

POLICE ACCOUNTABILITY IN KENYA

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In attempt to institutionalize police accountability, Kenya has developed structures and a legal framework that addresses this matter. This presentation will attempt to explore whether the systems adopted by the Kenyan government are effective, efficient and bonafide.

1. Appointment and recruitment

The Constitution of Kenya confers the power of appointing the Commissioner of Police to the President. The power to appoint the police officers above the rank of Assistant Inspector is conferred upon the Public Service Commission while that of appointing officers below the rank of assistant inspector is conferred upon the commissioner of Police. The rationale of empowering the president to make such an appoint seems to have been to ensure that such an occupant of such an important and sensitive office in national security ought to be not only sanctioned but also chosen by the highest authority in the land. However, the President's power of appointment is unchecked and he can easily appoint whomever he wishes without having to go through a rigorous and objective vetting process. This provides the opportunity for possible abuse of power in a presidential system of governance as adopted by Kenya. The president can appoint individuals who are likely to protect and promote his political agenda.

2. Structure

The police force in Kenya falls under the Office of the President. Currently, the Commissioner of Police reports to the Minister of State in the Office of the President in charge of internal security and provincial administration. The rationale of placing the police force under the office of the president seems to have been to ensure that the president be able to uphold and safeguard of national security. However, the reality of the matter in Kenya has been that the government of the day has in most cases used the police for as a weapon of power against the opposing political institutions and the proponents of human rights, democracy and good governance.

3. Legal Framework

(a) The Police Act and related regulations

The Police Act (Cap 84, laws of Kenya) was enacted to govern the functions, organization and discipline of the Kenya Police force and Kenya Police Reserve. This Act ensures that junior police officers are accountable to their seniors. The Act sets up institutions and regulations within the police force that handle discipline of wayward officers. This is a crucial element of accountability given that the junior police officers are the ones who mostly come into contact with the public. The Police Standing Orders give a more detailed account of the procedural aspect of disciplinary proceedings within the force. However, it should be noted that the purpose and manner in which the disciplinary proceedings (popularly known as Guardroom proceedings) are conducted is not meant for the benefit of the complainants against police officers since such complainants are not a parties to those proceedings and are not informed of the outcome.

The proceedings are mainly internal and relate to the wayward police officer as an employee of the police force.

(b) The Kenya National Commission on Human Rights Act

This legislation sets up the Kenya National Commission on Human Rights which is meant to promote and protect human rights in Kenya. The commission has statutory powers to summon any persons against whom complaints of human rights have been made included police officers. It also has powers to enter and inspect places where persons have been held in lawful custody including police stations. This was one of the ways in which parliament hoped that another institution would hold the police accountable. However, the reality of the circumstances in Kenya is that police officers persistently refuse to obey summons by the KNCHR with impunity and restrict the entry of Commissioners of KNCHR into places in which the police force is holding suspects.

(c) Private Prosecution

The Criminal Procedure Code (Cap 75, laws of Kenya) provides for prosecution by persons other than the police force and the Attorney General. The rationale behind this seems to be provision of an alternative course of action where the police have refused or are hesitant to instate legal proceedings against a suspect against whom there is enough evidence to warrant him being charged in court. Through, this avenue the police can be held accountable before the court. However, private prosecution is hindered by the investigative and procedural legal hurdles that the average unrepresented litigant is unlikely to cope with not to mention the alternative prohibitive financial cost of hiring a lawyer for that purpose. Further, the constitutional power of the Attorney General to enter a *nolle prosequi* at any stage in such proceedings without any legal duty to offer an explanation to the person who instituted those proceedings interferes with an otherwise excellent idea of holding the police accountable through legal proceedings.

(d) Parliamentary Committees

Parliament has the power to form committees that can hold the government accountable on various issues. This has been an avenue that has been used to hold the Kenya Police accountable. Two parliamentary committees that have been directly involved in investigating matters that relate to the police are:

- (i) The Committee of the Administration of Justice and Legal Affairs
- (ii) The Committee of Security

However, the Minister in the Office of the President in charge of Internal Security & Provincial Administration and the Commissioner of Police have been notorious of refusing to honour summons from these committees. They have also been unco-operative in helping these committees to accomplish their tasks.

(e) The Criminal Procedure Code

The CPC lays down regulations that relate to the manner in which police officers should handle criminal suspects. It also gives the courts of Kenya various powers that enhance police accountability (e.g. orders for *harbeus corpus* – production of suspects in court).

However, a major loophole that exists for police accountability is in the criminal justice system. Though the Constitution and the Criminal Procedure Code guarantee the rights of suspects, the actual pre-trial criminal process provides many opportunities for abuse by the police due to lack of accountability. Most human rights abuses by the police occur between the point of arrest and arraignment in court. They continue to be perpetuated with impunity by errant officers due lack of checks and balances in the criminal justices system. There is no clear or documented system that has been laid down to ascertain whether:

- (i) All persons who are in police custody have been arrested based on facts that warrant their being held in custody and charged in court
- (ii) All rights of persons in custody have been upheld and respected (e.g. right to legal representation)
- (iii) All persons held in police custody are arraigned in court within reasonable time as required by law or released on bail as of right

The lack of accountability as explained above gives room for persons to be arrested arbitrarily, detained in custody illegally and prosecuted maliciously.

Recommendations

1. Appointment of the Commissioner of Police should be vetted by Parliament to ensure that the same is not politically motivated.
2. The Kenya Police Force should be de-linked from the executive arm of government and set up as an independent constitutional institution to avoid political influence by the government of the day.
3. The powers of prosecution should be completely withdrawn from the police force to enhance justice and accountability in the criminal trial process.
4. A documented system consisting of forms sanctioned by statues should be introduced into police stations act as a checklist that will safeguard the rights of persons arrested by the police. Such forms should include checklists listing the rights accorded to persons in police custody and specific information on whether those rights have been upheld and respected. The document designed for this purpose should be signed by the accused and attached to the charge sheet to inform the court on how the accused was treated while in police custody.
5. The charge sheet in the criminal trial process should be modified to contain more information such as the date and time of arrest, date and time of arraignment in court, reasons for any delay in arraignment. This will enhance accountability to the court by the police.
6. A system should be introduced to empower the Kenya National Commission of Human Rights to conduct regular audits of police stations & records and other places where persons are held in custody by the police. Such audits would consist of comparing the number of persons arrested and detained, number charged in court, number successfully prosecuted and number acquitted. Such an audit report should be made public. This will enhance police accountability butt also the quality of

investigation. It will also reduce the clogging of the criminal justice system by frivolous cases.

7. More punitive sanctions should be meted out against Commissioners of Police and ministers who refuse to co-operate with the parliamentary committees that seek to hold them accountable.

Conclusion

The efficiency, objectivity and reliability of the police force is greatly dependent on how accountable the institution is to the people and institutions it serves. The systems laid down for accountability should not only be acts of goodwill and policy reforms but should be ingrained in our laws to safeguard accountability not only in the present day but also in the distant and uncertain future.

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