

Police Accountability: The Perspective of the Kenya National Commission on Human Rights



Background

- World over, many authoritarian regimes have been replaced by democratically elected governments. However the assumption that elected legislatures, an independent judiciary and executive governments subject to periodic elections would guarantee the respect for human rights has been replaced by recognition that this division of power while fundamentally important, has frequently failed to protect human rights- even when these were constitutionally entrenched.

Background

- The recognition that governments courting political popularity have been frequently been prepared to sacrifice respect for the human rights of unpopular or marginalised minorities in their quest to retain power has been one impetus in the movement to create independent national human rights institutions (NHRIs)

Background....

- 1991 -adoption of the Paris Principles by the UN United Nations adopted a criterion for the development of NHRI. These criteria envisaged that all NHRI must have
- Clearly defined broad based human rights mandate
- Incorporated legislation or preferably, constitutionally entrenched
- Independence from government
- Adequate Resources
- Membership that broadly reflects the

KNCHR – so...what *is* it?

- An independent public body established by an Act of Parliament (No 9 of 2002) known as the KNCHR Act for the better promotion and protection of Human Rights.
- Complies to Paris Principles
- Operational on 29 July 2003 when the President, on the recommendation of Parliament appointed nine Commissioners

Membership of the Commission

- Nine Commissioners nominated by the National Assembly and appointed by the President
- A chairperson and a Vice Chairperson elected from amongst them.
- A Secretary and staff appointed by the Commission.
- Commissioners serve on a full time basis

membership...

The Chairperson and the Commissioners enjoy –

In the case of the Chairperson the status of a
Judge of appeal

- In the case of a Commissioner the status of a
Judge of the high court
- In the case of the Secretary to the Commission,
the status of a Permanent Secretary
- Commissioners enjoy security of tenure

Mandate-

- *Watchdog Role* - Monitors Government institutions, carries out investigations on alleged violations, and in appropriate cases provides redress to those whose rights have been violated.
- *Advisory Role* - advises Government on how to enhance the promotion and protection of human rights.

Mandate..

Achieved through its functions outlined under Section 16 of the KNCHR Act, which are to -

- Investigate violations of Human Rights
- Visit prisons and places of detention to evaluate Human Rights conditions
- Inform and educate the public on Human Rights
- Recommend effective measures for promotion of Human Rights to the Parliament
- Formulate, implement and oversee programmes intended to inculcate awareness of Civic Responsibilities and appreciation of Rights and Obligations of all citizens and people resident in Kenya

Powers of the Commission

In order to maintain its independence, the Act that establishes the KNCHR states that in execution of its mandate the Commission is not subject to the direction or control of any other person or authority

Powers of a court

KNCHR has the powers of a Court of Law to -

- Issue summonses or other orders requiring the attendance of any person and the production of any document or record relevant to any investigation by the Commission
- Question any person in respect of any subject matter under investigation by the Commission
- Require any person to disclose any information within their knowledge relevant to any investigation by the Commission

Powers of investigations

The KNCHR may utilise the services of any public servant or investigation agency of the Government through;

- Summons and enforcing attendance of any person for examination
- Requiring the production of any document
- Subject to the official Secrets Act, requisition of any Public records from any public servant

Activities in regard to Police accountability

- 1. Conducting investigation relating to police violation of human rights. 22% of petitions received relate to regular and administration police mainly extrajudicial killings, lack of proper investigations and prosecution of perpetrators , abuse of police powers through harassments , unlawful arrests and confinement
- -Post-motems in conjunction with IMLU
- Others: Complaints on unlawful dismissal from the police force : internal dismissal mechanism often abused, flouts laws of natural justice

Investigations---

- Challenge is the non responsiveness of the police to KNCHR enquiries.
- KNCHR intends to utilise its tribunal which begins its sittings by end of June 2006 to ensure that the force and individual officers are held accountable by way of paying compensation to victims.
- Managing public expectations-public expect the Commission to handle and deliver quick results on all complaints presented before it regardless of the capacity or practicality of addressing the issues

investigations

- Poor accessibility to the Commission
 - Only situated within Nairobi
 - N/E region office in June 2006

- Enactment of Access to Information Act will improve investigations

Inspection of places of detention

2. Visited and inspected police cells and other places of detention. In the past year over 49 police stations were inspected. During such visits (sometimes carried out with CSOs, Media) the Commission interviews suspects held to establish whether they are provided with adequate food, information and establish whether they have been any torture.

Inspection--

- Successes include :Release persons unlawfully held after the period stipulated in law-48 hours for non – capital offences and 14 days for a capital offence before a person is charged in a court of law.. Section 19(2)(a)
- Causing of persons to be arraigned in court

Inspection

- Challenge: streamlining the system of release
- unlawful denial of access to police station . 7 police stations in the past year.
- Failure by Police Commissioner to give written instructions on need to allow KNCHR's access
- Action: KNCHR instituted private prosecution s against two OCS

Human Rights education and advocacy

- Training of administration police during refresher courses the APTC , NSIS officers
- Ongoing discussions to train mainstream police
- Developed curriculum with the police for use at Kiganjo Police Training College
- Developed billboard on rights of arrested persons to be mounted in police station

HRE...

- Challenge: Bill board only mounted in 5 police stations. Obstacle: Though the contents of the posters were developed in conjunction with the police force the Police Commissioner has failed to give express authority to OCPDs .
- Action: Lobbying through GJLOS and the new Minister of Justice
- Continued use of progressive OCPDS

Others-

- Successfully lobbied against the passing of the Suppression of Terrorism Bill and led the forum for its review and amendments (AG)
Planning to review the Police Act and Force Standing orders in conjunction with the KLRC
- Successfully intervened against police inaction in several incidents of ethnic based violence
- Continuing advocacy around a transition of justice mechanism to end impunity (Nyayo House Monument of Shame)

.Intends to conduct an inquiry into insecurity in the country. Based on the lessons learnt from a public inquiry into violations of human rights by salt mining companies that affected over 300 households in Malindi.

Challenge: Implementation of recommendations (Relies on the good will of government).

Conclusion

- Rights are not just given but are claimed. Thus human rights education is the greatest shield against human rights violations as an educated citizenry will be in a better position to claim their rights.
- Police though undergoing reforms through such initiatives such as Community Policing remains largely insular. (Political will)

conclusions

Ensuring police accountability through the NHRI model is just a starting point to full accountability.

Other critical players in the administration of justice including the Judiciary, the prosecution, the probation department need to perform their roles.

-Window of opportunity exists in community policing and strengthening of relevant parliamentary committees

Effective accountability of the police must be obtained through the establishment of an Independent oversight Body. NHRI can at best keep the police at their toes but given the massive resources and personnel required to check the powers of the police, a civilian independent oversight body is the way to go.

Ahsante sana