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Dear Michelle

I have now had time to read the report on the Nairobi conference. It is an excellent document and very readable. Given below are some comments that may or may not be of help.

### **The Constitution**

The keynote paper written by Joshua Auerbach is superb. Joshua has really captured the mood in stating that Kenya has a "constitutional moment".

What the new constitution specifies in respect of policing in particular and the security sector in general will be critically important. In the case of Sierra Leone the 1991 Constitution, which ushered in democracy, what is set down for both the military forces and the police is far from satisfactory when read in the context of the developments since 1991. This fact is well recognised but the Constitutional draftsman enshrined the provisions in respect of the military and police. Any change of those provisions requires assent at a national referendum where two thirds vote in favour of the proposed amendments. Such a referendum would be costly and would open up a whole can of political worms!

In consequence of the problems caused by the Constitution, police reformers have to work around the provisions rather than through them. Kenya has the "constitutional moment" to enable root and branch reform of policing.

It follows that careful thought needs to be given to the wording that surrounds future provisions on policing and that the resultant clauses are neither too narrow nor too broad. For example; in fixing the term to be served by a newly appointed commissioner of police it may be prudent not to specify a specific period such as ten years but to say something like "the commissioner of police will be engaged on a fixed term contract the length of which will be decided at the time of the appointment by the appointing authority." Such a line would not hamper future developments but would provide the appointing authority and government a degree of flexibility whilst allowing the post holder security of tenure.

### **Police Service Commission**

A further issue is the establishment of a Police Service Commission (PSC). I would be wary of the PSC model as I seriously doubt the effectiveness of the arrangements. How can such a body effectively oversee all personnel matters in organisations as large as national police forces in populous countries? I prefer the Northern Ireland arrangements where the Northern Ireland Police Board (NIPB) is required to concentrate upon

strategic matters whilst the personnel management and discipline is generally left to the chief constable to manage in accordance with strictly controlled guidelines. The principles of the NIPB are being utilised in Sierra Leone in an attempt to bring about equitable personnel policies and consistency in human resource matters.

### **Personnel Matters**

In Sierra Leone there is a Police Council established by the constitution with a similar personnel make up and mandate to that of PSC in other countries. In order for it to work more effectively in the personnel management areas of promotion and discipline new police regulations have been approved and they effectively delegate many of the powers to the inspector general of police (IGP) against mandatory procedures that are monitored by Police Council. Without such delegations many important issues were taking an inordinate amount of time to discharge because of the inability of Police Council to meet with sufficient frequency or the Police Council lacking the capacity to deal with the volume.

The newly drafted Police Regulations have also attempted to bring clarity to the appointment of the IGP, the deputy (DIG) and the assistant inspectors general (AIG) by requiring any vacancy in those appointments to be advertised throughout Sierra Leone for qualified persons to make application. The Police Council is then mandated to transparently shortlist and interview the candidates and in the case of the DIG and AIG the Police Council makes those appointments. For the IGP post the Police Council recommends its chosen candidate to the President for appointment and the President then submits the candidate to the scrutiny of Parliament, which has the right to reject or approve the nominated candidate.

My successor was not, however, appointed by that procedure but through a bastardised method. Myself as the policing adviser and outgoing IGP presented the professional profile of all qualified persons to Police Council and the best candidate was nominated to the President who agreed with the nomination. Parliament, through an appointments sub-committee, submitted the candidate to a rigorous interview that was totally transparent. In fact it was broadcasted live on radio and television as well as being conducted in open session. Although the procedure was less than perfect it was infinitely better than what had ever previously transpired and it has been widely accepted that Mr B A Kamara was the right person for the post.

Discipline is a real problem and the root in many countries that were formerly under British rule is that the procedures are based upon outdated rules originally written between the two world wars and updated through the forties and fifties. These old colonial ordinances were written to control the police forces and to ensure that the police remained "regime police". The roots of many of the policing problems now being faced in Africa stem from the simple fact that the colonialists (this applies to all of the former colonial powers and not just Britain) created police forces not to help the majority population but to protect the integrity of the colonial power.

In a disciplinary context the superior police officers (SPO) (i.e. from assistant superintendent upwards) were not included in the disciplinary provisions set out in police ordinances. The police ordinances provided fairly draconian powers for the SPO to discipline the junior ranks but made no provision for the SPO. Why was this? I suspect that it was a product of the institutional racism of colonialism in that almost the entire

SPO cadre until the mid fifties were white men and they were disciplined by either being returned home for enquiry or reposted to another colony.

In Sierra Leone no effort was made to correct this lacuna until 2000. In consequence the SPO could act with unfettered impunity. The SPO bullied the junior ranks through the old-fashioned quasi-military discipline procedures but behaved just as they pleased.

From my experience I guess that there will be a need in East Africa for a new disciplinary regime to be created and for it to have a strong input of civilian oversight built into any new legislation. It is absolutely essential that police are held to account for their exercise of their powers not only to the Law but also to the people through elected representatives. However, this higher level accountability needs to be complemented through local partnership arrangements down to a significantly lower level to ensure that service is delivered to all people.

I hope the above comments are useful.

Yours sincerely

Keith Biddle