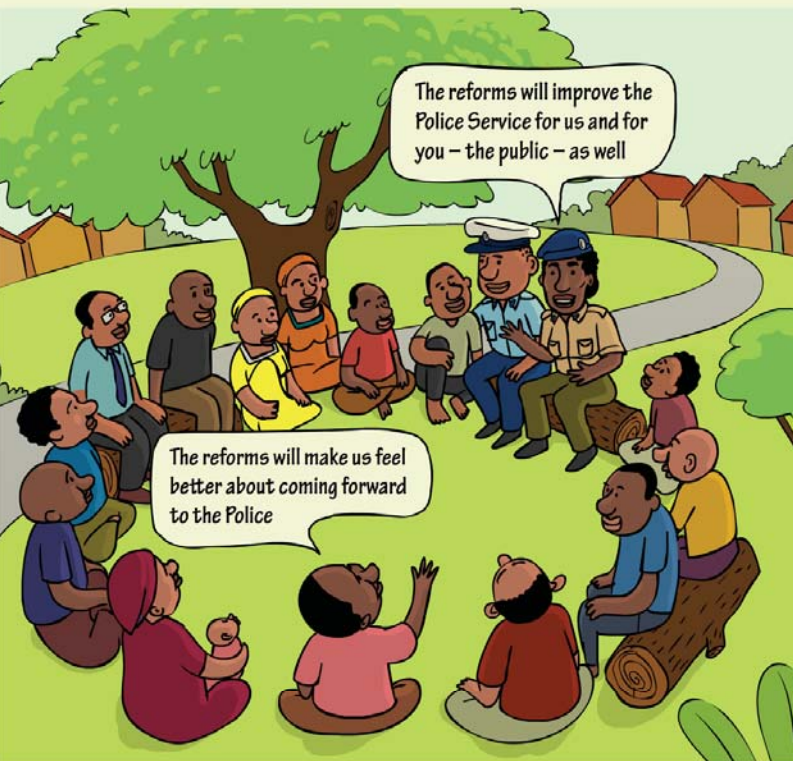


10 Things to Know About Police Reforms & Accountability

**A booklet for
the National Police Service**

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1. What is the Police reform process about?

It is about re-orienting the Police Service, to make it a stronger, accountable, professional, better equipped and resourced service working for the people of Kenya.

Police reforms will improve the National Police Service so that it is:

- ✓ Professional
- ✓ Accountable for its operations, conduct and its services
- ✓ Working together with the community
- ✓ A better place to work:
 - Improved employment conditions
 - Better equipment and resources
 - Improved training
 - Enhanced processes for promotion, transfer and discipline
 - Independent from political influence

2. Accountability helps the Police and the Community

Having bodies to oversee the police shall:

- ✓ Make the Police a stronger, well-disciplined service
- ✓ Improve the trust of the public in the Police



- ✓ Ensure the Police are accountable for their actions
- ✓ Improve community cooperation with the Police
- ✓ Improve police processes and professional standards
- ✓ Promote accountability to the people and the law

Public trust in the Police will result in:

- ✓ Better cooperation between the Police and the public – making it easier for the Police to solve problems of crime and disorder
- ✓ Safer and more secure communities
- ✓ Greater community participation in preventing crime and violence
- ✓ Reduced fear of victimisation

The main Police oversight bodies are:

- ✓ Independent Policing Oversight Authority (IPOA)
- ✓ Internal Affairs Unit of the Police (IAU)
- ✓ National Police Service Commission
- ✓ Office of the Inspector General of Police (IGP)
- ✓ The Parliament, Executive Arm of Government and Judiciary

3. What are the Functions of IPOA?



The IPOA investigates the more serious complaints of police misconduct while other complaints of breach of discipline are investigated by the Internal Affairs Unit of the National Police Service.

The IPOA does the following work:¹

- ✓ Investigates complaints of Police misconduct.

- ✓ Investigates all deaths and serious injuries that may have been caused by the Police, whether lawfully or not, and whether the death/serious injuries caused were accidental or not.
- ✓ Even if there is no complaint, the IPOA can investigate matters of possible Police misconduct.
- ✓ Inspects Police premises. The IPOA do not need to tell Police officers that they are doing this – they can just turn up and the Police must let them inspect the facility. This will help the Police as well though, as the IPOA can recommend that facilities, including accommodation facilities, are improved.
- ✓ Monitors the operations of the Police, patterns of Police misconduct and oversees the handling of complaints by the Internal Affairs Unit. If necessary, it can take over an investigation of the Internal Affairs Unit or direct the Department of Criminal Investigations to investigate a matter.²
- ✓ Makes recommendations on completion of an investigation or after the monitoring of Police operations (this is explained further in section 9 of this book).

The IPOA keeps records of all complaints lodged with it and the IAU. It also publicises actions taken on its recommendations and publishes the outcomes and findings from its investigations, reviews and monitoring work.

1 See Appendix A to the Pocketbook: Section 6 *Independent Policing Oversight Authority Act 2011* for a full list of the functions of the IPOA

2 s35(j) *Independent Policing Oversight Authority Act 2011*, s87(5) *National Police Service Act 2011*

4. What does the Internal Affairs Unit do?

The Internal Affairs Unit (IAU) is a unit within the National Police Service. Although the IAU is part of the National Police Service,³ it is not subject to the control, direction or command of the Kenya Police, Administration Police or the Directorate of Criminal Investigation. This will help to ensure that members of the Police that work in the IAU are not influenced by other members of the Police, and therefore able to do their work properly and effectively. Furthermore it will enhance public confidence in the IAU.



³ See Appendix B to this Pocketbook: Sections of the *National Police Service Act 2011* relevant to the Internal Affairs Unit

Units will be established across the country, with at least a senior investigating officer in every county who will be responsible for the IAU in that county.

The IAU is managed by a 'Director' who is the rank of an Assistant Inspector-General or above. There will also be a Deputy Director. Senior Investigating Officers in each county report to the Director and Deputy, who will then report directly to the Inspector-General of Police.

The Internal Affairs Unit does the following work:

- ✓ Receives and investigates complaints against the Police:
 - a) on receipt of a complaint from a member of the public or the Police;
 - b) on its own initiative (if there is no complaint lodged);
 - c) if directed to do so by the Inspector-General or a senior officer;
 - d) if requested to do so by the IPOA.
- ✓ Promotes uniform standards, discipline and good order in the Service.
- ✓ Keeps a record of the facts of any complaint received and investigation made into it.

At the end of an investigation, the IAU makes recommendations to the IGP and the National Police Service Commission. This may include recommendations for disciplinary action or criminal prosecution.

5. What does the National Police Service Commission do?

The National Police Service Commission ('Police Commission'):⁴

- ✓ Oversees and determines the employment matters of the Police Service, including recruitment, promotions and transfers.
- ✓ Oversees training of members of the Police Service.



- ✓ Monitors the running of the Police Service.
- ✓ Receives and can investigate complaints against the Police Service.
- ✓ Oversees internal discipline of members of the Police, including holding disciplinary hearings.
- ✓ Considers and implements the recommendations of the IPOA or Internal Affairs Unit.

The Police Commission monitors the general functioning of the Police Service including:

- ✓ Conducting public inquiries into policing matters. These reports are made public.
- ✓ Monitoring and evaluating the performance of the whole Service.
- ✓ Ensuring the efficiency and effectiveness of the Police Service.
- ✓ Promoting the key Constitutional values and reporting to the President and National Assembly on the level of compliance with these values within the Police Service.

After monitoring and evaluating the way the Police Service is operating, the Police Commission can make recommendations to the Government to improve the Police Service.

The Police Commission also reports on the action taken by the Government in response to its recommendations.

⁴ See Appendix C to this Pocketbook: section 10 *National Police Service Commission Act 2011* for a full list of functions of the Police Commission

6. All complaints about the Police must be sent to both the:

- Internal Affairs Unit; and the
- Independent Policing Oversight Authority.

The Police can take complaints about the behaviour of other Police officers, lodged by members of the public or other Police officers. Every station or Police unit must have the ability to receive, record and report complaints about Police misconduct.



If you receive a complaint about a member of the Police Service you must:

1. Record the complaint in accordance with the Police Service regulations.
2. Send a copy of the complaint with all relevant information to the Internal Affairs Unit and the Office of the Inspector-General.
3. Send a copy of the complaint with all relevant information to the IPOA.

It is an offence if you, as a member of the Police Service, do not record and report the complaint properly.

Reporting the actions of another Police officer: Members of the Police are bound to report any act they see or believe to have taken place that breaks the law, including witnessing another Police officer break the law. This must be reported to their superior or other relevant body such as the IPOA.

A Police officer that notifies a superior or the IPOA about the actions of another Police officer, or lodges a complaint, or gives evidence to the IPOA will **not** be subjected to disciplinary action or any other disadvantage because of these actions.⁵

5 s49(12) National Police Service Act 2011

7. Reporting on use of force and firearms

Any injury caused to a person by you as a Police Officer, regardless of how serious the injury is, must be reported to your superior immediately. If a serious or grave injury is caused, or death, the officer in charge must report this within 24 hours to:

1. The Internal Affairs Unit; and
2. The Independent Policing Oversight Authority; and
3. If the death was caused in Police custody, the Coroners Service must be informed.



A Police Officer that does not report these matters properly faces disciplinary action.

You and the other police officers must secure the scene immediately for investigation by the IPOA. The Coroners Service is also likely to investigate the cause of death. A copy of the report of the Coroner will be provided to the IPOA.

You must also notify the next of kin, a relative or friend of the person who died or was seriously injured. If a person is injured, medical assistance must be provided to them.

Police Officers should remember that when using force he or she must always attempt to use non-violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result. The force used must be proportionate to the lawful objective of the Police and the seriousness of the offence, and the resistance of the person against whom the force is used.

Police can only use firearms when less extreme measures are inadequate and

- a) it is necessary to protect another person or officer's life; or
- b) it is necessary to defend oneself or another person against imminent threat of life or serious injury.

This means the threat must be imminent (serious injury that is just about to happen) - not something that may happen later.

Penalties for not cooperating with the IPOA

A member of the police and public commits an offence and is liable (if convicted) to a fine or three years in jail, or both, if they:

- Breach any section of the IPOA Act, for which no specific penalty is provided.
- Disobey a summons by the IPOA.
- Fail to produce information required by the IPOA.
- Refuse to be questioned by the IPOA or refuse to answer inquiry-related questions by the IPOA (unless it will incriminate him or her).
- Fail to comply with any lawful order or direction of the IPOA.
- Present the IPOA with false information with the intention of misleading the IPOA.
- Knowingly submit false information to the IPOA.
- Purposely obstruct or hinder a representative of the IPOA carrying out his/her job.
- Fail to cooperate with the IPOA on issues of Police oversight.
- Unlawfully interfere with the functioning or operations of the IPOA.
- Publish confidential information.

8. The Police must cooperate with the IPOA and Internal Affairs Unit

The Police must provide the IPOA and Internal Affairs Unit with information when requested. Members of the police must respond to summons and should not interfere or obstruct the investigations of the IPOA or the IAU.

Members of the Police who do not co-operate may face disciplinary action. Penalties for members of the Police that do not co-operate with the IPOA are listed in the box on the opposite page.

Inspection of cells and detention facilities

The Police must ensure that all cells and detention facilities are open for inspection by the IPOA or other relevant authority.

In the case of these visits - both announced and unannounced:

- Members of the Police must cooperate, and allow the IPOA or IAU to access the detainees and detention facilities.
- Members of the Police must allow detainees to communicate freely and confidentially with persons making the visit.
- Recommendations can be made to improve the facilities.

Recommendations of the IPOA

The Inspector General of Police must act on the recommendations of the IPOA, including those regarding compensation. If action is not taken on the recommendations, the IPOA can refer the matter to court.

9. What happens after an investigation into a complaint of Police misconduct?

After an investigation of a complaint, the IPOA or the Internal Affairs Unit will either recommend some type of action (see below) or close the matter if there is no evidence.

Criminal prosecution

Where the investigation shows that a member of the Police is likely to have committed a criminal offence, a recommendation to prosecute the member of the Police will be made to the Director of Public Prosecutions.

Disciplinary action⁶

Where the investigation shows that a member of the Police was negligent or committed a disciplinary offence, a



6 See Appendix B, s89

recommendation to implement disciplinary action against the officer will be made. If the discipline that is recommended relates to termination of employment, an order of restitution or reduction in salary or rank, the Police Commission must review this and approve the disciplinary measure before it is implemented. If necessary, the Police Commission can investigate further and conduct a disciplinary hearing before making a decision on the balance of probabilities. This means the member of Police is given an opportunity to present their case.

Other disciplinary measures can be implemented directly by the Police Service, but a copy of the record of this disciplinary measure must be sent to the Police Commission for review.

A police officer can appeal a decision - first at the County level, then to the Inspector-General and then to the Commission in accordance with regulations.

Compensation

The IPOA can recommend that compensation be paid.

Problems with overall Police processes

Where the investigation shows problems with Police processes, the IPOA can recommend improvement.

Other options

The IPOA can assist the complainant, or any other victim, in obtaining relevant information in order for the person to undertake other proceedings, such as for compensation. Also, the IPOA can mediate an outcome between the member of the Police and the complainant, if the complaint is not serious.

10. Rights when being investigated

You should not fear these mechanisms for, as members of the Police Service, you have rights as well, and the process has been established to be fair and impartial.

What happens if the complaint is a lie?

If a complaint is made against a member of the Police that has no merit, is false, or malicious in some way, then the investigating body can decide not to investigate the complaint and close the matter. Also, members of the Police have access



to support through any complaint process to ensure it is a fair and just procedure.

Rights of members of the Police

A member of the Police being investigated and disciplined has the right to:

- ✓ Quick, efficient, lawful, reasonable and procedurally fair hearings.
- ✓ Be provided with written reasons for the decision made during a hearing.
- ✓ Appeal a decision – either to the Police (County level or Inspector-General of Police), to the Police Commission or to a Court.

IPOA investigations and hearings

If you are being investigated, or through another investigation your reputation is likely to be prejudiced in some way, you will be able to make a submission/speak before the IPOA. You can do this, or use an advocate.

Disciplinary action by the Police Service or the Police Commission

A member of the Police facing disciplinary action can be accompanied, assisted and supported by another member of the Police of his or her choice.⁷ A Police association may also be able to provide support.

⁷ s89(4) *National Police Service Act 2012*

Appendix A: Functions of IPOA

Independent Policing Oversight Authority Act 2011

Section 6

The functions of the Authority shall be to—

- (a) investigate any complaints related to disciplinary or criminal offences committed by any member of the Service, whether on its own motion or on receipt of a complaint, and make recommendations to the relevant authorities, including recommendations for prosecution, compensation, internal disciplinary action or any other appropriate relief, and shall make public the response received to these recommendations;
- (b) receive and investigate complaints by members of the Service;
- (c) monitor and investigate policing operations affecting members of the public;
- (d) monitor, review and audit investigations and actions taken by the Internal Affairs Unit of the Service in response to complaints against the Police and keep a record of all such complaints regardless of where they have been first reported and what action has been taken;
- (e) conduct inspections of Police premises, including detention facilities under the control of the Service;
- (f) co-operate with other institutions on issues of Police oversight, including other State organs in relation to services offered by them;
- (g) review the patterns of Police misconduct and the functioning of the internal disciplinary process;
- (h) present any information it deems appropriate to an inquest conducted by a court of law;
- (i) take all reasonable steps to facilitate access to the Authority's services for the public;
- (j) subject to the Constitution and the laws related to freedom of information, publish findings of its investigations, monitoring, reviews and audits as it sees fit, including by means of the electronic or printed media;
- (k) make recommendations to the Service or any State organ;
- (l) report on all its functions under this Act or any written law; and
- (m) perform such other functions as may be necessary for promoting the objectives for which the Authority is established.

Appendix B: Sections of National Police Service Act relevant to the Internal Affairs Unit

National Police Service Act 2011

s87.

- (1) There is established an Internal Affairs Unit (hereinafter referred to as – the Unit) of the Service which shall comprise of –
 - (a) an officer not below the rank of assistant Inspector-General who shall be the Director;
 - (b) a deputy director; and
 - (c) such other staff as the Unit may require.
- (2) The functions of the Internal Affairs Unit shall be to –
 - (a) receive and investigate complaints against the police;
 - (b) promote uniform standards of discipline and good order in the Service; and
 - (c) keep a record of the facts of any complaint or investigation made to it.
- (3) In the performance of its functions, the Unit shall be subject to Article 47 of the Constitution.
- (4) The Unit shall investigate misconduct and hear complaints –
 - (a) from members of the Service or members of the public;
 - (b) at the direction of a senior officer;
 - (c) on its own initiative; or
 - (d) on the direction of the Inspector-General; or
 - (e) at the request of the Independent Police Oversight Authority.
- (5) Notwithstanding subsection (4)(e) the Authority may at any time intervene and take over the investigations when they have reason to believe the investigations are inordinately delayed or manifestly unreasonable.
- (6) The Unit may recommend the following disciplinary actions to the Commission –
 - (a) the interdiction of an officer;
 - (b) the suspension of an officer;
 - (c) the administration of a severe reprimand or a reprimand to control or influence the pay, allowances or conditions of service of an officer; or
 - (d) any other lawful action.
- (7) The Unit shall be located in separate offices from the rest of the Service.
- (8) The Director shall assign a senior investigating officer in every county who shall be responsible for police internal affairs in that county.

- (9) The Units shall report directly to the Assistant Inspector-General who shall subsequently report directly to the Inspector-General.
- (9) There shall be an effective relationship and regular reporting by the Internal Affairs Unit to the Independent Police Oversight Authority, Coroners, the Chief Firearms Licensing Officer as well as the Commission.
- (10) The Unit shall not be subject to the control, direction or command of the Kenya Police, Administration Police or the Directorate.

88.

- (1) Every police officer shall be an officer in the Service and shall be subject to the law and regulations from time to time in force relating to the Service.
- (2) The offences against discipline include the offences prescribed under the Eighth Schedule.
- (3) A police officer who commits a criminal offence, as against law shall be liable to criminal proceedings in a court of law.
- (4) Notwithstanding subsection (3) the Commission may take disciplinary action against a police officer who commits a criminal offence, whether leading to disciplinary action, conviction or acquittal.

89.

- (1) A police officer who commits an offence against discipline is liable to be punished by –
 - (a) reprimand;
 - (b) suspension;
 - (c) an order of restitution;
 - (d) stoppage of salary increments for a specified period of time, but not exceeding one year;
 - (e) reduction in rank;
 - (f) dismissal from the Service; or
 - (g) any combination of the punishments provided under this section.
- (2) The police officer authorized to impose a penalty for a disciplinary offence, shall enter a record of such punishment, the date of the punishment and the offence for which it was inflicted on the record sheet of the police officer punished, a copy of which shall be forwarded to the Commission for review and confirmation.
- (3) All disciplinary proceedings under this Part shall be in accordance with the Service internal disciplinary procedures as approved by the Commission and shall comply with Article 47 of the Constitution.
- (4) A police officer facing disciplinary action may be accompanied by another police officer of his choice for assistance and support.

- (5) A police officer aggrieved by the decision may appeal first at the County level, then to the Inspector-General and then to the Commission in accordance with regulations.
- (6) The sanctions under subsection (1) (c), (d), (e), (f) and (g) only take effect after approval and confirmation by the Commission

Section on prohibition against torture

95.

- (1) It shall be unlawful for a police officer to subject any person to torture or other cruel, inhuman or degrading treatment.
- (2) A police officer who subjects a person to torture commits a criminal offence and shall be liable on conviction to imprisonment for term not exceeding twenty five years.
- (3) A police officer who subjects a person to cruel, inhuman or degrading treatment commits a criminal offence and is liable on conviction to imprisonment for term not exceeding fifteen years.

Appendix C: Functions Police Commission

National Police Service Commission Act 2011

10.

- (1) In addition to the functions of the Commission under Article 246(3) of the Constitution, the Commission shall –
 - (a) keep under review all matters relating to standards or qualifications required of members of the Service;
 - (b) with the advice of the Salaries and Remuneration Commission, determine the appropriate remuneration and benefits for the Service and staff of the Commission;
 - (c) approve applications for engagement by police officers in trade and other businesses, in accordance with the law relating to matters of leadership and integrity under Article 80 of the Constitution;
 - (d) co-operate with other State agencies, departments or commissions on any matter that the Commission considers necessary;
 - (e) provide for the terms and conditions of service and the procedure for recruitment and disciplinary measures for civilian members of the Service;
 - (f) develop fair and clear disciplinary procedures in accordance with Article 47 of the Constitution;

- (g) investigate and summon witnesses to assist for the purposes of its investigations;
- (h) exercise disciplinary control over persons holding or acting in office in the Service;
- (i) promote the values and principles referred to in Articles 10 and 232 of the Constitution throughout the Service;
- (j) ensure that the Service is efficient and effective;
- (k) hear and determine appeals from members of the Service;
- (l) develop policies and provide oversight over training in the Service;
- (m) approve training curricula and oversee their implementation;
- (n) investigate, monitor and evaluate the organization, administration and personnel practices of the Service;
- (o) receive and refer civilian complaints to the Independent Policing Oversight Authority, the Kenya National Human Rights and Equality Commission, the Director of Public Prosecutions or the Ethics and Anti-Corruption Commission, as the case may be, where necessary;
- (p) review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the Service;

- (q) evaluate and report to the President and the National Assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the Service;
- (r) monitor and evaluate the performance of the Service;
- (s) receive complaints and recommendations from police associations registered in accordance with the applicable law;
- (t) perform such other functions as are provided for by the Constitution, this Act or any written law.

Constitution of Kenya 2010

246 (3) The Commission shall —

- (a) recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service;
- (b) observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service; and
- (c) perform any other functions prescribed by national legislation.



**Commonwealth
Human Rights Initiative**



The **Usalama**
Reforms Forum

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