

SUBMISSION
INDEPENDENT POLICING OVERSIGHT AUTHORITY
BILL 2011.



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The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international NGO working for the practical realisation of human rights in the countries of the Commonwealth.

SUBMISSION on the INDEPENDENT POLICING OVERSIGHT AUTHORITY BILL 2011

Introduction

This submission represents the Commonwealth Human Rights Initiative's (CHRI) consideration of the *Independent Policing Oversight Authority Bill* and our corresponding recommendations. Previously we have made a submission on the version of the draft Bill released in December 2010. We have now analysed the latest version¹ of the draft Bill, identified gaps and weaknesses, provided suggestions for amendment as well as recommended the inclusion of provisions that will strengthen the mandate and powers of the Authority. We understand that the draft Bill has been approved by Cabinet and we ask that the Parliamentary Committee (or members of Parliament reviewing the draft Bill) to consider our submission.

CHRI is an independent, non-partisan, non-governmental organisation headquartered in New Delhi, India. CHRI's areas of work are focused on the right to information, access to justice, and human rights advocacy.² Since 2001, CHRI's Access to Justice programme has been promoting police reform in the Commonwealth East African countries of Kenya, Tanzania and Uganda. CHRI has also published two reports on policing for each country, conducted regional roundtable conferences and helped establish civil society police reform networks. In 2009 and 2010, CHRI has been working in partnership with the African Policing Civilian Oversight Forum (APCOF) and the East African Police Chiefs Cooperation Organisation (EAPCCO) and in collaboration with the East African Community to articulate common standards for policing in the region. In Kenya, CHRI was instrumental in the establishment of the civil society forum TURF - The Usalama Reform Forum - which is an organisation that brings together NGO's working in the area of security sector reform. Through TURF, CHRI has already made contributions to the legislative reform process underway in the policing arena, with submissions made to the Police Reform Implementation Committee (PRIC) on Bills including the National Police Service Bill and the Private Security Industry Regulation Bill. Further, CHRI has made an independent and comprehensive written submission to the Committee on the National Police Service Bill.

One of the hallmarks of democratic policing is that the police are formally held to account for their actions and any wrongdoing. There are various kinds of accountability and police should be answerable to multiple levels and layers of oversight. The creation of an Independent Policing Oversight Authority ('Authority'), as countenanced by this Bill, would establish a statutory, external mechanism with a dedicated police oversight mandate. This development will be a vital feature of a comprehensive system of police accountability in Kenya.

¹ Circa July 2011

² For more information on CHRI's activities, please visit www.humanrightsinitiative.org



Analysis

PART I - PRELIMINARY

Section 3 - Interpretation

The interpretation section of the Bill includes a definition of “misconduct”. Part (c) of this definition is aspirational but difficult to hold an errant officer to account. It is suggested that the definition of misconduct is expanded upon to clarify that misconduct includes police corruption, the commission of a criminal offence and a contravention of the norms of policing contained in regulations and standing orders etc.

Further, subsection (c) states that misconduct can also mean any action, or failure or refusal to act, etc, which does not meet “applicable norms and standards provided for in international instruments applicable to Kenya”. The subsection is lacking of sufficient certainty to be applied to enforcement of standards against police officers. For example, Kenya may have signed an international treaty or declaration, but not ratified it by way of passage of domestic law. Are the standards in such an instrument to apply here? This definition also leaves an ambiguity as to what is to happen if there is a difference between international standards and the law or standards within Kenya. It would be unfair to hold officers to a standard derived from international agreements that was different to the laws that they are bound to adhere to and enforce within Kenya.

The Bill refers to either “investigation” or “inquiry”. It is submitted that inquiry shall mean investigation.

On a minor matter, it is noted that there are two definitions of “member of the Service”. The second definition should be deleted.

Recommendations:

CHRI recommend that the following definition of misconduct is considered³:

For the purposes of this Act, *police misconduct* means any action or inaction or alleged action or inaction of a police officer or member of the service⁴:

- (a) whether or not it also involves non-police participants, and**
- (b) whether or not it occurs while the police officer or member of the service is officially on duty, and**

³ This definition draws heavily from the definition of police misconduct included in the New South Wales *Police Integrity Commission Act 1996*

⁴ CHRI note that “member of the service” is defined under the *National Police Service Bill 2011* to include civilian members or staff of the Service

- (c) whether or not it occurred before the commencement of this subsection, and
- (d) whether or not it occurred outside of Kenya.

(2) Examples

Misconduct can involve (but is not limited to) any of the following:

- (a) corruption,
- (b) the commission of a criminal offence, including but not limited to, death or serious injury to a person, rape, attempted death, serious injury or rape to a person and arrest or detention with due process to the law
- (c) wilful breach or neglect by a police officer of any law, rule, regulation, standing order or policy providing for standards of discipline, behaviour or ethics which is applicable to members of the service

(3) Former police officers

Conduct may be dealt with, or continue to be dealt with, under this Act even though any police officer involved has ceased to be a police officer. Accordingly, references in this Act to a police officer extend, where appropriate, to include a former police officer.

That “inquiry” shall mean “investigation” (or vice versa).

That the Committee delete the second definition of the term “member of the Service”.

Part II - THE INDEPENDENT POLICING OVERSIGHT AUTHORITY

Generally, the investigative mandate of the Authority needs to be strengthened and made more explicit within the Bill.

Section 5 - Objectives of the Authority

Firstly, within this section, the fact that the Authority has an investigative mandate should be clearly set out. It needs to be set out that the Authority has a role in not only *holding police accountable*, but also in *investigating*, police actions and performance. This is important, because it makes clear that the Authority is to take an active role, as opposed to the more passive role of observing the police.

When considering the investigative mandate of the Authority, it is also important that the specific issues to be investigated are set out. Such specific investigative powers should be set out within this section, as well as re-iterated in the next. At a minimum, an Authority of this kind should have a clear mandate to investigate every death at the hands of the police or in police custody. It may also be desirable to set out other serious matters, such as rape or torture, large-scale public disturbances/demonstrations where police are involved or take action against citizens, or police misconduct that are to be investigated by the Authority in all cases.

Recommendation: That the section is reworded as follows:

The principal objects of this Act are:

- (a) to establish an independent, accountable Authority whose principal function is to detect, investigate and prevent police misconduct and hold the police accountable to the public in the performance of their functions; and

- (b) to provide special mechanisms for the detection, investigation and prevention of police misconduct; and
- (d) to provide for the auditing and monitoring of particular aspects of the operations and procedures of the National Police Service, including oversight of the handling of complaints by the Service; and
- (e) to give effect to the provision of Article 244 of the Constitution that police shall strive for professionalism and discipline and shall promote and practice transparency and accountability.

Section 6 - Functions of the Authority.

Within this section, the specific investigative mandate of the Authority should be set out again. At present, the reference to the investigative function of the Authority is contained within subsection 6(a). The use of the term “criminal offences committed” should also be amended to “allegations of criminal offences committed”, as presumably at this stage, it is not definite whether the police officer has committed an illegal action. Further, for the sake of clarity, the part of subsection 6(a) that states that the authority shall “*make recommendations to the relevant authorities, including recommendations for prosecution, compensation, internal disciplinary action or any other appropriate relief and publicize the response received to these recommendations*” should be a separate subsection, and not included within (a). Furthermore the subsection should state that it is a function of the Authority to publish the Recommendations of the Authority as well as the Response to the Recommendations publicly.

The current subsection 6(b) states that the Authority shall receive and investigate complaints by members of the Service. This subsection should be expanded to detail the types of complaints that members of the service can make. For example, it may not be appropriate for the IPOA to receive complaints about pay etc.

A further function should be included which states that the Authority shall prosecute members of the Service where appropriate.

It is submitted that it should be made explicit that the Authority must investigate every death in police custody or at the hands of police, and that these matters must be reported to the Authority by the police. The Bill should describe the Authority as having a strong investigative mandate that covers not only misconduct by the police but also, specifically, police corruption, commission of a criminal offence by a police officer or officers, death in custody or at the hands of an officer/s, and serious matters such as rape and torture.

Subsection 6(c) should be amended to, as well as monitor and investigate, also include the function of making recommendations and reporting on policing operations affecting members of the public.

Recommendations: That, section 6(a) be amended as follows:

- (a) investigate any concern of police misconduct, criminality and corruption, specifically, but not limited to, all incidents of death occurring in police custody, and allegation of police corruption, allegations of commission of criminal offences by police officers, allegations of torture and rape in police custody or by police officers.***

- (b) *To ensure that members of the Service report all deaths and serious injuries sustained in police custody to the Authority, and in cases where a report is not made, to penalise and/or prosecute the responsible member of the Service*
- (c) *To make binding recommendations to the relevant authorities and to the government, including recommendations for prosecution, compensation, internal disciplinary action or any other appropriate redress and relief;*
- (d) *To prosecute cases in accordance with this Act;*
- (e) *To report on all complaints made, investigations conducted, recommendations made, prosecutions undertaken and all responses to recommendations and to publish such a report in accordance with this Act*

The current subsection 6(l) to be deleted in favour of (d) above.

That the current subsection 6(b) be amended to detail the types of complaints that members of the Service can make.

That subsection 6(f) be expanded upon to specifically state that the Authority shall co-operate with other institutions on issues of police oversight, including *the Kenya National Human Rights and Equality Commission* and other State organs in relation to services offered by the Police.

In addition to the above amendments to section 6(a), (f) and (l) the other subsections 6(b)-(m) should remain.

Section 7 - Powers of the Authority.

The Bill seeks to invest the Authority with “all powers generally necessary for the execution of its functions under this Act”. Specific powers are then enumerated.

In relation to section 7(1)(a), it is submitted that it should be slightly redrafted to clarify that the Authority can investigate matters on its own motion (also referred to as *suo motu* powers).

In relation to subsection 7(1)(a)(iv), it is submitted that there should be additional procedures set out for what is effectively the execution of a search and seizure. Whilst the current provision notes that a receipt is to be given, the procedure should also include the presence of an independent witness if premises are searched, and the person conducting the search keeping proper records of the search.

The current subsection 7(2) states that the Authority can request the assistance of the Police. This implies that the Police can deny such a request, which may severely affect the ability of the Authority to undertake investigations. Subsection 7(2) should be amended to give the power to the Authority to *require* assistance from the Police.

Further, the Bill should be amended so that, following the investigative process, the Authority should have the power to refer matters to the police for investigation if necessary. The police should be required, under the law, to report back on the outcomes of their investigation within a specified period of time.

On a more administrative front, it should be stated in this section of the Bill that the Authority has the power to draw funds from Treasury. Although the funding of the Authority is allowed for under Part III of the Bill, there is no direct reference to the Authority having the power to draw funds.

Recommendations:

Section 7(1)(a) should be redrafted as follows:

“to investigate complaints against a Police Officer or Member of the Service made by members of the public or a Member of the Service or investigate any other matter pertaining to the National Police Service on its own motion, and for those purposes, to gather, by such lawful means as it may deem appropriate, any information it considers relevant, including - ...”

Section 7(1)(a)(iv) should contain the additional requirements that:

- “- the investigative officer shall ensure the presence of an independent witness at all times;*
- the investigative officer shall make a record of anything seized, and that record shall be counter-signed by both the independent witness and the owner/occupier of the premises, and a copy of that record shall be provided to the owner/occupier.*
- the investigative officer who conducts the search, shall bring before a Authority, the record of the seizure and the items seized (where practicable) or photos and descriptions of the items seized (where it is not practicable to bring such items to the Authority).”*

Section 7(2) should be redrafted to state:

“The Authority may in exercise of its powers under this Act, require and compel the Police or any other governmental body or person within Kenya to assist in any way that it may consider in its own opinion to be necessary in the enforcement of its powers. Further, the Authority may request and receive such assistance from any international body or person as may in its own opinion be necessary in the enforcement of its powers.”

An additional subsection could be included to give the power to the Authority to refer certain matters to the Police (or other body such as the Kenya National Human Rights Commission) for investigation and to require the Police or other body to report on the outcome of the investigation.

A further subsection should be added to give the Authority the power to draw funds from Treasury if required.

Section 8 - The Board of the Authority.

This section countenances the creation of the Board of the Authority, and its powers and duties. Subsection 8(2)(c) gives the Board the power to “receive any grants, gifts, donations or endowments and make legitimate disbursements there from”.

It is submitted that this provision should be deleted, and is not in line with the creation and maintenance of a truly independent Authority. Funds should not come from sources other than government as it is vital that the Authority and the Board remain independent, in funding as well as functioning. Funds should come from a dedicated budget approved by Parliament and not subject to change by the Executive, as stipulated in section 31(1)(a).

Further, it is unclear why there is a section about funding for the Board, that is separate to the Financial Provisions (Part III) of the Bill. It is submitted that all financial provisions should be located under the Part III.

Recommendation: That subsection 8(2)(c) be deleted from the Bill.

Section 10 - Qualifications and disqualifications.

The current Bill seeks to disqualify persons who have been convicted of certain offences - namely, dishonesty offences, or wherever the person was sentenced to imprisonment without the option of a fine. It is submitted, however, that to maintain complete integrity of the Authority and the Board, that all persons with criminal convictions be disqualified.

Recommendation: That section 10(2)(f) be redrafted as follows:

“has been convicted, whether in Kenya or elsewhere, of any criminal offence as recognised by the laws of Kenya.”

Section 11 - Procedure for appointment of the members of the Board

The Bill states that the President shall appoint the selection panel responsible for short listing candidates. The shortlist is then provided to the President, who selects the Chairperson and members and provides this list to the National Assembly. If the National Assembly reject a candidate, the President must choose another candidate from among the candidates shortlisted by the selection panel, and present that nomination to the National Assembly. Hence the selection panel has ample power in determining who will be elected as members of the Board.

It is submitted that to maintain independence and ensure the Authority is effective and seen as independent, that the selection panel should not be appointed solely at the discretion of the President, but be appointed by the National Assembly (or a committee thereof) or the Public Service Commission.

Recommendation: that Section 11(1) is redrafted as follows:

“The National Assembly shall, within 21 days after the commencement of this Act, constitute a committee comprising of members from all parties to appoint a selection panel comprising of one person from each of the following bodies respectively -

- a. The Office of the President;***
- b. The Office of the Prime Minister;***
- c. The Judicial Service Commission;***
- d. The Commission responsible for anti-corruption; and***

e. The Commission responsible for human rights⁵

Section 16 and Schedule 2 - Conduct of business and affairs of the Board

This section states that the conduct and regulation of business of the Board shall be in accordance with the Second Schedule.

The Second Schedule, paragraph 3, states that a quorum shall be “generally” at least half of the members. This is confusing, as generally infers that sometimes the quorum can be less than half of the members. This paragraph should be redrafted to delete the word “generally”.

Recommendation: That paragraph 3 of the Second Schedule is amended to delete the word “generally”.

Section 19 - Director of the Authority

Section 19(1) states that the Authority shall appoint a person to be the Director of the Authority. To be clear, it is submitted that the section states that the Board of the Authority, through majority vote (or consensus vote) [*alternatively in accordance with the rules of the Board established in accordance with section 16*] appoint a suitably qualified person to the Director.

Recommendations:

That section 19 (1) be redrafted as follows:

“The Board shall appoint a qualified person to be the Director”

Section 22 - Staff of the Authority.

Senior Investigators

This section of the Bill states that the Authority may appoint such staff as it deems necessary. There are no other specifications or descriptions as to staff of the Authority, save to state in s.22(2) that the Board shall ensure they are adequately trained for their respective positions.

It is submitted that the Bill should establish at least the appointment of Senior Investigators (to oversee the other investigators) and a Senior Prosecutor, and the procedure for the Authority to appoint these staff. This is very important as it is the investigators that will be carrying out the majority of the tasks of the Authority. In the absence of such staff, the Authority will remain heavily dependent on police undermining its independence.

Such staff should have certain qualifications and experience related to investigation, prior and in addition to any training that they might receive from the Authority or after appointment there.

⁵ CHRI note the decision of the Committee of the Implementation of the Constitution to merge the National Commission on Gender with the Kenya National Human Rights Commission

CHRI suggest that the Bill can be amended so that the Authority appoints Senior Investigators in a similar manner as the appointment of the Director.

Additionally, it may be considered appropriate to endow investigative officers with a rank comparable to senior police investigators. This will further help ensure that the Authority is able to carry out its functions properly and in a way that is respected by both the public and the police.

Prosecutors

As discussed above, if the IPOA is going to have the power to prosecute as envisaged by the draft Bill, then the Bill must establish how this will take place. For example, will an independent legal wing be set up under the Director of Public Prosecutions, or within the IPOA? Further consideration should be given to the requirements for being employed in the position of prosecutor.

Training

All staff should have relevant skills and expertise and should get proper and regular training. CHRI comment section 22(2) stating that all Board members and relevant members of staff will be adequately trained for their respective positions.

Recommendations:

That the Bill establish the position of Senior Investigator, and set out the procedure for appointment and required minimum qualifications such as:

- (1) *The Authority shall appoint Senior Investigators to manage investigations in accordance with this Act***
- (2) *The Senior Investigators shall be appointed through an open, transparent and competitive recruitment process, and shall serve on such terms and conditions as the Board may determine***
- (3) *A person is qualified for appointment as a Senior Investigator if the person -***
 - a) Possesses a degree from a university***
 - b) Has had at least five years experience in undertaking inquiries or investigations;***
 - c) Has proven relevant experience in either -***
 - (i) Security matters***
 - (ii) Good governance***
 - d) Meets the requirements of Chapter 6 of the Constitution; and***
 - e) Has never been convicted of a criminal or disciplinary offence.***
- (4) *Senior Investigators will:***
 - a) Manage investigations in accordance with this Act;***
 - b) Manage staff assisting in the carrying out of an investigation or other function under this Act;***
 - c) Carry out any task as directed by the Director in accordance with this Act;***
 - d) Report to, and be responsible to, the Director***

Similarly, if the IPOA is going to have a separate prosecution wing/department, it should be considered as to whether the Bill should establish this independent department and the requirements for being employed as a prosecutor.

That the Committee consider endowing investigative staff of the Authority with a rank similar to that of senior police investigators.

PART IV - INVESTIGATION INTO COMPLAINTS

Section 23 - Lodging of complaint and investigation.

This section sets out in detail how complaints can be made to the Authority and the investigation process thereafter. One particular concern is anonymity. Subsections 27(14) and (15) deal with confidentiality of documents created during the investigation, and anonymity of complainants. The Authority is vested with the power to decide when documents are no longer to be kept confidential, and when/if a complainant is to remain anonymous.

It is first submitted that, rather than relying on requests from complainants, the Authority should be required to advise all complainants that there is the option of asking that they remain anonymous. If the Authority denies a request, they should give the complainant an opportunity to be heard on that decision, or perhaps even to withdraw their complaint, before the Authority proceeds further. Whilst it is recognised that the interests justice generally and of any person or persons to be investigated need to be considered, they need to be balanced against the public interest of complaints being made, and safety of complainants. The example of police officers who remain in the Service and wish to make complaints against fellow officers is one example where a guarantee of anonymity is perhaps the only way in which a complaint will be made. This is likely the case, as well, in smaller communities, and in cases where persons are complaining about issues such as ongoing harassment by police officers.

Whilst it is not submitted that confidentiality or anonymity should remain throughout the entire process, there should certainly be provision which allows the complainant to make decisions as to whether to proceed further without such protection.

In addition to these concerns, it is noted that a relatively new Witness Protection Act and scheme is in place in Kenya. The Committee may consider whether complainants to the Authority are able to access such protection, and what role the Authority might play in referring such cases to the scheme.

Recommendations: That section 23(16) be redrafted as follows:

“(a) The Authority shall inform all complainants that they may request that their identity be kept confidential. If such a request is made, the Authority will keep the complainant’s identity confidential unless it is demonstrably in the interests of justice not to do so. If the Authority does determine that a complainant’s identity is not to be kept confidential, the complainant is to be informed of that decision and given the opportunity to withdraw their complaint before any further action is taken by the Authority.

(b) The identities of any complainants that are kept confidential shall be kept as such until the end of all investigations by the Authority. In

exceptional cases, the Authority may determine that the identity of a complainant may not be published even after conclusion of an investigation or only on terms determined by the Authority.”

That the Committee consider the interaction of this Bill with the Witness Protection Act and scheme currently in operation in Kenya. That the Committee seek to ensure that complainants to the Authority may be referred to Witness Protection if necessary.

Section 24 - Deaths and serious injury in police custody

The inclusion of a section that requires the mandatory reporting of deaths and serious injury in police custody, and the securing of evidence, is commended.

Section 24(2) establishes that the initial investigative steps of securing and gathering evidence regarding a death or serious injury in police custody are carried out by the police. CHRI submit that this section should be changed to ensure that police officers or members of the service do not carry out any of the investigation steps relating to a death or serious injury in custody. Rather, as soon as a death and/or serious injury is sustained, the police officer must inform the Authority, and the Authority’s investigative mechanism kicks in.

It is submitted the Authority should be required to keep detailed records and statistics of these cases. Further, the Authority should be required to report and make their findings available to the public.

Recommendation: That the Bill require that the Authority report on all deaths and serious injury in police custody. It is suggested that the following subsection be included in the section:

“Upon completion of the investigation, the Authority shall publish on the internet and in a paper of national circulation, a statement outlining the findings of the investigation and recommendations.”

Section 28 - Steps after Investigations.

Section 28(2) states if the Directorate of Prosecution fails to comply with the direction of the Authority or fails to do so within a reasonable time then the Authority itself may prosecute the person. CHRI have submitted that this is included as a function of the Authority as well under section 6 (*it is already included as a power of the Authority*). It is submitted that the Bill outline how the Authority will undertake prosecutions, for example, that the Authority will employ an independent legal team, headed by a Senior Prosecutor, to undertake prosecutions before the appropriate courts. Or alternatively, that a separate arm of the Director of Public Prosecutions will undertake prosecutions under this Act.

Subsection 28(3) provides for the Court to enforce any recommendations made by the Authority following an investigation. It simply states that the Authority “may apply to the court for the enforcement of any of its recommendations”. However, no guidance is provided as to how the court will make a decision if an application is made under this section. If the intent of the drafters is to require the court to enforce all recommendations when such an application is made, then that should

be made clear. If that is not the case, then some guidance should be provided as to how the court is to determine which recommendations to enforce and which to not. One option is to reverse the onus - this is, upon application, the court is to enforce the recommendations, unless there is a significant reason in the interests of justice that they should not be enforced.

Further, it is submitted that the recommendations made should be binding and enforced within a specified time period. Although the Authority can apply to the Court for enforcement of its recommendations, this is a further step that will cause delay and strain the resources of the Authority. It is noted that, under section 10(t) of the *National Police Service Bill 2011*, the Inspector-General of the National Police Service must “act on the recommendations of the IPOA including compensation to victims of police misconduct”. Such a function should be reiterated in this Bill.

Recommendations:

That consideration is given to whether the Bill should include a separate Section establishing the prosecution unit of the Authority.

That, at the very least, sections 28(1)(a) and (b) be amended as follows:

- (a) *Where the inquiry in the Authority’s sole opinion discloses a criminal act by a Police Officer or a Member of the Service, make a binding recommendation to the Director of Public Prosecutions that the member or Police Officer be prosecuted within a specified time period;*
- (b) *Where the inquiry in the Authority’s sole opinion discloses negligence in the performance of a duty by a Police Officer or a Member of the Service, make a binding recommendation to the Inspector-General of the National Police Service, stating the disciplinary action to be taken against such a member within a specified time period.*

It is submitted that the most appropriate drafting of section 28(3) is as follows:

“The Authority may apply to the court for enforcement of any of its recommendations contemplated in subsection (1). Upon such an application being made, the court is to make any order necessary for the enforcement of the recommendations, unless it is manifestly against the interests of justice to do so.”

Section 29 - Performance Report

Under the current Bill, the Authority is required to prepare a report every six months. This is forwarded to the Cabinet Secretary who must, within 14 days, lay it before the National Assembly. This report shall, according to the section, include such recommendations or matters and the Authority sees fit.

It should be noted that the KNCHR has the power to make recommendations directly to Parliament, aside from its annual reporting - s.16(1)(d) *KNCHR Act*. Such a function is not allowed for in the current Bill for the Authority and there should be, in addition to reporting requirements, the power to make

recommendations to Parliament as required and the Authority sees fit. This was also referred to above, in reference to s.6 - Functions of the Authority.

It is submitted that subsection 29(2) be amended so that the Authority shall publish its 6 monthly report publicly, as well as providing it to the Inspector-General, the Commission and the County Assemblies.

Subsection 29(4)(g), states that the report must contain “*statistics about disciplinary and criminal action taken as a consequence*”. It is unclear what disciplinary and criminal action taken is referred to - action taken as a consequence of what? CHRI submits that this subsection be reworded to explain all statistics that must be included in the report, and as this section is important, that this be moved to a higher part in the sequence of subsections. Further, it is submitted that the report should also contain statistics concerning how many complainants had requested to remain anonymous or access witness protection, and whether the Authority granted such requests. In the situation where the Authority declined a request, the subsequent decision of the complainant or witness to continue to proceed with the matter should also be reported on. Further, the report should also contain statistics on the number of deaths or serious injuries in custody reported in the 6 month period.

It is noted that subsection 29(4)(b) and (e) seem to relate to the same matter (reporting on action taken in response).

Recommendation: That the Authority be given the power to report to or make recommendations directly to Parliament, aside from six-monthly performance reports.

That subsection 29(2) be redrafted as follows:

“A copy of the report referred to in subsection (1) shall forthwith be forwarded to the Inspector-General, the Commission, the County Assemblies and made available to the public by way of electronic means and other means.”

That subsection 29(4)(g) be redrafted as follows:

“statistics about:

- a. Number and type of complaints received by members of the public*
- b. Number and type of complaints received by members of the Service*
- c. Whether these Authority undertook and investigation into the complaints referred to in a. and b., and if no investigation was undertaken, the reason for this decision*
- d. Findings and recommendations for all investigations undertaken;*
- e. Whether such recommendations were acted upon;*
- f. Number of complainants requesting to remain anonymous;*
- g. Number of persons requesting witness protection;*
- h. In relation to e. and f., whether such requests were granted by the Authority, and whether the investigation proceeded;*
- i. Number of deaths in custody;*
- j. Number of reports of serious injuries in custody;*
- k. Any reprisals reported to or known to the Authority that may have occurred as a result of a complaint and/or investigation*

PART III (*this should be Part VI*) - FINANCIAL PROVISIONS

Section 31 - Funds of the Authority.

As is the case in relation to s.8(2)(c) of the Bill, s.31(b) seeks to allow that funds of the Authority may consist of monies other than those provided by parliament. The same objection is raised here - regardless of the additional provision that such funds be approved by Cabinet Secretaries, money should not come from any other source than publicly from Parliament. To allow otherwise risks both the actual independence, and the appearance of independence, of the Authority.

However CHRI recognize that, even with a plethora of powers, oversight bodies are constrained in their ability to hold the police accountable without sufficient financial resources. Even if these are not withheld for illegitimate political reasons, shortage of funds is a serious limiting factor. The debilitating effect of lack of funding on the Authorities is clear - with no permanent offices, no basic infrastructure and no pool of independent investigators. Financial independence can only be ensured when budgets are approved by state legislatures, not the Executive, and then administered by the Authorities themselves without interference.

Recommendation: That s.31(b) of the Bill be deleted.

Submission by:

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