUT THE*  
**POLICE**  
*BUT WERE*  
**TOO AFRAID**  
*To Ask*

