# **YOUR GUIDE TO:**

# THE NATIONAL POLICE SERVICE ACT, THE NATIONAL POLICE SERVICE COMMISSION ACT

# **AND**

THE INDEPENDENT POLICING OVERSIGHT AUTHORITY ACT

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# **Foreword**

Police reforms in Kenya have been a key concern to many stakeholders. Specific concerns have been raised as to the adequacy of policing, police accountability and respect for human rights. Kenya faces an acute crime challenge and the police have been found to be lacking in their response to this challenge.

Further the police stand accused of gross, systematic and widespread human rights abuses. The promulgation of the constitution provided great impetus for wide-ranging police reforms. Parliament passed the National Police Service Act, the National Police Service Commission Act and The Independent Policing Oversight Authority Act. However, the process of implementation has been slow and there is doubt as to whether there is political will and commitment to the full and faithful implementation of the reforms.

Already, there has been concern that there are attempts to delay the reforms on the pretext that the reforms cannot be completed before the next general elections yet it is imperative that the reforms be completed before the elections given the fact that in 2007, the police were accused of gross human rights violations, including extra-judicial executions.

Extra-judicial executions continue to be a matter of grave concern. RPP and other organizations have documented numerous cases of these killings. It would be impossible for any reforms to have meaning if police continue to kill civilians unlawfully and without being held to account. Police reforms under the new legislation will bring greater accountability in the Police and contribute to the reduction in extra-judicial executions while offering victims a chance for redress.

It is RPP's hope that this publication will contribute towards police reform by enabling ordinary citizens to understand what the new legislation on policing entails. An enlightened citizenry will thus be able to play an active and meaningful role in this process.

# **Odhiambo Oyoko**

Ag. Executive Co-ordinator

# THE NEW NATIONAL POLICE SERVICE:

# **Background**

#### Introduction

With the new Constitution providing for sweeping reforms in the police, the government had to set up a new police system to reflect the changes.

The laws setting out the system have now been passed by Parliament, and the new police system is being established.

#### WHY DID THE SYSTEM CHANGE?

The Constitution of Kenya, made law in 2010, established a new National Police Service and a National Police Service Commission. New laws were required to reflect the changes to the police system made under the new Constitution.

The changes made to the police system were prompted by many factors, including the Police Reform Taskforce Report (also called the Ransley Report) that reviewed the police structures and systems after the 2007/8 post-election violence and recommended wide-ranging reforms to the police service. The goal of the police reforms is to transform the Police to a professional, efficient and accountable police service that is trusted by the public.

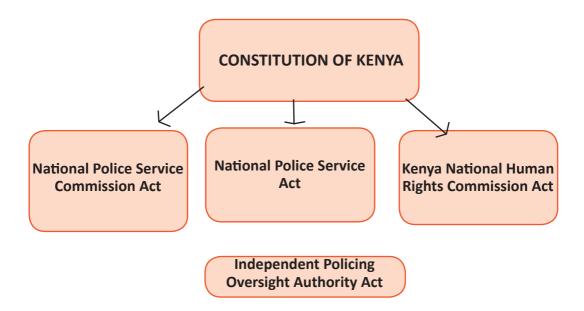
The Ransley Report recommended the restructuring of the police services to include new organisations, including the Police Service Commission and the Independent Policing Oversight Authority.

#### THE CONSTITUTION SETS UP:

- ✓ A **Bill of Rights**, which guarantees the rights and freedoms of the people including: freedom from torture and cruel, inhuman and degrading treatment or punishment; right to freedom of assembly; right to life; rights of arrested persons; and rights of persons detained, held in custody or imprisoned. The Kenyan government must ensure that the rights are guaranteed through the law, policy and standards.
- ✓ National values and principles that must be adhered to in interpreting, applying or enacting the Constitution, laws and public policy. These national values and principles include the rule of law, democracy, sharing of power, participation of the people, human rights, good governance, transparency and accountability and more.
- ✓ **Values and Principles of public service** including high standards of ethics, responsive and impartial provision of services, accountability and transparency and provision of timely information.
- ✓ Principles of national security including that national security will be pursued in accordance with the law and with the utmost respect of the rule of law, human rights, democracy and fundamental freedoms.
- ✓ National Security Organs: includes the National Police Service, Kenya Defence Forces and the National Intelligence Service. These bodies must work in accordance with the law with respect for human rights. They are not allowed to be biased for particular people, and they are governed by the people of Kenya through the Parliament.
- ✓ Human Rights Commission and other commissions like the independent Ethics and Anti-Corruption Commission.
- ✓ **County governments** to be established under new legislation and are made up of county assemblies and other county government structures.

#### THE CONSTITUTION

The Constitution is the supreme law of Kenya, and is superior to all other laws.



# Apart from the new laws, what else guides the police?

#### **Other Kenyan laws**

The Criminal Procedure Code, Evidence Act and Penal Code also guide the police in their operations. The Penal Code sets out the criminal offences in Kenya. The Criminal Procedure Code sets out the process by which a person can be arrested, charged and tried in court, and also sets out some of the powers of the police. The Evidence Act sets out the evidence required to prosecute a person for an offence.

#### International law

Kenya is also bound by international law, and must follow international human rights law. Every international treaty that Kenya has ratified is now automatically a law in Kenya – so this means that the government must make sure that they follow these laws as well.

#### **Internal procedures, Service Standing Orders**

Internal policies and procedures also govern the operations of the Police. The Police have 'Service Standing Orders' that set out the specific rules and procedures that the Police must follow in order to carry out their work. They provide direction for the Police in all the various, distinct areas that face Police in their daily work.

The Service Standing Orders can only provide direction to the police on how to carry out their duties and must be consistent with the Constitution, the National Police Service Act and all other Kenyan laws. These Service Standing Orders are meant to be available to the public wherever possible, so if you are interested in reading these orders, please ask at your local police station.

New Service Standing Orders will be made to reflect the new Police Laws.

The Police also have a Code of Conduct that guides their general behaviour.

# How is the police organisation structured now?

#### Who is doing what?

The different police organisations carry out different functions, and are structured a little bit differently.

- ➤ **National Police Service (NPS):** works to maintain a safe and secure community; detecting, preventing and investigating crime; maintenance of public order.
- National Police Service Commission (NPS Commission): manages recruitment, employment, professional standards and discipline of the National Police Service.
- Independent Policing Oversight Authority (IPOA): investigates complaints made against the police, investigate all deaths in police custody, investigate matters that are not the subject of an individual complaint but that the IPOA think it should investigate, and make recommendations for action and report to Parliament.
- County Policing Authorities (CPAs): are also new bodies, established under the National Police Service Act. The CPAs are a key way for the local county community

to be involved in the policy direction and strategy of the police in their own County. Community Policing Committees will also be established in each area.

# **NPS**

- Public safety and security
- Investigate and prevent crimeMaintenance of peace and public order

# **NPS Commission**

- Recruitment, employment condi tions
- Training
- Discipline police officers

# **IPOA**

- Independent investigations into complaint against police - including all dealths in custody
- Recommendations for action/discipline

# **County Policing Authorities**

- Implement community policing
- Ensure police accountability to the public

# **NATIONAL POLICE SERVICE ACT:**

# A simple guide

The National Police Service is established under Article 243 of the Constitution and *The National Police Service Act 2011*.

The purpose of this chapter is to explain the new law establishing the National Police Service, *The National Police Service Act*. The chapter will explain how the Service is set up, how the leaders of the Service are appointed, the role of the police, the powers of the police, how the community can get involved in policing and the workings of the police internal investigation unit.

#### THE NATIONAL POLICE SERVICE IS MADE UP OF:

- The Kenya Police Service
- The Administration Police Service
- The Directorate of Criminal Investigation

This is different to the previous system, as now both police services – the Kenya Police and the Administration Police - fall under one organisation, the NPS. They are both governed by the same Inspector-General of Police.

There are two Deputy Inspector-Generals: one for the Kenya Police Service and one for the Administration Police Service.

There is also a separate Directorate of Criminal Investigation which is overseen by the Director, whose overall boss is also the Inspector-General for Police.

# **Inspector - General National Police Service Deputy IG Deputy IG** Director **Administration Po-Directorate of Kenya Police Service** lice Service **Criminial Investigation Assistant Inspector Assistant Inspector** General General Senior Senior Superintendent Superintendent **Assistant** Assistant **Superintendent** Superintendent Chief Chief Inspector Inspector Inspector Inspector Senior Senior Sergeant Sergeant Sergeant Sergeant Corporal Corporal Constable Constable

#### What are the different roles of the KPS and the APS?

#### THE KENYA POLICE SERVICE (KPS) HAS TO:

- ✓ Assist the public
- ✓ Maintain law and order and preserve the peace
- ✓ Protect life and property
- ✓ Detect and prevent crimes and collect criminal intelligence
- ✓ Investigate crimes
- ✓ Apprehend offenders
- ✓ Provide services to prevent stock theft
- ✓ Enforce all laws and regulations under its mandate

Like the KPS, the Administration Police Service (APS) is also established to provide assistance to the public, maintain law and order, preserve the peace, protect life and property and apprehend offenders.

#### However, the focus of the APS is also on:

- ✓ Border control and security
- ✓ Protection of important government buildings
- ✓ Providing support to government agencies so that they can carry out their functions
- ✓ Along with other government agencies, conflict management and peace building

# What does the Directorate of Criminal Investigation do?

The Directorate of Criminal Investigation (DCI) is a section within the National Police Service that is primarily responsible for detecting, preventing and investigating serious crimes, such as murder, drug crimes, human trafficking, terrorism, money laundering and organized crime.

They also collect and provide criminal intelligence, conduct forensic analysis of evidence, maintain criminal records and work with the International Police (INTERPOL).

The DCI also investigates matters referred by either:

- the Attorney-General; or
- the Independent Policing Oversight Authority.

The 'Director' manages the DCI, and his /her boss is the inspector-General of police

#### Who commands the Police Service?

The Inspector-General of Police (IGP) commands the Police Service.

The IGP must command the Police in accordance with the law, regulations and other police guidelines.

#### THE INSPECTOR-GENERAL IS INDEPENDENT.

The Constitution says that: "The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector-General with respect to—

- (a) The investigation of any particular offence or offences;
- (b) The enforcement of the law against any particular person or persons; or
- (c) The employment, assignment, promotion, suspension or dismissal of any member of the National Police Service."

Any directions given to the IGP from Ministers or politicians have to be in writing. This way there is a clear line of accountability - there will always be a document that states exactly what direction was given to the IGP.

# What does the Inspector-General have to do?

The Inspector-General is responsible for:

- ✓ Police operations: including establishing police stations and ensuring that each County has enough stations.
- ✓ Planning and budgeting: preparing a plan which states the priorities and objectives of the police and estimates the money needed to implement the plan.
- ✓ Policy: Implementing, and monitoring implementation of policy decisions.
- Research and Advice: authorising research to check how the police are operating in comparison to best practice and giving advice to the government on policing.
- ✓ Training: establishing and maintaining training institutions.
- ✓ Police misconduct: implementing the decisions of the Independent Policing Oversight Authority and establishing Internal Affairs Units across the country.
- ✓ Monitoring and cooperation: providing reliable statistics on crime rates, detection rates, public confidence in the police, number of complaints against the police and promoting co-operation with international police agencies.

#### How is the Inspector-General appointed?

- 1. The NPS Commission advertises the position in the Gazette and two other national newspapers.
- 2. The Commission considers the applicants, conducts interviews and short-lists at least 3 people, whose names are published in the Gazette. Only people who fit the selection criteria will be shortlisted see "Who can apply to be the Inspector-General?" later in this document.
- 3. The Commission will also appoint a panel made up of representatives from the Officer of the President, the Office of the Prime Minister, the Judicial Service Commission, the Ethics and Anti-Corruption Commission, the Kenya National Commission on Human Rights and the Kenya National Gender and Equality Commission. This panel will interview the candidates shortlisted by the NPS Commission and then give the President a list of candidates in order of preference.
- 4. Within 7 days of receiving the list, the President must nominate one person from the list to the Parliament.
- 5. Within 14 days of receiving the nomination, the Parliament must approve or reject the person nominated.
- 6. Once the Parliament approves a person, a notice will be published in the Gazette. If the Parliament does not agree with the person nominated by the President, then the President must submit a different nominee to the Parliament from the people put forward in the list given to the President (see point 3).
- 7. If the Parliament does not agree on any of the names put forward then the process will need to start again and the position will be readvertised.

# For how long can someone be the Inspector-General of Police?

A person can only be the IGP for one term of 4 years. Once the four year term has been completed a new Inspector-General must be appointed. The previous Inspector-General cannot be reappointed.

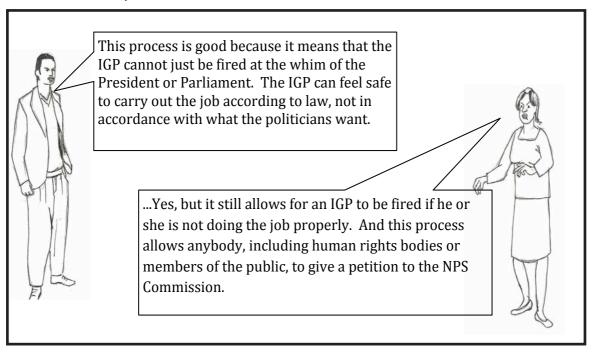
# What happens if the Inspector-General does the wrong thing? Can she or he be fired from the position?

Yes, the Inspector-General can be removed from office, but only in accordance with the following process:

- 1. A petition is given to the NPS Commission which says that the Inspector-General should not continue to be the Inspector-General for one of the following reasons:
  - a serious violation of the Constitution (including Chapter 6) or any other law;
  - gross misconduct;
  - unable to perform the job due to physical or mental problems;
  - incompetence;
  - bankruptcy; or
  - > any other just cause.

Evidence to support the petition must be included.

- 2. If two-thirds of the Commission believes that the petition shows that the IGP should not continue to be the IGP for one of the above reasons, then the Commission will recommend that the Parliament remove the Inspector-General.
- 3. The Parliament will then consider the petition, and if satisfied that it shows a valid reason to dismiss the IGP, the Parliament will inform the President of this.
- 4. The President must then appoint a Tribunal to investigate the matter and make a binding recommendation to the President. The President can decide whether to suspend the IGP whilst the investigation by the Tribunal is being carried out.
- 5. The Tribunal must investigate and provide a recommendation as quickly as possible. Once the Tribunal makes a recommendation, the President has to implement it within 7 days.



#### What do the Deputy Inspector-Generals do?

There are two Deputy Inspector-Generals – one that manages the Administration Police and one that manages the Kenya Police Service. Their boss is the IGP.

#### THE JOB OF THE DEPUTY IGPS IS TO:

- Oversee operations: manage and supervise the day-to-day workings of the police, establish and maintain police stations, provide direction
- Planning and budgeting
- Community relations: maintain a relationship with the community.
- Monitoring and Oversight: provide systems to oversee the police and improve transparency and accountability; monitor and evaluate the KPS/ APS; ensure every police station has a facility for receiving, recording and reporting of complaints; the Deputy IG for the APS must also ensure complaints from the public are reported to the IPOA
- Policy
- Training: coordinate the training of the KPS
- Cooperation: cooperation between the police services and with other bodies
- Implement decisions: implement decisions of the IGP or the Police Commission

# Who can apply to be the Inspector-General or a Deputy Inspector-General?

To apply to become the Inspector-General, or one of the Deputy Inspector-Generals, a person:

- Must be a citizen of Kenya, and must not hold citizenship of another country.
- Must have a degree from a university recognized in Kenya.
- Must have had a distinguished career.
- To be the Inspector-General of Police, he/she must have been employed in a senior management position for at least 15 years.
- Must have previous experience in either: criminal justice, policy development and implementation, finance and public administration, strategic management, security, law, sociology or Government.
- Must not be a Member of Parliament or of a county assembly, or be a Governor or Deputy Governor or hold an office in a political party.
- Must not have, in the last 5 years, served as a Member of Parliament, county assembly or trade union, or held an office in a political party.
- Must not have been convicted of a criminal offence.
- Must not have violated the Constitution, and must meet the requirements of Chapter 6 of the Constitution.
- Must not be employed elsewhere.

- Must not be an undischarged bankrupt.
- To be a Deputy Inspector-General, he/she must be a serving police officer of the rank of Superintendent or above, and have worked as a police officer for at least 15 years.

# What are the requirements of Chapter 6 of the Constitution?

#### The guiding principles of leadership and integrity include:

- Selection on the basis of personal integrity, competence and suitability
- Objectivity and impartiality in decision making no favouritism
- Service based solely on the public interest, including honesty in undertaking public duties and declaring any conflicts of interests
- Accountability to the public for decisions and actions
- Discipline and commitment in service to the people

#### State officers must act in a way that:

- Is consistent with the purposes and objects of the Constitution
- Demonstrates respect for the people
- Brings honour to the nation and dignity to the office
- Promotes public confidence in the integrity of the office
- Serves the people

#### A State officer shall avoid, in both public and private:

- Any conflict between personal interests and public or official duties
- Compromising any public or official interest in favour of a personal interest
- Demeaning the office the officer holds

#### A state officer shall NOT:

- Participate in any other gainful employment
- Hold office in a political party

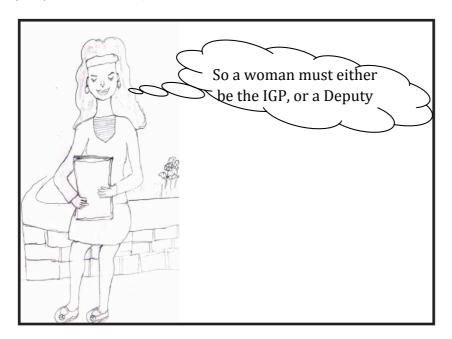
#### A person is not eligible for election or appointment to a State office:

- If the person is not a citizen of Kenya
- If the person holds dual citizenship.

This doesn't apply to judges and members of commissions or any person who has been made a citizen of another country by operation of that country's law, without ability to opt out.

#### **Gender equity**

Both genders must be represented in the three positions (Inspector-General and two Deputy Inspector-Generals).



#### What about the Director of the DCI - what does he or she do?

The Directorate of Criminal Investigation works a little bit like a company, so the Director is given the responsibility of being the chief executive officer and accounting officer.

The Director also must:

- Oversee operations: effective and efficient administration operations, supervision of the DCI
- Provide Strategic guidance and advice
- Budget and plan
- Organise training, development and research for the DCI
- Monitor, evaluate and ensure internal oversight of the operations of DCI
- Improve transparency and accountability of the DCI
- Co-operate with Deputy IGs and other government bodies where necessary

# Who can be appointed to be the Director of the DCI?

A person can be appointed as the Director if she or he:

- Is a citizen of Kenya
- Has graduated from a recognised University and has had a distinguished career
- Has at least 10 years experience in managing a public institution
- Has knowledge and experience in criminal investigation or policing

- Has proven relevant experience in one or more of the following areas: management, law, economics, change management, finance, governance or public administration
- Meets the requirements of Chapter 6 of the Constitution

# Process for appointment of the Deputy Inspector-Generals and Director of DCI

The NPS Commission advertises, considers applications for the position, vets the applicants and conducts interviews. The Commission then short-lists three persons for each position, and the names are published in the Gazette and provided to the President. The President must then appoint a Deputy IG or Director from the list within 7 days.

#### Can the Deputy IGPs and Director of DCI be removed from office?

Yes. Like the IGP process, a person can give a petition to the NPS Commission asking for a Deputy IG or the Director to be fired for one of the reasons below:

- He/she has seriously violated the Constitution or any other law
- He/she has committed gross misconduct
- He/she is unable to perform the job due to physical or mental problems
- He/she doesn't have the ability to do the job properly
- He/she is bankrupt
- Or any other just cause

However, unlike the process with the IGP, the Commission can undertake an investigation if two-thirds of the members agree. Then, if two-thirds of the Commission believe that the facts uncovered in the investigation show that the petition is right, the Commission will recommend that the President removes the Deputy IG or Director. The President has to remove the Deputy IG or Director within 14 days.

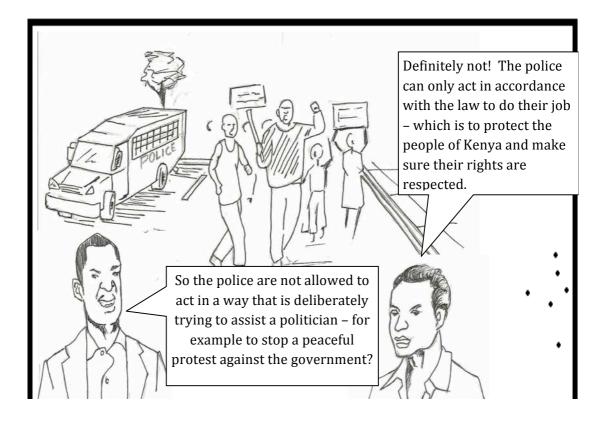
# **Principles police must follow**

# The Constitution states that the police must abide by the following principles:

- Compliance with the law and utmost respect for democracy, human rights and fundamental freedoms and the law
- Respect the diverse culture of the communities within Kenya
- Recruitment shall reflect the diversity of the Kenyan people
- Strive for the highest standards of professionalism and discipline
- Prevent corruption and promote and practice transparency and accountability
- Comply with constitutional standards of human rights and fundamental freedoms
- Train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity
- Foster and promote relationships with the broader society

# The Constitution strictly forbids the NPS from:

- acting in a biased manner
- furthering a political interest or cause
- prejudicing a political interest or political cause that is legitimate (legal)



The Constitution says the police are subject to civilian authority. This means that the people of Kenya, through the Parliament, govern the police. They are also overseen by other civilian oversight organisations such as the Independent Policing Oversight Authority and the Kenya National Commission on Human Rights.

# The powers and responsibilities of the police

The police are given powers so they can carry out their job properly. The job of the police is set out earlier in this booklet, under the question "What are the different roles of the KPS and the APS?". The law also sets out the rules on how the police can use their powers, to make sure that they are not abused. The police also have responsibilities to make sure the rights of civilians are upheld and that police facilities are maintained to the right standard.

The Criminal Procedure Code also sets out some of the powers of the police in relation to arresting a person, obtaining a warrant etc.

# Use of force by police officers

There are regulations regarding use of force and firearms by police officers in Schedule 6 of the NPS Act. Broadly, the schedule states:

#### **USE OF FORCE**

- A police officer is allowed to use force, but he or she must use non-violent means first, and can only use force when non-violent means are not working.
- The force used must be proportionate to the seriousness of the offence, the resistance of the person against whom it is used and the objective sought by the police.
- When the police cause an injury, they must immediately provide medical assistance and notify relatives or close friends of the person injured.
- Any use of force must be immediately reported to the officer's superior.
   The superior will decide the next step, in line with the law.
- Use of force which results in death or serious injury must be reported immediately to the Independent Policing Oversight Authority. The police officer must secure the scene for investigations and notify relatives or friends of the person. A police officer who fails to do this commits an offence.
- Following orders is no excuse for unlawful use of force.
- The Ministry of Internal Security and the IGP will make further regulations including:
- A list of lawful forceful measures that police can use
- Training requirements
- Reporting procedures

# When can the police stop somebody?

A uniformed police officer can stop and detain any person who he/she:

- Witnesses doing any act or thing,
- Finds in possession of anything,
- Suspects of doing any act or thing or being in possession of anything,

Which requires a licence, permit or certificate or pass under the law – provided that the police officer uses the power to detain as a last resort.

Although it is written a bit differently in the law, we believe this section is meant to say that a police officer can only stop and detain someone who the officer sees doing something, or has something, that the person needs a licence, permit, certificate or pass for under the law. If asked by the police to produce a licence, permit, certificate or pass, a person has 48 hours to do this. After 48 hours, the person can be arrested without a warrant unless he or she gives his/her name and address and the officer is satisfied that he or she will answer any summons or other proceedings issued against him or her.

A police officer is not allowed to abuse their stop and detain powers – if they do they are committing an offence.

#### **POLICE USE OF FIREARMS**

- Police are only allowed to use firearms when saving or protecting life or protecting a person against an immediate threat of serious injury.
- The police can only use firearms when no other option would work and they must make every effort to avoid using them, particularly against children.
- A police officer who intends to use firearms must:
- Identify themself and give a clear warning that they are going to use a gun
- Give enough time for the person to react to the warning except when doing so would place the officer or another person at risk of death or serious injury or when the circumstances make it inappropriate.
- Any use of a firearm must be reported to the officer's superior. Any death, serious injury or other grave consequences caused by the use of a firearm must be reported to the IPOA. Also the police officer must secure the scene for investigations and notify the next of kin, relative or friend of the person.
- The Ministry of Internal Security and the IGP have to make further regulations regarding use of firearms by the police including:
- When the police are allowed to carry firearms and which type
- Banning certain particularly dangerous firearms
- The control, storage and issue of firearms, as well making sure officers are accountable for the weapons and ammunition issued to them
- The selection, training and testing of officers that carry firearms
- The testing of officers carrying firearms at regular intervals, at least once
  a year and failing the test will mean the officer cannot carry a gun until
  he/she passes the test
- A reporting system for use of firearms

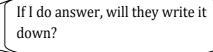
# Attendance at the station Search and Enter - including confiscation of property

Can the police make me come to the police

station?

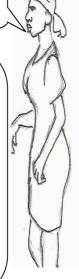
A police officer can ask a person in writing to come to the local police station if they think that person has information that can help an investigation. You have to go to the station unless you give a reasonable excuse.

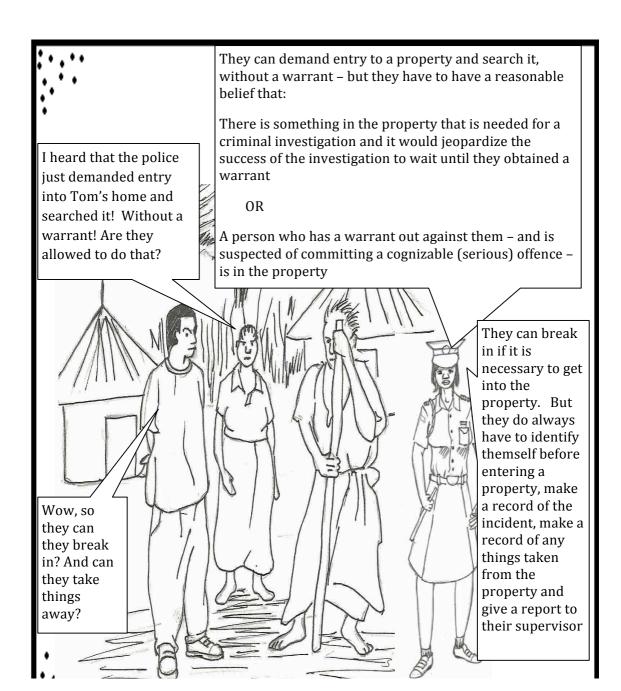
A person is not required to answer any question if the question might result in the person being charged with an offense or having to pay a fine.



Yes. The police have to write down what you say as a "statement", but they **must** warn you, before you answer any question, that the statement may be used as evidence if the matter goes to court.

Also the police officer must read out the statement he/she has recorded, and you can make any corrections to it that you need to.





# Searching vehicles

A police officer may stop, search and detain any vehicle which the police officer has reasonable cause to suspect it has been used to carry out a crime.

If the driver does not stop when requested by the police, the driver commits an offence. A police officer may arrest the driver, without a warrant, unless the driver gives his or her name and address and satisfies the police that they will answer any summons or proceedings issued against them.

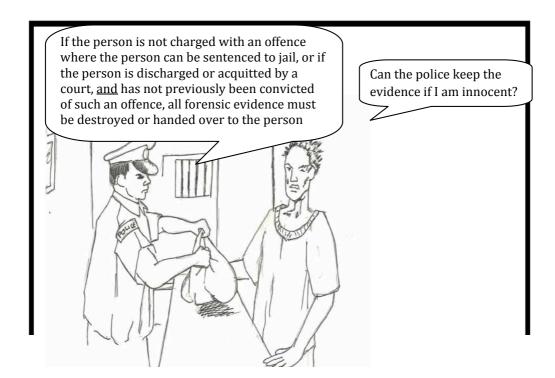
Getting evidence (photos, fingerprints and forensic evidence)

A police officer may take forensic evidence from any person in lawful custody or who is under

police supervision.

#### This includes:

- Measurements
- Photographs
- Footprints and casts and palm-prints, finger-prints
- · Other forensic evidence



# **Recording of statements**

A police officer has to record any statement made to him or her. The police officer must warn the person, before recording the statement, that the statement could be used as evidence. The statement recorded must be read out to the person in a language which the person understands, after which the person can make any corrections to the statement before signing it. If a police officer does not follow the right procedure the statement can't be used as evidence in any court proceedings.

#### ARREST AND DETENTION

Do the police need a warrant to make an arrest?

Normally yes, but the police can make an arrest without a warrant where:

- the person is accused of committing an aggravated assault
- the person obstructs the police officer from doing his/her duty
- the person has escaped or is attempting to escape custody
- there are reasonable reasons for the police officer to suspect the person has committed a cognizable (serious) offence or felony
- the person breaches the peace
- the person has property that the police officer reasonably suspects is stolen or part of a crime
- the person is a deserter from the armed forces
- the police officer has reasonable grounds to believe there is a warrant out for this person

As soon as a person is arrested, the police officer must tell them, in a language the person understands, that they have the right to:

- Remain silent and the consequences of not remaining silent
- To talk to a lawyer, and other persons whose assistance is necessary
- Not be compelled to make any confession or admission that could be used in a court proceeding as evidence against the person

# How long can a person be held in custody for?

An arrested person must be brought before a court as soon as reasonably possible, but no later than 24 hours after being arrested. If the 24 hour period ends when the court is not open, then the person must be brought before the court before the end of the next court day.

What happens if a person is not brought before a court within 24 hours? Then the person can petition for an order of habeas corpus. This means the person can ask to be brought before a court.

#### What happens at court?

At the first court appearance, the person must be charged or informed of the reason for the detention continuing, or be released. If the person is charged or investigations are continuing, he/she has a right to be released on bond or bail, unless there are compelling reasons not to.

#### Can you be held in custody for small crimes?

No. A person can only be held in custody if they have been arrested regarding an offence punishable by a jail sentence of 6 months or more.

#### PERSONS HELD IN CUSTODY/DETENTION HAVE THE RIGHT TO:

- Communicate and receive visits from family subject to reasonable conditions and restrictions.
- Inform family of the arrest and place of detention.
- Access medical assistance.
- Lodge complaints against mistreatment and the right to compensation.
   These complaints will also be investigated by the IPOA.
- Persons detained before going to court have a right to be held separately from people serving a sentence.
- All the rights and freedoms in the Constitution, except where it is clearly incompatible with the fact that the person is detained, held in custody or imprisoned

#### REGISTER OF DETAINED PERSONS

- The police officer in charge of the station or place of detention has to keep a register of the people detained, including:
- Name
- Reasons for arrest and detention
- Date and time of arrest and detention
- Date and time of first appearance before a court
- Identity of the arresting officer
- Date and time of interrogations and identity of interrogators
- Date and time of any transfer of the detainee

#### **LOCK-UP FACILITIES**

- Every police station has to have a lock-up facility for detaining arrested persons. No detained person shall be held in any other place except a designated lock-up facility.
- These lock-up facilities must have:
- Hygienic conditions
- Adequate light, toilet & washing facilities and outdoor area
- Men and women kept separately
- Juveniles and children kept separately from adults
- Police detainees kept separately from convicted prisoners

#### **INSPECTION OF LOCK-UP FACILITIES**

- A lock-up facility must be open for inspection, including unannounced visits by both the IPOA and the Cabinet Secretary or their representatives.
- In the case of these unannounced visits:
- Officers must cooperate
- Binding recommendations can be made for improvement
- Detainees can communicate freely and confidentially with persons making the visit

#### **Death in custody**

• If a detained person dies in custody, the officer in charge shall notify the IPOA and any other body required by law to be notified for investigations.

#### Police records

A police officer in charge of a police station or other post must keep a record of all complaints and charges, the names of all persons arrested and the offences they are charged with.

#### Reporting by police officers – complaints about police

Any complaint made against any police officer shall be recorded and reported to the police officers superior and the IPOA. It is an offence if a police officer does not do this.

#### Property held by police

Police must deliver all unclaimed property given to them to the nearest station. Within 48 hours, the police officer must take a description of the property to a magistrate who will:

- Give orders for the property to be detained
- Ensure that a notice describing the property is put up in an obvious place in the magistrate's court and at some police stations

If it is your property, you must appear before the Magistrate, or other specified person, and show that the property is yours. If the property is a gun, the Magistrate can get rid of it. If no owner is found within twelve months of the notice date, the property may be sold in a way directed by the magistrate. If the property belongs to no one, the money will be paid into the Government Revenue.

#### **Traffic matters**

The police regulate and control traffic and make sure there are no unnecessary traffic obstructions during assemblies, meetings and processions.

#### POLICE MISCONDUCT

There are different organisations that can investigate police misconduct:

- Internal Affairs Unit: this is an internal unit of the police service that will then
  recommend action to the National Police Service Commission, Independent Policing
  Oversight Authority or Director of Public Prosecutions.
- Independent Policing Oversight Authority (IPOA): this is an independent body that can investigate complaints of police misconduct.

Generally, if the complaint involves serious allegations of criminal conduct by a police officer, it will be investigated by the IPOA. The IPOA must investigate all deaths and serious injuries caused by police actions.

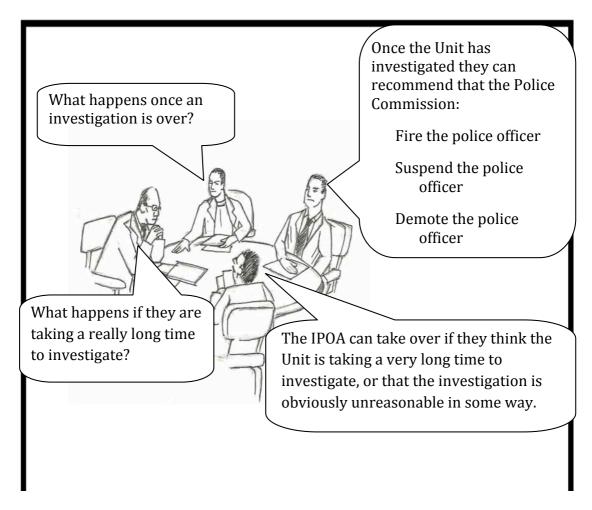
If the complaint is not as serious, it may be investigated by the Internal Affairs Department of the NPS.

#### **Internal Affairs Unit**

One of the jobs of the Inspector-General of Police is to set up an Internal Affairs Unit. This Unit will investigate complaints against police officers, from other police officers or members of the public. The Unit can also investigate suspected misconduct at its own initiative. The Unit must also investigate suspected misconduct if directed to do so by the Inspector-General or requested to do so by the IPOA.

As well as investigating complaints about police officers, the Unit must also promote uniform standards of discipline and good order within the Police Service.

The Unit has to make sure it conducts investigations into police misconduct in a fair and effective manner.



The Unit will report directly to the Assistant Inspector-General, who then reports to the Inspector-General. The Unit will be located in separate offices to the rest of the police. Relationships with other bodies

The Unit has to have an effective, working relationship with, and report regularly to:

- IPOA
- NPS Commission
- Coroners Service (The law is yet to be passed)
- Chief Firearms Licensing Officer

# How do I make a complaint to the Internal Affairs Unit?

A police officer or a member of the public can make a complaint against the police to the Internal Affairs Unit. The Unit must record the facts of any complaint made and any subsequent investigation.

Every police station must have the ability to receive, record and report complaints about police misconduct – so a member of the public can make a complaint to any police station.

#### Making a complaint to the Commission

A member of the public or a police officer can make a complaint about police misconduct to the NPS Commission. If the complaint is made by a member of the public, the NPS Commission may refer it to the IPOA, Department of Public Prosecutions, Kenya National Commission on Human Rights or the Independent Ethics and Anti-Corruption Commission.

#### Making a complaint to the IPOA

Anyone can make a complaint to the IPOA about the behaviour of a police officer. They can make the complaint either in writing or verbally (over the phone or at the office). The IPOA will set out exactly how this can be done, for example, by using a form.

# Community policing: how to get involved

There are different ways to be involved in community policing in your area:

- 1. Through being part of a County Policing Authority
- 2. Through being part of a Community Policing Committee

The police have to liaise with the community to:

- Establish and maintain a partnership
- Improve communication
- Promote co-operation to better address the policing needs of the community
- Improve police services
- Improve accountability and transparency in police matters
- Assist in police problem identification and solving

# **County Policing Authorities**

The County Policing Authorities (CPA) are a way for the community to get involved in policing at the local level. The CPAs do not interfere with police day-to-day work or the work of the NPS Commission but provide broader policy direction and input. They establish structures to implement community policing in all parts of the county.

Presumably the CPAs will need to set up rules and guidelines to assist in meeting their functions to monitor trends, promote community policing, facilitate public participation, ensure compliance with national policing standards and do all its other work. In relation to police accountability, there will need to be guidelines about how the CPAs work with other key bodies monitoring the police – the IPOA and the Kenya National

Commission on Human Rights.

#### What do the CPAs do?

- Develop proposals on priorities, objectives and targets for police performance in the county
- Monitor progress and achievement of these policing targets
- Give feedback on the performance of the police in the County
- Promote community policing initiatives in the County and implement community policing policies and guidelines
- Provide a platform through which the public can participate on all aspects to do with the National Police Service at county level, including policy
- Prepare county community policing reports and give to the Cabinet Secretary
- Ensure the police are accountable to the public
- Facilitate training on community policing
- Monitor trends and patterns of crime in the County including those that have a specific impact on women and children
- Receive reports from Community Policing Forums and Committees
- Ensure compliance with the national policing standards and oversee the budget of the County Police

#### WHO IS ON THE CPA

The Governor of the County, or a member of the County Executive Committee appointed by the Governor (this person is the Chairperson)
A representative of the Inspector-General of Police

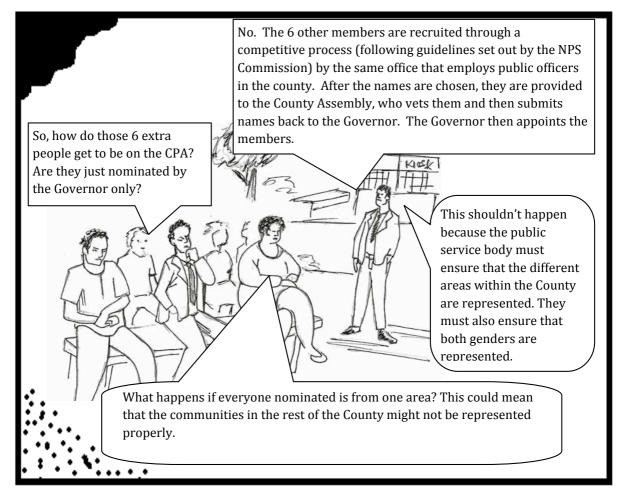
The County heads of each of the Kenya Police Service, Administrative Police Service, Directorate of Criminal Investigation and National Intelligence Service

Two elected members nominated by the County Assembly

The chairperson of the County Security Committee

At least 6 other members, from among the following groups within the county:

- The business sector
- Community based organisations
- Women
- · Persons with special needs
- Religious organisations
- Youth



# A person is not able to be part of the CPA if he/she:

- Has violated the Constitution;
- Has been declared bankrupt;
- Is not of good character or moral standing;
- Has been convicted of a felony (serious criminal offence); or
- Has not been resident or employed in the county for a continuous period of three years

# How long do people sit on the CPA?

The members of the CPA from the groups in the community sit for a 2 year term and can be re-appointed for one more term. This means they can sit on the CPA for a maximum of 4 years.

#### When does the CPA meet?

A CPA has to meet at least once every three months. A quorum (minimum number of people required to be in attendance to make a decision) for CPA meetings is 50% of members.

# **Budget of the CPA**

The budget of the County Police is not established in the Police Act, except for saying that the

National Police Service shall meet the costs of each CPA. More detailed guidelines and policy on the budget of the CPA will need to be developed. Presumably the Inspector-General, who is in charge of preparing the overall budget for the NPS, will determine the budget for the CPAs.

# Reports of the CPA

The CPA provides a quarterly report to the Inspector-General, Cabinet Secretary, County Assembly and Governor, detailing progress made, and impediments to progress, under each of the functions that it has to do.

The Act does not stipulate what the Inspector-General or other bodies must do with the reports provided by the CPAs. Further policy/guidelines should be developed to state how each body will incorporate the recommendations of the CPAs.

# **Community Policing Committees**

Under the Police Act, the police officer in charge of an area is meant to set up Community Policing Committees. The police officer must establish the Committee in consultation with stakeholders (people in the community who are interested in the Committee).

# The purpose of the Committees is to:

- Establish and maintain a partnership between the community and police
- Improve communication between the police and community
- Promote co-operation to better address the policing needs of the community
- Improve police services to the community
- Improve accountability of the Police Service to the community
- Promote policing problem identification and problem solving by both the police and the community.

These Committees are made up of elected representatives of community policing forums in the area and the station commander or administrative police post commander. The Committee can, when necessary, appoint other members, experts and community leaders to the Committee in an advisory role only.

The Chairperson of the Committee will be elected by the other members and must be a non-police officer. The Vice-Chairperson is also elected by the other members, and must be a police officer.

The quorum for Committee meetings is the majority of members. The Committees can establish the other operating procedures.

# **NATIONAL POLICE SERVICE COMMISSION ACT:**

## A SIMPLE GUIDE

This chapter aims to explain the new law establishing the National Police Service Commission.

The National Police Service Commission is established under Article 246 of the Constitution of Kenya and The National Police Service Commission Act 2011.

## WHY WAS THE COMMISSION SET UP?

- The National Police Service Commission is an important organ that will drive the overall reforms to the system of policing in Kenya.
- The changes made to the police system were proposed by the Police Reform Taskforce Report (the Ransley Report) that reviewed the police structures and systems after the 2007/8 post-election violence.
- Along with many other recommendations, it recommended the establishment of a Police Service Commission to improve recruitment and deployment of police officers (make sure the right person is in the right job), and to properly investigate and discipline police misconduct.
- The new Constitution of Kenya, which was promulgated in August 2010, also provided that a National Police Service Commission be established.

## STRUCTURE OF THE COMMISSION

## THE NPS COMMISSION IS MADE UP OF 9 MEMBERS:

A chairperson, who is a senior lawyer qualified to be appointed as a High Court Judge. The Inspector-General of Police. Two Deputy Inspectors-General, each being the head of regular police and administration police.

Two retired police officers, who held the rank of senior superintendent or above. One of these officers must be a woman. One must be retired from the Kenya Police Service, one from the Administration Police Service.

Three other people of integrity who have served the public with distinction, and have at least 10 years experience in either:

- Finance and administration
- Economics
- Human resources development and management
- Public administration
- Labour laws
- Law
- Human rights

# To be appointed as a senior lawyer or as a person of integrity, the person must:

- Not be a police officer, either serving or retired
- Be a citizen of Kenya
- Have a degree from a recognized University
- Meets the requirements of Chapter 6 of the Constitution.
- Was fired from another job because he/she broke the law.
- Is an un-discharged bankrupt.

# WHAT ARE THE REQUIREMENTS OF CHAPTER 6 OF THE CONSTITUTION?

The guiding principles of leadership and integrity include:

- Selection on the basis of personal integrity, competence and suitability
- Objectivity and impartiality in decision making no favouritism
- Service based solely on the public interest, including honesty in undertaking public duties and declaring any conflicts of interest
- Accountability to the public for decisions and actions
- Discipline and commitment in service to the people

## State officers must act in a way that:

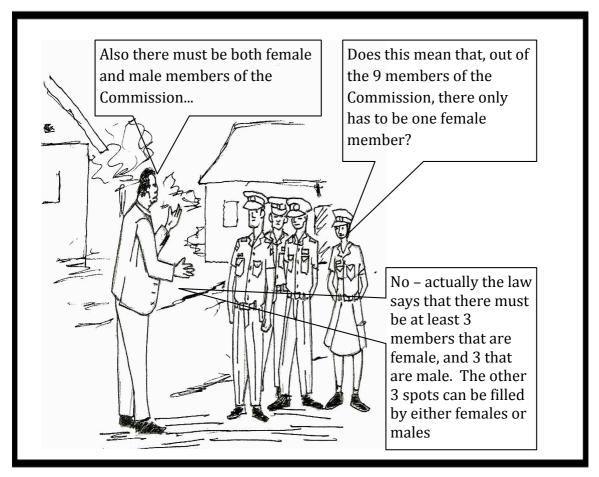
- Is consistent with the purposes and objects of the Constitution
- Demonstrates respect for the people
- Brings honour to the nation and dignity to the office
- Promotes public confidence in the integrity of the office
- Serves the people

## A State officer shall avoid, in both public and private:

- Any conflict between personal interests and public or official duties
- Compromising any public or official interest in favour of a personal interest
- Demeaning the office the officer holds

#### A state officer shall NOT:

- Participate in any other gainful employment
- Hold office in a political party



# What is the appointment process?

- A selection panel advertises positions, considers applications, shortlists candidates (which are published in national papers), conduct interviews and then shortlists three people for the position of Chairperson and eight people for the position of members of the Commission.
- 2. The selection panel then gives the list to the President, who nominates a Chairperson and members to the National Assembly.
- 3. The National Assembly vets the candidates and then decides whether to approve the people nominated.
- 4. The names of the approved candidates are provided to the President, and he/she then appoints the candidates through a notice in the Kenya Gazette.
- 5. If the National Assembly does not agree with one of the people nominated by the President, the President must nominate someone else from the short-list given by the selection panel. If the National Assembly does not agree with any of the names put forward by the President then the selection panel starts the process again advertising, interviewing and short listing candidates etc.

6. Once selected, the members of the Commission must take an oath agreeing to obey, respect and uphold the law and to do their job without any bias.

## Who is the selection panel?

The selection panel is made up of one person from each of the following bodies:

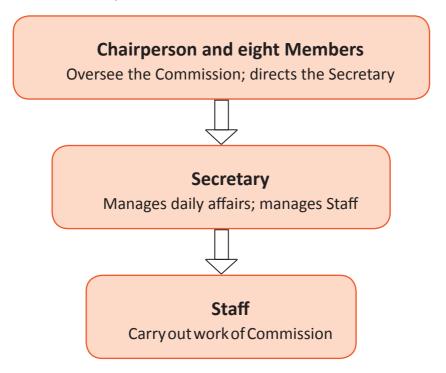
- The Office of the President
- The Office of the Prime Minister (after the elections, it will be a member from the Public Service Commission)
- The Judicial Service Commission
- The Independent Ethics and Anti-corruption Commission
- The Kenya National Commission on Human Rights
- The National Gender and Equality Commission
- The Association of Professional Societies of East Africa

## Who is the head of the Commission? And how does the Commission work?

The Chairperson heads the Commission and governs the meetings of the Commission.

The Chairperson, along with the other members, has to ensure that the Commission is carrying out its functions properly.

The members of the Commission then appoint a Secretary who acts as the Chief Executive Officer of the Commission. The role of the Secretary is to implement the decisions of the Commission and to efficiently and effectively manage the daily operations of the Commission, including managing the staff of the Commission. The members of the Commission give directions to the Secretary.



#### What work does the Commission do?

The Commission basically manages the employment matters of the police, oversees training of police officers, monitors the running of the police service and disciplines police officers.

These areas are explained in more detail below.

#### **EMPLOYMENT MATTERS**

#### The Commission:

- Recruits police officers for the whole National Police Service this includes both the Kenya Police Service and the Administration Police Service
- Recruits people to be civilian members of the Police Service
- Posts officers to particular positions
- Decides promotions, demotions, transfers
- Reviews the standards and qualifications required to be a police officer
- Makes recommendations to the government regarding conditions of service, code of conduct and qualifications of police officers
- Determines the appropriate salaries and benefits for police officers and staff of the Police Service, with the assistance of the Salaries and Remuneration Commission
- Decides on any applications by police officers to take on other work The Commission can delegate the recruitment, assignments and promotions of officers under the rank of sergeant to the Inspector-General of the National Police Service.

## TRAINING AND MONITORING OF POLICE FUNCTIONING

## The Commission:

- Manages police training including the curriculum and policy
- Investigates, monitors and evaluates the Police Service organisation, administration and personnel practices
- Conducts public inquiries into policing matters and publishes the outcome
- Monitors and evaluates the performance of the whole Service to do this they can also hold inquiries into particular matters
- Ensures efficiency and effectiveness of the Police Service
- Promotes the key Constitutional values throughout the Police and reports 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 Commission can make recommendations to the Government regarding the Service and report on the action taken by the Government in response to the recommendation.

#### **POLICE DISCIPLINE**

#### The Commission:

- Develops fair and clear disciplinary procedures.
- · Holds disciplinary hearings.
- Implements disciplinary action against police officers when required.
- Whilst investigating disciplinary offences and during the disciplinary hearing, the Commission can summon witnesses, receive written and oral statements and require the provision of information.
- The Commission will also develop a process for disciplining civilian members of the National Police Service. Civilian members are employees who are not police officers.

## Does the Commission take complaints?

The Commission can take complaints from members of the public, and refer them to the Independent Policing Oversight Authority, Kenya National Commission on Human Rights, the Director of Public Prosecutions or the Independent Ethics and Anti-Corruption Commission. The Commission can receive complaints and recommendations for police associations – these matters are more likely to relate to employment conditions of the police. Police associations work to protect the general welfare and efficiency of the Police, and assist police officers in their employment and disciplinary related matters.

# What kind of matters does the Commission investigate and discipline?

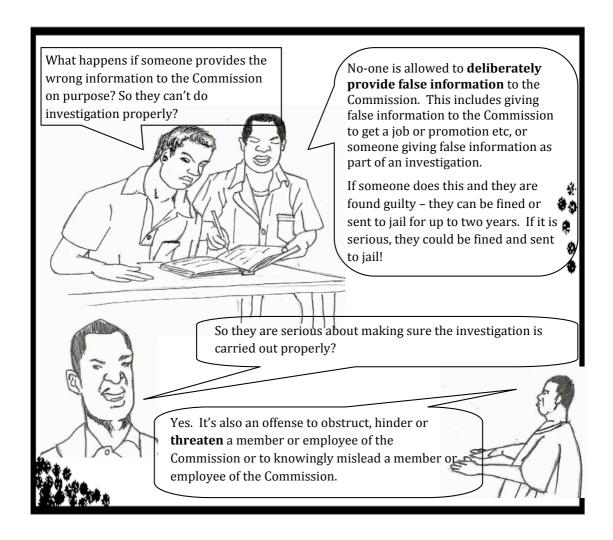
The Internal Affairs Unit of the National Police Service generally investigates less serious complaints of police misconduct. At the end of the investigation, if necessary, the Unit can recommends that the Commission discipline the officer in a particular way. The Commission then investigates further if necessary and holds a disciplinary hearing, after which it may decide to implement disciplinary measures against the officer.

The Independent Policing Oversight Authority (IPOA) is likely to investigate the very serious complaints or the complaints that have a lot of public interest. For example, the IPOA must investigate all deaths and serious injuries which happen in police custody or that are the result of police actions. At the end of the investigation, the IPOA can also recommend that the Police take disciplinary action against an officer, through the Commission, or make other recommendations such as prosecution of the officer.

If someone brings a matter that is about serious police misconduct to the Commission, the Commission can refer the matter to the IPOA, the Kenya National Commission on Human Rights, the Director of Public Prosecutions or the Independent Ethics and Anti-Corruption Commission – whichever body is most relevant.

# Investigations and disciplinary hearings

Whilst undertaking investigations, and during the disciplinary hearing, the Commission can summon witnesses, receive written and oral statements and require the provision of information.



# **Disciplinary hearing**

The actual disciplinary hearing process is not set out in the NPS Commission Act. This will be provided for under regulations to be developed by the Commission, but the law says it has to be in accordance with the Constitution.

## The Constitution says that:

- Every person has the right to quick, efficient, lawful, reasonable and procedurally fair hearings.
- For administrative decisions, every person has the right to be provided with written reasons for the decision of a hearing if the decision does, or is likely to, cause a right or freedom of the person to be adversely affected.
- There can be a review of the decision by a court or an independent tribunal.

## After the hearing – what happens to the Police Officer?

After hearing all the information and statements, the Commission can make a decision to either discipline or not discipline the police officer. The Commission can discipline the police officer by:

- Firing the police officer
- Suspending the police officer
- Demoting the police officer
- Reducing allowances or conditions of service
- Reprimanding the officer
- Making an order that the police officer pay or make compensation

# Can the police office appeal the decision of the Commission?

Yes - the Act says that the Commission shall hear and determine appeals from police officers.

## What powers does the Commission have to do its work?

The Commission is given the powers its needs to do its work, including the powers to:

- Conduct investigations on matters that the Commission is authorised to investigate which includes accusations of police misconduct.
- Gather information and require people or organisations to provide information. This can be for a disciplinary matter, public inquiry, employment related matters and more.
- Issue summons for witnesses to appear before the Commission regarding an investigation.
- Hold disciplinary hearings and take disciplinary action against an officer.
- Conduct public inquiries and publish the outcome of such inquiries.
- Undertake employment interviews.
- Make recommendations to the Government on matters relating to the Service and report on the action taken by the Government in response to the recommendation.
- Require the Inspector-General to report on the implementation of policies and procedures that fall within the work of the Commission.

# **Vetting of police officers**

All police officers will be vetted by the Commission, to make sure they meet the Constitutional standards of personal integrity, competence and ethics. The process of vetting police officers will be organised by the Commission once it is established.

# **Budget of the Commission**

At the end of each financial year, the Commission prepares an estimate of the costs that will be required to carry out its functions in the next financial year. The estimate is provided to Parliament, who then approves a budget for the provision of government funds to the Commission.

The Commission can also receive donations and gifts. If the Commission does receive money

as a donation or gift, the Commission must provide information of the donation publically (e.g. who made the donation, the amount, the date etc).

## **Annual Report**

The Commission will publish an Annual Report publicly and also provide it to the President and the National Assembly. The Annual Report will be provided before November of each year.

The Annual Report is a mechanism through which the Commission is held accountable to the people of Kenya, through the Parliament. After it is tabled before National Assembly, it is expected that it will be debated in accordance with the procedures of Parliament.

# Lastly, how can the public get involved in the work of the Commission?

- The public and civil society organisations can make sure that the Commission is carrying out their work properly by monitoring their work, requesting information and following up on the status of disciplinary procedures.
- The public and civil society can provide information to the Commission
  to assist them in carrying out their work. For example, information
  that may assist in vetting a police officer, information that will assist in
  an investigation, or information about the functioning of the police.
  The Commission can inquire into the matter and report on it, and
  if necessary make recommendations to the Police for improvement.
- Civil society can assist in educating the public about the role of the Commission, and can assist the public in accessing the Commission.

# **INDEPENDENT POLICING OVERSIGHT AUTHORITY ACT:**

## **A SIMPLE GUIDE**

The purpose of this chapter is to explain the new law establishing the Independent Policing Oversight Authority.

The Independent Policing Oversight Authority (IPOA or Authority) is a new body established under the Independent Policing Oversight Authority Act 2011.

It is an independent body that investigates complaints of police misconduct, and must investigate all deaths and serious injuries caused in police custody, or which were the result of police actions (caused by the police). The IPOA also monitors the operations of the police that affect the public, patterns of police misconduct and oversees the handling of complaints by the National Police Service Internal Affairs Unit. Based on its investigations and monitoring, it can make recommendations to improve the police or hold particular police officers accountable.

The new body will improve the police service by making sure that police officers are held accountable for their actions. The IPOA will help in making the National Police Service professional, disciplined, transparent and accountable. This is good news for both the Police Service and the public, and will greatly boost and enhance the trust of the public in the police, which will in turn make policing more effective in Kenya.

## Why was the IPOA set up?

- The Authority was established as part of the wider police reform process.
- The changes made to the police system were prompted by many factors, including the Police Reform Taskforce Report (the Ransley Report) that reviewed the police structures and systems after the 2007/8 post-election violence.
- Along with many other recommendations, the Ransley Report called for the establishment of an Independent Policing Oversight Authority to independently investigate police misconduct, ensure errant police officers are held accountable and therefore help improve the image of the police and public trust in the police. The Report of the Commission of Inquiry on Post-Election Violence (the Waki Report) also recommended the establishment of an 'Independent Police Conduct Authority' to investigate allegations of police misconduct and provide civilian oversight.

#### The Structure of the IPOA

## Is it independent from the police and politicians?

Yes – the law setting up the IPOA clearly states that "no person or body may interfere with the decision making, functioning or operations of the Authority". It also says that the Authority carries out its work independently, and that no person, office or other authority can interfere with this. The Act even says that every government officer or institution has to give the IPOA necessary assistance to make sure that it is independent, impartial and, most importantly, effective.

The IPOA is separate from the National Police Service, and is overseen by an independent Board of Directors. The Board of Directors is chaired by someone who is qualified to be a judge in the High Court of Kenya. None of the Directors are serving police officers, or people who have served in the police force for the past five years.

## The Board of Directors, which oversees the IPOA, is made up of:

Chairperson: this person must be qualified to be a High Court Judge Seven members. Each Member must have at least 10 years' experience in:

- Criminology
- Psychology
- Law
- Human rights and gender
- Medicine
- Alternative dispute resolution
- Security matters
- Community policing

The Chairperson of the Kenya National Human Rights Commission. This person does not need to go through the Selection Process, as whoever is the current Chairperson of the Kenya National Human Rights Commission will automatically be part of the IPOA Board.

## **The Selection Process**

The members of the Board are appointed by a thorough, transparent process to ensure that there are no ad hoc or arbitrary appointments:

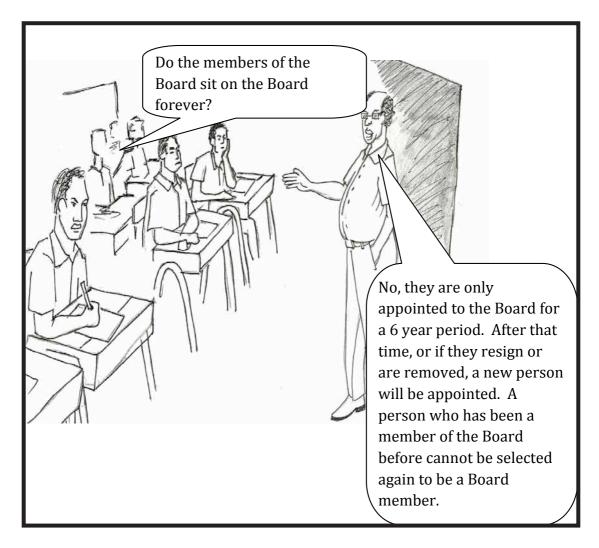
- 1. A selection panel is formed. The panel is made up of one person from each of the following bodies:
  - Office of the President
  - Office of the Prime Minister (after the 2012/13 elections, it will be a member of the Public Service Commission)
  - Judicial Service Commission
  - Independent Ethics and Anti-Corruption Commission
  - Kenya National Commission of Human Rights
  - Kenya National Gender and Equality Commission

- 2. The panel advertises the positions in national newspapers and then shortlists the applicants.
- 3. The names of the applicants shortlisted are published in at least two national daily newspapers.
- 4. The panel then conducts public interviews with the short-listed candidates.
- 5. After the interview process, the panel shortlists three people to be a possible Chairperson of the Board, and eight people to be members of the Board, and gives the names to the President.
- 6. From these names, the President chooses a Chairperson and other members of the Board, and provides the names to the National Assembly.
- 7. The National Assembly vets the nominations and either approves or rejects any or all of the names put forward. If the National Assembly rejects a person nominated by the President, the President must provide a new nomination from among the shortlisted applicants previously forwarded by the panel. If the National Assembly does not agree with any of the names nominated by the President then the selection panel starts the process again (advertises, interviews and shortlists candidates etc).
- 8. Once the National Assembly approves the people nominated, the President must appoint them. The President does this by a notice in the Gazette.

## Can anyone apply to be a member of the Board?

No – a person can't be a member of the Board if he or she:

- Has previously served as a member of the Board.
- Is employed or is associated with any person who supplies services or goods to the Authority, or whose spouse or other family member is so employed or associated.
- Holds an office in a political party.
- Is a Member of Parliament or a member of a County Assembly, a Governor or Deputy Governor.
- Is a serving police officer, or a police officer that retired within the five years immediately preceding the commencement of this Act.
- Has been convicted, whether in Kenya or elsewhere, of an offence involving dishonesty or of any other offence for which such person has been sentenced to imprisonment without the option of a fine.
- Is unable to perform the functions of office due to mental incapacity.
- Is an un-discharged bankrupt.



## Representation

Of the eight members on the Board three of them must be women and three men. The remaining members can be either male or female.

# What happens if a Board member becomes disqualified to hold office on the Board?

If a member of the Board, including the Chairperson, at any time is no longer qualified to hold office, they must immediately inform the President and Chairperson in writing. The President will then remove that member from the Board and the member is no longer able to attend any meetings of the Board.

# What is the procedure to remove a member from the Board?

To remove a member from the Board the following procedure is to be followed:

- 1. A petition is submitted to the Public Service Commission saying that the Board member or Chairperson is unfit for the position on one of the following grounds:
  - Serious violation of the Constitution or another law
  - Serious misconduct

- Physically or mentally unable to do the work required as a Board member
- > Incompetence
- Bankruptcy

The petition must set out all the evidence and alleged facts to support the claim.

Any person can prepare a petition and give it to the Public Service Commission.

- 2. If two-thirds of the Public Service Commission present and voting agree that the petition shows that the Board member should be removed, the Commission will recommend to the National Assembly that the Board member is removed.
- 3. The National Assembly will consider the petition and, if it agrees that it demonstrates grounds for removal, will forward the petition to the President.
- 4. The President will appoint a tribunal to investigate the petition. The tribunal will consist of:
  - A person who holds or has held office as a judge of a superior court, who will be the Chairperson.
  - At least two people who are qualified to be appointed as judges of the High Court.
  - One other member who is qualified to assess the facts in respect of the particular ground for removal.

The President may suspend the Board member or Chairperson pending the outcome of the petition.

5. The tribunal will investigate the matter, report on the facts and make a binding recommendation to the President. The President has to implement the recommendation within seven days.

#### Powers of the Board

The Board is given the broad power to do things that are necessary to do its job, including specific powers to manage the finances and administration of the Authority. The Board has the power to:

- Control and manage the assets of the Authority in a way that best promotes its objectives.
- Determine provisions to be made for capital and recurrent expenditure of the Authority.
- Receive any grants, gifts, donations or endowments and make legitimate disbursements from these.
- Enter into association with other bodies or organisations within or outside Kenya which it considers appropriate and relevant to its objectives.
- Open a bank account for the Authority.
- Exercise any other power provided for in the IPOA Act or any other applicable legislation.

# So that means that the Board oversees the Authority, but who is the person who actually manages its day to day functioning?

The Director, who is the chief executive officer of the Authority, manages the Authority. The Director is responsible to the Board for the day-to-day management of affairs of the Authority.

The Director is appointed through an open, transparent and competitive recruitment process.

## Who can be appointed as the Director of the Authority?

The Director of the Authority must:

- Be a citizen of Kenya
- Have a University degree
- Have had at least 10 years management experience
- Have relevant experience in government affairs; law; management; finance; security; or public administration
- Meet the requirements of Chapter 6 of the Constitution

## Removal of the Director

The Director may be removed from office only for:

- Serious violation of the Constitution, the IPOA Act or any other law
- Gross misconduct
- Physical or mental incapacity which means the Director can't perform the functions of office
- Incompetence
- Bankruptcy

A person may present a petition to the Public Service Commission, setting out why they think the Director should be removed based on one of the grounds above. The Public Service Commission then looks into the matter.

# **Staff of the Authority**

The Board can appoint staff for its functioning. The employment terms and conditions of service of these staff will be determined by the Public Service Commission.

All Board members and staff will be trained properly for their roles, and all staff involved directly in investigations will get human rights training.

#### What the IPOA does

The IPOA is responsible for doing a range of different jobs. Broadly the IPOA investigates complaints of serious police misconduct and monitors and reviews the police, and patterns of police misconduct. The IPOA will publish the outcomes and findings from its investigations, reviews and monitoring work.

## The IPOA main areas of work are set out below.

## **INVESTIGATIONS**

## The IPOA:

- Receives complaints of police misconduct and investigate them
- Initiates its own investigations into suspected police misconduct, even if there is no complaint. The IPOA can continue an investigation even when the victim or witness does not want an investigation conducted.
- Investigates all deaths and serious injuries caused in police custody, or which were suspected to have been caused by the police.
- After investigations, make recommendations for appropriate action
   like prosecution, disciplinary action, payment of compensation
   (more on this later).

# **Monitoring and inspections**

- Monitors, reviews and checks on the investigations and recommendations of the NPS Internal Affairs Unit.
- Reviews patterns of misconduct and the functioning of the internal police disciplinary processes.
- Keeps a record of all the complaints lodged with both the NPS Internal Affairs Unit and the IPOA.
- Monitors and investigates policing operations that affect the public.
- Conducts inspections of police premises and police controlled detention facilities.
- Makes recommendations to the NPS or other State organs to improve policing.

# What is meant by "misconduct"?

"Misconduct" is defined as meaning any action, or failure or refusal to act, by a police officer, which does not meet:

- The requirements or standards of relevant Kenyan laws, regulations or official documents such as the code of conduct, standing orders, and policies.
- The values and norms of democratic policing, especially the values in the Constitution of governance, the values of the public service and the objects of the National Police Service. These include professionalism, compliance with human rights, transparency and accountability.
- International standards set out in international documents applicable to Kenya.
- This means that misconduct doesn't just mean when a police officer breaks the law, it also covers when a police officer doesn't comply with policing values, standards and regulations – so police actions that might be either a disciplinary

offence or a criminal offence.

- For example, misconduct could include:
- A police officer using too much force on someone when it wasn't necessary
- A police officer firing a weapon when they shouldn't have
- Serious injuries or deaths caused by police officers
- Torture and other cruel treatment carried out by a police officer
- A police officer detaining someone in custody for more than 24 hours
- A police officer arresting someone when they are not allowed to, or not telling someone the right information when they are arrested
- Bad conditions in a police detention cell
- A police officer intimidating a witness
- A police officer asking for a bribe
- A police officer not returning weapons
- Any other action where the police are not acting properly or in accordance with the law . \*Check our "National Police Service Act: A Simple Guide" to see what the police are allowed to do.\*

# How do I make a complaint?

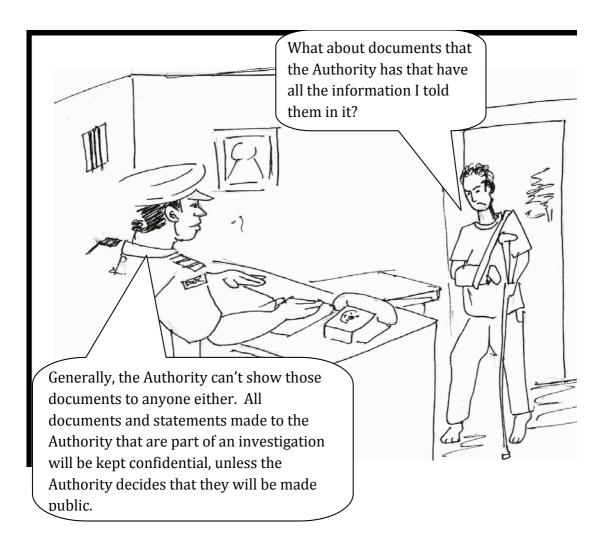
Anyone can make a complaint to the Authority about police misconduct – both members of the public and other police officers.

You can make the complaint either in writing or verbally (over the phone or at the office). The IPOA will set out exactly how this can be done. For example, they may set up a form that people can fill out in person, or answer over the telephone.

# When you make a complaint to the IPOA, you can request for your identity to be kept confidential.

A person making a complaint to the IPOA can ask that their identity is kept confidential. The IPOA will do this, unless it is clearly not in the interests of justice to do so. The identity of the complaint will remain confidential until the end of the investigation unless the Authority decides that the identity of the person should not be published, even at the end of the investigation.

It may be that the Authority has to release the name of the complainant in some circumstances – if it is deemed necessary under the law to do this, in the interests of fairness. There is, however, a Witness Protection Agency in Kenya that can provide witness protection services when necessary.



## **DEATHS AND SERIOUS INJURIES CAUSED BY POLICE**

- The IPOA must investigate all deaths and serious injuries that are caused by police action. This includes all deaths and serious injuries caused in police custody.
- The police must cooperate with the IPOA in their investigation.
- In relation to deaths and serious injuries caused by the police, the police have to take all the necessary steps to secure the evidence.
- The police must notify the IPOA and provide the evidence to them, as well as other information that will assist the IPOA in carrying out an investigation.
- A police officer who does not do this commits an offence.

## What is not investigated by the IPOA?

The IPOA can't investigate a matter which is currently before the courts or a tribunal. However after court proceedings against an officer are finished, the IPOA can choose to continue its investigation if it thinks it should.

## The Authority can also decide:

- To discontinue an investigation, if the investigation is about a matter that has already been before the court.
- Where the complaint has already been investigated by the NPS Internal Affairs
  Unit or the NPS Commission, the Authority can decide, in appropriate cases, to
  adopt the findings of the Internal Affairs Unit and/or Commission, and conclude
  its own investigation.
- Not to investigate a complaint if the Authority considers that a complaint is vexatious - this means the complaint is trying to cause frustration to the Authority.
   The Authority can also decide not to investigate a complaint that is frivolous – this means it is not a serious complaint.

#### Referrals

The IPOA can refer complaints made to the Internal Affairs Unit of the National Police Service. The IPOA will have to establish a process setting out how and when they can make referrals to the Internal Affairs Unit.

## The IPOA can take over Internal Affairs Unit investigations

The IPOA can take over an investigation being carried out by the NPS Internal Affairs Unit at any time if they think the investigation being carried out by the Unit is being extremely delayed or is clearly unreasonable.

# How are investigations carried out?

After a complaint is lodged with the IPOA, the Authority begins its investigation. The investigation involves requesting information from relevant Government departments or agencies or any other body, within a certain timeframe.

## AS PART OF ITS INVESTIGATIONS THE AUTHORITY CAN...

- Request reports, records, documents or any information from any source, including from the Police.
- Enter premises with a warrant.
- Seize and remove any object from any building, including police buildings, which may be related to the investigation. If an item is taken, a receipt must be given.
- Interview and take statements under oath/affirmation. A statement made by a person to the Authority as evidence will not be used against the person in a legal/civil proceeding. Summon people to interviews, or to attend session or hearings. Compel people to attend interviews or sessions/hearings if they do not obey a summons. Require the Police to, within a specified reasonable time period, provide it with information relating to policy, including implementation and effectiveness.
- Request and receive necessary assistance from a person or other governmental or international body.

# When carrying out investigations, officers will identify themselves

Every officer of the Authority will identify him/herself using a certificate to: all people that are going to be interviewed; people in charge of properties that the officer is entering; or people in control of items that the officer is going to seize.

However, sometimes the officer does not need to use the certificate to identify himself – in the case where the nature of the investigation does not make it necessary or desirable to produce the certificate.

# What happens if police officers or other people don't cooperate with the Authority?

A person commits an offence and is liable (if convicted) to a fine of up to KSh500,000 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 a document, paper or thing ordered by the IPOA.
- Refuse to be examined before the Authority or refuse to answer inquiry-related questions by the Authority.
- Fail to comply with any lawful order or direction of the IPOA.
- Present the IPOA with a false document or false statement with the intention of misleading the Authority.
- 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 a confidential document or statement (the fine for this is not more than KSh300,000).

## **Getting compensation**

Where appropriate, the IPOA can provide a victim of unlawful police actions relevant information to enable them to carry out civil legal proceedings for compensation. If the matter is before the Internal Affairs Unit of the NPS, the police officer can be ordered to compensate the victim.

# What can the IPOA do after it finishes its investigation?

# After the IPOA has finished its investigation, it can:

- Recommend prosecution of the officer by the Department of Public Prosecutions.
- Where the investigation shows that a police officer was negligent, recommend disciplinary action. The NPS Commission would implement this recommendation against the police officer.
- Where the investigation shows problems with processes, recommend improvement.
- Recommend the complainant take other suitable courses of action.
- Assist the complainant, or any other victim, in obtaining relevant information in order for the person to undertake other proceedings, such as for compensation.

## Mediation

During or after an investigation the Authority has the power to reconcile or mediate the matter. This can only be done if the complainant agrees and if the complaint is not serious. For example, a complaint about a police officer shooting a person or torturing a person is likely to be considered too serious to be mediated.

# What happens if the recommendation of the Authority is not followed?

If a recommendation made by the IPOA is not followed, then the IPOA can apply to the court for enforcement of its recommendation.

The Authority can also require the Director of Public Prosecutions (the head of the Department of Public Prosecutions) to respond to any recommendation made by the Authority to prosecute a person. The DPP must at least respond to why it has not followed a recommendation of the Authority.

Also, under the National Police Service Act, the Inspector-General of Police has to act on the recommendations of the IPOA, including in relation to compensation.

# Reopening of investigations - new evidence

The Authority can reopen an investigation that had previously been concluded if there is new evidence. The Authority can also amend or withdraw previous findings or recommendations

in consideration of this new evidence.

# **Reports and Finances**

Performance Report

The Authority must submit a Performance Report on its performance and its recommendations to the Cabinet Secretary every six months. The Secretary will put it before the National Assembly.

## The report will also be published publicly.

A copy of the report will be forwarded to the Inspector-General, the Commission and the County Assemblies.

## The report will include:

- Recommendations made by the IPOA.
- Action taken or not taken on the recommendations made by the IPOA.
- The response of the police to complaints referred to it by the IPOA.
- Number of cases where criminal or disciplinary action was suggested.
- Patterns of misconduct by police officials.
- Attempts by people, authorities or institutions to unlawfully or unduly interfere with IPOA operations.
- Matters relating to IPOA operation which minority members wish to bring to the public's attention.
- Matters which highlight the need for practice or policy reform of the Service.
- Other matters which the IPOA wishes to bring to the attention of the National Assembly.

# **Annual report**

The Authority must also produce an annual report which contains:

- The financial statements of the IPOA.
- The IPOA's opinion on the adequacy of its funding.
- A description of the IPOA's activities.
- Other relevant information, including appropriate statistical information relating to complaints received and investigations and reports by the IPOA.

The Annual Report shall be given to the Cabinet Secretary who shall pass it on to the National Assembly. The Authority will publish it in the Gazette and in other places.

## How is the IPOA funded?

The IPOA will be funded by money allocated by the Parliament and money which is lawfully granted, donated or lent to the Authority with the approval of the Cabinet Secretary and the Cabinet Secretary for Finance.

The IPOA can never accept any money from the National Police Service.

## **Budget of the Authority**

The financial year of the Authority ends 30 June. At least three months before the financial year begins, the IPOA must prepare estimates of its revenue and costs for that year.

## Estimates of costs must include:

- Payment of staff salaries, allowances and other charges.
- Payment of pensions, gratuities and other charges payable out of IPOA funds
- Maintenance of IPOA assets.
- Funds for potential liabilities relating to benefits, insurance or replacement of buildings, installations or equipment.

Once approved by the IPOA, prior to the financial year, the budget will be submitted to the Cabinet Secretary for approval.

The Board must keep all proper books and records of account of IPOA income, expenditure, assets and liabilities.

At the end of each financial year the Authority must submit its accounts to the Controller and Auditor-General.

## This must include:

- A statement of the IPOA's annual income and expenditure.
- A statement of the IPOA's assets and liabilities as of the last day of the financial year.