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(CHRI)

THE KENYA POLICE SERVICE STRATEGIC PLAN 2003 – 2007

A COMMENTARY

By

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INTRODUCTION

The Kenya Police Force has recently developed an ambitious plan for police reform, aimed at transforming the Kenya Police into an institution that will be modern, efficient and effective and responsive to the needs and expectations of the public.

This proposal represents a fundamental shift in policing in Kenya. The police now recognise that they are alienated from Kenyans, and have focused substantial energy on sustaining the power of the ruling party. According to the plan, the focus now will be on providing service to the Kenyan people through the promotion of the respect of the rule of law and human rights¹.

The content of the plan suggests that the police are willing to engage in democratic reform of the institution. This is the first time in post-independent Kenya that the police have demonstrated such a dramatic shift in their rhetoric.

The new vision of the Kenya Police, and the development of this plan, is a significant and positive step towards strengthening democratic institutions and expanding the space for citizen participation in Kenya. Kenyans, and other stakeholders, need to support this move, and ensure that the momentum for change is not lost. The new rhetoric must be translated into practice.

CHRI, in collaboration with and on behalf of civil society actors in Kenya like the Kenya Human Rights Commission (KHRC), Intermediate Technology Development Group (ITDG), Saferworld, UN HABITAT Safer Cities Programme, has analysed the plan with the overall view to advocating for, and supporting real and democratic institutional reform of the Police.

The purpose of this analysis is first, to ensure that the plan takes into account the concerns of Kenyans vis à vis the quality and nature of policing, and comes up with practical strategies for improved crime management and citizen safety. Secondly, the analysis identifies gaps in

¹ Pg. 24 of the Kenya Police Service Strategic Plan 2003-2007

the strategy and makes recommendations aimed at strengthening the plan to ensure that implementation will actually result in higher quality policing.

SUMMARY OF ISSUES IN THE PLAN AND ANALYSIS

The fundamental issue is recognition by the police that they need to change their orientation and engage in democratic reform of the institution. The police propose to move from the traditional approach to policing that prioritises law enforcement, to an approach that prioritises crime prevention and citizen safety.

The goals and objectives highlighted in the plan recognise the importance of adhering to the rule of law, fostering partnerships and upholding human rights. The plan also recognises the importance of enhancing both individual and institutional accountability, through establishing transparent performance management systems, setting performance standards, establishing a Police Service Commission and an independent oversight body to monitor performance, investigate misconduct and take action. Several other issues referred to are:

- Partial decentralisation of the Force;
- Addressing the dearth of resources within the force. The plan identifies modernisation of the police as the main priority².
- Training and retraining³
- Dismantling institutional and structural barriers to policing⁴;
- Recruit new officers, and retrain police officers⁵. The plan also recommends rehiring officers below 60 who were honourably retired, and that the retirement age be increased to 60;
- Develop a National policy on policing, as well as policy's and clear guidelines for improved police functioning⁶;
- Introduce security of tenure for the head of the police service⁷;
- Relinquish auxiliary services like driving and guarding VIPs⁸.

These are important issues but it is important to recognise that transforming the police institution while observing democratic tenets and prioritising human rights means that institutional accountability must be the paramount objective of reform, and serve as a foundation for further reform.

The plan recognises that institutional unaccountability, impunity and corruption is endemic to the force. However, the plan does not give these fundamental issues priority. There are no specific plans or strategies designed to inculcate culture change within the force, deal with

² pg. 11. The term "Modernisation" as referred to in the plan means the purchase and/or acquisition of modern and appropriate equipment, including vehicles, weapons, communication equipment and the use of IT among others. It also includes improving terms and conditions for service.

³ Not much mention is made of this in the narrative, but it features substantially in the action plan

⁴ pg. iii

⁵ Those areas specifically mentioned are training in management and internalisation of change, training in the tenets of community policing, and specialised training for all the police units.

⁶ Recommend the development of clear guidelines and policies for recruitment, promotion, deployment, retirement, discipline, supervision, relationship with private security agencies, community policing

⁷ Fixed term of 5 years, renewable once.

⁸ Pg. 15 and 43

impunity and corruption and improve accountability. Instead, the priority has been placed only on modernisation, which will include purchasing modern equipment, improving conditions of service and retraining. In an emerging democracy like Kenya, police reform cannot be accomplished by making slow inroads from the margins of police operations. Rather, institutional arrangements and management systems designed to ensure police accountability and adherence to the rule of law, and to engender an institutional respect for these values, must be put in place before other, more targeted reforms can take hold. Programmes to enhance specific police operational capacities, to provide for a for engagement between the police and the community, to train police personnel on principles of human rights, and to increase the pay of the constabulary – all badly needed – cannot have their maximum impact in the absence of reforms at the institutional level.

Further, the Police strategic plan needs to take cognisance of and position itself within the context of the wider reforms currently taking place in Kenya. The Constitution, which once ensured the domination of a single political party, and under which widespread human rights abuse were condoned, is now under revision. Ordinary citizens are deeply engaged in the process of revising the principles underlying Kenyan democracy and in reshaping government institutions in accordance with those principles. The process has now entered its final stage and it is expected that Kenya will have a New Constitution by the middle of 2004.

The National Constitutional Conference is responsible for creating in the New Constitution a legal and institutional environment in which reform can take place. The draft constitution places a high value on human rights and the principals of transparency and accountability. These values, of the respect for human rights, the rule of law and accountability, must inform the police strategic plan and be the foundation from which any reform strategies will be developed and implemented.

The Technical Working Committee on Defence and National Security (TWC I) has discussed and agreed on the specific provisions relating to the Kenya Police. Whereas the decisions arrived at by the TWC are still subject to endorsement by the National Constitutional Conference plenary, and final inclusion into the New Constitution, the debate surrounding the Kenya Police strongly suggests that broad consensus on the issues has been reached. It is therefore highly likely that the decisions of the TWC will find their way into the New Constitution.

In particular, the TWC has agreed on the following:

- That the Constitution will establish the Kenya Police Service (KPS)⁹, headed by an Inspector General of Police;
- That the organisation and administration of the Service will be in such a manner and have such functions as prescribed by parliament¹⁰;
- That the KPS will be a National force, and the division of its functions shall be organised to take into account the structure of devolution¹¹;

⁹ Art. 265(1)

¹⁰ Art. 265 (2)

¹¹ Art. 265 (4)

- That the IGP will be independent and enjoy security of tenure;
- That members of the Kenya Police Service shall not act in a partisan manner, further any interest of an political party or cause, or prejudice a political interest or political cause that is legitimate in terms of the constitution;
- That the Kenya Police Service shall abide by the principles of transparency and accountability to society and democratic institutions;
- That the KPS shall work closely with communities to ensure security and safety for all citizens¹²;
- That the Primary objective of the Kenya Police Service will be to work with and for the people to ensure;
 - a) A peaceful and safe environment;
 - b) The protection of rights and freedoms;
 - c) The detection and prevention of crime;
 - d) The support of victims of crime and disorder; and
 - e) The protection of life and property.
- That In furtherance of these objectives, the force will
 - a) Strive for the highest standards of professionalism;
 - b) Work to eliminate and avoid corruption of all sorts;
 - c) Observe human rights standards;
 - d) Train staff to the highest possible standards of competence, integrity and respect for human rights and dignity;
 - e) Recognise the duty of accountability to society and democratic institutions.
- That a Police Service Commission will be established, with the broad mandate to recruit and appoint persons to hold office in the KPS, promote and exercise disciplinary control including the hearing and disposal of appeals by such persons.

The foregoing has major ramifications for the future of policing in Kenya. The establishment of the Kenya Police Service and the principals by which they will be governed means that the police must transform themselves into an institution that channels its resources to serving Kenyans by providing a safe environment for all, within a framework that respects and upholds the fundamental rights and freedoms of Kenyans.

The police will have to prioritise reforms aimed at making them more accountable by giving prominence to, and adopting the values of accountability i.e., popular accountability which means holding the police accountable to the will of the people; legal accountability and transparency. This will require change in the processes – chains of command, complaint procedures, oversight mechanisms, courts of laws, freedom of information laws among others – and institutional values – openness, responsiveness, responsibility, adherence to the law.

In order to discharge their mandate under the New Constitution therefore, priority areas for police reform must include;

- a) Law reform: this will include reviewing the Police act, the force standing orders and other laws pertaining to the criminal justice system to ensure that they conform with the principles established in the constitution;

¹² Art. 265(5)

- b) The development of comprehensive policies and implementation plans to improve performance and bring about culture change through recruitment, training, promotions and transfers, deployment, discipline, improved welfare and terms and conditions for service for officers and modernisation of the service
- c) Development of comprehensive policies and implementation plans to improve transparency and accountability through research, planning and development, monitoring and evaluating police performance, strengthening internal complaints and disciplinary procedures, handling of complaints from the public and developing and sustaining partnerships;
- d) Development of strategies to identify the capacity within the current force for change, the management of change, identification and support for visionary leaders within the service to drive and sustain the reforms and identification of partners and supporters outside the force to provide impetus and sustain momentum for change.

Alongside the constitutional review is the development of a sector-wide strategy for reform. This strategy paper is being developed as part of Kenya's poverty eradication action plan. One of the sectors under this plan is the justice sector of which the police are part. Whereas the plans are not yet available, it is important for the police to ensure that the strategic plan is used to inform, and become part of the sectoral reforms.

Finally, the development of the police strategic plan needs to take cognisance of the East African Community and the role that can be played by the same. The second development strategy (2001-2005) identifies peace and security as one of the areas in the strategy. An area that has a direct bearing on any plans for police reform in Kenya.

CHAPTER OVERVIEW

CHAPTER ONE: HISTORY OF THE POLICE FORCE

The chapter gives a very brief overview of the history of the police. For the purposes of this strategy for reform, it is very important to analyse the impact of colonialism on the nature and quality of policing. The police force set up by the British in Kenya was very similar to those set up in other colonies. The forces' primary role was to support the colonial regime rather than provide security for all citizens. The colonial police force was characterised by being subservient to the political executive, unaccountable to anyone except their own hierarchy and the executive; militaristic and authoritarian in structure and functioning, designed to intimidate the natives and deter opposition to colonial rule. The force was feudal in its values. History shows that even after the countries became independent, the system with all its shortcomings was retained and in fact promoted as it suited the new political elite. The result was the strengthening of a force that was distant from the community, unaccountable to citizens and whose priority was to sustain the power of the ruling elite.

This situation is true of Kenya as well, and an analysis of the impact on policing will show that historically the police have been designed and organised as a repressive force, as opposed to the responsive service envisioned both in the new constitution and the strategic

plan. An analysis should identify organisational structures that support unaccountable and repressive policing and these ought to be prioritised for reform.

CHAPTER THREE: SITUATIONAL ANALYSIS

This section is very important, as it should analyse the current performance and capacity of the service. A comprehensive analysis of the current capacity and performance helps point out priority areas for reform and can help identify solutions to current problems facing the institution. Many of the statements made in this section have not been proved or shown to be a problem and the impact on the quality of policing has not been demonstrated. Hence, a sound case for reform has not been established.

The main problems that appear to emerge both from the situational analysis and other parts of the plan are:

- Lack of human and material resources: however, there is no information detailing the current capacity of the force and highlighting the specific areas where there is a dearth. The impact of lack of resources on the quality of policing has not been explored
- Lack of accountability: the situational analysis suggests that a culture of corruption and impunity prevails within the force. However, this issue has not been explored and the impact articulated. The institutional bottlenecks to accountability have not been exposed. It therefore becomes very difficult to understand the extent of the problem and the various aspects of unaccountability that contribute to the culture of corruption and impunity, and thereby develop a comprehensive action plan to deal with the problem.
- Political interference: this has not been clearly articulated and it is not clear what the extent of this problem is – it is suggested in the analysis that many officers owe their positions to the patronage of powerful individuals outside the force. The impact of this has not been explored and even in the situational analysis, this issue comes up under staffing and deployment, thereby relegating to the sidelines a major problem that contributes to corruption and impunity.
- Flaws in the criminal justice system – just referred to but not explored and neither is the impact on policing highlighted. The legal framework is the foundation on which policing rests and needs to be comprehensively analysed so as to identify specific areas for legal and administrative reform, bearing in mind the fundamental principles established in the new constitution.

The plan discusses various aspects of policing, and in particular looks at crime prevention, with a paragraph devoted to road accidents. It would be invaluable at this stage to analyse the performance of each of the police units and their current ability to discharge their mandate.

There is no evidence that any of the statements made in the situational analysis are informed by sound data. Whereas it is recognised that the police are the best placed to state what ails them, it is essential that any analysis be based on sound data and information.

CHAPTER FOUR: OVERALL GOAL, OBJECTIVES, STRATEGIES AND ACTION PLAN

This chapter discusses the objectives of the plan, and the strategies to achieve them. It is important to remember that any objectives and strategies developed need to be in line with the objectives and principles that will be laid out in the New Constitution and which have already been agreed upon by the TWC. As such, one of the main objectives that has been laid out by the TWC and recognised in this plan but surprisingly does not find purchase in this chapter is with regards to enhancing the transparency of police functioning and actions, and strengthening public accountability.

The goal set out in the plan (2007) is too ambitious. The strategies laid out need to be prioritised and set out as short, medium and long-term goals. The objectives for reform, as well as the strategies laid out, need to derive their basis from the foregoing chapters. This is not the case here. Because there is no baseline information, it will be difficult to monitor the effectiveness of the strategies and gauge whether they will actually deliver the desired outcomes.

CHAPTER FIVE: WAY FORWARD

The main points of this chapter are:

- The establishment of a Police service commission, which will be a constitutional body responsible for the main administrative functions of the police including determination of disciplinary cases, with original and appellate jurisdiction.
- The establishment of an independent, external oversight board to oversee the police and investigate police misconduct and take action.
- Recognition that the police have been regime police, which have focused substantial institutional energy on sustaining the power of the party in power.
- Recognition that the police must now move towards democratic policing.
- Security of tenure for the head of the police force
- Recognition of the importance of measuring police performance and the citizen role in determining this. Public satisfaction of police a key indicator.
- Focus on police is on their performance in the delivery of service
- The planning committee for the strategic plan will monitor and evaluate its implementation

This chapter raises very important points some of which, like issues of security of tenure for the IGP and the establishment of a police service commission, will most likely be entrenched in the New Constitution. Other issues, like the establishment of an oversight board to monitor the performance of the police and handle complaints against them, become fundamental to the full implementation of the principals set out in the New Constitution and must be incorporated in any strategic plan for reform.

GAPS

Some gaps have already been identified and discussed in the preceding sections. However, some other areas that need to be looked into in the plan are listed here below:

- The plan does not take into account the capacity of the government, and prospective donors, to finance the reforms. The costs attached to the plan are phenomenal and are not itemised. The high costs involved are guaranteed to scare off donors;
- The plan does not consider possibilities for regional cooperation. The East African Community and East African Police Chiefs have stated a desire to eventually harmonise policing in the region. The plan should take this into account and explore possibilities for enhanced cooperation and sharing of regional resources;
- The plan needs to recognise and identify the challenges that will face the implementation of such a revolutionary and ambitious plan, and come up with practical strategies to manage change in the force
- There is no link in the plan, between issues raised in the introduction, foreward, situation analysis and the goals, objectives, strategies and action plan. Some fundamental areas for reform, like decentralisation, dismantling barriers that impede police effectiveness, enhancing both internal and external police accountability are not articulated or identified as desired outcomes of reform measures. Likewise these areas do not feature in the action plan. On the other hand, plans to enhance the capacities of all the police units, through retraining and purchase of modern equipment, plans to change the retirement age and recall officers who have been retired honourably, are prioritised in the action plan without there having been any previous mention or justification for the same in preceding chapters. These areas need to be redressed to ensure consistency and coherence throughout the document.

RECOMMENDATIONS FOR FINALISING AND IMPLEMENTING THE STRATEGIC PLAN

1. As a starting point, a comprehensive needs assessment or baseline survey needs to be conducted to establish:
 - The current capacity of the force and their evident strengths;
 - The capacity for change;
 - The police expectations of their work;
 - Citizen expectations of police work;
 - Come up with recommendations to strengthen and support the strengths of the force;
 - Identify and prioritise the impediments to police functioning;
 - Recommend actions to dismantle the barriers.
 - Whether there have been any previous reform initiatives or management audits/organisational audits that have looked at the functioning of the police force;
 - Whether the recommendations of these previous initiatives were implemented and the effect on policing;
 - If the recommendations were not implemented, the reasons given;
2. It is important to recognise that the plan will have two main roles: first, it will act as a road map, to guide reformists on the direction to be taken and the means with which to figure out whether targets have been met and goals achieved. Second, the plan acts as a

marketing document. This plan will be used to attract financial support for the reforms. It therefore has to be clearly articulated and a strong case must be established supporting the reforms proposed and the options taken by the service. The document has to be convincing enough to persuade sceptical, potential donors that it is realistic, fully justifiable and that it will work and achieve intended outcomes.

3. The plan as it stands is too ambitious. The plan should come up with short, medium and long-term measures for the eventual transformation of the force.
 - Some realistic outcomes for the short-term (2 years) could be:
 - ◊ To carry out the needs assessment, which will inform targeted modernisation of the force with articulated outcomes;
 - ◊ Collaborate with the Law Reform commission, the Attorney Generals' Chambers and other associations like the Law Society of Kenya, to review the laws under the Criminal Justice system, and draft amendments to these laws to ensure that they are consistent with the principles laid out in the New Constitution;
 - ◊ Collaborate with members of the Expanded Legal Sector Reform to ensure that plans being developed take into account police strategies and priorities for reform;
 - ◊ Some immediate measures to improve police morale such as salary increments and the purchase of vehicles have already been done by the government, but need to be improved upon;
 - ◊ Measures to improve public confidence in the police – first, the police should continue to have targeted (identify high crime areas and focus on enhancing police capacity to tackle key crime problems in these areas) and visible anti-crime operations; second, the police leadership needs to be more accessible to the public to talk about the new plans, the role of the police and respond to queries from the public. There may be a lot to be gained from regular attendance to TV and Radio talk and call in shows; third, the police can begin the process of becoming more transparent in their operations – police activity can be open to observation and the police can regularly report to the public on activities, actions taken, and in return be open to external criticism and suggestion could help improve confidence.
 - ◊ It is critical to develop and strengthen a research and analysis capacity. Initial investments should go to this area. Additionally, the police should open up to and develop relationships with external academicians, researchers and analysts so that research carried out on the police, or analysing performance can be used for mutual benefit.
 - ◊ Establish and maintain a committed group of reformists within the force, who will spearhead the change at all levels and in all departments. The commitment and vision of the management is key to bringing about sustainable change. This group should be involved in the reforms from this moment to the long-term to ensure continuity. Security of tenure for top officers within the force takes on new urgency in this respect.
 - ◊ Start an internal campaign and extensive consultations to sell the main principles of the reform agenda to the police. The lower cadres are the primary implementers and they need to accept the reform agenda. Significant change will

only happen when there is widespread acceptance of the reform agenda within the police force.

- ◇ Identify and begin to implement strategies to manage reform. Reform can bring about a breakdown in discipline. Therefore, the strengthening of disciplinary mechanisms can be carried out in the short-term.
- ◇ Some targeted capital input to priority areas within the force.
- Medium and long-term plans would include targeted capital investment to priority areas, done incrementally. A needs assessment/baseline survey would also help identify priority areas for reform and determination for putting them in the mid-term or long-term would be made based on identified priorities.