

Setting the “Agenda” for an Era of Change

- April 2003 Conference on Police Reform in Kenya

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In the twenty-four years that President Daniel arap Moi ruled Kenya, police, academics, and human rights activists may have been as likely to meet one another in the now-notorious detention facility at Nyayo House, a Nairobi skyscraper, as in any other setting. Yet, on April 24-25, 2003, on the PanAfric Hotel’s hillside terrace overlooking Nyayo House, representatives of the government, the police, academia, and civil society came together to discuss the transformation of the Kenyan police from a “force,” an institution defined by its authority to use coercive tactics against citizens, to a “service,” an institution fundamentally committed to providing quality service to citizens. Kenyan representatives were joined by colleagues from Uganda, Tanzania, Nigeria, South Africa, Australia and India.

The conference, “Police as a Service Organisation: An Agenda for Change,” was jointly sponsored by CHRI and the Kenya Human Rights Commission (KHRC), one of the most visible and effective human rights organizations on the Kenyan scene. Willy Mutunga, Executive Director of KHRC, said in his welcoming remarks that the conference represented a potential watershed in the renewal of the relationship between the Kenyan government and civil society.

The conference was book ended by professions of commitment to institutional reform by both the Kenyan government and the Kenya Police Force itself. Hon. Chris Murungaru, Minister for Provincial Administration and National Security, stated in opening remarks that the government intends to “make democratic ideals of accountability a reality” and to move Kenyan law enforcement “from regime policing to democratic policing.”

“We would like to change the name of the Police Force to the Police Service,” Commissioner Edwin J. Nyaseda, the newly appointed head of the Kenya Police Force (KPF), told conference participants in his closing address. “The change of name depicts our willingness to change.”

Along with the government’s profession of commitment to police reform came recognition of the KPF’s past record of corruption and human rights abuse. Prof. Yash Pal Ghai, chairman of the Constitution of Kenya Review Commission, described in detail the citizen testimony received by the CKRC concerning torture, arbitrary arrest and detention, bribe solicitation, and police involvement in criminal activity. One could conclude from this testimony, Prof. Ghai said, that the police had “become a lawless force unto themselves quite apart from acting under an oppressive regime.”

Prof. Ghai's remarks were echoed in a remarkably candid presentation by Superintendent Gideon Kibunja Mwangi of KPF, who said that citizens have complained of police brutality, torture, assault, rape, "triggerhappiness," illegitimate arrest, harassment, incivility, disregard for human rights, disregard of political freedoms, corruption, and extortion, among other things. Superintendent Mwangi said that citizens also complain about police inaction, about police giving excuses for doing nothing in the face of crime and victimization. With the qualification that many of these shortcomings are attributable to the scarcity of resources with which the police must contend, Superintendent Mwangi acknowledged that these citizen complaints are "often justified."

Although the causes of KPF's past failings are numerous and complex, two received particular attention at the conference. One, as mentioned by Superintendent Mwangi among many others, is the scarcity of resources that KPF has at its disposal. Like its institutional counterparts in Uganda and Tanzania, KPF does not have sufficient personnel. Its facilities are antiquated. It lacks modern forensic facilities and is insufficiently computerized. Low-ranking police officers are among the most poorly paid civil servants in the Kenyan government, making them particularly prone to corruption.

The second cause of poor policing that received particular attention at the conference is the lack of institutional accountability within the KPF, and the KPF's lack of accountability to other organs of government and to the people of Kenya. Police participants acknowledged that, in the past, the Commissioner of Police had to prioritize maintaining the patronage of the President and the ruling party above all other tasks if he wished to remain in office.

Police participants also acknowledged that the mechanism by which citizens make complaints about police misconduct has not been properly implemented, and that citizens have rarely gotten to learn anything about the results of complaints that they have made.

A consensus emerged at the conference for the creation of a new accountability mechanism, a Police Service Commission, with supervisory authority over certain aspects of police functioning, and with a measure of legally-guaranteed independence from both the government and the police force.

Justice Julie Sebutinde of the Uganda High Court, Commissioner Laurean Tibasana of the Tanzania Police Force, Commissioner Fred Yiga of the Uganda Police Force, Prof. Andrew Goldsmith of Flinders University in Australia, Mr. David Bruce of the Center for the Study of Violence and Reconciliation in South Africa, and Chief Simon Okeke of the Nigeria Police Service Commission, each made important contributions to the discussions about the structure and functioning of internal and external mechanisms of accountability.

Because Kenya is in the midst of rewriting its constitution, the conference closed by developing a set of recommendations to be presented to the National Constitutional Conference. The conference recommended that the new constitution make it an obligation of the state to establish a police force that provides security to the people of Kenya, that protects the fundamental rights recognized in this Constitution, and that adheres to the rule of law at all times. The conference recommended that Parliament be afforded a formal role in the appointment of the Commissioner of Police and that, once appointed, the

Commissioner should be allowed security of tenure during a fixed term of office. The conference also recommended the creation of an independent Police Service Commission.

If implemented, these institutional changes would represent a mere beginning. What is needed is a wholesale revision in the management and culture of the police force. Commissioner Nyaseda described the task ahead as follows:

“What we are envisaging is a change of attitude of police officers toward their duties. The Police Service will be oriented towards meeting the needs of civilians and institutions of a democratic society for policing services of a high standard guided by the principles of integrity and respect for human rights, nondiscrimination, impartiality and fairness.”