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Police Accountability in Kenya

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1.0 Introduction: The Involvement of the KHRC in Police Reforms

The Kenya Human Rights Commission (KHRC) works to protect and promote the human rights and democratic freedoms of all people. Accordingly, the KHRC is pursuing the Vision 2012 project which envisages the creation of a human rights state in Kenya in which the values, principles, the very essence, of rights and democratic practice are implanted in the consciousness, outlook and lifestyles of the people themselves. To achieve this great dream, the KHRC realizes that it must vigorously support state institutions to appreciate, prioritize and genuinely pursue forms of governance that emphasize high levels of accountability by way of safeguarding the humanity, dignity, welfare and rights of all people.

The Kenya Police is a state institution that interacts frequently and extensively with the people in the exercise of its mandate. Owing to its monopoly over the means of violence, its legal powers to restrict liberty and its general authority to invoke and enforce the laws of the country, it is imperative that there is careful scrutiny of the police to ensure that it acts in support of rights and democratic order. From 1998 the KHRC has sought to improve the compliance of the police to rights and democratic values with a view to ensuring that it upholds the dignity of all Kenyans. This work has been pursued by way of research, advocacy and educational initiatives that have been aimed at informing the police, and policing in Kenya, to embrace forms of governance that are premised on the need for high levels of accountability and the respect, protection and promotion of rights.

1.1 Police reforms in Kenya, Rights and Democratic Order

As the wave of democratisation spreads into many parts of the world, and notably Africa in the 21st century, societies are becoming increasingly concerned about and engaged with institutions of government and their compliance with democratic principles and human rights. As societies aspire towards more genuine forms of democratic governance, there is growing interest and awareness of the role of the police as an institution in a democratic society based on the primacy of human rights. In democracies, the police, a ubiquitous, vital and influential institution guarantees public safety by detecting and preventing crime, keeping the peace and cooperating, as far as possible, with the public to maintain law and order. In order to effectively discharge these functions and support human rights and democratic order, the police must be governed by a vision and an unambiguous set of rules and regulations that promotes the notion of democratic policing.

Kenya, like other developing societies, is in a phase of transition to democracy. In the December 2002 polls, Kenyans overwhelmingly voted out the Kenya African National Union (KANU) party after close to four decades of misrule distinguished by repression, ethnic chauvinism, nepotism and corruption. Over 60 percent of the electorate chose instead to vote for the reformist National Rainbow Coalition (NARC) in support of its pledges to pursue extensive democratic reforms, improve governance and reconstruct the country's economy. For most Kenyans, there was intense optimism that the country's hopelessly corrupt police and justice systems would be radically reformed to enhance effectiveness, accountability, transparency, government-citizen cooperation, adherence to the rule of law and respect for human rights.

In 2003, the Kenya Police, in conjunction with civil society organizations led by KHRC, the private sector and the international community, started work on an ambitious police reform plan aimed at infusing the principles described above in the police's ethos, organizational culture and operations. The five-year Kenya Police Strategic Plan (2003-2007) is now underway and organizations like the KHRC and the Kenya National Commission on Human Rights (KNCHR) are monitoring and evaluating the steps being taken in the reform process in order to support the transformation of the Kenya Police into a genuinely rights-compliant, people-oriented and accountable institution.

2.0 The Kenya Police as an Obstacle to Rights and Democratic Order

While some of the new policies contained in the Kenya Police Strategic Plan are inspiring and ambitious, implementing them remains a difficult affair because of the Kenya Police's long and unsavoury history which is characterized by inefficiency, corruption, abuse of office and general disregard for human rights and the rule of law. In order to appreciate the enormity of actually reforming the Kenyan Police to serve as a constructive institution within the context of a democratic society, it is necessary to briefly consider the organization's history and governing framework.

2.1 A Brief History of the Kenya Police

Created in the late 19th century, the Kenya Police has served as the state's principal organ of domination, curtailing rather than enhancing the rights of Kenyans. Its initial responsibility was the protection of the builders of the Nairobi-Mombasa railway link from hostile Africans opposed to colonialism. After World War I its operations spread to include protecting Kenya's minority white-settlers through the enforcement of racist, restrictive and exploitative laws that oppressed Africans. The police force was especially instrumental in carrying out murderous campaigns to deter African resistance as happened in Embu (1904 and 1906), Kisii (1904 and 1908), Sotik (1905), Nandi (1905 and 1906) and Kabras (1908), where hundreds of Kenyans were killed or maimed.

Likewise, in the run-up to independence in 1963 the police sadistically suppressed pro-independence forces like the Mau Mau movement for land and freedom. At independence, the new government inherited the philosophy, structure and systems of the colonial police. Shortly after, President Jomo Kenyatta's intolerance to any kind of

opposition prompted a series of legal and constitutional changes that disrupted the relatively liberal provisions of the Independence (Lancaster) Constitution. These sweeping changes stripped the police force of its autonomy bringing it under full presidential control. In effect, the Kenya Police became a “regime police” that essentially served the ruling party and the president, was insulated from public scrutiny and viewed itself as quite apart from the rest of the citizenry.

Matters worsened in the era of *de jure* one-party rule in which corruption, selective application of the law, denial of due process rights, extra judicial executions and torture became routine police practice. Furthermore, the Kenya Police is yet to absolve itself from plausible allegations that it participated in or condoned political violence in the 1990s by not preventing it or investigating and arresting its perpetrators. Seen together, the undemocratic, even criminal disposition and the aversion of the police to human rights and human dignity generated deep suspicion and distrust between it and the citizenry complicating the prospects for democratic policing in Kenya. It is unfortunate but this state of affairs persists even today.

2.2 A General Assessment of the Framework Governing Police Accountability in Kenya

In the post one-party dominance era, Kenya has an opportunity to make a break with its authoritarian past. The present government is attempting to implement new policies aimed at establishing a culture of democratic policing within the Kenya Police that essentially promotes and ensures accountability, rights-compliance, transparency, adherence to the rule of law and effectiveness. Regrettably, there are seemingly indomitable challenges to making democratic policing a reality in Kenya. For one, an overhauling of the prevailing constitutional and legal order is required if institutions like the police are to comply with the demands of a democratic society. Notwithstanding the weaknesses in the laws governing the police and policing—The Police Act, The Evidence Act, Penal Code, criminal law enforcement procedures among others—the greatest obstacle to effective, rights-compliant policing in Kenya is the absence of institutional mechanisms that may check and balance the police.

The Kenya Police falls under the command of the state’s powerful, overweening presidency which dominates the political and public administration processes. There is hardly any meaningful oversight provided by any other institution including Parliament and State Commissions such as the Kenya National Commission on Human Rights. Moreover, Kenya’s judiciary is itself unjust and is plagued with corruption, incompetence and low funding levels. The lack of effective institutional oversight mechanisms translates to the low accountability levels demonstrated by the police, whose corollary is ineffectiveness, lack of transparency and the perpetuation of *impunity* for all manner of violations, injustices, crimes and malpractices attributed to the Kenya Police. In fact, it is amazing that the police even investigate and prosecute their own when the circumstances described above emerge. Indeed, the presidency has often insulated the police from other state institutions in addition to subverting the autonomy, and consequently, the professionalism of the police.

2.3 Exploring the Status of Police Reforms in Kenya

The Kenya Police Strategic Plan (2004-2008) seeks to change the state of affairs described so far by implementing reforms that will enhance accountability and rights-compliance by the Kenya Police. General police reforms are also an important feature of the government-led *Economic Recovery and Wealth Creation Strategy (2006)*, which prioritizes the improvement of policing and security as fundamental to economic growth. It is instructive that this section is an exploration, as opposed to an evaluation of the status of police reforms in Kenya. This is the case because police reforms have only been underway for a relatively short period of time and there is a lack of adequate data, and subsequently, a basis for a serious, objective analysis that could provide any kind of conclusive appraisal of the same.

Nonetheless, the following, tentative conclusions may be made about selected areas in the police reform plan:

a) *Community-Oriented Policing:* In April 2005 the Kenya government launched the National Comprehensive Community-Policing Program, which essentially advocates for increased collaboration between citizens and the police in the pursuit of a safer society. The program directs that each police division in the country must adopt a community-oriented policing approach within its area of jurisdiction. Indeed, the timeliness of this program is underscored by the continuing challenge of surging crime, particularly violent crime, which confronts the Kenya police and members of the public alike.

The KHRC has been involved in popularizing the idea of community policing in Nairobi from 2001. Its assessment so far: (1) The Kenyan public seems interested in participating in the program but there is still a high level of distrust and suspicion between it and the police that complicates the smooth-running of the initiative. (2) It is unclear if there is a shared, level understanding of the initiative between the public and the police, especially because some sections of the public have essentially been pursuing vigilante justice and not community-oriented policing. (3) The initiative lacks the necessary resources to be pursued effectively. It is telling that it prevails largely in urbanized areas and is almost non-existent (and ineffective) in outlying areas such as the Northern region of Kenya.

b) *Rebuilding the Image of the Police (Public Relations and Communications Strategy):* The Kenya Police exists to serve the people. Therefore, it must be seen to be popularly accountable and ultimately, legitimate to the people. In this sense, it must be transparent and communicate useful information such as crimes statistics, reviews of its activities, especially with regard to institutional reforms, its budgets, rules of operation, points of success and failure among other types of information. Availing this information to the public provides it with an avenue through which it may act in an informed way to hold the police accountable while supporting the police reform process.

To date, the Public Relations Strategy has received some attention evidenced, for instance, by the launch of an Internet Website earlier in the year. However, the police remain a largely opaque institution that offers little information about itself. A review by

the KHRC of the *Annual Report of the Commissioner of the Police*—the most comprehensive source of information reporting on the police—concluded that the report does not provide useful information that may be applied to support the institutional reform process and hold the police to account for its policies, strategies and actions from a well-informed position. In fact, the report is entirely misleading as far as the matter of accountability is concerned: It glosses over the serious issues of police misconduct, rights violations and malpractices generally.

c) Welfare Concerns (Remuneration and Terms of Service, Housing and Working Conditions): The welfare of any worker is an important consideration if that worker is to do his or her work effectively. So far, some commendable steps have been taken towards improving the remuneration, terms of service and expanding the housing facilities available to the police. Of course, more resources could still be directed to these areas. The working conditions of the police remain challenging because there are shortages of vehicles, protective gear and other facilities and requirements that may ease an already difficult occupation.

Indeed, this concern is closely tied to the provision of adequate security-related equipment, facilities and technologies which are intended to modernize and enhance the effectiveness of policing in Kenya. On this front, there is great apprehension occasioned by runaway, grand corruption perpetrated by the Office of the President in the procurement of security-related equipment and technology. In the last few years, it has emerged that billions of Kenya shillings intended for the procurement of security-related equipment and technology have been misappropriated. Consequently, the modernization of the police has been adversely affected and stands to suffer more should this trend persist unchecked.

d) Recruitment (Adequate Staffing Levels in the Kenya Police): The United Nations (UN) has reported that the police-to-citizen ratio in Kenya is appallingly low. At present it stands at 1:811, far short of the internationally-recommended ration of 1:450. An additional 31, 821 police officers would have to be recruited if Kenya was to meet this minimum standard. Regrettably, the recruitment of police officers in Kenya continues to be plagued by plausible allegations of nepotism, tribalism and corruption with varying results. These include: (1) Recruitment of incompetent persons (2) Recruitment of persons from only a few ethnic communities thereby adversely affecting the principle of diversity, which is essential for the institution to be representative, and ultimately, legitimate.

e) The Nexus between the Police and the Prosecutions Department: The police in Kenya remain heavily involved in the prosecution of criminal cases, which is the province of the Attorney General's office. The problem with this approach is that the police lack the legal expertise required to competently prosecute cases. As a result, offenders have tended to escape justice for serious crimes, and the criminal justice system is viewed as incompetent, negligent and a threat itself to the security and safety of Kenyans. This anomaly also creates an unmanageable dissonance in the working relations between the police, the prosecutions department and the courts.

f) Rights and Ethics Training: The police training curriculum in Kenya lacks a strong rights and ethics component. The trainings conducted by groups such as the KHRC in this regard, are often of the ad hoc type, and it is the impression of the KHRC that they are incorporated in the training framework simply as a public relations gimmick. There is no evidence that the police leadership has put in place any kind of framework with indicators and processes to evaluate the compliance of the police to rights and ethical conduct. The evidence gathered by the KHRC indicates that rights violations and unethical conduct on the part of the police are still routine practice despite the initiation of reforms. Similarly, the levels of corruption perpetrated by the police remain unchanged. In fact, recent evidence collated by Transparency International-Kenya points out that the Kenya Police is the most corrupt state institution, which has resulted in the seemingly irredeemable loss of public confidence in the institution.

g) Oversight Institutions (The Kenya National Commission on Human Rights (KNCHR) and the National Assembly): Since its establishment in 2003, the KNCHR has attempted to apply its legal authority to hold the police to account for rights violations and other malpractices. In its interactions with this institution, the KHRC is disturbed to learn that the Kenya Police has changed little and often ignores summons for information and urgent appeals for investigations for alleged rights violations. In fact, the police have often denied the KNCHR access to certain categories of information, even its right to visit police cells, which is in stark contravention of the legal powers bestowed upon the institution by the National Assembly. The latter institution has also faced non-cooperation from the police in recent years, particularly, where it is called to appear before the Parliamentary Committees for National Security and Legal Affairs and Administration of Justice.

h) Budgetary Concerns: KSHS. 52 billion is required to roll out the Kenya Police Strategic Plan (2003-2007). This represents a significant proportion of the government's projected revenue over that period of time. It remains to be seen whether the government will commit this level of budgetary support, especially because of other demanding public funding initiatives like the free primary education program, the newly launched healthcare strategic plan and infrastructure development programs among others. A greater concern is the lack of transparency and accountability in the use of public funds in the Office of the President, which directs and administers the Kenya Police.

3.0 Conclusion: Future Opportunities for Reforming the Kenya Police

The direction and administration of the Kenya Police must be de-linked, as far as possible, from the political process in order for the institution to become autonomous, professional, effective and accountable. So far, the government seems unwilling to commit the necessary resources—political goodwill, financial, human and otherwise—to the police reform effort. Beyond these considerations, there is the greatest challenge—that of reforming the mentality and attitude of the individual Kenyan police officer while simultaneously inspiring greater confidence in the public.

3.1 The Case for Civilian Oversight

A satisfactory level of police accountability in Kenya may only be realized by the establishment of a civilian oversight body that not only deals with complaints against the police but also advises on and undertakes reviews of policy and some operational issues. The discussion of the details of what kind of institution is appropriate is superfluous at this point for various models such as those in place in South Africa, Ireland and Nigeria could be used as important reference points. As stated earlier, democratic policing can only be realized if the citizenry have confidence in the police. Citizens' confidence in the police is only possible where the police are responsive to the priorities of citizens, seek their guidance and advice through consultations, organize formal and informal mechanisms for joint cooperation as equal partners, and most of all, are sensitive to the rights of citizens.