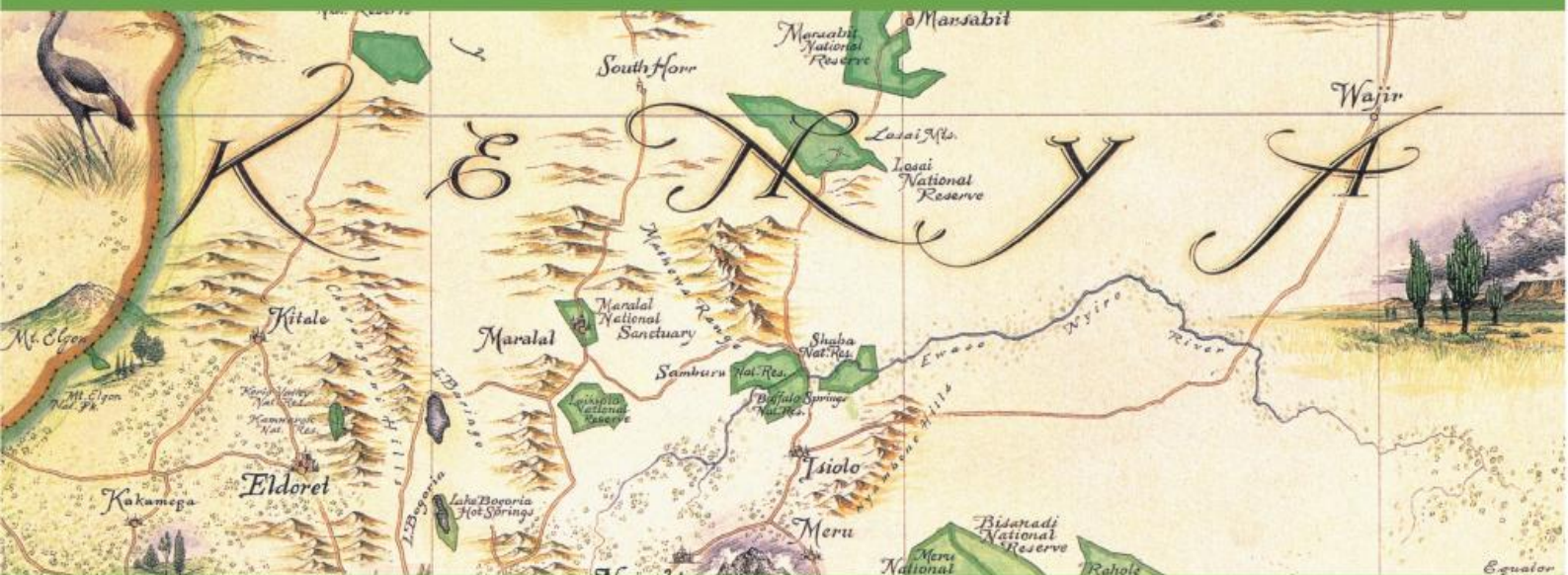




THE POLICE, THE PEOPLE, THE POLITICS: POLICE ACCOUNTABILITY IN KENYA



Commonwealth
Human Rights
Initiative

2006

Pamoja Tutetea Haki
KENYA HUMAN RIGHTS
COMMISSION

THE POLICE, THE PEOPLE, THE POLITICS: POLICE ACCOUNTABILITY IN KENYA

A joint report by the
Commonwealth Human Rights Initiative & the
Kenya Human Rights Commission



ACKNOWLEDGEMENTS

The report was primarily researched and written by Michelle Kagari and Sophy Thomas. Supervision and guidance was provided by: GP Joshi, Police Programme Coordinator, CHRI; Maja Daruwala, Executive Director, CHRI; and Steve Ouma, Deputy Executive Director/ Programmes Coordinator, KHRC.

Research assistance was provided by Anthony Kuria, John Otieno Ouko, Mikewa Ogada and Raphael Obonyo, from KHRC, and Andrew Jordan, Chris Davies, Evelyn Kamau, John Mark Mangana, Joshua Auerbach, Sumit Baudh, and Xavier Ejoyim from CHRI, as well as Albert Mwenda and Stephen Muiruri.

Further guidance and assistance, including comments on drafts, was provided by members and staff of many human rights organisations, as well as experts working with them. KHRC and CHRI thank: Independent Medico-Legal Unit (IMLU), Release Political Prisoners (RPP) and People Against Torture (PAT). Additionally, our thanks go to: Beatrice Kamau, Charmaine Rodrigues, Cynthia Mugo, Daniel Woods, Dave Mills, Dennis Kabaara, Ekitela Lokaale, Jacques Carstens, Margaret Garling, Njuguna Mutahi, Pheroze Nowrojee, Samwel Mohochi, Sue Lane, Wanjiku Miano and Zarina Patel.

Particular thanks go to Janine Rauch for her support and input, Clare Doube for editing and Chenthil Paramasivam for designing the report. Further thanks goes to the Kenya Police Department and Administration Police.

CHRI and KHRC wishes to especially thank the Ford Foundation for its financial support to this project and particularly Joseph Gitari and Willy Mutunga for their support and encouragement.

THE PROJECT

In 2001, the Ford Foundation invited the Commonwealth Human Rights Initiative to build on its experiences of working on policing in India to do similar work in East Africa; the debate on improving policing was not as open then as it is now and it was hoped that a research study would provide a catalyst for discussion.

CHRI was charged with undertaking a comparative study of the police in East Africa, specifically targeting two main issues. The first is the extent of illegitimate political control of the police in Kenya, Uganda and Tanzania and the impact of such control on the quality of police leadership and performance. Linked to this is an analysis of the mechanisms by which the police are made accountable for their actions – both internally (through mechanisms such as internal disciplinary procedures) and externally, through the role of the parliament, executive, judiciary and community. The second part of the project is to undertake an analytical study of policing budgets in the region, to explore the impact levels of funding have on police performance and particularly impact on crime management and safety of citizens.

This report on policing in Kenya is part of the larger comparative study, and examines the Kenyan police, looking particularly at illegitimate political control, the impact of that control on policing, and the reform answers that will provide a more democratic and accountable police service to the Kenyan people. A separate report on policing budgets in Kenya has also been produced.

CHRI worked closely with the Kenya Human Rights Commission to produce this report.

ABBREVIATIONS

AIE	-	Authority to Incur Expenditure
AP	-	Administration Police
CAC	-	UN Convention Against Corruption
CAT	-	UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBC	-	Canadian Broadcasting Corporation
CEDAW	-	UN Convention on the Elimination of All Forms of Discrimination Against Women
CERD	-	UN Convention on the Elimination of All Forms of Racial Discrimination
CHRI	-	Commonwealth Human Rights Initiative
CID	-	Criminal Investigation Department
CIDA/GESP	-	Canadian International Development Agency's Gender Equity Support Project
CKRC	-	Constitution of Kenya Review Commission
COS	-	Commanding Officer in the Station
CPF	-	Community Police Consultation Forums
CRC	-	UN Convention on the Rights of the Child
CSOs	-	Civil Society Organisations
CYPA	-	<i>Children and Young Persons Act</i>
DFAIT	-	Department of Foreign Affairs and International Trade (Canada)
DFID	-	Department for International Development (UK)
EAPCCO	-	East Africa Police Chiefs Committee
ERWCS	-	Economic Recovery and Wealth Creation Strategy
FIDA	-	International Federation of Women Lawyers
FOP	-	Friends of Police
GA	-	General Administration
GJLOS	-	Governance, Justice, Law and Order Sector
GP	-	Government Press
GSU	-	General Service Unit
HRD	-	Human Resource Development
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic Social and Cultural Rights
ICT	-	Information, Communication and Technology
IMLU	-	Independent Medico-Legal Unit
IMG	-	Immigration
IPPG	-	Inter-Party Parliamentary Group
CAA	-	Kenya Airports Authority
KADU	-	Kenyan African Democratic Union
KANU	-	Kenya African National Union
KHRC	-	Kenyan Human Rights Commission
KNCHR	-	Kenya National Commission on Human Rights
KPF	-	Kenya Police Force
LIFAT	-	Litigation Fund Against Torture
LRC	-	Legal Resources Centre
MTEF	-	Medium Term Expenditure Framework





ABBREVIATIONS

NARC	-	National Rainbow Coalition
NCBDA	-	National Central Business District Association
NCC	-	National Constitutional Conference
NGO	-	Non-governmental organisation
NS	-	National Security Sector
NYS	-	National Youth Service
OCPD	-	Officer Commanding Police Division
PA	-	Field or Provincial Administration
PAT	-	People Against Torture
PEAP	-	Post-Election Action Plan
PI	-	Physical Infrastructure
PRSP	-	Poverty Reduction Strategy Paper/Plans
PSLO	-	Public Safety Law and Order Sector
SALW	-	Small Arms and Lights Weapons
SCHR	-	Standing Committee on Human Rights
SRIC	-	Security Research and Information Centre
SWG	-	Sector Working Groups
TI	-	Transparency International
TIT	-	Trade Industry and Tourism
UDHR	-	Universal Declaration of Human Rights
USAID	-	US Agency for International Development
UN HABITAT	-	UN Human Settlements Program

TABLE OF CONTENTS

INTRODUCTION	1
--------------------	---

CHAPTER 1: HISTORY OF POLICING AND POLITICS IN KENYA..... 3

1. Colonial policing	3
2. 1952-1960: The emergency period	4
3. 1960-1992: After independence	5
4. 1992- 2002 : A move towards multi-party democracy?	7
5. 2002 onwards: Change of regime to the National Rainbow Coalition	8
6. The present: Policing challenges in Kenya today	9

CHAPTER 2: UNDERSTANDING KENYA'S CIVILIAN POLICE FORCES 12

1. Dual policing – Kenya's police forces	12
2. Function of the police force	14
3. Structure of the police force	14
4. Police powers and duties	15
5. Police experience	16
6. The public face of police as reformers	17

CHAPTER 3: NEGATIVE PERCEPTIONS OF THE KENYAN POLICE FORCE 19

1. Corruption	19
2. Excessive use of force	21
3. Abuse of due process	23
4. Culture of secrecy supports criminality	24
5. Impunity is at the heart of the problem	25

CHAPTER 4: LACK OF ACCOUNTABILITY DUE TO ILLEGITIMATE POLITICAL INTERFERENCE 27

1. Entrenched by law	27
2. Old habits die hard	29

CHAPTER 5: DEMOCRATIC POLICING : CONCEPTUAL FRAMEWORK 31

1. Policing and human rights	31
2. Hallmarks of democratic policing	32
3. Benefits of democratic policing	33
4. Dimensions of police accountability	33
5. Transparency: an essential precursor to accountability	34

CHAPTER 6: KENYA'S LEGISLATIVE FRAMEWORK 36

1. The constitutional framework	36
2. Redrafting the Constitution	36
3. Domestic laws	37
4. International standards	38
5. Regional mechanisms	39

CHAPTER 7: INTERNAL ACCOUNTABILITY MECHANISMS	41
1. Complaints	41
2. Disciplinary proceedings	43
3. The failure of internal mechanisms	44
4. Good practice	44
CHAPTER 8: EXTERNAL ACCOUNTABILITY MECHANISMS	46
Accountability to parliament, committees and commissions	46
1. Parliament	46
2. External oversight bodies	48
Accountability and the criminal justice system	50
3. The judiciary	51
4. Government prosecutors	52
5. Defence representation	54
6. Civil proceedings	54
Accountability & civil society	55
7. Civil society oversight	55
CHAPTER 9: POLICE REFORMS IN KENYA	59
1. Governance, Justice, Law and Order Sector (GJLOS) reforms	60
2. Police Strategic Plan 2003-07	61
3. Police Reforms Task Force	61
CONCLUSION	64
Findings	64
Recommendations	65
ANNEX 1: UNITED NATIONS AND OTHER GLOBAL INSTRUMENTS ON POLICING	68
ANNEX 2: UNITED NATIONS BASIC PRINCIPLES ON THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS	71
ANNEX 3: POLICE FORCE STANDING ORDERS	72
BIBLIOGRAPHY	74
ENDNOTES	81

INTRODUCTION

“In a democratic society, the police serve to protect, rather than impede, freedoms. The very purpose of the police is to provide a safe, orderly environment in which these freedoms can be exercised.”

- *United Nations International Police Task Force*

Democratic, accountable policing is one of the hallmarks of democracy. In a healthy democracy, a police service exists to protect and support the rights of its community; not to repress or curtail freedom and ensure power for the governing regime. Holding the police to account for their plans, actions and decisions provides the necessary balance to the exercise of professional discretion by police officers. Accountability also provides a means by which the relationship between the police and the state can be kept under scrutiny; a way of providing insulation against internal and external interference with the proper functioning of the police.

Kenya is ready for police reform. Its police force falls well short of the standards of accountability that the democratic ideals of its country demand. Mired in its colonial history, and the political context in which it developed, the Kenyan police force has been charged with corruption, misuse of force and abuse of due process. Kenya’s men and women associate the police with impunity, secrecy and violence. Illegitimate political interference is entrenched by the law – for example, the President has the right to hire and fire the head of the police force.

Reform must begin with a strong legislative framework based around the principles of accountability, setting out appropriate standards of behaviour and mechanisms for redress. Beyond the blunt instrument of legislation, police must be supported and held responsible by a web of accountability mechanisms. Police must be accountable to both their communities and their government. Accountability mechanisms can be ad hoc (like commissions of inquiry), can provide more sustained oversight (like committees of parliament) or can be embedded structures (such as police service commissions and performance evaluation boards). Their value lies both in the ability to immediately check acute misfeasance as well as to examine year on year trends and bring in steady, if gradual, improvements to chronic ailments in policing.

Mechanisms of accountability work best if they are strong and independent enough to monitor each other, and are designed to work in tandem. The weakness of one mechanism creates knock on effects that compromise the whole structure. For example, civil society groups on their own frequently gather evidence and information to prove criminal or unethical behaviour, but without responsive independent prosecutors and internal disciplinary structures, the information and concern will be seen as remaining outside the state institutions. The entire system – executive, legislature and judiciary, plus the sub-set of the criminal justice system itself – must work effectively as an organic whole.

None of this is radically new thinking for Kenya. The police themselves clearly stated their position in the *Kenya Police Service Strategic Plan 2003-2007* (Draft 2):

“Under the current law formal mechanisms for holding the Kenya police accountable do not extend beyond the office of the President. The result of this legal arrangement has been that in practice the police have been vulnerable to interference by powerful individuals outside of formal mechanisms of accountability and the regular chain of command such as politicians and wealthy business owners. These powerful individuals

have been able to use the police for their own political and personal agenda, often in direct contravention of the interests of the Kenyan people.”¹

This report looks at the concepts of democratic policing and accountability in practice, in the Kenyan context. It looks at the development of the Kenyan police force, examines the issues that are faced the police, and considers the legislative and political frameworks that the police operate within. Finally, it looks at the kinds of reforms that need to take place in Kenya, and provides a road map of accountability mechanisms and suggested laws that will deliver to Kenya the democratic and accountable police service it needs and deserves.



CHAPTER 1

HISTORY OF POLICING AND POLITICS IN KENYA

“The police behave as if Kenyans are not supposed to assemble freely, speak freely, openly discuss matters of public interest, express personal opinions and criticise activities of certainly elected leaders and other public officers and to be part of the decision making processes that affect them. The police force has been made to believe that protecting the political system is their prime function.”

- Professor Chris Maina Peter, Dar es Salaam University

Policing is inseparable from the political context in which it is situated, whichever system of law enforcement or politics is in operation. As with many countries with recent colonial pasts, Kenya has experienced law enforcement as control imposed by an alien culture, then as an infrastructure left behind by a retreating old order, and then as a force adapted by new post-independence politicians to maintain their regimes. In the 21st century, as Kenyan democratic instincts strengthen, policing is again evolving to meet the needs of the political environment in which it finds itself. This chapter traces the evolution of the police force and the political regimes in Kenya, shedding light on how the police force came to be the body that it is today.


1. Colonial policing

East Africa experienced the imposition of alien restraints through trading settlements for many centuries, initially by Arab and Persian states and later by Europeans. Formal external control was imposed by the colonial powers of Europe in the *General Act* agreement of 1885, followed by the *Anglo-German Agreement* of 1886, which arbitrarily imposed boundaries on the region by allocating what is now known as Tanzania to Germany and Kenya to the British. The British chose to use the East Africa Trading Company (later the Imperial East Africa Trading Company) which was operating in the region as a vehicle to help expand British interests without investing any national resources.²

The Company established an administration with an armed security force in 1896³ with fortified stations to protect its trading routes, trading centres, stocks and staff.⁴ The security personnel were largely recruited from the Indian police and watchmen, and were governed by Indian police statutes, giving the security force a quasi-police status.⁵ Towards the end of the 18th century, an additional security force was set up, which was employed to protect the building and maintenance of the Kenya-Uganda railway systems. This required centres at Kisumu and Nairobi, as well as Mombasa. The colonial presence and colonial security presence were expanding.

During the 1880s, the British Colonial Office had increasingly taken over the administration of the region from the Imperial East Africa Trading Company. The commissioner of the region was given the right to establish a police or other force for the defence of the protectorate⁶ and armed forces were established.⁷ There was opposition to the colonial outsiders and the police force was needed to suppress this opposition.

In 1906, the Kenya police was established by a police ordinance. To improve performance, the Governor, Sir James Hayes Sadler, appointed a committee to look into the affairs of the



police. One of the Committee's recommendations was the establishment of the Police Training School in Nairobi. In 1911 a training depot was established.⁸

The end of the First World War saw increased migration of white settlers into Kenya. They were granted land concessions and expansion continued, to the increasing detriment of the evicted indigenous population. The white settlers demanded increased security from the administration, and greater resources were required to support the police.

In 1920, the modern Kenya police was founded. Africans were recruited to fill only the lowest ranks of the force – subservient to European and Asian officers. Within the urban areas, the police force strategy of keeping Nairobi safe for the settlers meant containing the potential crime and disorder perceived to emanate from the Africans residing illegally in the slum areas of Eastlands. With the police primarily serving as a tool of the colonists right from the start, the early Kenya police force has been described as “a punitive citizen containment squad”.⁹

It was a time of review and expansion for the police. There continued to be signs of development of the police as an investigative body, with the establishment of the Criminal Investigation Department (CID) and education classes provided for the lower ranks.¹⁰ Special sections like a fingerprint bureau were created, starting with a skeleton staff composed of former police officers from Britain and South Africa.

Later, following the Police Terms of Service Committee of 1946 and recommendations for increased operational capacity, the police force was again expanded, partly in response to the growing threat of indigenous unrest.¹¹ In 1948, the Kenya Police Reserve was formed as an auxiliary of the force, authorised to provide assistance in times of emergency and integrating the increasingly anxious settler communities into security operations. A dog section was introduced, and the General Service Unit established for deployment in emergency situations. In 1949, the Police Air Wing was formed to facilitate communication and evacuation of sick persons to hospital.¹²

However, the restructuring and expansion of skills within the force did not touch on the function and philosophy of the organisation: it remained a tool of the colonial regime. The distance between the police and the indigenous population, already confrontational and remote, became crudely polarised during the emergency period, from October 1952 to January 1960.

2. 1952-1960: The emergency period

The uprising of insurgent groups caused panic among the white settlers. The most notorious group was the Mau Mau in the late 1940s and early 1950s, in the Rift Valley and Central areas. A state of emergency was declared in October 1952 and was not lifted until 1960, when the army took over from the police as the primary law enforcement agency.¹³ The security forces used during the emergency included the British military, volunteer military forces, locals collaborating with the British, local Home Guards (recruited primarily from the white settlers) and the Kenya police force.¹⁴

The initial suppression of the uprising was followed by a planned programme of brutality against civilians, designed to purge the region of Mau Mau sympathisers. The programme had at its heart a regime of detention camps, where those suspected of having taken the Mau Mau oaths were tortured to obtain ‘confessions’. The treatment of the detained was stupefying in its

brutality. The Home Guard and police raids across the countryside and into the villages were equally vicious.¹⁵ The management of this programme was the responsibility of the entire colonial administration so all departments were involved – and tainted – to varying degrees.

The Kenya Police Reserve, Special Branch and CID were notoriously at the forefront of the police brutality and misconduct.¹⁶ The Special Branch was in charge of the Mau Mau Investigation Centre outside Nairobi, which was a specialised torture centre where those suspected of serious involvement in the insurgent group were sent.

The emergency was accompanied by changes to the criminal justice system. Emergency regulations were issued in 1953 that aimed at giving the District Commissioners the powers to control the largely Kikuyu population. The regulations allowed for the disbanding of political parties and detention without trial. Criminal proceedings were amended to allow the relaxation of the rules of procedure - for example rules of evidence were changed to allow the use of confessions, which increased convictions.¹⁷


The European Convention of Human Rights, drafted as a response to the discovery of the Nazi camps just a few years before, complicated the legal framework of the emergency. Britain was a signatory to the Convention and it had been extended to British colonies in October 1953. Article 5 forbade detention without trial, which was a core component of the civilian purges.¹⁸ However, derogation from Article 5 was permitted in public emergencies. It has been argued that the extension of the emergency period was a means of avoiding compliance with the prohibition on detention without trial.¹⁹

When the treatment of the detainees and the systematic abuse of due process were finally discovered, there was concern in the UK Labour Party and occasionally even within the settler population itself.²⁰ However, the colonial administration remained determined to do what it saw as necessary to hold on to power, and remained unchecked by any accountability mechanisms that might otherwise have limited the abuse. There was no question of the police investigating the crimes being perpetrated by or at the behest of the orders of the administration.

The impact of extreme and selective brutality over such a long period was profound. The effects of this time are only just beginning to be spoken about in the public sphere, and even then, particular groups inside Kenya are still not able to address the issues raised by the period. The security forces and administration acted as one during the long years of civilian purges, suppression and uprising. The police played a central role in developing torture as a tool to force confessions and proved itself to be completely aligned with the ruling administration. As the country moved quickly to self rule, having in place the same police units, the same police structures and many of the same police officers made it inevitable that the same culture of supporting the regime in power would permeate the force and be carried over into the new post-independence era.

3. 1960-1992: After independence

The emergency ended in 1960. In Britain, public and parliamentary outrage at emergency excesses combined with the anti-colonialism movement across Europe and the growing preoccupation with the Cold War was to give impetus for the independence movement in Kenya. In 1961, the first general elections in Kenya resulted in the elected party, the Kenya African National Union (KANU) forming a government headed by Jomo Kenyatta, a resistance



leader who was released from prison following the election.²¹ The new Kenyan leaders met with representatives of the British Government and colonial administration in Lancaster House in London to finalise the political and legal systems which would govern Kenya. Several different draft constitutions were proposed, debated and rejected and feelings ran high between the different political parties as well as the different nationalities. Finally a complicated Constitution was adopted, and new elections resulted in a KANU government led by Kenyatta and internal self-rule on 1 June 1963. Full independence was achieved on 12 December 1963.

The independence Constitution was conventionally based on the Westminster model and established a system of checks and balances including an independent judiciary, two houses of parliament and a prime minister. However the Westminster system was quickly rejected by the new government and by 1966 it had been abolished in favour of a parliament made up of the President and a National Assembly.²²

The 1963 Constitution had included provisions designed to establish a professional, neutral police force. The Constitution gave autonomy to the police force. It envisaged that the police force would be set up by legislation and overseen by a Police Service Commission and a National Security Council. The Inspector General of Police was to be appointed by the President on the advice of the Police Service Commission.²³ These provisions were never implemented. In 1964, a constitutional amendment removed the force's autonomy and the police became an extension of the civil service.

The 1964 amendments consolidated power into the hands of the President, who became the head of the executive as well as head of state. By 1966, the Government had also given itself unlimited emergency powers, in echoes of the previous decade of emergency. The amendments to the Constitution continued, escalating after President Jomo Kenyatta's death in 1978, with the succession of President Daniel arap Moi. The executive became all powerful, with the Parliament and the judiciary reduced to rubber stamps of executive authority. In 1982, the infamous Section 2A amendment of the Constitution was passed, which formally turned Kenya into a one-party state.²⁴ By 1986, the security of tenure of the Attorney General²⁵ had been removed, making the head of legal services accountable only to the President and by 1988, security of judicial tenure had been removed as well,²⁶ destroying any hope for the judicial independence.

During the mid 1980s, resistance was growing within civil society. There were several underground resistance movements, the most well known being the Mwakenya. In 1986, suspected members of the Mwakenya were rounded up and taken to the notorious Nyayo and Nyati houses - the Police Special Branch headquarters.²⁷ Over 70 people were later convicted on charges of sedition, amidst allegations of torture and sham trials²⁸; High Court Justice Derek Schofield resigned in protest at Government interference in the cases. The police were the enforcement wing of this repression. With no independent investigators or prosecutors, the police were unaccountable to anyone outside the ruling regime.

Agitation for reform increased and by 1990, the Government had sufficiently recognised the strength of public opinion and started reversing some of the constitutional amendments. In 1990, security of tenures for the Attorney General and the judiciary were reinstated, and in 1991 section 2A was repealed and Kenya returned to a multi-party state.

Political assassinations were a hallmark of this period and the police were often implicated in the deaths of men and women who opposed the government, or in the cover-up of those

deaths. In 1975, police picked up J.M. Kariuki, an Assistant Minister in Kenyatta's cabinet, whose vocal criticisms of corruption within the Government cost him friends in high places. He was not seen alive again; his mutilated body was discovered several days later. In 1990, the body of Robert Ouko, a former foreign minister who had fallen out with the Government, was found, badly mutilated and burnt. The police were accused of assisting with the cover-up of his death and were charged with tampering with the scene of the crime, illegal surveillance and witness intimidation. Domestic and international outcry over the police involvement and investigation led to Scotland Yard conducting its own investigation into the matter, at President Moi's invitation. The government set up a Commission of Inquiry to look into the matter following receipt of Scotland Yard's investigation report; the government closed the Commission down just prior to the testimony of two key witnesses.

4. 1992- 2002: A move towards multi-party democracy?

The first multi-party elections since Independence were held in December 1992. KANU won the elections amidst claims of voter intimidation and violence being carried out by the police.²⁹ In the run up to the elections, KANU leaders urged their constituents in the Rift Valley region to chase away all who supported the opposition. The resultant land clashes displaced over 300,000 and left more than 1,500 dead.³⁰ The police aided and abetted the Government's ambitions to build a power base in the region, either by acquiescing to the violence or by direct participation.³¹

During the following decade, elections were increasingly characterised by violence. Mostly, the police were either complicit or culpable. In addition, there was a new breed of young party 'enforcers' to deal with. KANU's youth wing, the *Jeshi-la-Mzee* (a Kiswahili term meaning 'the army of the boss'), was reputed to be involved in election intimidation, harassment, extortion and violence. Other parties soon followed suit by establishing similar quasi-official party army wings. These private groups were particularly used by the government to unleash violence on particular ethnic groups, or to suppress protestors during demonstrations. The police did not intervene in the brutal attacks by these forces on citizens; government support of the groups was well known.

The first five years of multi-party politics showed that while the Constitution now allowed for the participation of a number of political groups, all other political arrangements supported a one-party dictatorship. Lobbying began for constitutional review, through coordinated nationwide strikes and monthly demonstrations. At this time, there were some civil liberties concessions from the President - most notably the establishment of the Standing Committee on Human Rights in 1996³² (which became the Kenyan National Commission on Human Rights in 2003). However, minor structural concessions were not backed by any serious change in government or police behaviour – government/community clashes followed in Coast Province in 1997, with the same involvement of the police as in previous such skirmishes.

KANU again won the 1997 elections, but the pressure for constitutional reform was so high that it could not sustain its resistance to reform. The Government set up an Inter-Party Parliamentary Group (IPPG) which, over the next five years, produced a series of recommendations – all of which were criticised for their minimalist nature. The IPPG culminated in the enactment of the *Constitution of Kenya Review Act* in 2000 that was to govern the constitutional reform process. Barely three months after the Review Act was passed, the entire process stalled because political parties could not agree on the representation to the Constitutional Review Commission,

which was to oversee the reforms. Eventually the Constitution of Kenya Review Commission (CKRC) was established and started its work in 2001.

5. 2002 onwards: Change of regime to the National Rainbow Coalition

The CKRC published its report in October 2002. In December the same year new elections resulted in a change of government with the National Rainbow Coalition's (NARC) victory at the polls. Included in the CKRC's recommendations was an acknowledgement of the public perceptions of police behaviour as corrupt and violent, reference to United Nations standards for exercise of police powers and recommendations for the constitutional entrenchment of police independence.

The CKRC submitted a proposed constitution, known as the Bomas Draft, to the new NARC Government. The Government put an amended version, known as the Kilifi Draft, to referendum in 2005. The referendum was not successful. In March 2006, President Kibaki set up a review committee to look at the reasons the referendum failed. Constitutional reform is expected to become an issue during the lead up to the 2007 elections.

Delays in police reform are disappointing, particularly when one reflects on the observations published in 2003 by the Standing Committee on Human Rights, that the:

“...toll on innocent civilian lives, injury, displacement and suffering of citizens together with the loss and wanton destruction of property not only violates fundamental human rights of many Kenyans but also demonstrates the government's failure to conceptualise security in human rights terms, and to recognise that such gross abuses are at the very core of domestic insecurity. A pervasive culture of impunity and violence had for long been nurtured through corruption, malpractice and incompetence, resulting in an alarming decline of law and order. The country's security agencies have for long been accused of incompetence, neglect, corruption and complicity in activities that constitute gross violations of human rights and fundamental freedoms of Kenyans.”³³

However, with the change in regime, the role the police has had in creating insecurity and contributing to crime rates is finally beginning to be acknowledged by the Government. The NARC Government has been developing a range of new strategies and policies for police reform, and in 2003 set up a Police Force Task Force to examine the role and reform of the police. The police reform policies are commendable; they are ambitious and comprehensive documents. Unfortunately, there has been no attempt to make the rhetoric of the reform policies a reality, and the police continue to operate in largely the same way. Small changes have been made – a community policing programme has begun, and police salaries have increased.

In April 2004 the President appointed a new Police Commissioner. Controversially, the appointee was an army officer, Brigadier (now Major-General) Hussein Ali. The controversy was fuelled because, rather than adopt a more public or participatory mode of appointment, the President used the discretionary powers of appointment in the same way previous Presidents had done. In addition, military involvement in civilian policing implies a lack of confidence in the higher ranks of the police and reinforces the notion of a police force modelled along militaristic lines that is inimical to the tenets of democratic policing.

6. The present: Policing challenges in Kenya today

6.1. Crime rates

The police face armed violence from criminal activity every day. Kenya is perceived as having a high crime rate and Nairobi is cited as one of the most insecure cities in the world.³⁴ In 2002, about 37% of Nairobi residents reported having been victims of robbery, 22% reported having been victims of theft, while 18% reported having been physically assaulted.³⁵

Crime figures for 2004, as reported in the Sunday Standard on 10 April 2005, show a decrease in reported crime.³⁶ Nevertheless, Kenya is still characterised by high levels of insecurity; there is a high level of violent crime and very high numbers of illegal small arms in circulation.³⁷ More troublingly, the police are often implicated in these problems. For example, in Northern Kenya, the Kenya Police Reserves (a disbanded volunteer guard) were reported by Human Rights Watch 2002 as acting as an alternative supply of small arms.³⁸ The UN HABITAT Victim Survey 2002 found that over one third of all crimes committed in the country were attributable to police criminality.

Much more criminality is masked by underreporting. According to UN HABITAT:

“...[r]eporting levels to police are low because victims do not believe that the police can assist them in dealing with the matter – either because there seems to be no chance of them resolving the crime, or because they do not believe that the police are competent enough to help them.”³⁹


Illustratively, only a small minority of girls report rape to the police, with 93% preferring to take their problems to health workers, pastors, family members, friends or even the village elders rather than go to the authorities mandated with their protection.⁴⁰

This security vacuum has been filled with private security solutions, but also with vigilantism. Businesses concerned with the bottom line have analysed the loss of profit due to lack of security and estimate that during 2004 business firms were spending 7% of their total sales or 11% of their total costs on security, infrastructure and personnel.⁴¹ In addition, businesses were spending 4% of their total sales on insuring property and 2% on neighbourhood security initiatives.

6.2. Vigilantism and militias

The rapid expansion of vigilantism in Kenya is perhaps the most illustrative expression of the nominal confidence the community has in the police. Vigilante groups have formed in both urban and rural areas in response to a doubt that the police can effectively secure the lives and property of community members. Generally, vigilante groups conduct day and night time patrols in low-income urban neighbourhoods and rural villages, engaging informants, and occasionally the police, in the detection and prevention of crime. Some vigilante groups, such as the Kuria-based Sungu Sungu, also perform controversial prosecutorial and judicial roles in which they conduct illegitimate trials and punish suspected criminals.

With rising insecurity witnessed in the last decade, the Kenya police have failed to stem the growth of vigilante groups in most urban areas, rural villages and remote outposts. While a few strive genuinely to enhance public safety and security in their locales, a large majority are completely unaccountable to anyone or any institution and operate in heavy-handed and blatantly unlawful



ways. Indeed, many instances of murder, rape, mob violence, theft and extortion across the country have been attributed to these groups. In March 2001 the Police Commissioner issued a directive outlawing all vigilante groups.

There is a genre of vigilante-type groups, such as Mungiki, Taliban and Baghdad Boys, that are politically inspired and even government-sanctioned entities, and therefore, may be more appropriately termed as militias. These militias work at the behest of politicians and political parties and provide security services to their paymasters or work generally to disrupt the activities of political opponents. Since they are constituted and supported by powerful ruling party and opposition stalwarts alike, they enjoy impunity for the often deadly violence, destruction of property and intimidation that they have repeatedly visited on Kenyans, particularly during the periods before, during and after general elections. Militias of this type have been activated by political elites in Kenya to deflect political threats by inciting violence, often along sectional identities.

The case of the Mungiki sect militia

The Mungiki sect was constituted by internally displaced persons from the Central and Rift Valley provinces following the state-sponsored ethnic violence of 1992. For almost a decade, the government brutally repressed Mungiki. However, in 2001 the government recognised the potential to use the Mungiki to its own ends. Consequently, the group was transformed into a government-sanctioned militia and allowed free reign to deploy violence during election campaigns in support of Kenyatta, Moi's favoured presidential successor.

Following the defeat of Kenyatta at the 2002 polls in January 2003, Mungiki members went on a murderous rampage killing four people in Nakuru. Several sect leaders were arrested but later released by police, who claimed there was insufficient evidence to sustain prosecutions against the leaders. The NARC Government has since cracked down on the group, but it is still known to commit crimes, particularly murder by beheading and extortion in the Central and Nairobi provinces. There is now fear that Mungiki and similar militias may emerge once again to violently disrupt the 2007 polls.

6.3. Violence against women

The number of reported rape cases has been increasing. According to the Attorney General, Amos Wako, in 2001 the figure was 1,987, increasing to 2,005 in 2002 and 2,055 in 2003.⁴² Crime figures for 2004 published in the Sunday Standard on 10 April 2005 showed the 2003 figures to be higher at 2,308, with a slight drop in 2004 to 2,190. However, the real figures are likely to be much higher as the majority of victims do not report cases of sexual violence. According to the Population Council, more than 40% of all Kenyan girls raped do not report it to anyone.

Of even more concern is the fact that there are also reports indicating that some police officers are perpetrators of sexual violence against women, or indirectly encourage the commission of the criminal activity by declining to treat it seriously as a criminal offence, which in turn sends out a signal that there is acceptance of such behaviour. There have also been reports that the police are so indifferent to the offence that there is no separation between men and women in police cells⁴³, despite allegations of sexual violence against women by male prisoners.⁴⁴

Small steps forward?

Encouragingly, there is at least some evidence that the Government and senior police officers are aware of the importance of targeting services towards women. The Spider Squad is a special police unit that was set up in November 2004 to target rape. Its existence was announced along with the story of a sting operation resulting in two men being shot for allegedly attempting to rape two female undercover police officers. In addition, a woman only staffed police station was established in Nairobi in 2004, designed to make female victims of crime feel safe, particularly when reporting rape or sexual violence. Although a formal analysis of the success of the police station has not been completed, local women's groups report that they have witnessed an increase in the number of women reporting gender related crime at the station.

6.4. Protecting children

In Kenya, children are still subject to torture, cruel treatment, unlawful arrest, forced marriages, female genital mutilation and child labour.⁴⁵ These crimes can be difficult to police as they are seldom reported and are often committed by the parents or guardians who are responsible for the child's welfare. However, there is also evidence that the police are among those who commit offences against children, particularly if they are poor or without protection. Street children are particularly vulnerable – there are reports they have been rounded up for “having no fixed abode” or begging, both crimes under the *Vagrancy Act*. The effect of extreme poverty among street children is their criminalisation. In 1999, 80% of children appearing before the juvenile courts were reported to be street children.⁴⁶

Legislation and regulations exist that are supposed to deal with the special needs of children within the criminal justice system and more specifically, treatment by the police. For example, section 14 of the Kenyan *Penal Code* provides that the age of criminal responsibility is eight years old and between the ages of eight and twelve a child is only responsible for acts or omissions if at the time the child ‘had the capacity to know’ the act or omission was wrong.⁴⁷ The *Children's Act* was intended to harmonise the *Children and Young Persons Act* and other laws relating to children into a single tool comprehensive enough to cover all aspects of juvenile justice.⁴⁸ In the specific context of policing, paragraph 22 of Chapter 49 of the Standing Orders forbids children under 18 from being held in the same cell with adult prisoners. Paragraph 9 of the Police Manual also states that juveniles and adults should be detained separately.

In reality though, practice has yet to catch up with theory. There are still numerous stories of children being insensitively handled by the police and even targeted for abuse. For example, in October 2003, a 15-year street boy, Njoroge Kamau was shot by a police officer who suspected him of stealing a mobile phone. Njoroge was charged with robbery with violence and was remanded instead of being taken to hospital. When researcher J. Otieno Ouko visited Njoroge in prison he found that Njoroge had become blind as a result of his injuries.⁴⁹ In October 2003, the Standard Newspaper reported:

“A city policeman yesterday morning dragged a 13-year-old girl from the cell and defiled her in the toilet. The police constable forced the minor from the cell and after sexually abusing her took her back to confinement. The constable was the cell's sentry officer at Riruta Police Station when the 4.30 a.m. incident occurred.”

CHAPTER 2

UNDERSTANDING KENYA'S CIVILIAN POLICE FORCES

“Functions of the force: The force shall be employed throughout the country for the maintenance of the law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime, the apprehension of offenders and the enforcement of all laws and regulations with which it is charged.”

“Attributes of a police officer: A police officer must be impartial, honest and loyal, discreet, careful and efficient in his duties. He is an officer of the law and a servant of the public and must be fair and correct in his treatment of persons and property. He must always control his temper. When necessary he must be firm but always just. To earn the respect and confidence of the public he must set an example of impartiality and efficiency, and at all times be ready to provide whatever assistance may be within his power when circumstances demand it.”

- Paragraphs 1 and 3, Chapter 2, Police Manual

Policing, whether good or bad, is made up of a number of factors, particularly its legal framework. However, it does not exist in a vacuum of law, it is also affected by the way the police organisation is structured, the way it works on a day to day basis, and the way it is staffed. This chapter looks at the nuts and bolts of the police as an institution.

1. Dual policing – Kenya’s police forces

1.1. The Kenya police force

The Kenya police force is governed by the *Police Act* 1961. In addition to the *Police Act*, the police is governed by:

- ◆ *Police Regulations*⁵⁰, first published in 1961, which set out the list of disciplinary offences, private use of the police and administrative matters such as firearms stores, certificates and forms – these are expanded by the *Standing Orders*. Notably, Part IV of the *Police Regulations* governs the *Kenyan Reserves* (whose function is to assist the police force).⁵¹ All of this legislation is compiled in the 1988 Revised Edition of the *Police Act*.
- ◆ *Standing Orders* which deal with the “general control, direction and information of the Force”.⁵² The *Standing Orders* (see Annex 3 for a full list) are issued by the *Police Commissioner* and regulate procedures on day-to-day operational and administrative matters. Largely drafted in 1962, they have been revised several times, most recently in 2001.
- ◆ The *Police Manual*, which was issued in 1997. The *Manual* is a practical guide that contains a summary of relevant laws and guidance on good behaviour, proper procedure and lawful actions to be taken in given situations.

1.2. The Administration Police

The *Administration Police* was established by the *Administration Police Act* 1958, and is subject to its own set of *Standing Orders* and *Manual*. Historically, Kenyan law was divided into civil and customary streams.⁵³ The predecessors to the Kenya police dealt with the civil

law and reported through a police structure to a Police Commissioner, while the Administration Police dealt with customary law, and reported through a local provincial council structure to a national Commandant who reported to a government Minister. Today, despite the evolution of Kenyan law and the removal of the concept of a parallel customary law, the Administration Police continue to operate, reporting through local provincial heads to the Minister of Internal Security. The police have stated that in practice the roles of the police and the Administration Police overlap and are blurred.⁵⁴ Consideration needs to be given to the proper roles and functions of the Administration Police so that both the police and the public are clearer about their roles and activity. Study of the Administration Police, however, was outside the terms of this report.

Police Units of the Kenya Police Force

The departments and special squads include:

- Administration: management of postings, leave, maintenance and control of training and welfare.
- Air Wing: training of pilots, maintenance of aircraft.
- Anti-Corruption Unit
- Anti-Narcotic Unit
- Anti-Robbery Unit: disbanded in 2002 - reportedly due to its reputation for torturing and killing suspects.
- Anti-Drugs Unit
- Anti-Stock Theft Unit: targets cattle theft particularly along the borders, which are a source of illegal small arms.
- Anti-Terrorist Unit: recently criticised for its interrogation methods.⁵⁵
- Dog Unit: breeding, care and training of dogs and dog handlers.
- Flying Squad: created to deal with car jackings and armed robberies. They apparently have their own offices and cells, although they use other police stations to house their detainees.
- Force Armourer
- Force Quartermaster
- General Service Unit: established by Chapter 9 of the Standing Orders, designed to deal with 'special operations and civil disorders'.
- Kanga Squad: an elite unit of CID.
- The Kenyan Police Reserve: a volunteer corps established by Part IV of the Police Act and whose function is to assist the police.⁵⁶ Enrolled to serve part time for a minimum of two years, its personnel are subject to the same disciplinary codes as the police.⁵⁷ In 2004, the Commissioner of Police disbanded the KPR due to their reputation for criminal activity.
- Motor Transport: selection of vehicles, maintenance and repair.
- Motor Vehicle Theft Unit
- Rhino Squad: created to combat the *Mangiki*; in practice they have a reputation for arresting suspects, taking them to the forest, beating them and leaving them there, or detaining them for long periods in different police stations to avoid the 14 day detention rule.
- Presidential Escort
- Port and Railway Police: security including bomb disposal, monitoring drug trafficking and currency crime in airports and protection of property on internal transport systems such as roads and railways.
- Special Crimes Prevention Unit: known for dealing with robberies and public disturbances in particular demonstrations.
- Spider Squad: designed to target rape.
- Telecommunication: selection of communication equipment, maintenance and repair
- Tourist Unit: protection of tourist destinations and tourists.
- Traffic Unit
- Training Colleges: training of recruits and other personnel.
- Vehicle Inspection Unit

2. Function of the police force

The Police Act lays down the functions of the police as the maintenance of law and order, the preservation of the police, the protection of life and property, the prevention and detection of crime, the apprehension of offenders and the enforcement of all laws and regulations with which it is charged.⁵⁸ Police are also required to regulate traffic⁵⁹, keep public order and “prevent unnecessary obstruction on the occasion of assemblies”.⁶⁰

There are additional policing functions outlined that do not form part of this study, for instance, the Police Act provides for the police force to be used privately on hire⁶¹ or, less unusually, under reciprocal arrangements with neighbouring countries⁶² to deploy police to assist in temporary emergencies. The ability of people or groups to hire the police is concerning, particularly as the police are only hired by those with money and connections.

3. Structure of the police force

Kenya’s Constitution provides that the Commissioner of Police is appointed and under the command of the President (see Chapter 4 for further discussion).⁶³ The Commissioner and any senior superintendent to whom he or she delegates powers⁶⁴ retains overall control of all aspects of police although day to day control is given to regional officers appointed by the Commissioner. The Commissioner is assisted by a secretariat, which includes a Senior Deputy Commissioner, Senior Assistant Commissioners and other uniformed and civilian officers. The Secretariat is situated at police headquarters in Nairobi. Also situated centrally at headquarters is the Special Branch, Criminal Investigation Department, Motor Transport Branch, Signals Branch and the Quartermaster.

Kenya is divided into policing provinces: Central Province, Coast Province, Nairobi Contingent, North-Eastern Province, Rift Valley Province, Kenya (Railways and Harbours) Police, Nyanza Province, Eastern Province and Western Province. Each province is subdivided into divisions. A Divisional Commander controls all police activities within their division and is responsible to the police officer in charge of the province. Normally there is a Chief Inspector or Inspector of Police in direct charge of each police station and a Sergeant or Corporal in charge of each police post.

Police Ranks

Officers: Commissioner, Deputy Commissioner, Senior Assistant Commissioner, Assistant Commissioner, Senior Superintendent, Superintendent, Cadet Superintendent

Inspectorate: Chief Inspector, Inspector, Cadet Inspector

Subordinate Officers: Senior Sergeant, Sergeant, Corporal, Constable

Police numbers are low. The police to population ratio has become worse over time, from 1:711 in 1991 to 1:875 in 2001 and 1:1,150 in 2004⁶⁵, which compares poorly to the UN recommended standard of 1:450. There are approximately 18,000 Administration Police officers. It has been estimated that even if the two forces merged, taking attrition into account, the country will need to recruit 3,999 recruits per year for ten years (2004-2014) to reach international policing population standards by 2014. In a survey published in June 2004 it was found that only 6.2% of the police are women, and only 4 women are deployed as divisional Commanders, despite the fact women outnumber men in the population. A

2005 recruitment drive to increase police numbers failed, in the shadow of claims of corruption and political influence.

The lack of officers means serious understaffing in some areas. For example, in November 2003, it was reported that in the Rift Valley area there was a deficit of 7 inspectors and 64 sub-ranks – the ranks that carry out day-to-day policing.⁶⁶ In rural areas, lack of reliable or appropriate transport and communication leads to the inability of the local force to respond to crime, even if there are sufficient officers.⁶⁷

The Police Council

Although the police are under control of the Commissioner, there are still means for officers to communicate directly with the higher echelons of power. The Police Regulations establish a Kenya Police Representative Association whose function is to bring to the notice of the Commissioner and Government all efficiency, welfare and pay related concerns of the police themselves.⁶⁸ The Police Council is made up of four government representatives and four representatives of the Kenya Police Representative Association. The chair is the Permanent Secretary of the Minister or his/her deputy.

4. Police powers and duties

The duties of individual officers and constables are to obey all lawful orders, investigation and apprehension of suspects, collect information affecting law and order and prevent crime and public nuisance.

Nonetheless, the Police Act limits these general powers. For example, the powers of search and seizure are subject to the issue of magisterial warrants and even the decision to search a property without a warrant – when delay may prejudice an investigation - requires that an officer put in writing the reasons for this decision.⁶⁹ The exercise of these powers is also subject to the Standing Orders and Regulations, the Police Manual and the procedures of the *Criminal Procedural Code*. For example the Police Manual sets out three different methods of searching a person under the general powers conferred by section 19 of the Police Act. Chapter 31 (Arms and Ammunition) of the Standing Orders deals with the care and issue of arms, which practically limits the use of the power to use firearms under section 28 of the Police Act and section 14 of the *Administration Police Act*.

The Kenya Police Manual

In order to leave little to doubt, the 1997 Police Manual, which is given to police officers on enlistment, provides every police officer with an amplification of relevant laws, regulations and Standing Orders. Intended as a practical guide, it is easily read, thorough and an accurate summary of good practice for the police as they go about their duties.

The Manual covers the constitution and organisation of the force, general instructions, general police duties, arrest and search, investigation into crime, evidence in criminal cases, criminal procedures, warrants and summonses, courts, civil disturbances and crowd control, use of force and firearms, and traffic control. It provides simple explanations of law, such as paragraph 1 of Chapter 4: “What does arrest mean? An arrest is a taking of a person into custody to answer according to law for some specified offence. In consequence a police officer **MUST** have a reason and legal right to arrest. His powers must be used correctly and with great care”.

It details essential procedures such as how to preserve forensic evidence and to take witness statements (Chapter 5); and sets out standards of behaviour such as how to conduct oneself in court. It places particular emphasis throughout on public relations: such as in dealing with complaints in paragraph 12 of Chapter 2: “police officers called upon to answer complaint made against them will adopt a quiet and courteous manner”.

5. Police experience

There are numerous reports on the way Kenyans experience policing but there is little public account of what the police experience as employees, as professionals and as individuals hated and feared by large numbers of their fellow citizens. There is little discussion about pressures experienced by honest officers when caught up in the corrupt networks of relationships in their local police station, or how facing and using violence impacts their lives and the lives of their families. While the police have a public duty to serve and protect citizens and the welfare of the state, they are also individuals with rights and needs who exist as part of the broader community. They are employees of the state and they are members of a professional body whose labour rights and job satisfaction are also an important consideration in any reform effort focused on improving accountability and professionalism of the force.

Individual police officers have expressed frustration that their rights and their safety are not given attention: for example there is little outcry in the papers when a police officer is killed on duty - or any sympathy from the community. In addition, police officers expressed dissatisfaction that they were expected to obtain evidence without use of torture as an investigative technique, but the investigative techniques they were trained to use were not producing evidence satisfactory to the court and cases were being dismissed. Police feel blamed whatever they do.⁷⁰

In this context, it is significant that morale within the police is low. A 2004 survey found 72.7% of police felt that their job was insecure.⁷¹ Deployment and career progression are not factors the individual officers are reassured about. It has been reported that the procedures governing deployment, including transfers, are not followed and deployment is influenced by “favouritism, nepotism and corruption”.⁷² A 2004 report targeted at reform, terms the relationship between junior and senior officers as “so bad that the junior officers do not respect the seniors”.⁷³

Police welfare contributes to police job satisfaction and is one means of inculcating a culture of service and mutual obligation. The Kenya Police Representative Association is given the responsibility under the regulations for bringing to the attention of the Commissioner and the Government all matters “affecting their welfare and efficiency, including pay, pensions and conditions of service, other than questions of discipline and promotion affecting individual officers”.⁷⁴ However there is no evidence that there has in fact been a culture of promoting police morale in practice, other than the provision of some recreational facilities such as sports associations, canteens, recreational halls and assistance in the way of a staff saving and cooperative association.⁷⁵

More broadly, the long term failure to deal with police welfare issues mean that the terms and conditions of working as a police constable or officer are unlikely to attract quality applicants who have the option to choose another career. In June 2003, senior Kenyan police officer Edwin Nyaseda was reported as saying that poor living conditions were an impediment in the police war against crime. The argument was that officers were participating in theft and other crimes to top up their salaries. He also argued they were demotivated because of poor conditions.⁷⁶

Prior to January 2004, a constable could earn as little as 4,645 KSh (about 63 US\$) per month plus a house allowance of 600 KSh (or 1,200 KSh if married) and a medical allowance of 450 KSh.⁷⁷ In January 2004, pay increased dramatically: the lowest paid rank increasing from 4,645 KSh per month to 10,000 KSh per month (about 140 US\$ per month). However living conditions for lower ranked officers - constables, in particular - have not improved. The force is estimated to have a deficit of 63,326 house units as of November 2003.⁷⁸ There are apparently 8,891 housing units to accommodate 32,361 junior officers, which is 3 officers (plus their families) to every room.⁷⁹

Police officers appear to have little provided in terms of health and safety expenses. There is confusion about how the Kenya Police Medical Fund operates (it is a contributory fund) and the medical allowance is rarely adequate. There is no compensation currently paid to police officers families in the event of being killed in the line of duty, although funeral expenses are defrayed.⁸⁰ This is despite the fact that in 2003 the then Police Spokesperson, Mwangi King'ori, said that police officers were not safe from criminals⁸¹ and, given the crime rate in Kenya, it must be the case that police officers' lives are regularly at risk.

While it is positive that there are now efforts to redress police welfare issues, there is a considerable backlog and little evidence that welfare principles will be effectively converted into answering the real needs of officers. It will take time and money to build police housing and improve service conditions. Notably, future budgets will need to include a long term commitment to catch up with the backlog – which will require ongoing political will.

6. The public face of police as reformers

Police officers are well aware of their reputation, and there are increasingly examples at the top and bottom of the professional ranks of a commitment to reform or at the very least, a more honest dialogue on what is wrong with the system. It is positive that many police officers themselves now seem willing to engage on these issues as successful reforms will need to be internally supported rather than imposed from outside. It is hoped that this could result in a police service where the rewards for professionalism and integrity are greater and more reliable than the 'rewards' for corruption and criminality, and where standing up against unlawful practice is supported and applauded. The Police Commissioner appears to be pro-reform, but is stymied by a lack of political will and pressure from anti-reformists inside the Government and the police. A number of examples of the Commissioner's approach to reform are over the page.



Reform led from the top

There are several examples where the Commissioner's actions indicate a commitment to long-term change.

Promotion rewarding professionalism

On 8 April 2005, the Police Commissioner announced that he had promoted 640 officers and that "only deserving officers reap the benefits of the reforms... only deserving hard working and disciplined officers would be promoted".⁸² The majority of those promoted were part of the junior and middle ranks, promoted over the heads of more senior officers. The Commissioner also announced that 800 others, who had been at one station too long, were to be transferred with immediate effect.

The Commissioner stated that he made the changes on the recommendation of a board of police officers, distancing himself from the interference of the executive in the past. In addition, the large number of transfers indicates a force-wide reform that would break up established patterns of control within police stations and also between police stations. Locations were not reported so it is unknown whether most of the transfers are from urban or rural stations or what that meant in terms of a shake up. However such a large transfer could signify a move to end some of the overly 'cosy' relationships that have lain undisturbed for too long.

Public defence of his officers

In an interview with Stephen Muiruri, Chief Crime Editor for the Daily Nation, on 28 March 2005, the Commissioner kept the interests of his officers at the fore, referring to additional Government funds for salaries and mentioning an anticipated review of allowances. Most significantly, he protected his officers against illegitimate political interference when he refuted Minister John Michuki's announcement that the police should act unlawfully and operate a shoot to kill policy.⁸³

CHAPTER 3

NEGATIVE PERCEPTIONS OF THE KENYAN POLICE FORCE

Kenyans view their police force in one of two ways. First, they see it as an organisation in such a corrupt state that it is little more than an institutionalised extortion racket, that uses illegal and violent methods to uphold the status quo and is only paying lip service to reform initiatives. Alternatively, they see it as an institution that is struggling to reform itself and to overcome its history, to become a disciplined and law-abiding police service more suited to the democracy in which it now exists.

A survey published in 2002 found that average Kenyans estimate that half of the police force is corrupt and that over one-third of all crimes committed in the country are attributable to police criminality.⁸⁴ Concerns raised about the police tend to be about officers actively misbehaving rather than about any omissions, incompetence, negligence, or poor performance in crime control. Accordingly, it is police criminality that seems to be fuelling the most negative perceptions about police. This criminality takes different forms – corruption, both in terms of bribery, as well as the perversion of the criminal process, illegal use of force and abuse of due process.

1. Corruption

Corruption continues to be a huge problem within the ranks of the Kenyan police force. According to the Kenya Bribery Index 2004⁸⁵, the Kenya police is reported to be the most corrupt agency in the Government. In 2004, 80% of respondents thought the police were corrupt, 48.7% thought them partial and 52% thought they collude with criminals.⁸⁶ More damningly, 67% of police officers surveyed thought that the police colluded with criminals⁸⁷ and 79.1% of the police admitted the force was corrupt.⁸⁸ Transparency International's 2002 survey results suggest that the average Kenyan paid 1,270 KSh (about US\$15) in bribes to police officers per month.⁸⁹ Although the 2004 Index survey indicated that the numbers of people refusing to pay bribes rose dramatically from 25% in 2003 to 42%, Transparency International interpreted this as the public beginning to refuse to pay bribes so often.

Corruption criminalises poverty

Criminalisation of poverty goes hand in hand with corruption: the poor may not always be able to immediately give the police the bribes demanded but neither can they afford lawyers to make trouble for those demanding bribes. Instead, they struggle to defend themselves against false or exaggerated charges and they do not have the influence to prevent harassment and arbitrary arrests for failure to pay bribes.⁹⁰ As bribery and corruption is in operation at every stage of the criminal justice process, so too the poor are discriminated against at each stage. If they cannot pay to avoid arrest they may spend long periods in custody, at the expense of their jobs and their families' income and often, if subject to torture, their health or their life. The wealthy, on the other hand, can pay their way out at any stage of the process with bribes, influence or lawyers.

Too often, it is the vulnerable that suffer most from corruption. For example, the majority of homeless girls interviewed in the streets of Nairobi viewed police officers as rapists.⁹¹ Interviews with street children⁹² reaffirm police collusion and corruption: police regularly round them up and take them to cells where officers demand payment for release. In some areas, street children

have formed cooperatives where every member makes regular contributions to a fund to pay police bribes.⁹³ Hawkers and other small business owners, such as taxi drivers, also suffer at the sharp end of police extortion as they are easily targeted and unlikely to have the connections, education, legal knowledge or funds for lawyers to resist sustained police intimidation, particularly if their livelihood is threatened. According to one taxi driver, “The police are very hungry. They harass us instead of arresting the thieves. When they arrest you, you have to bribe them even if you have your identity card”.⁹⁴

Anecdotally, a favoured method used by police officers to extort money is to target drivers or establish themselves on a street corner in a poor area where it is unlit, and there is no likelihood of lawyers being involved at a later stage. No one is allowed to pass the ‘police road block’ without paying a fee. Refusal usually results in an increased price being demanded and a pistol whipping where the police use the gun handles as a weapon. Citizens complain particularly about the ‘Friday collection’ where police make arrests on Friday evening, knowing the threat of spending all weekend in the cells will result in more detainees paying bribes to be released. Detainees are routinely tortured to force their families to pay out money (see the case of William Tanui below), women are unlawfully kept in cells with men where they are sexually assaulted and prisoners’ property is sometimes stolen (see the case of Njuguna Mutuhi on the next page).

Rumours circulate about organised corruption such as an order given by a superior officer to collect a weekly financial quota, which then passes up the chain of command, with each level taking a cut. These stories lack evidence but they resonate with the public. The fact that these rumours are circulated so confidently and so widely gives some idea of the level of public distrust, not only of the individual police they come into contact with, but also the institution and the higher echelons of command.

A bribe available for every occasion?

Bribe to escape from custody

In January 2004, Mrs Loise Kagure Njeru was reported as telling the Nyeri court that she secured her release from Karatina station by bribing the police with 8,000 KSh.⁹⁵

Organised extortion - the price of avoiding arrest

If stopped on the sidewalk, the price of not being arrested in Nairobi is in the region of 200 – 500 KSh. If the suspect is inside the patrol car the price is around 1,000 KSh. Once inside the police station cell, the price is in the region of 2,000 KSh.

Extortion with menaces

At 6.30pm on 11 January 2000, William Tanui and several of his colleagues were heading home from Chemil Market, where they had been selling maize. What appeared to be a criminal gang but in fact were police officers emerged from a nearby sugar plantation and ordered them to stop. Tanui, unsure of who was accosting him, hit the police with his donkey whip. He was beaten with the whip, kicked and threatened with strangulation. The police then demanded 20,000 KSh to avoid charges of assaulting a policeman. Unable to pay, he was held in Tinderet police station for five days. His relatives then gave the police 12,000 KSh and he was released without charge. Tanui reported the case to the Officer Commanding Police Division, the matter was investigated and several officers were transferred.

Opportunistic extortion

Njuguna Mutuhi, Program Director of People Against Torture, was arrested in May 2004 and taken to Kikuku Police Station, and again in October 2004 and taken to Central Police Station. On neither occasion was he searched or his property removed prior to his being placed in the cells. (If police remove property from a prisoner a record of property should be made to ensure it can be restored or reclaimed.) Fellow prisoners in the cells then searched him by force and robbed him of his possessions. On leaving the cell, all prisoners were searched by the police and any property found on their persons removed and kept by police, but no listing of possessions took place. Njungana Mutuhi could not prove ownership of his own possessions.

Police ordered to be complicit in crimes of their bosses

Ms. Hellen Muhonja Maiyo was admitted to hospital on 2 May 2003 with broken ribs. She claimed a Police Inspector at Kapsokwony Police Station in Mt Elgon District had assaulted her. She had confronted the Inspector about the fact that her husband, Constable Philip Maiyo, was regularly ordered by superior officers to take *busaa* and *chang'aa* (illegal traditional alcoholic drinks) confiscated from police raids, to a brewer in Kapsokwony town. Constable Maiyo claimed the brewer had the Inspector's protection.⁹⁶

2. Excessive use of force

One of the most shocking and intimidating forms of criminality by any state institution is the excessive use of force, which, because it is perpetrated by an agent of the state, is usually classified as a form of torture.⁹⁷ This is a violation of human rights; it is criminal behaviour that should be prosecuted; it is a civil wrong for which the state as well as the individual police officer can be held accountable; and it should always be a professional disciplinary offence. If the state does not ensure excessive use of force and torture are eradicated and perpetrators disciplined and prosecuted then it is condoning the violation of human rights and the criminal behaviour of its agents.

In 2000, the then United Nations Special Rapporteur on Torture, Sir Nigel Rodley concluded that the use of torture by law enforcement officers in Kenya was "widespread and systematic" and that there was a general expectation of impunity amongst law enforcers.⁹⁸ The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which set out the UN standards on use of force, are included in Annex 2.

Amnesty International has been documenting police use of torture and government complicity in Kenya for years. Monitoring and lobbying by Kenyan civil society groups point to the pervasive use of torture by the police. The Independent Medico Legal Unit (IMLU) documented 358 cases of alleged torture in 2003.⁹⁹ In 2003-04, the Kenya National Human Rights Commission received 24 complaints of torture and 43 complaints of police brutality.¹⁰⁰

The police are also widely reported to be responsible for illegally killing citizens - what are called extra-judicial killings or more simply, execution. Amnesty International reported that 100 citizens were killed "by the police in suspicious circumstances"¹⁰¹ in 2002. Closer to home, IMLU, with two pathologists – 1 independent and 1 government - investigated 48 cases of alleged extra-judicial killings in 2003. Of these, 34 were found likely to be extra judicial killings, and 14 of the bodies indicated that torture had been inflicted.¹⁰² During 2004, IMLU reported that police officers killed 27 persons and another 6 died

Use of excessive force pervades police operations

Police killing led from the top: On 7 March 2004¹⁰³, three suspects were arrested and immobilised by police officers after an attempted robbery along Bunyala Road in Nairobi. There was no question that the suspects were likely to escape or posed any risk to the safety of the police or citizens, but the Officer Commanding Police Division attended the scene and shot the suspects dead. He stated that the fact that they were robbery suspects was sufficient reason.¹⁰⁴ The suspects' rights to a fair trial and the due processes of law were not issues that were raised or considered.

Prisoners claim police use torture: Capital remandees at the Nairobi Remand Prison claimed in a memorandum dated 28 February 2004 that torture was still prevalent in police cells. The memorandum stated that police either used torture as a means of obtaining evidence from suspects in the course of police investigations or while acting as hired thugs as a means of settling scores in business, political or family feuds with third parties.

Police kill schoolboy: On 25 December 2003, police shot and killed Benson Mutua Maundu, a thirteen year-old boy at Dr Krapf Primary School in Maringo Estate, Nairobi. Witnesses said police arrested Mutua, handcuffed him and dragged him to the school compound where they executed him. Benson's sister says she saw the police officers beat her brother before opening fire on him while he was still handcuffed. The police shot six bullets into his body. Police later claimed that Benson had been part of a gang that had shot dead a policeman a month before, and that in an interview on 17 February 2004 he had claimed he was actually 16 years old, not 13. The question of proportionality in fatal use of firearms against an immobilised and handcuffed teenager in the relatively risk free environment of a schoolyard was not addressed.¹⁰⁵

Killed for asking for 50 KSh: IMLU investigated the case of Simon Kiplagat, aged 35. Police officers while on duty at Kamagut village in Eldoret killed him because he asked for 50 KSh payment for helping the police push their vehicle through a flooded area of the road on 9 August 2003. An autopsy by IMLU doctors found that he had been shot at short range through the left ear.

while in police custody (compared with 11 in 2003). IMLU reported that at least 15 of these deaths were unlawful killings.¹⁰⁶

In its April 2005 comments on Kenya's report on its compliance with the International Covenant on Civil and Political Rights, the UN Human Rights Committee expressed grave concern over the number of police detainee deaths by excessive force. Ruth Wedgewood, an expert from the USA on the Committee, praised the Kenyan delegation's frank responses about the "culture of excessive force" throughout the country's law enforcement agencies. She noted that 19 cases had been taken up but was astonished that, even after the passage of a relevant law, 3,400 people died in custody in Kenya in 2004.¹⁰⁷

The poor, young and vulnerable are easy targets for police brutality. Between December 2003 and January 2004, police shot 40 young people – whose ages ranged from 13 to 25 – in the Eastlands area of Nairobi alone.¹⁰⁸ The reasons given for killing ranged from confronting law enforcers with a firearm to separating street children fighting over a bottle of glue. KHRC estimates that every month the police kill at least 3 young people aged between 15 to 25 years in the slums of Korogocho for questioning their arrest. They are shot in the head, either on the spot or in the fields outside the slum.¹⁰⁹

At other times orders to use illegal force come from above, with the knowledge that there will be protection granted for carrying them out. For example, in January 2004, at least 20 people were shot dead by police in Nairobi's eastern suburbs.¹¹⁰ Barely a month later, the Nairobi Provincial Commissioner is alleged to have told police officers: "Youth from Dandora and Korogocho are criminals. Shoot them. Don't spare them. Shoot them to kill them".¹¹¹ He did not give any reasons for issuing this order. While such orders are deeply disturbing, it is worth noting that a year later, in March 2005, when the Minister for Internal Security announced a shoot to kill policy the Police Commissioner refuted the policy¹¹² and the Minister later retracted his statement in Parliament.

3. Abuse of due process

Even where a proper system of checks and balances is in place, police officers sometimes secretly subvert the system to unlawful ends or to achieve a particular result – this is an abuse of due process. Tampering with evidence, intimidating witnesses and allowing corruption to change the outcome of a case all constitute common abuses. The Kenyan Standing Committee on Human Rights in its seventh report published May 2003 found a:

"...tendency by errant police officers in conspiracy with prosecutor counterparts; to abuse the court process by instituting fabricated or trumped up charges as cover up for malpractice in the course of duty. Indications are that this course of conduct is systematic and widespread within the police force. It is habitually used to cover up arbitrary arrests, illegal detentions; bribery and extortion; to legitimise police conduct and absolve the police department of blame."¹¹³

In Kenya, some abuses of process are classified as disciplinary offences under the Police Act, while others are criminal offences under the Penal Code. Only the Attorney General has the power to institute criminal proceedings for offences related to abuse of office. This takes the burden of the prosecuting decision off operational officers. However, in a system where supervision is weak it allows for an extra layer of management in which decisions can be delayed, information diluted and responsibility obscured.

Abuse of due process takes many forms

Examples abound of overt police corruption, where threats of criminal proceedings are made or charges are documented in order to extort money or where cases are dropped on payment of a bribe. However, abuse of process is not always so blatant; it can be found in false representations, in refusal of bail and in intimidation or deliberate delay so that witnesses tire of attending court.

Delay in investigation: Where there is a death in custody, it is mandatory for there to be a post mortem, an investigation by the Commanding Officer in the station and for a file of evidence to be presented to a magistrate who can then order a public inquest.¹¹⁴ However, in practice, it is not uncommon for such cases to be delayed by the investigating police.

Delay in supplying forms: Professor Yash Ghai reported during the Roundtable Conference on Policing in 2002¹¹⁵ that citizens testifying during the Constitution of Kenya Review hearings had complained that they were routinely refused P3 forms by police in cases of alleged police misconduct or criminality. A P3 form is the form on which medical staff report an injury in criminal investigations.

Falsifying evidence: On 1 December 2003, a woman held in custody at a police station was allegedly raped by a police officer. The woman was suspected of stealing from a fellow passenger on a bus from Nairobi. The woman claimed that she had been forced to put her fingerprints on a letter that recanted her statement complaining of rape. She was reported in the newspaper as saying “He [the officer] read me the letter and boasted that I could take him nowhere since I had already signed [a] letter which stated he had not raped me.”

Intimidation of witnesses: The Daily Nation reported on the acting Chief Government Pathologist, Dr Moses Njue, and his experience of police intimidation on 13 July 2004. “The police threatened me with death. They put me in their cells several times following my findings which claimed that the suspect was tortured,” the newspaper reported him as saying in court. Njue was suspended after releasing a post mortem that implicated the police in the death of the victim. He was finally dismissed in May 2003, indicating that seniority and status as a government public servant is no protection against police officers’ attempts to pervert the course of justice, breach their own disciplinary code, commit criminal offences and violate human rights.

4. Culture of secrecy supports criminality

The way the Kenyan police operates, the level of police misbehaviour and institutional reaction to misconduct are shrouded in secrecy. This secrecy, coupled with the community’s negative conception of the police, allows corruption and criminal behaviour to flourish within the force.

The culture of secrecy exists from senior to junior ranks. Presidential control of the police reinforces the secrecy and lack of transparency because there is no obligation on the President to consult with other officials in making policy for the police force, nor is he required to disclose the nature of his instructions to the police. This lack of openness means the public never know whether their dissatisfaction with the conduct of the police force relates simply to an individual police officer, a general police practice or a specific political command. When a member of the public comes to lodge a complaint against the police, simple information on how to lodge, and what happens to a complaint once it is submitted, is difficult to access.

As noted earlier, figures on police prosecutions are not readily available; there is little information about how disciplinary procedures work in practice, how many officers are disciplined, the reasons for the discipline and what punishment was meted out. A small amount of information on numbers disciplined and numbers of complaints recorded is available in police Annual Reports, but these documents are not easily accessible, especially in the absence of a right to information law. In fact, there is debate about whether the reports are subject to the *Official Secrets Act* and therefore cannot be released to the public.

When the NARC Government came into power, it was hoped that public officials would become more transparent. But, after a year in office, in April 2004, the Head of the Civil Service and Secretary to the Cabinet issued a circular reminding public servants of the existence of the *Official Secrets Act* and threatening to take action against any public servant releasing government information to “unauthorised persons”.

The *Official Secrets Act* is broadbrush in its definitions of what is subject to classification. It is a criminal offence, punishable by up to 14 years imprisonment, to possess a government document,

or to transfer a government document to any person, for “any purpose prejudicial to the . . . interests of the Republic [if that document] might be . . . directly or indirectly useful to a . . . disaffected person”.¹¹⁶ Unsurprisingly, under this legal regime, most officials of the Kenyan Government, including senior police officers, have been reluctant to reveal even the most innocuous government documents.

Conversely, the right to information has long been recognised as a fundamental human right. In fact, Article 79 of the Constitution of Kenya, which guarantees freedom of expression, includes the right of “freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons)”.

In January 2005, the Government released a draft Freedom of Information Bill. Unfortunately, the Bill has many flaws and needs to be redrafted in order to make it effective and user friendly. The wording of the Bill is unnecessarily complicated, which would discourage many ordinary citizens from using it. The current Bill also attempts to exempt considerable amounts of government information – even allowing Ministers to effectively veto information disclosure. This does not accord with the international best practice principle of maximum disclosure and minimum exemption. The current Bill needs considerable work to bring it in line with best practice and ensure that it gives Kenyans a meaningful right to information, and a tool to use to promote police accountability.

Secrecy affects internal efficiency

Secrecy does not just mitigate against external accountability it also puts obstacles in the way of efficiency within the force. If police officers are not given sufficient information to make informed decisions, they are reduced to merely obeying orders or to exercising their discretion without the full facts. There are even examples of the various coercive arms of the state being unable to coordinate effectively due to internal failures to share information. For example, a “bitter row” was reported between the Administration Police and the Criminal Investigations Department when the Administration Police ordered the release of a politically connected suspect whom the CID had intended to interrogate.¹¹⁷


5. Impunity is at the heart of the problem

Police criminality and misconduct are based in impunity. The police are charged with protecting the public from illegal conduct, however rife criminality within police ranks reflects a belief that police illegality will go unchecked. The state is either complicit in or acquiescing to police criminality.

The story is not all bleak. There are examples of misconduct being dealt with. The US State Report on Human Rights published in February 2005 stated that during 2004:

“...the Government took some steps to curb abuses by security forces. According to an IMLU report at the beginning of the year, out of 45 unlawful killings committed by police in recent years, the Attorney-General had ordered an inquest into only 3 of the cases. However, during the year the Government opened several more investigations into allegations of unlawful killings, some of which resulted in the arrest of police officers.”¹¹⁸

There are also records of prosecutions against police officers, and disciplinary proceedings have been pursued in isolated circumstances. For example, in July 2005, four senior police officers



were charged with stealing 250,000 KSh from the Government. Gigiri police boss Kegode Kidiava, his deputy Sylvester Githungo and divisional Quartermaster Paschalina Nthenya Nzoi appeared in court charged with six counts of fraud and an arrest warrant was issued for a fourth suspect, Ms Grace.¹¹⁹

However, prosecutions or action against misconduct is far from automatic. The majority of police misconduct is not dealt with, and police continue to act in inappropriate and illegal ways without fear of reprisal.

CHAPTER 4

LACK OF ACCOUNTABILITY DUE TO ILLEGITIMATE POLITICAL INTERFERENCE

The Kenya Police Force's colonial birth has meant that illegitimate political interference is embedded in its culture. There are no structures in place to limit the power of the various actors who have a role in police governance. For example, the President's power to appoint and remove the Police Commissioner allows him to directly influence the policy and operational decisions of the Commissioner – and there is historical precedent for this. Illegitimate political interference is entrenched in both law and habit.

Interference at election times

According to the Kenya Human Rights Commission, 1,500 men and women were killed and 300,000 were left homeless in politically motivated violence between 1991 and 1996.¹²⁰ In incidents connected with the 1997 elections, 2,000 people were killed and 400,000 displaced.¹²¹ More recently, the 2002 elections were also tainted by police repression of political opposition. For example, on 23 February 2002, police in Taveta cancelled an opposition political rally: the Taveta Officer Commanding Police Station, Andrew Ochieng, led anti-riot police officers in blocking entry to the venue to prevent the rally from going ahead. In another example, former Gatundu MP Moses Mwihia and five members of an opposition party (the Green Belt Movement) were charged with holding an illegal procession in Thika town. Even police officers were not immune: in October 2002 three police officers were immediately dismissed for stating, while off-duty, that they supported the opposition party.¹²²

1. Entrenched by law

The police legal framework entrenches the ability of the executive to interfere with the operations of the police. Most significantly, Article 108(1) of the Kenyan Constitution vests the President with complete authority over the police force through the unfettered right to appoint and terminate the Commissioner of Police who in turn has control of the force. Controlling one of the key coercive arms of the state strengthens presidential control over all other aspects of government operation. The President's authority over the Commissioner of Police is absolute. First, Kenyan law affords neither Parliament, nor any other body, any role in appointing or removing the Commissioner of Police. Second, the President is given complete discretion over the appointment – without having any guiding criteria. Third, the Commissioner has no fixed term of office, which means that he or she serves entirely at the whim of the President. Lack of security of tenure is a particularly serious problem as it creates a clear incentive for a Commissioner to succumb to pressure and 'keep the President happy' out of fear of losing his or her job.

The Public Service Commission has the discretion to appoint and remove persons holding or acting in ranks of Assistant Inspector and above.¹²³ The Commission can delegate its powers of appointment to the Commissioner – who in turn is the President's appointee – although this delegation has not been made. All other appointments are under the control of the Commissioner of Police – either directly or under his or her delegation.¹²⁴

Appointing the Police Commissioner

A former Commissioner of Police, Kamau Ngotho, described the circumstances of his own appointment under President Moi in a 2003 newspaper article.

“The night before his appointment, the Commissioner received a call summoning him to State House first thing in the morning. “On arrival, I was abruptly ushered into an empty room and left alone for almost an hour. For once I thought I was under arrest and headed for detention.” Then he was ushered into the President’s office and found the Head of State and Chief Secretary waiting. Without any ado, the President handed him a one-paragraph letter that read: “Owing to the confidence I have in you, I have appointed you the Police Commissioner with immediate effect. I hope you won’t betray my trust.” The air was heavy and the room tense and as the new Police Commissioner made to leave, the President beckoned him to sit down. “You are going to wait here until I give you the green light to go to your office,” the President said. Then turning to the Chief Secretary he ordered him to go and arrest the just dismissed Commissioner, and telephone back with confirmation the ex Commissioner was on the way to Kamiti prison. No-one said anything more. In less than half an hour, the Chief Secretary called back to say that the former Commissioner had indeed been arrested from his office by the head of operations at the CID headquarters, and was on his way to Kamiti Maximum-Security Prison. The President turned to the new man and said: “You will now go straight to the office and start working.”¹²⁵

The President also has the right to declare an emergency, displacing the Commissioner of Police and allowing the President to give operational direction to the police forces. Section 85 of the current Constitution consolidates this power by granting that “the President may at any time . . . bring into operation, generally or in any part of Kenya, Part III of the *Preservation of Public Security Act*”,¹²⁶ which, in turn, makes it “lawful for the President . . . to make regulations for the preservation of public security”.¹²⁷ The range of subject matters upon which the President is explicitly authorised to make regulations is extraordinarily broad and incorporates the entire range of ordinary police functioning. These subject matters include:

- detention;
- restriction of movement (into, out of or within Kenya);
- compulsory movement of persons;
- imposition of curfews;
- censorship, control and prohibition of communication;
- prohibition of any meeting;
- compulsory property acquisition;
- suspending the operation of any law; and
- any other matter “expedient for the preservation of public security”.¹²⁸

Section 85 of the Constitution provides that a presidential order bringing Part III of the *Preservation of Public Security Act* into operation shall expire after 28 days without parliamentary approval.¹²⁹ However, this provision is rendered meaningless in two ways. First, the President is empowered to issue a new order bringing Part III of the Act into immediate effect upon the expiration of any prior order.¹³⁰ Second, the 28-day period does not run during any period in which Parliament has been dissolved,¹³¹ and, under the Constitution, the President “may at any time dissolve Parliament”.¹³²

Thus, either by the serial issuance of orders, or by the long-term dissolution of Parliament, the President is empowered to establish himself as the final and essentially permanent authority in the legality of all arrests, all detentions, all searches and seizures, and is the final arbiter of whether any public meeting or assembly can take place. In a system where the President has complete authority over the appointment and tenure of the head of the police and where the President can, at any time, essentially take over command of police operations, presidential control will be, in practice, complete.

2. Old habits die hard

When the NARC Government came into power in January 2003, the new President appointed a new Police Commissioner, Edwin Nyaseda. Just over one year later, in April 2004, the President summarily dismissed the Commissioner and appointed a serving member of the army, Brigadier Hussein, to head up the force. As discussed earlier, this was highly controversial – both because the new President was relying on the appointment methods of the past, and because the new Commissioner was from the military, which is more often associated with imposing law and order by force rather than with the flexibility and discretion required for effective democratic civilian policing.


At local levels, there has also been concern that the NARC regime has not brought a new approach to policing. For example, when public concern was voiced about “the release of a politically well connected suspect” by a provincial police chief in February 2003, he said he ordered the suspects release on instructions from ‘above’, but declined to specify from whom these instructions had come.¹³³

The NARC Government has room for improvement

After the 2002 elections, there were high hopes of police reform, however, reforms did not take place. In April 2004, the press reported an incident where the Assistant Minister of Provincial Administration and Internal Security, who was trying to lead a group of demonstrators to a disputed piece of private property, told a police officer he was his ‘boss’ and his orders took precedence over any police orders. The police officer stood his ground and ordered his officers to fire teargas at the demonstrators when they attempted to forcibly gain entry into the property. Barely two days later, the officer, along with 56 other police officers, was forcibly retired from the force.

The Government has maintained that the incident had nothing to do with the officers’ subsequent dismissal. Parliament took up the issue, but to no effect. The then newly appointed Police Commissioner, who is as vulnerable to summary dismissal as the 57 officers, has supported the government position on this issue. In the absence of an explanation, it is not surprising that suspicion remains that political interference is still rife.

Although instances of political interference are still occurring, at the higher levels there appears to be a genuine commitment to resisting attempts at political interference. For example, in 2003, the Provincial Administration and National Security Minister acknowledged the problem of interference when he formally instructed police commanders to resist pressure from outside the police chain of command. He is reported to have assured the police, “I have word from the President that there shall not be orders from anywhere else except your immediate superiors”.¹³⁴ Such statements are essential, and if such commitments are maintained, they could signal a real



entry-point for more sustainable efforts at entrenching police accountability. In March 2005, an executive shoot to kill order by the Minister of Internal Security by the Minister of Internal Security was retracted when the Commissioner stated in an interview a few days later that:

“Such things will never happen under my watch. I will have no hesitation to take such people to court because the law applies to all of us and it applies to all of us equally.”¹³⁵

The Commissioner has also been robust in denying any political interference in his work and has taken personal responsibility for the force. When asked if politicians influence his decisions he stated:

“I have not experienced any situation of that nature at all. Police work by the law. Nobody tells them whom to arrest or whom not to arrest. For the year I have been here, I will be categorical and tell you that nobody, not even one, has tried to influence the decisions I make. You can quote me on that one.”

CHAPTER 5

DEMOCRATIC POLICING: A CONCEPTUAL FRAMEWORK

“The role of the police is to help achieve that social and international order. They must, for example, uphold the laws that safeguard the lives of citizens. There should be no conflict between human rights and policing. Policing means protecting human rights.”¹³⁶

- *Independent Commission on Policing for Northern Ireland*

The British colonial legacy of regime policing lives on in many countries of the Commonwealth. This means that the police are still accountable to the ruling powers alone; above and beyond their responsibility to their community. Today, membership of the Commonwealth is premised on the basis of democracy – and a democracy needs a democratic, accountable police force. This chapter looks at the conceptual framework that surrounds the ideas of democratic policing.

Colonial or regime policing means the police are protectors of government, rather than citizens. It often exhibits a focus on the maintenance of law and order, without any reference to the protection of human rights. Under colonial policing, the police:

- answer predominantly to the regime in power and not to the people;
- are responsible for controlling populations, not protecting the community;
- tend to secure the interests of one dominant group; and
- are required to stay outside the community.

Democratic policing is the alternative. It is rooted in the idea of accountability. A democratic police organisation is one that:

- is accountable to the law, and is not a law unto itself;
- is accountable to democratic structures and the community;
- is transparent in its activities;
- gives top operational priority to protecting the safety and rights of individuals and private groups and protects human rights;
- provides professional services; and
- is representative of the community it serves.

1. Policing and human rights

“...the police force of a democracy is concerned strictly with the preservation of safe communities and the application of criminal law equally to all people, without fear or favour.”

- *United Nations International Police Task Force, 1996*

The police are the gatekeepers of the criminal justice system. They are the first, and often only, interaction that members of the community will have with the justice system. The police, as a primary agency responsible for protecting civil liberties, are responsible for turning the promise of human rights into reality. Failure to protect the human rights of a community is a failure of the police. Where police are active in committing human rights violations against their community, policing has failed on more than one level.

Respect for human rights is central to how the police do their work. Unlike any other branch of government, the police are given wide powers, including the authority to use force against citizens. This power to infringe on citizens' freedoms carries with it a heavy burden of accountability. Good systems of governance require that the police account for the way they carry out their duties, especially for the way they use force. This ensures that the police carefully consider the methods they use to protect peace and order, and that incidents of police misconduct or abuse of their powers will be dealt with harshly.

Community policing is strongly associated with a more modern approach to policing. However, even undemocratic regimes have introduced forms of 'community policing' (for instance in apartheid South Africa) and the name can mean different things to different people. Democratic policing is a more useful term because it has a more specific meaning. Democratic policing is appropriate across the Commonwealth, because its key elements are the same as those that bind the Commonwealth.

2. Hallmarks of democratic policing

A democratic police force:

- ◆ is accountable to the law, and not a law unto itself. Democratic police institutions demonstrate a strong respect for the law, including constitutional and human rights law. The police, like all government employees, must act within the law of the country and within international laws and standards, including human rights obligations laid down in international law. Police officials who break the law must face the consequences, both internally through the discipline systems of police organisations, and externally, in the criminal justice system.
- ◆ is accountable to democratic government structures. The police are an agency of government and must account to the government. In a democratic system, the police account to elected representatives of the people – for example, parliaments, legislatures or local councils – for their performance and use of resources. Democratic police institutions also account 'horizontally' to other agencies of government, such as the Treasury or Finance Departments for their financial performance, and the Public Service Commissions or Departments of Administration for their adherence to civil service codes and administrative policy.
- ◆ is transparent in its activities. Accountability is facilitated by transparency. In a democratic system, most police activity should be open to scrutiny and regularly reported to outside bodies. This transparency applies to information about the behaviour of individual police officers as well as the operation of the police organisation as a whole.
- ◆ gives top operational priority to protecting the safety and rights of individuals and private groups. The police must primarily serve the people. The police should be responsive to the needs of individual members of the community – especially to people who are most vulnerable.
- ◆ protects human rights, especially those which are required for political activity characteristic of a democracy. Democratic policing implies policing which is supportive and respectful of human rights, and which prioritises the protection of life and dignity of the individual. This requires the police to make a special effort to protect the freedoms that are characteristic of a democracy – freedom of speech, freedom of association, assembly and movement, freedom from arbitrary arrest, detention and exile, and impartiality in the administration of law. A democratic approach can place the police in a difficult position, if, for example, they are required to enforce repressive laws,

and simultaneously protect human rights. These situations call for the skilful exercise of professional police discretion, which should always lean towards the prioritisation of human rights.

- ◆ adheres to high standards of professional conduct. Police are professionals whose behaviour must be governed by a strong professional code of ethics and conduct in which they can take pride, judge themselves and each other and against which they can be held accountable.
- ◆ is representative of the communities it serves. Police organisations that reflect the populations they serve are able to better meet the needs of those populations. They are also more likely to enjoy the confidence of the community and to earn the trust of vulnerable and marginal groups who most need their protection.

Regulating the use of force: a key issue for democratic policing

Police are authorised by law to use force. However, in many dictatorships, one party states, and even in some democracies, police powers are misused as instruments of the ruling regime to maintain control over the population at large. In accountable police systems, the use of force is regulated and exercised within the context of larger legal frameworks such as international law and state obligations, domestic law relating to policing, individuals' rights and the operation of the criminal justice system. Policing is also defined by professional regulations and codes of conduct and rules as well as the law as it applies to every citizen.

3. Benefits of democratic policing

Implementing a more democratic approach to policing provides positive benefits for the community, police officers, and the police organisation. One benefit is a stronger sense of safety in the community. Another benefit is that crimes are more likely to be prevented and solved – as the public begins to see the police service as an ally in keeping the peace rather than an instrument of oppression, they are more willing to share information which can help to prevent and solve crime.

Additionally, showing commitment to democratic policing can be a way of building the case for more resources to fund improved policing – people are more willing to support the use of limited government funds when they believe public money will benefit them. And, finally, improved accountability will generate greater respect for the police and police officers – people's views of the police will change, as the police become part of the community rather than outside it. This is vital to the morale, effectiveness and professional pride of police staff.

4. Dimensions of police accountability

There are commonly four types of accountability or control over police organisations:

- ◆ State control – The three branches of government – legislative, judicial and executive – provide the basic architecture for police accountability in a democracy. In a thriving and active democracy, the police are likely to be regularly held to account in all three halls of state; by Members of Parliament in passing legislation, the criminal and civil justice system and by government departments such as Auditors-General, service commissions and treasuries.
- ◆ Independent external control – The complex nature of policing and the centrality of police organisations to governments require that additional controls are put in place.

At least one such independent civilian body is desirable in any democracy, although many Commonwealth countries enjoy the services of a number. Institutions such as Human Rights Commissions, Ombudsmen and public complaints agencies can play a valuable role in overseeing the police and limiting police abuse of power.

- ◆ Internal control within the police organisation, such as disciplinary systems linked to a public complaints systems, training, mentoring and supervision and systems for recording performance or crime data.
- ◆ Social control or 'social accountability' – In a democracy, the police are publicly held accountable by the media and community groups (such as victims of crime, business organisations, local neighbourhood groups or NGOs). In this way, the role of holding the police accountable is not only left to the democratic institutions that represent the people, but also ordinary men and women who themselves play an active part in the system of accountability.

There is no hard and fast rule about the form good police accountability should take. This will depend very much on the circumstances of each country and the nature of the existing relationship between the police and the community. Mechanisms within the police service are essential - "all well functioning accountability systems are grounded, first and foremost, on internal police mechanisms, processes, and procedures".¹³⁷ External scrutiny is also needed and the basics for this are external oversight by:

- ◆ democratically elected representatives (in national parliaments if police are structured at the national level, in state legislatures if police are organised at the state level, and in local councils if policing is organised at the local level);
- ◆ an independent judiciary;
- ◆ the executive, through direct or indirect policy control over the police, financial control, and horizontal oversight by other government agencies such as Auditors-General, Service Commissions and Treasuries; and
- ◆ at least one independent statutory institution, such as an Ombudsmen or a Human Rights Commission, or, ideally, a dedicated body that deals with public complaints about the police.

5. Transparency: an essential precursor to accountability

"The police service should take steps to improve its transparency. The presumption should be that everything should be available for public scrutiny unless it is in the public interest – not the police interest – to hold it back."

¹³⁸

- *The Independent Commission on Policing for Northern Ireland 1999*

Accountability means transparency. People cannot hold police accountable if they do not have information with which to assess police conduct and to prove misconduct or malpractice. Nor can the police properly perform their policing functions or protect themselves and their colleagues if they do not have access to information.

One of the most effective ways of ensuring transparency is to operationalise the right to information. Maximum information disclosure can support police accountability, with few drawbacks. As long as law enforcement information that is genuinely sensitive is protected, there can be few security reasons why the police should not at least make available basic information such as

departmental rules, policies and procedures, data about the occurrence of crime, details of incidents involving the use of force, internal discipline outcomes and the particulars of budgetary allocations and procurements.

International experiences: the right to information can promote police accountability

Proactive disclosure of information can be an excellent way of promoting accountability. For example, routinely publishing the police budget and regular updates on expenditure can reduce corruption by making it more difficult for officials to misappropriate public funds. Coupled with the right to request information, the right to information can also empower the public to access detailed information on how funds are being allocated at the micro level and whether they are being spent efficiently and effectively.



CHAPTER 6

KENYA'S LEGISLATIVE FRAMEWORK

Policing in Kenya is subject to a great deal of regulation. This ranges from Constitutional articles that provide rights to the citizen; to the specific laws that govern the establishment and discipline of the police (including the Police Act, Police Regulations and Standing Orders); to the general laws of the land that govern the criminal justice system. Together, these all provide the legislative framework within which the police must function. In addition, the scheme of international treaty obligations created by Kenya's membership of such bodies as the United Nations, the Commonwealth and African Union also oblige Kenya to import and conform to agreed international standards for policing. However, Kenya's domestic legal framework does little to promote accountability or to implement international standards of good police behaviour.

1. The constitutional framework

As discussed in Chapter 1, the independence Constitution envisaged a police service independent of the executive and accountable to autonomous bodies. In particular, the police force was to be set up by legislation and overseen by a Police Service Commission, with all matters pertaining to its organisation overseen by a National Security Council. The Inspector General of Police was to be appointed by the President on the advice of the Police Service Commission.¹³⁹ However, through a series of amendments that culminated in a one party state in 1982, these accountability initiatives were never implemented.

Consequently the police have been placed firmly under the executive thumb. Most problematically, as discussed previously, the power to appoint and dismiss the Police Commissioner sits with the President, negating police autonomy in practice. The control over the police is necessary to prop up the ruling regime, muzzle opposition, curb political activity and dissent.

2. Redrafting the Constitution

Attempts have been made to implement constitutional reform in Kenya. In 2001 and 2002, a public consultation process resulted in the drafting of a proposed constitution, known as the Bomas draft. This draft was substantially amended by the NARC Government to become the Kilifi, or Wako draft, which was put to the people in a yes/no referendum in November 2005. The referendum returned a no vote, and Kenya retained its original flawed Constitution.

An analysis of the key provisions of the draft is useful, as it illustrates the reform ideas that were being discussed in Kenya. It is also useful to consider given the wide public consultation that led to the drafting of the Bomas proposal. The Bomas draft sought to reverse the President's near monopoly over the police by establishing multiple levels of accountability, with a particular focus on police autonomy in day to day operations. It included:

- parliamentary accountability for police performance;
- the establishment of a Police Commission and a National Police Security Council, both with operational responsibility for the police and Administration Police forces;
- judicial independence; and
- the establishment of mechanisms to give full effect to an expanded Bill of Rights.

Additionally, the appointment and dismissal of the Police Commissioner was dealt with. While the President retained the power to appoint the Commissioner (but only with the approval of the National Assembly¹⁴⁰), the Commissioner could only be removed on the recommendation of a specially constituted tribunal.¹⁴¹

Public service standards under the proposed Constitution

Article 245(1) of the proposed Constitution set out the guiding principles of the public service. As public servants themselves, police officers have a duty to live up to these standards, which should guide any policy and reform process within the police force:


- (a) maintenance and promotion of a high standard of professional ethics;
- (b) promotion of efficient, effective and economic use of resources;
- (c) effective, impartial, fair and equitable provision of services;
- (d) encouragement of people to participate in the process of policy making;
- (e) prompt, efficient and timely response to people's needs;
- (f) commitment to the implementation of public policy and programmes;
- (g) accountability for administrative acts of omission and commission;
- (h) transparency fostered by providing the public with timely, accessible and accurate information;
- (i) merit as the basis for appointments and promotions (subject to (k) below);
- (j) adequate and equal opportunities for appointments, training and advancement of men and women and the members of all ethnic groups; and
- (k) reflection of ethnic composition of the population in the composition of public service at all levels.

3. Domestic laws

Kenya has extensive experience of bad domestic law being passed to legitimise government misbehaviour, such as the passing of the *Preservation of Public Security Act* or the *Communications Act* and the *Miscellaneous Amendment Act*, which curtailed media activities. These laws have compromised the police, as the police are required to enforce laws that are partisan and repressive.

Relevant domestic legislation that impacts the police includes:

- the *Penal Code*: Codifies the behaviour that is considered a criminal offence in Kenya. Notably, the police themselves can also be prosecuted under the Code; for example, an extra-judicial killing can be prosecuted as murder under the Code.
- the *Criminal Procedure Code*: Sets down procedures to be followed by all criminal justice agencies in criminal investigations and criminal legal proceedings in Kenya. The Code applies to the police, the prosecution, the judiciary and court administrative staff. Police officers can be held accountable by the Court if they do not investigate and process cases in accordance with the Code.
- the *Evidence Act*: Details specific standards of procedure in relation to evidence. The Code specifies what will be considered evidence in court and is designed to set a standard to which all parties will be held accountable. For example, confessions are only admissible if made before a Magistrate in Court. This recognises that confessions are too often procured through the use of torture. By disallowing such confessions in all circumstances, the police will have to focus on different types of evidence, such as forensic evidence, witnesses, or corroborative evidence.

- 
- *Anti-Corruption and Economic Crimes Act*: Builds on the *Prevention of Corruption Act*, by expanding the definition of corruption to cover abuse of office, misappropriation, plunder of public resources, and conflict of interest. It also establishes the Kenya Anti-Corruption Commission, which has powers of investigation and asset recovery functions, but not prosecution. This body could be used to process claims of corruption against the police, although it appears to be focusing on more high profile incidents of corruption. The Commission has been functioning since the second half of 2004, when its senior ranks were filled. The Commission has taken on a large volume of work, and has opened a high number of previously closed files related to corruption issues. Doubts have been expressed as to how effective the Commission will be, given the volume of its work and the political climate in which it operates.
 - *Public Officer Ethics Act*: Provides for a mandatory code of conduct for all public servants, including the police and politicians prohibiting dishonesty, nepotism, and conflict of interest. It also requires all public officers – including the President – to declare assets both at the beginning and end of each financial year.

4. International standards

Kenya is part of the international community of nations through its membership of the United Nations, the Commonwealth and the African Union. International agreements that govern policing should be reflected in Kenyan law and practice.

4.1. United Nations standards

Key United Nations documents related to policing are captured at Annex 1.

In Kenya, incorporation of international norms into domestic law is not automatic – it requires specific legislation to be enacted. Whilst this has been done in some key areas, there are still glaring gaps. In fact, recently the United Nations Human Rights Committee – which has oversight over compliance with the International Covenant on Civil and Political Rights (ICCPR) – noted that “the Covenant has not been incorporated into domestic law and that the provisions of international human rights instruments, in particular the Covenant, are not in practice invoked in courts of law”. The Committee recommended that appropriate steps be taken to ensure that Covenant rights can be invoked in Kenyan courts, but this has not yet been done.

International standards: their value to policing in Kenya

In agreeing to abide by certain basic norms of proper state behaviour Kenya has also agreed to certain ongoing duties, including reporting to oversight bodies. In April 2005, the United Nations Human Rights Committee examined Kenya’s second periodic report in respect of the ICCPR and made its recommendations.¹⁴² The Committee commended the government on a number of measures, but nonetheless regretted that Kenya’s report came 18 years late and did not contain sufficient information how effective implementation members had been, or on practical measures designed to put Covenant guarantees into place.

Among the subjects of concern raised by the Committee, a number relate directly to policing:

- ◆ “extrajudicial killings perpetrated by police units (‘flying squads’) or other law enforcement personnel.” The Committee in particular deplored “the fact that few instances of unlawful killings by law enforcement officials have been investigated or prosecuted, and that de facto impunity for such acts continues to be widespread”;

- ◆ “reports that law enforcement officials responsible for acts of torture are seldom prosecuted”;
- ◆ the extremely high number of custodial deaths and that “police custody is frequently resorted to abusively, and that torture is frequently practiced in such custody”;
- ◆ widespread corruption and other factors that limit access to judicial remedies and frequent failure to enforce court orders and judgments;
- ◆ “reports of the forcible eviction of thousands of inhabitants from so-called informal settlements, both in Nairobi and other parts of the country, without prior consultation with the populations concerned and/or without adequate prior notification”; and
- ◆ large public political meetings require at least three days prior notification under section 5 of the *Public Order Act*, and “public demonstrations have not been authorized for reasons that appear to have nothing to do with the justifications listed in article 21 of the Covenant” and “no remedy appears to be available for the denial of an authorization, and that unauthorized meetings are at times broken up with violence”.

In a key recommendation the Committee stated: “The State party should take more effective measures to prevent abuses of police custody, torture and ill-treatment, and should strengthen the training provided to law enforcement personnel in this area. It should ensure that allegations of torture and similar ill-treatment, as well as of deaths in custody, are promptly and thoroughly investigated by an independent body so that perpetrators are brought to justice.” In particular, High Court judgments in such cases should be enforced without delay.

The Committee asked Kenya to submit, within one year, information on the follow-up to the Committee’s recommendations, including on extra-judicial killings and widespread de facto impunity, torture abuse and death in custody and the need to “provide increased resources for the administration of justice”. At the time of printing, just before the expiry of the one year deadline, no submission had been made to the Committee.


5. Regional mechanisms

A number of regional mechanisms exist to protect human rights that can be affected by policing. They include the African Union (AU), the African Commission on Human and Peoples’ Rights and the African Court on Human and Peoples’ Rights.

5.1. The African Union

The Organisation of African Unity (OAU) was established in 1963 as a forum for the promotion of independent democratic ideals of African countries in the process of emerging from colonial rule. The OAU became the African Union, or AU, in 2002. The African Charter on Human and Peoples’ Rights (referred to as the ‘Banjul Charter’) was adopted by OAU members in 1981 and came into force in 1986. The Charter grants the same civil and political rights protections, directly relevant to policing, as other international instruments such as the Universal Declaration of Human Rights and the ICCPR. For example, the Charter prohibits torture or degrading treatment and detention without trial and recognises the right not to be arbitrarily executed or arrested, the right to a fair trial and impartial judiciary and the right to have effective recourse to justice.

Although Kenya was one of the original signatories to the Banjul Charter, it has not been made accountable for abuses in contravention of international and regional human rights treaties.



Unfortunately, the promotion and protection of human rights within AU member states has not been a major priority for the organisation, as it has focused on political and economic independence, non-discrimination and the eradication of colonialism at the expense of ‘individual’ rights.

A push to strengthen the mechanisms of the AU is currently underway as part of the New Partnership for Africa’s Development (NEPAD) programme.

5.2. The African Commission on Human and Peoples’ Rights

The African Commission on Human and Peoples’ Rights was born out of the Banjul Charter in 1987 to promote and protect Charter rights in Africa. The Commission’s mandate is to investigate and make recommendations to states to carry out investigations and implement measures to prevent the reoccurrence of abuse. The Commission has the potential to be an accountability mechanism for the enforcement of human rights on behalf of a broad range of victims of police brutality, although it has not had any notable successes. This has been attributed partly to inadequate human and financial resources.¹⁴³ Applicants also face procedural hurdles.

5.3. The African Court on Human and Peoples’ Rights

The African Court on Human and Peoples’ Rights was established under the African Charter on Human and Peoples’ Rights but is yet to be fully operational. The first judges were appointed in January 2006, but it is now expected that the Court will merge with the African Court of Justice. Under the Charter, the Court can hear cases brought by signatory states, the Commission, and African intergovernmental organisations. Individuals and NGOs may, at the discretion of the Court, file a petition with the court against a state, on condition that they have exhausted other avenues of relief. However, the Court will only hear the case with the relevant state’s consent.

When deciding cases, the Court has the ability to draw on the African Charter on Human and Peoples’ Rights “and any other relevant human rights instruments ratified by the States concerned”.¹⁴⁴ Thus, complainants can rely on the UN provisions in relation to policing, which allows a broader jurisprudence than the African Charter alone affords. The Court can order appropriate remedies for human rights violations, including payment of compensation or reparation.¹⁴⁵ States recognising the Court are under an obligation to comply with its judgments.¹⁴⁶ The AU Council of Ministers is charged with monitoring the execution of the Court’s judgments on behalf of the AU Assembly.¹⁴⁷ The Pan African Parliament, the Assembly and other institutions are supposed to take responsibility for enforcement – pressuring a non-compliant country into honouring a Court judgment.¹⁴⁸

The Court has not yet looked at any human rights violations by the police.

CHAPTER 7

INTERNAL ACCOUNTABILITY MECHANISMS

“Effective disciplinary systems within the police should be a first-order priority in democratic reform.”¹⁴⁹

Accountability is a key aspect of democratic policing. This chapter looks at internal accountability mechanisms. In a democratic police service, internal mechanisms operate side by side with external mechanisms, which are discussed in Chapter 8. Internal accountability mechanisms complement, rather than replace, other oversight mechanisms. Self regulation is self discipline and still needs to be balanced by external oversight, which promotes public confidence and encourages the internal oversight body to properly discharge its functions.

Internal accountability or self-regulatory mechanisms promote professionalism and responsibility. They are also cheaper and, if implemented properly, can be a faster way of addressing misconduct or poor performance than external mechanisms. Internal systems can be developed to monitor performance, maintain discipline, investigate public complaints against the police, investigate allegations of abuse of power, outright corruption and criminal behaviour and manage any resultant disciplinary procedures. They have aspects of both carrot and stick. Incentives within the police involve regular and more prompt promotions and increased recognition and honours, while disincentives can include dismissal, reduction in rank, reprimand and fines, as well as stoppage, withholding or deferment of extra duty.

In common with many other countries, Kenya’s internal oversight mechanisms maintain strict hierarchies. The Police Act, the Standing Orders and the Police Manual all emphasise obedience. This means that supervisors have a key role in promoting accountability, enforcing discipline and setting the standard for proper behaviour. Senior officers are given a wide discretion to discipline juniors, although there are restricted opportunities for representation, appeal, or complaint to outside authorities.

1. Complaints

Complaints against police personnel can come from a variety of sources, including victims, witnesses and police officers themselves. Complaints by police about police are not common - officers are unlikely to report misconduct by colleagues as it can lead to isolation within the workplace and even violent reprisal. Also, although the Standing Orders specify that the police can make complaints according to certain procedures, using the wrong complaint procedure is itself a disciplinary offence – which is a disincentive to make a report at all.

The Kenyan police specifically recognises the importance of accountability through the complaints system. Chapter 20 of the Standing Orders, which deals with discipline states:

“The investigation of complaints against the police by the members of the public is a matter of great importance and often of considerable difficulty. Such complaints will be the subject of careful and immediate investigation by the most senior officer available. The authority exercised by, and the good name of the Force must depend largely on the confidence of the public that any complaint will always receive full, unprejudiced and immediate hearing and that redress will follow a well-founded complaint.”

Under the current system, the police receive, investigate and resolve complaints themselves. Complaints are usually about individual incidents, and there is no requirement for the police to consider whether the complaint denotes a broader problem or appears to be one of a pattern of problematic incidents.

Whistleblowing can be dangerous

Although intimidation is often directed at junior police personnel who 'blow the whistle' on misconduct by their colleagues, a South African story shows that even senior officers are not immune. In the summer of 2003, a Cape Town police commissioner who had been leading a campaign against corrupt police personnel went public with evidence of a plot to have him executed. Supported in his claims by the Independent Complaints Directorate, he revealed that he had received death threats, probably from a contract put out by corrupt police working with local gangs.¹⁵⁰

In Kenya, MP Paul Muite told a Nairobi court on 15 August 2005 that four police officers, whom he named, killed Catholic priest Antony Kaiser in August 2004 before his body was dumped on the Nakuru-Naivasha road. His source was a senior police officer, who had disclosed the information on condition his anonymity was protected as he otherwise feared for his life.¹⁵¹

A complaint can be made to an officer in the street, but unless urgent, it should be made at the nearest police station or divisional headquarters. The most senior officer available should investigate the complaint immediately. A file will be opened for each investigation, which will paint as clear a picture as possible, with recommendations as to what action should follow. The file should include prescribed information, including witness statements and an investigation diary. Anonymous letters of complaint are ignored.

There is no provision that the complainant needs to be kept informed of the progress of the investigation. The Standing Orders state "the complainant must invariably be informed of the result of the investigation without necessarily indicating the disciplinary action that has been taken". However, the Police Manual requires more, stating that "the complainant must be informed of the investigating officer's finding". The Standing Orders go on to require that "[w]here a fault or an offence by a police officer has been disclosed, a suitable apology will be made".

There is a culture of secrecy surrounding the complaints process. Complainants find it difficult to have a complaint recorded or are sent to other stations, and despite having the right to be informed of the outcome of the investigation in accordance with the requirements of the Police Manual, few ever hear anything further. Senior police officers now concede that the police have not adhered to this requirement.¹⁵² Considering the public's distrust of the police, and in the absence of any information to the contrary, people tend to assume that complaints are not dealt with. As a result, the public regards internal accountability mechanisms with suspicion. This is compounded by the lack of general statistics regarding internal discipline released by the police. Also, the lack of supervision of the internal mechanisms by an external body, which could monitor the progress of complaints or intervene where there is an issue, is one of the major flaws of the current system.

Special internal Courts of Inquiry

Where the usual procedure is not considered sufficient, there is a further means of investigating internal incidents. A Court of Inquiry composed of two or more gazetted officers can be established by the Commissioner or by a Provincial Police Officer to collect and record evidence into any matter pertaining to the force, conduct of an officer, or matters affecting public interest.

The completed report is presented in specified format to the person who ordered the inquiry and this, along with their comments, is sent to the Commissioner. If it is suspected a criminal offence was committed during the inquiry the suspected officer will be cautioned and he or she is to be present during the inquiry so as to have an opportunity to cross examine or call any witnesses.

This procedure could act as a quasi-independent investigator into, for example, suspicions of conspiracy to commit offences of corruption or torture at a particular police station. In practice, details regarding this inquiry have not been made public.

2. Disciplinary proceedings


While the chain of command is the backbone for maintaining high standards of general performance throughout the force, disciplinary proceedings are the formal mechanism whereby police officers are officially held to account for their actions. The Police Act regulations include a list of disciplinary offences. Chapter 20 of the Standing Orders, which deals with discipline, replicates the offences listed in the Police Act regulations.

Misconduct can involve a minor breach of internal regulations, such as falling asleep while on duty.¹⁵³ It can also be a gross misconduct that amounts to a criminal offence, such as extortion or perverting the course of justice by intimidating a witness. The Police Act similarly allows removal of police officers on grounds of having become inefficient¹⁵⁴, or having acted in a way "prejudicial to the peace, good order or good governance in Kenya"¹⁵⁵, the public interest or the interests of the force.¹⁵⁶

The disciplinary process

Disciplinary complaints are considered by an officer. The grade of officer depends on the gravity of the offence alleged. The accused has the rights to at least 24 hours notice of the inquiry hearing, to call witnesses and to ask for the advice and assistance of an officer above the rank of inspector. Such a request will be granted if it is in the interests of the accused; no accused officer may be legally represented. Rules for the hearing are detailed in paragraph 16 of Chapter 20 of the Standing Orders. These detail where a disciplinary hearing may form in absentia, the way non police witnesses shall be called and the procedure of the trial hearing itself - including the rules of admissible evidence. Trial procedure generally follows the format of a criminal trial with the accused being invited to enter a plea, the presentation of the prosecution case, consideration of whether a case has been established, and then the defence is given an opportunity to respond.

If a guilty plea is entered or the accused is found guilty then the sentence is based on: the circumstances of the offence, seniority, length of service, previous record and conduct of the offender, and any mitigating statement. Punishment should be commensurate with the offence and also appropriate to the circumstances of the offender and the reputation of the police force.



Chapter 20 also contains procedure to be followed after sentence and procedures for appeal. The appeals are dealt with by officers of ranks dependent on the gravity of the offence set out in Annex 20. There is also a Provincial Disciplinary Board that meets from time to time to consider all appeals and punishments, including dismissal or removal. The ultimate appellate authority lays with the Public Service Commission for members of the Inspectorate and the Commissioner of Police for all subordinate officers.

Where there is an allegation or evidence of a police officer having committed a criminal offence, the Officer in Charge must report to the Director of Criminal Investigations (DCI) and the Commissioner. The DCI takes advice from a state law officer on pursuing prosecution. Where proceedings are instituted a report is forwarded to the Commissioner. Legal aid may be available for proceedings instituted against the officer in relation to actions taken in the course of duty.

A conviction of a criminal offence can result in removal from the force, but it is not mandatory. Where an officer has been tried and acquitted he or she may have disciplinary charges laid, but only if they do not raise substantially the same issues on which he or she was acquitted. This gives the senior disciplining officers wide discretionary powers on whether to initiate disciplinary proceedings. There appears to be no evaluation of the decisions to initiate proceedings, or the decision made by the disciplining officer. This leaves junior officers vulnerable to senior officers and disciplinary proceedings can become a vehicle for favours and victimisation. However, every member of the police has the right of appeal to the Commissioner of Police.

3. The failure of internal mechanisms

Public and police perceptions apart, the fact that instances of police criminality are a regular feature of the policing landscape shows that internal mechanisms of accountability are not working. Commenting on the Kenya police force's systems of internal accountability, the government's own Standing Committee on Human Rights remarked in 2002 that:

"Despite public statements from the Commissioner of Police on efforts to reform the Police Department and to deal firmly and effectively with police officers who have committed abuses, the disciplinary sanction imposed on officers found guilty of brutality are frequently inadequate. Officers are rarely prosecuted for using excessive force. Investigations of numerous cases alleging torture . . . revealed that the "Code of Silence," in which officers fail to report brutality, destroy evidence or threaten witnesses in an effort to cover up abuses, commands widespread loyalty, contributing to a climate of impunity."¹⁵⁷

The police themselves recognise that they are getting away with indiscipline, abuse of power, corruption and criminality. A concerning 53% of police personnel surveyed by the Kenya Police and Security Research and Information Centre in 2004 considered themselves only averagely accountable, and 14% thought they were low in accountability. This accords with the perceptions of 64% of the population who considered the police low in accountability.¹⁵⁸

4. Good practice

Progressive management strategies are being used more across the world, as police and governments recognise the efficiencies that they bring to the police. Accountability and transparency are key to effective performance management and reporting.

Five of the key principles of modern police management are:

- ◆ Clarity – each police officer knows what the police are trying to achieve and their role;
- ◆ Responsibility – every member of the police is held accountable for his or her actions;
- ◆ Transparency – senior managers' decisions are made openly, in consultation with staff and the community where appropriate - enabling outside scrutiny if necessary;
- ◆ Visibility – within operational limits, the activities of police staff are perceptible both to colleagues, superiors and the public; and
- ◆ Empowerment – responsibility is devolved to the lowest level possible to enable decisions to be taken as close to the front line as possible.

There are indications that this monitoring is being considered for the senior and management ranks of the Kenya police, as part of a broader trend across the government and public service to focus on performance management. However, it is unlikely to filter through to the junior ranks of the police for some time. The East African Standard reported on 16 August 2005 that a three day workshop in Nairobi was underway to train senior officers in readiness for a new monitoring and evaluation regime. The Commissioner was reported as saying "the performance contracts are part of the broader reforms aimed at improving efficiency in the public service".

Records management is a key aspect of performance management. Standing Orders detail the records that should be kept by the police – from operational business to administration and management. However, it is not clear that the quality of the policing that led to the records is ever monitored or followed up on. A performance framework needs to be in place to complement the records management.

CHAPTER 8

EXTERNAL ACCOUNTABILITY MECHANISMS

Accountability to parliament, committees and commissions

Independent external oversight mechanisms are one of the most important ways of promoting police accountability. Although it is preferable to set up specific accountability bodies to oversee the action of the police, existing bodies can also be tasked with holding the police to account. In fact, considering the costs involved in setting up separate bodies, this is often a first option for cash-strapped countries. Of the bodies available to act as police watchdogs, parliament is one of the most effective and most important. However, permanent and ad hoc committees and commissions also offer a useful avenue for handling police problems.

1. Parliament

As discussed, in Kenya the President has kept a tight hold of the police, which means that its parliament has been under-utilised as an oversight and accountability mechanism. International best practice supports an independent role for parliament in keeping the police under scrutiny. Parliament has the power to question police wrongdoing, to correct systemic faults by passing new laws, to seek accounts of police performance, and to keep policing under constant review. Members of Parliament have many routine opportunities for police oversight through question time, annual departmental reviews (particularly at budget allocation time), and by examining policing issues through the parliamentary committee system. High constitutional moments, or times when public interest in policing is deeply engaged may also provide legislators with opportunities to radically reform police systems.

1.1. Using question time effectively

“Question time in Parliament is not a contest between the Minister and MP. The Questions are brought here to redress grievances of Kenyans.”¹⁵⁹
- *The Speaker, 5 March 2003*

One of parliament’s most effective oversight tools – if used properly – can be question time, when any MP has the power to query a member of the government. Below is a table that sets out the numbers of policing related questions asked by MPs in the House from 1999–2003. This also includes the number of responses given. It is positive to note that in 2005, for the first time, almost all questions received a response. Diverse topics have been raised – for instance, during 2000, 13 of the questions that received government responses related to allegations of extra-judicial killings or deaths in police custody. The responses were generally aimed at providing reassurance that action was being taken, for example, by promising to conduct an investigation and report to the House or by undertaking to report back within 21 days in instances where investigations had been opened into alleged police killings.

Year	Number of questions raised	Number of responses
1999	50	28
2000	73	47
2001	62	45
2002	32	26
2003	30	13
2004	43	20
2005	42	41

It is positive that there are some signs that question time is providing some oversight and is addressing the concerns of the public. For example, the narratives of some of the questions revealed how responsive some MPs can be to their constituents, as when the Minister of State, Mr Gitonga, described in a question how his constituent Mr Ndirangu was shot by police from Kibicho police station in September 2002. Someone telephoned the MP who was able to go straight to the dispensary where the constituent was lying. The MP asked a question in the House regarding this incident less than two months later.

Similarly, it was encouraging that the Deputy Speaker was willing to use his power to intervene if not satisfied with the answer, for example, when Mr Kochalle (then Assistant Minister in the Office of the President) was asked in April 2002 about the alleged perversion of the course of justice by a police officer, the Deputy Speaker intervened and deferred the question for a better answer because he was not satisfied with the answers given.

MPs asked a range of questions, covering public security generally, but also raising specific issues about police welfare and police conduct. Questions on police welfare ranged from inquiring about the financial compensation fund to benefit families of officers killed on duty (by asking why the family of an officer who was killed on duty in 1996 still had not been compensated), to lack of resources available to police (by asking why the telephone line at Maragwa Police Station had been disconnected for non payment of the telephone bill).¹⁶⁰ The questions also touch on all aspects of police activity including the effectiveness of accountability mechanisms. For example, in June 2002, MP Dr Kalunda asked why no action had yet been taken against District Officer Mr Peter Orare who five years previously had allegedly knocked out two of complainant Mr Saul Waka's teeth.

There were however occasions where the question was dropped, due to the absence of the relevant MP at the time the question might have been answered. This suggests that parliamentary questions are treated as personal concerns of the individual MP, rather than matters of concern to the whole House, the constituents and the public.

1.2. Monitoring police through the committee system

Parliamentary committees are another key accountability mechanism – drafting committees offer an opportunity for MPs to shape the legal framework for policing, while standing committees act as a useful oversight mechanism. In Kenya, the *National Assembly (Power and Privileges) Act* and Standing Orders of the House confer powers onto Committees, which enable them to

oversee nearly every aspect of parliamentary work. They have the power, for example, to order persons to attend to give evidence, which means that they can call on police officials to directly account for their actions and decisions.

In Kenya, the Departmental Committee on Administration, National Security and Local Authorities and the Departmental Committee on Administration of Justice and Legal Affairs are the key fora in which policing related issues arise. As such, the MPs who sit on those Committees can play a key role in police oversight by asking probing questions and by proactively scheduling hearings directed towards obtaining feedback on police accountability issues, such as the effectiveness of the police complaints system, disciplinary procedures and supervisory channels.

Similarly, at budget time, MPs can use the Public Accounts Committee (PAC) – or even the House itself – to scrutinise the police budget allocations and expenditures, particularly in the context of past performance. The PAC has the responsibility to vet all public accounts as presented by the Office of Controller and Auditor General. The police budget falls under the Office of the President (OP) which, like every other department, prepares a proposed budget, presents it to Treasury and then submits it to the Parliament for approval. At that point, MPs have an opportunity to ask questions about what the money will be used for and can use the opportunity to strategically raise other reform and accountability issues. At the end of the year, the police report to the OP, which, like other departments, submits accounts to the Auditor General who in turn submits reports to the Public Accounts Committee and the Public Investments Committee. MPs on these Committees can make the most of the opportunity to monitor police performance more broadly.

1.3. Underdevelopment of parliamentary oversight

Although in theory many options are available for parliamentary oversight of the police, the Kenyan Parliament never had a real opportunity to develop its oversight capability, as the centralisation of power began almost immediately after independence. Years of executive dominance, a one party system and tight control exercised by the party over MPs mean the Parliament has only a limited oversight role. The strengthening of Parliament as an oversight mechanism – both for the police and in a more general role – is a priority for both civil society in Kenya, and reformists within the Government.

2. External oversight bodies

Kenya already has a number of bodies with a general oversight role, which could be used to monitor the police and promote accountability. For example, the Public Service Commission, the Kenyan Anti-Corruption Commission, the Department of Governance and Ethics (which has a mandate to advise the President on policies and strategies for fighting corruption), and the National Anti-Corruption Campaign Steering Committee (NACCSC) (which is responsible for initiating a “national culture that resists and stigmatises corruption”). In the President’s Office there exists the Efficiency Monitoring Unit, an audit unit created by President Moi to monitor departmental efficiency. There is also the Controller and Auditor-General, which is the constitutional office established at independence to audit ministries and state corporations and report to Parliament. However, although these bodies all currently have oversight roles, they are embedded in Government and are not perceived as having the independence of external Commissions.

Nonetheless, some bodies exist that are considered more independent, such as the Kenya National Commission of Human Rights (KNCHR) and some of the permanent and ad hoc commissions set up over the years. Although international best practice demonstrates that no particular type of external oversight agency is appropriate in all circumstances, no matter the structure, there are four features which are common to all effective oversight agencies, and which are critical for their success:

- ◆ independence;
- ◆ adequate powers;
- ◆ sufficient resources; and
- ◆ the authority to follow up on recommendations.

2.1. Kenya National Commission of Human Rights

National Human Rights Institutions can be particularly important bodies in terms of promoting police accountability because they can have broad mandates to investigate rights violations and they operate independently of the state. To be effective they should, at a minimum, adhere to the Paris Principles.¹⁶¹

Prior to 2003, Kenya did not have a national human rights institution. Complaints of human rights violations were dealt with by a Standing Committee on Human Rights set up in 1996. The Standing Committee was established by a presidential order and, as such, relied on his goodwill. Its powers were limited and it often appeared to see its role as defending the government against allegations of human rights violations.

In 2002, the *Kenya National Commission on Human Rights Act* was passed, establishing the Kenya National Commission on Human Rights as an independent body with the power to investigate instances of human rights abuse and to take action against any person found guilty of human rights violations. Its ten commissioners have the status of Appeals Court or High Court judges. The Commission can issue summons, order the release of prisoners, and order compensation for human rights abuses. However, in its first annual report, published in August 2005, the KNCHR stated that the government had failed to implement rules to allow the Commission to function, and attempts to meet senior government officials had been unsuccessful. Despite this, the Commission undertook a significant programme of work in its first year. In relation to policing, it visited 20 places of detention, resulting in the release of some illegally detained prisoners. There was resistance reported from some police officers and, as a result, during 2004 the Commission initiated civil proceedings against the police for refusing access to police cells indicating that it intends to carry out its mandate.¹⁶²

The Commission also participated in the Police Reforms Task Force, and took up a role advocating for the establishment of an independent police oversight body. The Commission's police related work currently centres around proactive and reactive investigations of potential human rights violations by police.

2.2. Kenya Anti-Corruption Commission

The Kenya Anti-Corruption Commission (KACC) was established in May 2003¹⁶³ under section 7 of the *Anti-Corruption and Economic Crimes Act* and became fully operational in January 2004. It replaced the Kenya Anti-Corruption Authority. Its functions are to investigate corrupt conduct, economic crime, suppress corruption, address loopholes in anti-corruption

legislation¹⁶⁴ and to examine the practice and procedures of public bodies with a view to reducing corruption. A special Anti-Corruption Court has been established to facilitate the fast track hearings of corruption cases that were having an impact on the Kenyan economy.

The KACC is not a constitutional body and therefore has limited powers in relation to the police or Attorney General. The powers allow the KACC to investigate offences under the Anti-Corruption Act but not the Penal Code, which means it is prevented from investigating the main corruption offences. The KACC does not have powers of prosecution, although KACC investigators do have the power to arrest and charge. This means the Attorney General can decide not to proceed further, or simply withdraw the prosecution.

2.3. Permanent oversight commissions

Permanent commissions are established by statute, and sometimes by a constitution, to play a permanent role in the governance of public institutions. They often have both an oversight function in their specialist area, as well as constituting an avenue of redress for citizens. It is hoped that their existence signals a state mature enough to accept and respond to criticism as part of its institutional existence. The draft Bomas constitution contemplated the establishment of a number of new oversight commissions, including a Police Service Commission (to deal with the human resource functions of the police) and an Ethics and Integrity Commission (to oversee appointments to the Police Service Commission and police leaderships). The Police Reforms Task Force also pushed for the establishment of an independent oversight body in its final recommendations.

Accountability and the criminal justice system

Although the police is a large and complex institution requiring considerable legislation and rules to regulate itself, it is in fact just one agency within the criminal justice system. Other agencies include the courts, the prosecutors, the defence lawyers, the prison and probation staff and the judiciary. The criminal justice system is a whole process, which starts from the commission of an offence and may only end with the satisfaction of a sentence. If the system works effectively, it acts as an accountability mechanism on the police, because each of the interlocking agencies acts as a check and balance on the other.

From crime to court: the police role

In examining the different parts of the criminal justice system it helps to have an overview of how the criminal justice system works. The following gives an overview of the process that the Kenya police carry out prior to a case arriving in court.

Investigating: Investigations begin: (i) when the police themselves feel there is enough suspicion that a crime has been committed, (ii) when a member of the public makes a complaint, either to the police or to a Magistrate¹⁶⁵; or (iii) when the Police Commissioner orders a special investigation. For all investigations involving a medical examination, a completed P3 medical examination form is required from the hospital or medic.¹⁶⁶ When investigating a case, an officer is required to follow the procedures laid down in the Standing Orders (see Chapter 5 and Chapter 46 of the Police Manual). These set out processes and formats, for example, regarding the collection of witness statements storage of forensic and other evidence, and the format of the investigating file (for example, which statements should be taken, how they should be presented and the status of police officers' investigating diaries).

Arrest: On arrest a person should be told why they are arrested, cautioned, searched for dangerous objects and evidence, and restrained with minimum force. For serious offences or where the suspect is dangerous, he or she can be restrained with handcuffs. The person should be brought to the police station. The arrest and details of the detainee are to be recorded in the Occurrence Book, which is the key record of activity in any police station.¹⁶⁷ Property should be removed from the detainee and a receipt given.

The Cell Register Records record the entry and exit of persons into each cell. If information is recorded accurately, these records should enable officials to determine when a person was arrested and booked into a police station and how much time was spent in a cell. There is no record kept of why a person is arrested. Accordingly, there is not always data with which to assess the reasons for arrest or for not charging a suspect. This vacuum in record-keeping gives scope for an arbitrary use of their arrest powers.

On arrest, a person can make telephone calls or send a letter (at his or her own cost) and is entitled to have his or her family and employer contacted. Anyone who enquires about that person is entitled to information. Friends or families are able to visit those arrested in the cells, although this is at the discretion of the police officers rather than a right derived from any legislation. The suspect has the right to see a legal representative.

Charging: Police can obtain advice from the Attorney General's office or provincial counsel on whether there is sufficient evidence to charge, if they so desire. However, it is usually the police who decide on whether to press charges or not.

In court: In the majority of cases it is the police prosecutors who will prosecute a case although the Provincial State office is supposed to inspect the prosecution file to review the evidence.

3. The judiciary

In Kenya, the Court of Appeal is the superior court of the land. Its judgments interpret law and can be a guide to good practice. The Court of Appeal, and even the lower courts, have the potential to identify bad practice, monitor the application of the law, criticise bad performance and act as a practical accountability mechanism. If a judge or magistrate makes remarks regarding the evidence or conduct of any police officer, the Police Manual requires that the police prosecutor or senior police officer in court submit an immediate report to his superior officer addressing the comments, but there is no evidence that this is actually done. If the criticisms in court judgements are not acted on, then the courts usefulness as an accountability mechanism is substantially diminished. It is important to note that the judiciary is facing its own internal corruption issues.

Court of Appeal judges have criticised the criminal justice agencies and the lower courts for poor practice, and have drawn a link between lack of criticisms by the lower courts and increased police misbehaviour. Criticising the judiciary, for example, in the case of Dr Odhiambo Olel¹⁶⁸ the Court of Appeal observed:

“What gave us cause for concern, however, was the length to which the judges were prepared to go to justify the illegal detention of the appellant in custody by the police for 17 days in flagrant violation of his fundamental rights ... the judges purported to have been going by the record but we can find no indication in the record that the police suggested to anyone that they detained the appellant illegally because they required more time to investigate the offence. This finding was based on pure speculation.

...The prosecutor did not explain the delay and the Chief Magistrate made no inquiry... It was the duty of the Chief Magistrate to seek an explanation from the prosecutor as to why the appellant had been kept in custody ... The Chief Magistrate was guilty of a grave dereliction of duty."

Not all of the judiciary are derelict in their duties. Some magistrates and judges recognise their duty to protect the integrity of the courtroom and promote good police practice. For example, when suspect Stephen Hirau alleged he had been tortured by the police in Nyeri Magistrate Court in April 2002, the Senior Resident Magistrate ordered that the defendant, who had swollen legs and bloody stool, be taken to hospital for medical treatment. The magistrate also ordered that the police start a fresh investigation into the case.

3.1. The need for judicial reform

During the Moi years, excessive political control weakened the judiciary. Judges were robbed of the independence needed to control the police and as such they were impaired in their ability to act as a check and balance to the executive. In its weakened state, the judiciary began being perceived as corrupt. Transparency International's Kenya Urban Bribery Index ranked the Kenyan judiciary the sixth most corrupt public institution in Kenya in 2001, and eleventh in 2002.

In 2003, the Lord Chief Justice established the Integrity and Anti-Corruption Committee of the Judiciary, which confirmed the perceptions of corruption. The Committee was mandated to gather evidence of corruption and to make recommendations for short term and long term change. The Committee's Report found that 56% of the members of the Court of Appeal, 50% of the members of the High Court and 32% of the magistracy were implicated in corruption. A comprehensive list of interacting factors inducing corruption among judicial officers was annexed, but the most significant cause of corruption identified by the committee was lack of accountability. The report recommended that those implicated in corruption should face prosecution or administrative disciplinary action. A considerable number of officials subsequently resigned. At the time of writing however, the clean up had not shown results. There is evidence that members of the judiciary are still vulnerable, which, in turn, means their ability to function as an accountability mechanism is compromised. Since the clean up the Law Society has called for radical reforms in relation to executive interference, the judiciary's budget and judges' tenure.

In April 2005, the Kenya Chapter of the International Commission of Jurists published a report that claimed there are still entrenched networks of corruption within the judiciary and "excessive and unwarranted" interference by the executive. This report was pre-empted by an announcement in March 2005 by Chief Justice Evan Gicheru that a committee was to be established to investigate allegations of corruption within the judiciary and that a three year reform package would be implemented to reduce delay and improve access to justice. It will be some time before the judiciary is in a position to act as an effective accountability mechanism.

4. Government prosecutors

Prosecutors have considerable power as an oversight body of the police. Prosecutors are in a position to scrutinise police methods of investigation, whilst assessing evidence. Prosecutors can decline to present certain evidence or may ask the police to reinvestigate or provide additional information, making it more difficult to cover up misconduct. Prosecutors are either lawyers

appointed by the Attorney General under section 85 of the *Criminal Procedure Code*, or any police officer over the rank of Inspector who has the right to assume the role of public prosecutor and prosecute criminal cases in the Subordinate Courts.¹⁶⁹ In practice, this means state counsel acts for the government in the High Court and police prosecutors appear in the majority of the cases in the Magistrates Courts.

Lawyers are an essential link in the accountability chain

The legal profession can act as an effective accountability mechanism – challenging evidence and breaches of procedural rules, and using their knowledge of the law to challenge its misuse. The use of lawyers as effective instruments of accountability however relies on the legal profession being properly trained and their competence and professional integrity regulated. The legal profession has also initiated reform of the standards of its members. Compulsory legal education for advocates practicing in Kenya came into force on 10 January 2005. Every advocate is now required to attain at least five units of continuous legal education organised by the Law Society of Kenya. Failure to complete the programme means the advocate will be refused a practicing certificate.

Notably, the Standing Orders require that every prosecutor (whether a police prosecutor or a lawyer prosecutor) should send the case file to the Provincial State Counsel or Attorney General's office within 14 days of arrest, to be returned with legal advice. This is a significant regulation because it gives scope for the Provincial State Counsel or Attorney General's office to play a police oversight role. However, in most cases the Kenya police investigate and make the decision on whether, and what, charge to bring against an accused without reference to the Attorney General's office or Provincial State Counsel. This means that there is considerable scope for the police to attempt to hide their own investigation errors – because there is no oversight from an external body to check whether charging decisions are made correctly. Prosecuting lawyers should monitor such performance and by doing so, will provide practical reinforcement of the regulations concerning how to charge an accused.

4.1. Prosecuting criminal police behaviour

Presidential Circular Number 1, dated 24 September 2004, provided that the Attorney General's office should expressly extend its functions to include police prosecutions. This signals a move towards separation of the investigation and prosecution functions. A major benefit of this reform will be greater independence of prosecutors, which could increase the prosecutions brought against the police themselves. By ensuring that police are not responsible for determining when to take a case forward, there is less chance for the police fraternity to close ranks when one of their own is accused of misconduct and hard decisions need to be made about what to do.

In terms of taking forward prosecutions against the police, it must be noted that the Police Act specifically protects officers who were obeying orders. If a police officer claims that an act was carried out in obedience to what purported to be a warrant issued by a court, or that the police officer reasonably believed to be issued by the court, then a court is required to find in favour of the officer.¹⁷⁰

Which complaints are actioned?

Complaints and prosecutions are sometimes undertaken, but there is too little public information available to be able to speculate on the reasons why some complaints are actioned and successful. Anecdotally, those without influence or money find it difficult to have their complaints registered, let alone investigated. In the absence of information and relevant statistics, media reports influence perceptions – and many of the media reports are of ignored complaints from the poorer and more vulnerable sections of society. The media reports of complaints that are dealt with successfully tend to involve persons of influence or money – as the following examples show.

In May 2003, three police officers were reportedly arrested for extorting money from a businessman who had been selling counterfeit oil in Nakuru town. Again in May 2003, police were reported to have refunded a total of 8,700 KSh extorted by 10 police officers in Muiruri village from people arrested for allegedly being drunk and disorderly. Twenty of those who had given bribes attended Meru Police Station with their lawyer demanding their money back.

Three police officers, who were suspected of being involved in a robbery at the Mau Summit trading centre worth 1.5 million KSh were reportedly arrested by the Flying Squad. The nine officers were questioned about a theft of 1.5 million KSh from a businessman at Malawa roadblock near Naivasha town. The police officers were reported as later admitting in court that they stole the money and shared it among themselves.

5. Defence representation

The degree of legal advice available to the poor can be a strong indicator of the state's willingness to be held accountable and of its concern to protect its citizens. Legal representation can be an effective accountability mechanism for limiting police misbehaviour, particularly when police investigate and prosecute cases and where the judiciary is too willing to accept police evidence.

Where there is little access to legal advice, the poor are the most likely to be picked on by police for harassment, extortion and malicious prosecution because they are the group least likely to defend themselves, or to challenge police prosecutions and police evidence. Unfortunately, because the legal aid fee is low, few experienced criminal defence lawyers take on legal aid work so the available representation for the poor tends to be less experienced lawyers. A survey in March 2003 found that only 6% of all remand prisoners were legally represented, and that only 53% of those charged with capital offences had representation, either paid for privately or by the state. Legal aid is available for all capital offences but in reality it only seems to be provided for those charged with murder.¹⁷¹ The remainder are reliant on the integrity and competence of the police, prosecutor and judge to ensure the defendant's rights are upheld. Considering the limitations of these agencies, this does not bode well for ensuring police accountability.

6. Civil proceedings

Kenyan law permits civil suits against the police. In theory, a civil suit permits an aggrieved person to launch a suit for wrongful conduct by the state – even where the state prosecution agencies refuse to prosecute criminal charges. Civil suits allow individuals in the community to try to use the courts themselves to hold the police accountable. Although civil proceedings will

not result in a wrongdoer going to jail, the state can be forced to pay large compensation for an adverse finding. For example, civil cases can be pursued against police instances of torture, extra-judicial killing or illegal detention. Cases can be pursued by individuals for misconduct that impacted the life of a single victim or for a pattern of wrongful behaviour by the police force. Actions can also be brought to the High Court related to the Bill of Rights contained in the Constitution.

Isolated cases may not necessarily bring systemic change, but large financial payouts can sometimes make the Government sit up and take notice, and regular liabilities being incurred by the state, when paying out compensation, can exert cumulative pressure to prevent the police misbehaviour that gave rise to these actions. Civil cases can also operate as an accountability mechanism more indirectly, because civil hearings may be used as a means of obtaining information from the police and bringing it into the public domain, or of obtaining court judgements, which can highlight common malpractices and recommend improved practices. Civil suits can also heighten awareness if the media covers the issue.

Unfortunately, in Kenya, civil proceedings have not been as effective as they could be. The Courts do not differentiate between types of cases, which means that sensitive cases are not prioritised and long delays are common. Complainants can find themselves the object of police intimidation and can also be subjected to a campaign to discredit them.

Accountability & civil society

A fundamental tenet of policing is accountability to the community. Even where police organisations are accountable to elected representatives (via parliaments, legislatures or local councils), accountability needs to be reinforced by a direct relationship between the police and the people. Professional policing requires the consent of the community being policed, so public participation in policing is essential. In Kenya, civil society groups and the media have acted as a check on the impunity engendered by internal and external oversight systems weakened by years of political interference. Civil society mechanisms, like specialist NGOs, lawyers associations and the media, can be very effective watchdogs because of their close ties with the community and the trust they enjoy.

7. Civil society oversight

“The basic goal of citizen oversight is to open up the historically closed complaints process, to break down the self-protective isolation of the police, and to provide an independent, citizen perspective on complaints.”¹⁷²

In Kenya there is a thriving NGO community. It is positive that many of these organisations work on police related issues. It is a feature of Kenyan civil society that most NGOs and human rights activists have had to reinvent themselves after the 2002 elections – previously, common ground was found in opposition to Moi’s regime. Post-Moi, the work civil society groups do is no less necessary, but in the changed political environment there is more pressure on civil society to collaborate with government, to use a different language, restructure their activities and fund themselves differently.

Despite the limited political space provided under the Moi regime, NGOs gathered data, published reports, kept the police under scrutiny, went to court against violators, defended the

victimised, provided free legal services and counseling, raised public awareness and intervened in many ways – alone and in collaboration – to restrain police misbehaviour and criminality. In the process, these groups developed an expertise in civil liberties, police related issues and bringing the police to book which they are now able to employ in a new political environment that offers more scope to push for deep, far-reaching police reforms.

Civil society played a major role in the Police Reforms Task Force set up by the NARC Government. KHRC participated in the accountability team, and chaired a community policing sub-team. The Kenya chapter of the International Commission of Jurists led a legal and police reform committee. FIDA, the International Federation of Women Lawyers, was also involved with this committee. The government has modeled its community policing programme on suggestions made by this Task Force.

Kenyan NGOs: promoting police accountability is already a major issue

Major NGOs working with on policing related issues include:

- ◆ **Kenya Human Rights Commission** reports on human rights abuses, undertakes policy level interventions and public education and has been deeply involved with the constitutional review process and the present justice reforms in Kenya. It is closely engaged with the issue of police reform and has co-hosted conferences on policing with CHRI, such as the East Africa Roundtable Conference on Policing in 2002.
- ◆ **People Against Torture (PAT)** was established to coincide with the second anniversary of Kenya's ratification of the UN Convention Against Torture. It was formed because there was a recognised absence of a local organisation focusing its energies on torture issues alone. It takes on individual cases, as well as campaigns; with information from individual cases feeding campaigning activities.
- ◆ **Independent Medico Legal Unit** provides medical and legal opinions, as well as research on injuries and deaths where there is torture or a suspicious death. In addition to providing expert opinion at court, it takes cases to court itself. It also researches and campaigns against impunity and police malpractice.
- ◆ **Legal Resources Centre** promotes access to justice for the poor through human rights education, research and advocacy. It produces publications such as the Booklet on Self Representation for Persons Remanded in Prisons 2004, in English and Swahili, as part of the Paralegals in Prison pilot, five different Teach Ourselves Our Rights manuals for community workers, and an extremely useful forensic handbook for NGOs and the police.
- ◆ **International Federation of Women Lawyers (FIDA)** is perhaps the best known NGO focusing on gender related issues and, as such, regularly overlaps with police reform issues.
- ◆ **Centre for Governance and Development** includes strengthening parliament as a key priority area, and this includes reviewing security related legislation.
- ◆ **Coalition on Violence Against Women** seeks to promote awareness of women's human rights, and has been involved with the setting up of women's police desks.
- ◆ **Amnesty International (Kenya)** has had involvement with monitoring human rights violations by the police. It is not involved with advocacy for reform.

7.1. Opportunities for engagement

Civil society can play a key role in spreading awareness and influencing public opinion – and is a key reform strategy because public opinion matters a great deal to politicians, both in

government and in opposition. The same politicians that have to be convinced to put in place effective accountability mechanisms are the ones who may need public support in the next election. Mobilising significant groups of citizens can help pressure those in power to implement reforms and deal harshly with misconduct. In fact, political support for continued and deepened police reform will only be sustained if there is a broad domestic constituency that comprehends and supports the concept of responsive and accountable policing.¹⁷³

Civil society acting as witnesses and advocates

At around 11am on 26 June 2004 at Ebushitini chief's camp in Bukura village, Butere-Mumias district, two Administration Police officers shot at mourners, killing one person and critically injuring two others. People Against Torture (PAT) officials, Kamanda Mucheke and Mbugua Kaba, were shot at as the police snatched a videotape - at gun point - from Mbugua, who was filming the incident. The mourners were in a peaceful procession to protest the death of Nimrod Sianje Okwayo, while also marking the United Nations International Day in Support of Torture Victims. Also present were journalists and PAT officials who became witnesses to the incident.

A PAT official telephoned Butere Police Station and a contingent of armed police officers arrived with police dogs. After chasing the crowds away, villagers hiding in a nearby maize field saw the police shatter the windows of the Chief's office and plant weapons, fabricating a scenario that the procession had been violent, thus justifying the actions of the two police officers. The police then instigated a search for PAT officials. The Kenya National Commission on Human Rights, through Commissioner Khelef Khalif, intervened to prevent their arrest.


Two days later on 28 June, PAT officials retrieved the video-tape through the intervention of the Western Provincial Criminal Investigations Officer, Mr Mohamed Amin. The tape had recorded the incident and was retained by the police as evidence. The two police officers were eventually charged with murder in Kakamega High Court on 8 July 2004 – the PAT videotape was a key piece of evidence.

7.2. The media as watchdogs

The media can play a valuable watchdog role: exposing wrongdoing, providing information, making comment and raising public awareness. In recent years, radio, press and television in Kenya has proliferated. The government-owned Kenya Broadcasting Corporation continues to be the only TV station with national spread, but TV channels and small FM studios have sprung up across the country. The country is a hub for foreign journalists and news agencies. The Kenyan press is vocal and the Kenya Union of Journalists is a strong and active body.

The media are usually an essential part of any police reform effort. Extensive and sustained media coverage of police abuses can be the catalyst to encourage the government to reform the police, to create oversight mechanisms, or to prosecute errant officers. The police and its activities, because of the visual drama and human interest stories associated with them, sell papers and find plenty of space in print and television. Kenyan newspapers regularly report stories on police corruption, extra-judicial killings and incompetence. A 2004 newspaper study by CHRI¹⁷⁴ showed that 224 extra-judicial deaths were documented in Kenyan newspapers the Nation and the Standard between March 2002 and March 2004.

The Kenyan media are still vulnerable, as they remain subject to unreformed contempt, libel and defamation laws. Further, pressure is created by the threat of a loss of advertising revenues, which



are at the Government's discretion. Also, the effect of the *Official Secrets Act*, which gives unlimited discretion to declare official information secret, cannot be underestimated. There are also heavy penalties for breaching the licensing media regulations under the *Communications Act*.¹⁷⁵ The *Miscellaneous Amendment Act* requires all publishers to deposit a 1 million KSh bond before being allowed to operate, while the *National Security Act* allows members of the security forces to seize material that 'might' constitute a breach of the peace. The Government has also demonstrated heavy handed methods of enforcement at times. For example, in March 2006, the Government ordered a police squad to raid the offices of the Standard and KN-TV. The police entered the offices in the middle of the night, assaulting staff and damaging equipment. Bonfires of the day's edition of the Standard were set alight and KN-TV was pulled off air. The raids were in response to an article published in the previous weekend edition reporting a secret meeting between the President and the opposition leader. The Internal Security Minister's response to international and local condemnation of the police action was "If you rattle a snake, you must be prepared to be bitten by it".¹⁷⁶

In May 2005, the Nairobi Nation cited "a global survey by the well regarded US-based Freedom House that was released on 3 May 2005 to mark World Press Freedom Day, [which] found that in 2004 only two countries in the world registered a negative shift in category in terms of press freedom. Pakistan and Kenya moved from "Partly Free" to "Not Free".¹⁷⁷

CHAPTER 9

POLICE REFORMS IN KENYA

“The cardinal responsibility of any sovereign state is that of maintaining security, law and order...the decline in service delivery in this sector is manifest in increasing incidents of cattle rustling, drug trafficking, ethnic tension, general crimes, domestic violence and other forms of violence against women and children, discriminatory practices in law enforcement, corruption and mal-administration of justice...”¹⁷⁸

- *Ministry of Finance and Planning*
Poverty Reduction Strategy Paper for 2001-2004

The need for police reforms was recognised by Kenyan Governments as far back as the early 1990s when Kenya amended its Constitution to allow a multi-party system. Reform has been piecemeal since then. It is positive that the overarching five-year plan for economic recovery and wealth creation launched in 2003 included police reform within its priority of strengthening the institutions of governance. Improving governance and security is one of the five basic components of Kenya’s poverty reduction strategies.

Economic Recovery and Wealth Creation Strategy 2003 – 2007: Security priorities

- ◆ Decrease the overall police to population ratio from current 1:850 to 1:450;
- ◆ Develop and implement a public education programme to build trust between the police force and the public;
- ◆ Enhance police effectiveness and service coverage through recruitment and retraining on modern technology and emphasising the need to operate within the law;
- ◆ Provide the police with modern equipment and technology;
- ◆ Improve housing and terms of conditions of work for the police. As a first step, complete all the stalled housing projects within the recovery programme period;
- ◆ Review and enact appropriate laws to deal with modern crime challenges in terrorism, money laundering, cyber crime, tax evasion, among other areas; and
- ◆ Develop and enforce a framework for cross border and territorial waters’ policing, and collaborative security management.

While the security priorities identified are all important and necessary, it is troubling that there is no specific priority given to entrenching mechanisms to improve police accountability, discipline, professional behaviour or improved performance. Policy at a national level sets the scene for reform at lower levels. Nonetheless, sector specific strategies have also been developed and these are more encouraging.

The Police Reforms Task Force set up by the Government looked at the reform process as a way of enhancing the efficiency and effectiveness of the police. The Task Force reported that, “police reforms as articulated in Kenya’s National Development Plans and Policies, seek to facilitate well functioning police forces capable of maintaining peace, security and enforcement of the rule of law”.¹⁷⁹

1. Governance, Justice, Law and Order Sector (GJLOS) reforms

Over recent years, reform of law and order has moved away from isolated, issue-by-issue reform – such as the courts, prosecution, forensics, legal aid, police, or prisons – and adopted a cross-sector, multi-stakeholder and practical outcome oriented approach. The Governance, Justice, Law and Order Sector (GJLOS) reforms, begun by the NARC Government in November 2003, focus on strengthening the whole of the administration of justice, from public financial administration down to practice on the ground. This cross-sector approach emphasises partnership and outcomes but also exposes all the individual agencies to multi-agency peer group scrutiny.

Police reform is a key component of the GJLOS program. The police are recognised as a pivotal institution as well as a player in the criminal justice system and reform of the police as an institution is central to the plans. The key reform priorities set out in the Vision and Strategy documents include:

- ◆ introduction of codes of conduct; establishment of independent complaints and oversight mechanisms with powers of investigation; improved transparency and public access to police actions;
- ◆ improving police responses to corruption through:
 - an anti-corruption sensitisation programme for police officers;
 - decentralising operations of the Anti-Corruption Unit to the provinces; and
 - providing appropriate equipment for prevention and rapid response.
- ◆ improving police local service delivery through a shift from reactive to proactive policing. The police will be piloting new protocols based on professional best practice in selected areas;
- ◆ improving crime reporting procedures as a service objective to the victim;
- ◆ increasing training in investigation techniques for the Criminal Investigation Division (CID); and
- ◆ providing better equipment and technical assistance, to increase intelligence led investigations of crime.

Key Output Area 4 of the document deals specifically with public safety and security and targets improvements to the police service institution. These include:

- ◆ enhancing police motivation by strengthening the police code of conduct and ethics, and its implementation; reviewing the salary scales and ensuring promotions on merit according to a clear and appropriate scheme of service;
- ◆ enhancing public access to the police through the establishment of community-based police services. This will also include a review of the number and distribution of police stations and posts throughout the country, and establishment of special desks to deal with special and vulnerable groups;
- ◆ developing a community policing strategy, to complement police efforts towards improving security, and as part of the adoption of a new approach to policing; and
- ◆ developing a national crime prevention strategy to provide a clearer picture of priorities and a performance monitoring and evaluation system.

As the GJLOS works to bring policy and action together it also emphasises civil society engagement with government and police and, based on a series of consultative meetings, has worked to improve coordination and increase participation through the development of the NGO Coordination Council.

2. Police Strategic Plan 2003-07

The *Kenya Police Strategic Plan 2003-2007* seeks to work in support of the GJLOS strategy. It specifically recognises the importance of fostering partnerships and upholding human rights. It acknowledges that institutional lack of accountability and impunity are entrenched within policing and the police are no longer able to do their job as a result.

In response, through a narrative identifying key priorities and objectives and in Action Plans that identify tasks to implement the objectives, it highlights the need to enhance both individual and institutional accountability. It does this through establishing transparent performance management systems, setting performance standards, establishing a Police Service Commission and an independent oversight body to monitor performance, investigate misconduct and take actions. The Strategic Plan also calls for a national policy on policing as well as clear operational guidelines, and tenure for the head of the police service.

The Action Plans prioritise the police service's organisational needs: addressing, first and foremost the dearth of resources within the force. The Strategic Plan identifies modernisation of the police as a key priority. This includes the purchase and acquisition of modern and appropriate equipment, including vehicles, weapons, and communication equipment and espouses the use of information technology, among other hard aids to policing. It also stresses the need to improve terms and conditions for service. The Strategic Plan recommends structural improvements through partial decentralisation, recruitment of more officers, including honourably retired officers above the age of 60, and relinquishing auxiliary services like driving and guarding VIPs.

Despite its good intentions, the Police Strategic Plan has been criticised for the gap between its rhetoric (that acknowledges the rule of law, citizen dissatisfaction with policing and the police's own deep dysfunction) and its Action Plans.¹⁸⁰ The Plan places much more emphasis on strengthening the operational capabilities of an unreformed and largely unaccountable force than it does purging itself of malpractice. In addition, the police force has neglected to connect its own strategic plans to ongoing reforms in other departments and has underemphasised the importance of engagement with civil society and the community. The Strategic Plan is insufficiently explicit about the steps and finances needed to ensure objectives are achieved and evaluated – some of the steps are farcically vague. Many of the objectives depend not merely on police reform but on governance reform through Kenyan state institutions. For example the criminal justice systems referred to must also have the capacity and willingness to reciprocate. Finally, the programme is very wide reaching and the will to reform may be stretched too thin.

3. Police Reforms Task Force

In April 2004, one month after the Police Strategic Plan was published, the Government put in place a 15 member Kenyan Police Reforms Task Force, both to take forward police reforms and to coordinate other on-going reforms. The Task Force's terms of reference require it to review the *Kenya Police Strategic Plan 2003-2007* and to recommend policy and institutional reforms for policing services in Kenya. The Task Force's terms of reference also call for extensive and substantive review of institutional and organisational changes that would modernise police services. The Task Force built on an earlier Security Research Information Centre Report and produced its own report, *Reforming Policing Services for the Social and Economic Development of Kenya*. This report builds on recommendations of the *Police Service Strategic Plan 2003-2007*. The Task Force completed its work with the release of the report. Although the police

have said that they will make changes in response to the report, there has been no sign of any actual reform.

The report includes accountability, categorised into three types: popular (through electoral processes); legal (through the rule of law); and transparency (through mechanisms that provide information). The report explicitly acknowledges:

“Existing weakness in accountability and responsibility in the Police Services can be traced to the entrenched culture of impunity and patronage, whereby officers involved in misconduct, crime and violation of human rights, feel confident that they will not be disciplined or held accountable. This practice has percolated through various public agencies and is not unique to the police only. However the critical role police play puts the service under spotlight due to the important role it plays in the political and social economic development of the nation.”¹⁸¹

The recommendations in the chapter on accountability¹⁸² call for reformed internal recruitment, terms and conditions, complaints procedures, strengthening the regulatory framework by review of the laws, establishing monitoring and evaluation systems through measures such as a civilian oversight board, and developing performance standards. An example of a suggested performance standard mechanism was service charters. There is surprisingly little emphasis on discipline, which is integral to a more professional police force. The problems of a weakly enforced disciplinary code, and the lack of trust the public have in the police ability to investigate themselves are articulated as issues of concerns.¹⁸³ There are recommendations that touch directly on discipline – to strengthen discipline, create a monitoring and evaluation regime and an external oversight body to investigate complaints of police misbehaviour.¹⁸⁴ However, given the breadth of issues touched on in the report, the responsibility of the institution to enforce existing disciplinary procedures and comply with the existing Police Manual and Penal Code is only addressed briefly.

The report also recommends additional police reforms, many of which are indirectly relevant to police accountability, in that they will contribute to building a police service which is professional, well-trained, responsive and responsible:

- (a) Police image, reform and development: The Task Force recognises that public confidence is dependent on positive experiences of policing. Image review is about better behaviour, practices and performance, and is not just a shallow public relations exercise.
- (b) Crime prevention and reduction: By recognising that one of the core functions of the government is to provide security and ensure maintenance of the rule of the law, it is recommended that a premium is put on the preservation of peace, protection of life and property, prevention and detection of crime, apprehension of offenders and enforcement of assigned laws and regulations.
- (c) Capacity building: Developing the existing police institution into an effective and efficient police force with the necessary infrastructure and equipment to discharge its duties. The Task Force noted that capacity building would require substantial financial resources coupled with a commitment from police officers to manage resources effectively.
- (d) Institutional and legislative review: It was recommended that there be a review of the Police Act, the *Administration Police Act* and the Standing Orders.
- (e) Community policing: Though it is recognised that the central role for maintaining law and order rests with the government, consideration should be given to new approaches that address insecurity more effectively given the limited resources available.

- (f) Human resource management and development: Efficient human resource management is critical to career development, welfare and morale of police officers. It will also contribute to a greater sense of professionalism within the force and entrench a meritocracy. Some of the reforms suggested deal with recruitment practices, deployment, training, career progression and exit.

Community policing can support accountability

Since 2003, the Government of Kenya has embraced community policing as a core crime prevention strategy. The Government promotes community policing as an organisational strategy that will facilitate accountability by establishing partnerships between the police and the community, which, in turn, will eventually foster ties that facilitate accountability to the public. Conversely, improved cooperation in police work by the community assists police in gathering intelligence.

The popularisation of community policing gained momentum in Kenya when the New York based Vera Institute of Justice supported projects in Kenya through the Kenya Human Rights Commission and the Nairobi Central Business District Association (NCBDA).¹⁸⁵ However, in practice, community policing models are difficult to implement successfully and the two projects supported by Vera have had mixed results. The KHRC project prioritised developing relationships that could curb crime and prevent human rights abuses, whereas the NCBDA project was conceptualised as a means of relieving the security concerns of members of the NCBDA. The difference in conceptualisation and implementation of these projects shows the difficulty in interpreting what community policing really means in practice.

Some successes have been reported with the two pilots, although neither has been an unqualified success. The KHRC pilot found a police force and local community unwilling to cooperate and the NCBDA project became seen as overly zealous in its control of small street business, or hawkers, with allegations that this close attention merely provided opportunities for extortion.¹⁸⁶ In another community policing project managed by Saferworld from the President's office, community police consultation forums were established in Kibera, Ruai, Ziwani and Isiolo, and it was found that there was a 30% reduction in crime in a three month period.¹⁸⁷

The national reform strategies have all included community policing as a key objective and as a model to aspire to. The National Police Task Force report has a national policy for community policing as its first annexure. Lessons learned from the models already tried in Kenya indicate that, for the project to be a success, community policing needs strong and fair minded referees to define a criminal activity and determine who 'the community' is to avoid dominance of a single agenda. Any community policing strategy should also factor in time to first implement wholesale discipline and professionalism reforms within the ranks of the police. This recognises that community policing may need to be implemented as a second stage of the reform process, after pressing systemic issues have been resolved.

CONCLUSION

Findings

Context

- ◆ Historically, the Kenyan police force has been a political tool. It is burdened by a culture that accepts violence and illegality as a means to achieve political ends.
- ◆ Police behaviour is still characterised by criminal activity, even if the levels are slowly reducing.
- ◆ Kenya's law sanctions interference by politicians into police operations.
- ◆ There is not enough transparency or accountability within the police force to prevent illegitimate political control.
- ◆ Accountability is thwarted by a culture of secrecy. The public's negative perception of the police is compounded by the lack of information circulating in the community about the way the police work.
- ◆ Individual members of the police leadership understand the need for reform, but the attempts to introduce change are frustrated by a lack of political will, and pressure from anti-reformists within the government and police.
- ◆ National policy strategies include police reform.
- ◆ Civil society is active in Kenya, but is subject to restrictive laws. This prevents civil society from taking a more meaningful role in police reform.

Legislative deficiencies

- ◆ All relevant laws fail to reflect international human rights obligations or good governance principles.
- ◆ Without a right to information law, information is difficult to access.
- ◆ Police reform is not prevented by Kenya's legal framework, but neither is it supported. Police reform will only take place where there is political willingness on the part of the ruling regime.
- ◆ The Standing Orders, Police Manual and regulations are useful protocols for the police but they are secondary legislation. A reformed Police Act is a more appropriate way to guide the police.
- ◆ There is some uncertainty in law as to the role and function of the different police forces, and how they operate together.

Key accountability challenges

- ◆ Despite all the reform programmes, actual reform is not filtering through to the ground. There is a sense in the community that reforms are being prevented on some level.
- ◆ A basic system of external accountability mechanisms is in place, including judicial, parliamentary and executive oversight, however, the mechanisms are not functioning.
- ◆ Internal structures to deal with performance and discipline are in place, but their effectiveness is unknown. They need to be overhauled to increase transparency, and to take into account performance management considerations.
- ◆ The police complaints system does not work. Public confidence in the disciplinary and complaints system suffer as a result as being totally internal, self regulated and shrouded in mystery. The police investigate the police and give inadequate feedback.

Relevant operational issues

- ◆ The Police Manual is a guide to internal matters such as discipline and complaints, the exercise of police powers, the legal requirements relating to detainees, investigation techniques and public relations. However, the Manual is not complied with.
- ◆ Poor police welfare and working conditions are inimical to developing a sense of professional pride. The rewards of honest police work do not appear to be sufficient to stand up against the temptations to illegal conduct.
- ◆ There is insufficient information about police good practice or successes to assess how effectively the police are doing their jobs - and also how deeply the police are compromised.

Recommendations

- ◆ **Shift in policing philosophy:** Regime policing must give way to democratic policing.
- ◆ **Undertake legislative reforms:** The current Constitution establishes a framework that supports a dictatorial regime and regime policing. There is no statement in current laws that describe the kind of police service to which Kenyan citizens are entitled or that imposes an obligation on the government to achieve a particular standard of policing.

Police legislation does not set out standards of ethics or behaviour. It is also deficient in terms of developing effective governance structures, including proper disciplinary and supervisory channels. There are two police forces with two different chains of command and disciplinary functions and there are numerous specialised units – with undefined issues of jurisdiction.

A review of all laws relating to policing is recommended. The law needs updating to reflect current international legal obligations, modern good governance and democratic practice. Most importantly, the review should result in clearly defined roles, responsibilities

and disciplinary procedures so both the public and the police understand their role and function in a modern democracy.

- ◆ **Establish an independent complaints body:** An independent complaints body must be established immediately, as a leading reform mechanism. An independent complaints body will significantly increase transparency and accountability within the police service.
- ◆ **Strengthen accountability mechanisms:** In order to insulate the police from political interference accountability mechanisms must be strengthened so that they are strong enough to ensure accountability from the police and to buffer the police against inappropriate interference. The structures are in place in Kenya for at least some accountability mechanisms to work and to minimise illegitimate interference. However, they are weak or inadequate.
- ◆ **Ensure independent senior leadership:** Presidential control of the police must be reduced.
- ◆ **Political will must be strengthened:** Strategies can be developed and lip service given to reform, but if there is no genuine political will at the top, obstacles to reform will be tolerated or encouraged, reforms will not be required to take root and things will continue as before. The commitment to reform is shown by results not by speeches.
- ◆ **Implement comprehensive operational reforms:** Day-to-day police operations need to be overhauled to allow for increased transparency and accountability. For example, suggestions have been made that the reason for an arrest – and any evidence – be recorded along with the time and date of the arrest. This contemporaneous record of events would help to ensure that some justification for arrest is given. It will also provide material on which the arresting officer's decision-making abilities could be assessed.
- ◆ **Support police officers:** The police endure poor living conditions, which contributes to low morale. This discourages the development of professional pride and a sense of purposeful service. Indirectly, this undermines accountability, as police officers become more concerned about their own welfare than that of the public. Measures to address this problem include improving housing and welfare provisions, medical provisions to protect officers' families, career paths that reward good practice and better management so that officers are fairly and consistently supervised, mentored, encouraged and disciplined.
- ◆ **Implement the right to information:** With information about police processes in the public domain, the police cannot hide their misdeeds behind public ignorance. Accountability mechanisms are also supported by freedom of information. Furthermore, Kenya has an obligation under international law to allow access to information.

ANNEX 1: UNITED NATIONS AND OTHER GLOBAL INSTRUMENTS ON POLICING

Universal Declaration of Human Rights (UDHR)

The 1948 UDHR is a fundamental source for legislative and judicial practice across the world, and a basis for all other international treaties and conventions discussed below. The UDHR defines the duty of governments to protect people's human rights, and lays down principles or standards for all nations to follow.

Standard Minimum Rules for the Treatment of Prisoners

Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and approved by the Economic and Social Council in 1957, these rules set out principles and good practice in the treatment of prisoners and the management of institutions. The Rules were among the first international instruments for the protection of the rights of those accused of committing a criminal offence.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Adopted in 1965, ICERD reaffirms that all human beings are born free and equal in dignity, and should be entitled to equal protection of the law against any discrimination. Signatory states take responsibility for prohibiting and eliminating racial discrimination in all its forms. The UN Committee on the Elimination of Racial Discrimination was established under this Convention to monitor how the states have fulfilled their undertakings. The Committee also accepts complaints from one state about racial discrimination by another state.

International Covenant on Civil and Political Rights (ICCPR)

The 1966 ICCPR widened the range of rights established by the UDHR and established the UN Human Rights Committee to monitor implementation.

Optional Protocol to the International Covenant on Civil and Political Rights

Also adopted in 1966, this optional protocol sets up systems for the Human Rights Committee to receive and consider communications from individuals who claim to be victims of human rights violations by any signatory states.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)


Adopted in 1979, CEDAW defines discrimination against women and provides the basis for the realisation of equality between women and men. States which ratify CEDAW are legally bound to put its provisions into practice. It establishes the Committee on the Elimination of Discrimination against Women, which can receive and consider communications or complaints about gender discrimination from individuals or groups.

UN Code of Conduct for Law Enforcement Officials

Adopted in 1979, this code sets out basic standards for policing agencies across the world. It requires police officials in signatory states to recognise the rights set out in the UDHR and other international conventions.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Adopted in 1984, the CAT prohibits the use of torture or any other inhuman or degrading



treatment in attempting to obtain information from a suspect. It is one of the most important declarations to be observed by police officials in the exercise of their duty. The CAT establishes the Committee against Torture, which can consider individual complaints and complaints about torture from one state about another.

UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)

Adopted in 1985, the Rules are intended to be universally applicable across different legal systems, setting minimum standards to be observed in the handling of juvenile offenders. These rules require that law enforcement agencies respect the legal status of juveniles, promote their well-being, and avoid any harm to young suspects or offenders.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Adopted in 1985, this Declaration defines victims and their rights, and aims to ensure that police, justice, health, social services and other personnel dealing with victims are able to provide proper and prompt aid.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Adopted in 1988, the Body of Principles reaffirms that no one in any sort of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, or to any form of violence or threats.

Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions

Recommended by the Economic and Social Council in 1989, this document defines principles concerning the arbitrary deprivation of life, and sets up measures to be taken by governments to prevent, investigate and take legal proceedings in relation to extra-legal, arbitrary and summary executions. The Principles should be taken into account and respected by governments within the framework of their national legislation and practices.

Convention on the Rights of the Child (CRC)

Adopted in 1989, the CRC recognises the rights of children, including child suspects, and requires that every child alleged to have infringed the penal law should be treated in a manner consistent with the promotion of the child’s sense of dignity and worth. A Committee on the Rights of the Child was established, but it does not accept individual cases.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Adopted in 1990, during the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, these principles set up a series of human rights standards regarding the use of force and firearms by law enforcement officials. They function as the global standards for police agencies worldwide, although they are not enforceable in law.

UN Standard Minimum Rules for Non-Custodial Measures (“The Tokyo Rules”)

Adopted in 1990, the Tokyo Rules are basic principles set up by the United Nations in order to promote the use of noncustodial measures in punishment, as well as minimum safeguards for persons subject to alternatives to imprisonment.

UN Rules for the Protection of Juveniles Deprived of their Liberty

Adopted in 1990, these rules are intended to establish minimum standards for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

Declaration on the Protection of All Persons from Enforced Disappearance

Adopted in 1992, this body of principles arose from deep concern in the United Nations that in many countries there were persistent reports of enforced disappearance caused by officials of different levels of the government, often police officials.

Declaration on the Elimination of Violence against Women

Adopted in 1993, this Declaration requires governments to develop policies that will eliminate violence against women; and sets standards for governments and law enforcement agencies to combat such violence, particularly sexual violence.

Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights ("Paris Principles")

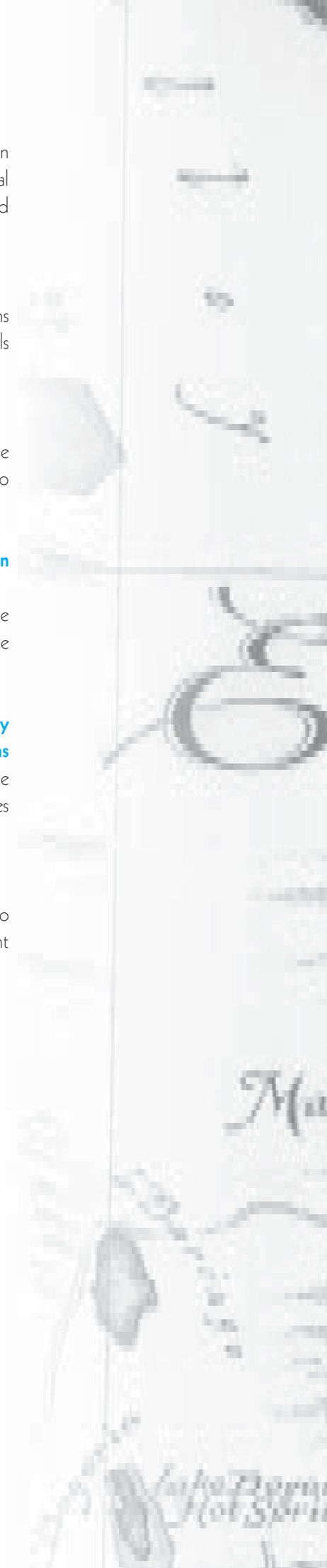
These principles are a set of internationally recognised standards created to guide states in the setting up of effective human rights commissions. The Paris Principles were endorsed by the United Nations General Assembly in December 1993.

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms

Adopted in 1998, this Declaration sets down principles to ensure that states support the efforts of human rights defenders and ensure that they are free to conduct their legitimate activities without fear of reprisals.

UN Convention against Corruption (CAC)

Adopted in 2003 but not yet in force, the CAC calls for international cooperation to prevent and control corruption, and to promote integrity, accountability and proper management of public affairs and property.



ANNEX 2: UN BASIC PRINCIPLES ON THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS¹⁸⁸

For POLICE OFFICERS, the UN BASIC PRINCIPLES are:

- ◆ To apply non-violent means as far as possible before resorting to the use of force and firearms;
- ◆ To only use force and firearms in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- ◆ To minimise damage and injury and respect and preserve human life;
- ◆ To provide prompt assistance and medical aid to any injured person whenever unavoidable use of force was applied, and to notify this person's relatives or close friends as soon as possible;
- ◆ To promptly report to a superior officer any incident involving injury or death caused by the use of force and firearms;
- ◆ Not to use firearms except in situations which involve self-defence or defence of others against imminent threat of death or serious injury, to prevent the perpetration of a serious crime involving threat to life, to arrest a person presenting such a danger and resisting the police authority, to prevent that person's escape, and only when less extreme means are insufficient.

For GOVERNMENTS, the UN BASIC PRINCIPLES are:

- ◆ To ensure that arbitrary or abusive use of force and firearms by police officers is punished as a criminal offence, under any circumstance;
- ◆ To regularly review the rules and regulations on the use of force and firearms;
- ◆ To make sure the rules specify circumstances under which police officers are allowed to carry firearms, prescribe the types of firearms permitted and provide for a system of reporting whenever police officers use firearms;
- ◆ To equip police with weapons and ammunition which allow for a differentiated use of force and firearms, such as non-lethal incapacitating weapons;
- ◆ To equip police with self-defensive equipment in order to decrease the need to use weapons of any kind;
- ◆ To ensure that police officers are properly selected, regularly go through professional training and have appropriate proficiency standards in the use of force;
- ◆ To ensure that human rights and police ethics are given special attention in the training of police officers, especially in the investigative process;
- ◆ To ensure that effective reporting and review processes are put in place whenever police officers use firearms in the performance of their duties and whenever any injury or death is caused by the use of force and firearms;
- ◆ To ensure that independent administrative or prosecutorial authorities exist to exercise jurisdiction on the circumstances in which force is used;
- ◆ To ensure that superior officers are held responsible if they know, or should have known, that those under their command are resorting or have resorted to unlawful use of force and firearms, and they did not do anything to prevent, suppress or report such a case;
- ◆ To ensure that no criminal or disciplinary sanction is imposed on a police officer who refuses to carry out an order to use force and firearms in compliance with the UN Code of Conduct and the UN Basic Principles.

ANNEX 3: POLICE FORCE STANDING ORDERS

The Standing Orders cover a considerable range of police operations and administration. Below is the index of chapters contained in the Standing Orders.

- Chapter 1: Constitution, Organisation and Control
- Chapter 2: Ranks, Duties and Responsibilities
- Chapter 3: Presidential Escort Unit
- Chapter 4: The Criminal Investigation Department
- Chapter 5: The Kenya Police College
- Chapter 6: Communications Branch
- Chapter 7: Force Transport
- Chapter 8: The Kenya Railways and Ports Police Unit
- Chapter 9: The General Service Unit
- Chapter 10: Anti Stock Theft Unit
- Chapter 11: The Kenya Police Airwing
- Chapter 12: The Kenya Police Dog Unit
- Chapter 13: The Kenya Police Band and Corps of Drums
- Chapter 14: Women Police Officers
- Chapter 15: The Kenya Police Reserve
- Chapter 16: Special Police Officers
- Chapter 17: The Kenya Police Ambulance Area (St. John Ambulance Brigade)
- Chapter 18: The Kenya Police Representative Association
- Chapter 19: Appointments and Enlistments
- Chapter 20: Discipline
- Chapter 21: Courts and Committees of Inquiry
- Chapter 22: Changes of Command
- Chapter 23: Transfers
- Chapter 24: Examination and Promotions
- Chapter 25: Leave
- Chapter 26: Discharge, Resignations and Retirements
- Chapter 27: Sickness, Injury or Death of Police Officers
- Chapter 28: Inspections
- Chapter 29: Training, Lectures, Honours, Compliments and Flags
- Chapter 30: Guards, Sentries, Honours, Compliments and Flags
- Chapter 31: Arms and Ammunitions
- Chapter 32: Lines
- Chapter 33: Stores
- Chapter 34: The Force Armourer's Branch
- Chapter 35: Civilian Firearms Control
- Chapter 36: Police Animals
- Chapter 37: Dress and Regulations
- Chapter 38: Orders, Decorations and Medals
- Chapter 39: Private Use of Police
- Chapter 40: Government Financial Regulations and Procedures
- Chapter 41: "Records" Provincial, Formation Divisional, Headquarters, Stations and Posts
- Chapter 42: Force, Provincial, Divisional and Station Standing Orders
- Chapter 43: Reports and Returns

- 
- Chapter 44: Correspondence
 - Chapter 45: Operations Map, Crime and General Information
 - Chapter 46: Guide to Criminal Investigation
 - Chapter 47: Control of Traffic
 - Chapter 48: Courts and Prosecution
 - Chapter 49: Prisoners and Accused Persons
 - Chapter 50: Escort, Patrols and General Duties
 - Chapter 51: Civil Disturbance
 - Chapter 52: Relations with Provincial Administration and the Public and Communication with the Press
 - Chapter 53: Force Welfare
 - Chapter 54: The Kenya Police Cadet Unit
 - Chapter 55: Relations with the Diplomatic Corps in Kenya
 - Chapter 56: Rules for the Kenya Police Rifle meeting General Regulations
 - Chapter 57: Police Duties at Elections
 - Chapter 58: Extradition of Offenders
 - Chapter 59: Traffic Department
 - Chapter 60: Kenya Airports Police Unit

BIBLIOGRAPHY

Books, journal articles and reports

Advisory Panel of Eminent Commonwealth Judicial Experts (2002) *Report of the Advisory of Eminent Commonwealth Judicial Expert*, Nairobi

Amnesty International (2002) *Kenya: Rape - the Invisible Crime*, <http://web.amnesty.org/library/index/engaf320012002> as on 20 March 2006

Bayley, D. (2001) *Democratizing the Police Abroad: What to Do and How to Do It*, National Institute of Justice, US Department of Justice, Washington

British Institute in Eastern Africa (BIEA), Institute Francis de Recherche en Afrique (IFRA) (2002) *Crime in Eastern Africa: Past and Present Perspectives*, BIEA, IFRA, Naivasha

Bruce, D. and Neild, R. (2004) *The police that we want: a handbook for oversight of police in South Africa*, Center for Study of Violence and Reconciliation, Johannesburg, and Open Society Justice Initiative, New York

Chalom, M., Leonard, L., Vanderschueren, F., Vezina, C. (2001) *Urban Safety and Good Governance: The Role of the Police*, National Institute of Justice

Children's Rights Project of the Community Legal Centre (1999) *Article 40*, Volume 1, Number 2, August 1999

Civil Society Program (2001) *Review of Access to Justice Projects Final Draft*, South Consulting, Kenya

Clayton, A., Killingray, D. (1989) *Khaki and Blue: Military and Police in British colonial Africa*, Ohio University Press, Ohio

Commonwealth Human Rights Initiative, Kenya Human Rights Commission (2003) *Police as a Service Organization: An Agenda for Change, Roundtable Conference on Police in East Africa*, Delhi

Commonwealth Magistrates and Judges Association (1999) *Conference on the Media and the Judiciary*, Nairobi

Commonwealth Secretariat (1993) *"Presidential, Parliamentary and Civic Elections in Kenya, 29 December 1992: The Report of the Commonwealth Observer Group"*, Election Observer Group Reports, London

Constitution of Kenya Review Commission (2002) *The Constitution of Kenya Review Commission: Issues and Questions for Public Hearings*, Constitution of Kenya Review Commission, Nairobi

Constitution of Kenya Review Commission (2002) *The Peoples Choice (Short Version)*, Constitution of Kenya Review Commission, Mombassa

Constitution of Kenya Review Commission (2003) *The Draft Constitution of Kenya 2002*, Constitution of Kenya Review Commission, Nairobi

Constitution of Kenya Review Commission (2003) *National Constitutional Conference (NCC) Verbatim Reports*, Constitution of Kenya Review Commission, Nairobi

CRADLE, USK and CSC (2004), *Street Justice and Juvenile Justice in Kenya*, www.eldis.org/static/DOC16852.htm as on 20 March 2005

Elkins, C. (2005) *Britain's Gulag, The Brutal End of the Empire in Kenya*, Jonathan Cape, London

Foran, (1960) *Kenya Police 1887*, Robert Hale Ltd, London

Ghai, Y., Constitution of Kenya Review Commission (2002) *The Constitution and the Economy*, Institute of Economic Affairs

Ghai, Y., McAuslan, (2001), *Public Law and Political Change in Kenya*, Oxford University Press, Nairobi and New York

The Governance, Justice, Law and Order Sector Reform Program (2003) *Governance, Justice, Law and Order Sector Reform Program, Short Term Priorities Programme (STPP) Fiscal Year 2003/04*, Nairobi

The Governance, Justice, Law and Order Sector Reform Program (2003) *Governance, Justice, Law and Order Sector Reform Program, Vision and Strategy (Draft for Comments and Discussion Only)*, Nairobi

Graduate Institute of International Studies (2004) *Small Arms Survey 2004*, Kenya

Human Rights Watch (1993) *Divide and Rule: State Sponsored Ethnic Violence in Kenya*, USA

Independent Medical and Legal Unit (2003) *Under the Mask of Democracy*, Nairobi

International Commission of Jurists - Kenya Section (1998) *1998 - Rule of Law Report*, International Commission of Jurists - Kenya Section, Nairobi

International Commission of Jurists - Kenya Section (2000) *2000 Annual Report*, International Commission of Jurists - Kenya Section, Nairobi

International Commission of Jurists - Kenya Section (2001) *State of the Rule of Law in Kenya – 2001*, International Commission of Jurists - Kenya Section, Nairobi

International Commission of Jurists – Kenya Section (2004) *Strengthening Judicial Reforms in Kenya: The Anti-Corruption Court in Kenya*, www.icj-kenya.org/publications/sjr_9.pdf as at 20 March 2006

Institute of Economic Affairs (2002) *Unpacking Budget 2002/3*, Institute of Economic Affairs, Nairobi

Institute of Economic Affairs (2002) *Parliament's Guide in Interrogating the National Budget 2002/2003*, Institute of Economic Affairs, Nairobi

Institute of Economic Affairs (2002) *The Budget Focus*, Institute of Economic Affairs, Nairobi

Institute of Economic Affairs (2002) *The Citizen's Handbook on the Budget: A Guide to the Budget Process in Kenya*, Institute of Economic Affairs, Nairobi

Institute of Economic Affairs (2002) *The Little Fact Book - The Socio-Economic and Political Profiles of Kenyans Districts*, Institute of Economic Affairs, Nairobi

Kenya Domestic Observation Programme (K-DOP) (2003) *When Kenyans Spoke - 2002 General Elections*, Nairobi

Kenya Human Rights Commission (1994) *Independence Without Freedom: The Legitimation of Repressive Laws and Practices in Kenya*, Kenya

Kenya Human Rights Commission (1998) *Killing the Vote: State Sponsored Violence and Flawed Elections in Kenya*, Nairobi

Kenya Human Rights Commission (2001) *Internally Displaced Persons and the Right to Return in Kenya*, Nairobi

Kenya Human Rights Commission (2003) *Eyes on the Prize*, Kenya Human Rights Commission, Nairobi

Kenya Human Rights Commission (2003) *Human Rights as Politics*, Kenya Human Rights Commission, Nairobi

Kenya Human Rights Commission (2005) *2005 Annual Report*, Nairobi

Kenya Human Rights Watch, East African Community (EAC) (2002) *The Treaty for the Establishment of the East African Community*, East African Community (EAC), German Agency for Technical Co-operation (GTZ), Arusha

Kenya Institute for Public Policy, Research and Analysis (2004) *Security Risk and Private Growth in Kenya*, Nairobi

Kenya Police Service (2003) *Strategic Plan 2003-2007 Draft 2*, Nairobi

Kenya School of Monitory Studies (2004) *2004 Report*, Nairobi

Kibwana, K., Ghai, Y., International Commission of Jurists - Kenya Section (2001) *Law and the Administration of Justice in Kenya*, Nairobi

Kibwana, K., Mute, L., Akivaga, S. K., Odhiambo, M. (2001) *Initiatives Against Corruption in Kenya*, Claripress, Nairobi

Kioka (2005) "The African Union and the Implementation of the Decisions of the African Court on Human and Peoples' Rights", *Interrights Bulletin*, Number 1, Volume 15

Kotonya, A., Kenya Human Rights Commission (2002) *Judicial Precedents on Policing, Kenya Human Rights Commission a 2004 Audit Report*, Kenya

Legal Resources Foundation (2004) *Pilot Prisons Paralegal Project Evaluation Report*, December 2004

Lumbe, R. Roundtable Conference on Police Reform (2003) *Recommendations on Police Reform from the Community and safety Program*, Nairobi

Mamdani (2004), 'Beyond Settler and Native as Political Identities: Overcoming the Political Legacy of Colonialism', *First Conference Of Intellectuals*, Dakar, 6 – 9 October 2004

Mazingira Institute (2003) *Introducing the Constitution of Kenya*, Mazingira Institute, Kenya

Ministry of Finance and Planning (2001) *Poverty Reduction Strategy Paper for the Period 2001-2004 Volume 1 and 2*, Ministry of Finance, Nairobi

Muchai, A., Jefferson, C., Security Research and Information Center (2001) *Kenya Crime Survey 2001*, Security Research and Information Center, Nairobi

Mulej, C., University of Nairobi *Theories on the Role and Function of the Police*, Nairobi

Mwenda, A. K. Institute of Economic Affairs (2003) *Budget Transparency*, Institute of Economic Affairs, Nairobi

Mwenda, A. K., (2004) *A Toothpick Scrutiny of the Kenya Police Force Budget*, Nairobi

Mweseli, T., Faculty of Law, University of Nairobi (1997) *An Outline of Criminal Law Procedure in Kenya*, Kenya Litho Limited, Nairobi

National Election Monitoring Unit (1993) *The Multi-Party General Elections in Kenya: The Report of the National Election Monitoring Unit*, Nairobi

National Task Force on Police Reforms (2005) *Report of the National Task Force on Police Reforms Draft 4*, Kenya

National Task Force on Police Reforms (2005) *Report of the National Task Force on Police Reforms Draft 5*, Kenya

Namwamba, A., The Chambers of Justice, Social Justice Programme (2004) *One Year After the Promise: A Citizens Audit of the NARC Government's First Year in Fulfilling the Kenyan Dream*, The Chambers of Justice, Nairobi

Neild, R. (1999), *From national security to citizen security: civil society and the evolution of public order debates*, http://www.wola.org/publications/pub_security_civil_society_national_sec_to_citizen_sec.pdf as on 20 March 2006

Otieno Ouko, J., (2003) *Research Report on Police Excesses 2003*, Kenya Human Rights Commission, Nairobi

Owiti, O., Wesselink, C. (2000) *Legal Aid Programs: A Pilot - Project Description: Draft 2*, South Consulting

People Against Torture (2001) *Your Aid Against Torture, People Against Torture*, Nairobi

Ravestijn, S., Safer Cities Program (1992) *Survivors Speak: A Snapshot Survey on Violence Against Women in Nairobi - Safer Cities Series 3*, UNHABITAT & EAC, Nairobi

Ruteere, M., Pommerolle, M-E. (2003) *Democratizing Security or Decentralizing Repression? The Ambiguities of Community Policing in Kenya* in *African Affairs* 102, 587-604

Standing Committee on Human Rights (2002) *Sixth Report to the Appointing Authority*, Standing Committee on Human Rights, Nairobi

Standing Committee on Human Rights (2003) *Seventh Report to the Appointing Authority*, Standing Committee on Human Rights, Nairobi

Standing Committee on Human Rights (2003) *Special Report on Freedom of Thought, Conscience and Worship in Public Schools* Standing Committee on Human Rights, Nairobi

Stone, C. E. and Ward H. H. (2000) *Democratic policing: a framework for action*, Policing and Society, Vol. 10, Number 1

Transparency International - Kenya *The Kenya Urban Bribery Index 2004*, Transparency International - Kenya, Nairobi

US State Department (2004) *Country Reports on Human Rights Practices: Kenya*, US State Department, USA

UN-HABITAT (2002) *Survivors Speak, A Snapshot Survey on Violence Against Women in Nairobi, Safer Series*, Nairobi

Walker, S. (2001) *Police accountability: the role of civilian oversight*, Wadsworth, Belmont, California

Press releases and newspaper articles

Amnesty International (2005), "Kenya -The impact of "anti-terrorism" operations on human rights", 23 March 2005, www.web.amnesty.org/library/Index/ENGAFR320022005?open&of=ENG-325 as on 20 March 2006

InterPress Service News Agency (2004) February 2004

Kenya National Commission on Human Rights (Undated), "KNCHR Sues the Police" <http://www.knchr.org/news.asp?ID=18> as on 20 March 2006

United Nations (2000), *Untitled*, 6 April 2000 <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/6DC7D1B632E9DAD0802568B9004F826E?opendocument> as on 20 March 2006

___ (2002) "Dismissals a violation of human rights", *Daily Nation*, 1 November 2002

___ (2003) "Police row as graft suspect is released from cells", *Daily Nation*, 4 February 2003

___ (2003) "Better pay and gear for police on the way", *Daily Nation*, 21 February 2003

___ (2003) "Former police chief speaks out on the 'Mwakenya' crackdown", *Sunday Nation*, 2 March 2003

___ (2003) "Police Say They Aren't Safe From Criminals", *East African Standard*, 6 June 2003

___ (2003) "Nyaseda blames poor pay for rise in crime", *Daily Nation*, 5 July 2003

___ (2004) "I bribed police officers, woman tells magistrate", *East African Standard*, 8 January 2004

___ (2004) "Uproar over Rising Crime Deaths in City", *Daily Nation*, 26 January 2004

___ (2004) "Rise in Police Killings of Suspects", *Daily Nation*, 26 January 2004

___ (2005) "30 police Chiefs are moved in major reshuffle", *Daily Nation*, 8 April 2005

___ (2005) "Police Chiefs Charged With Stealing Sh250,000", *Daily Nation*, 29 July 2005

___ (2005) "4 CID men executed Kaiser, MP alleges", *East African Standard*, 16 August 2005

Joseph (2003) "Good cops and bad cops collide in the Cape", *Cape Argus*, 17 July 2003, http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=vn20030717100905648C971925 as on 20 March 2006

Kairuki (1999) "Torture- Move to End Enduring Evil by Police", *The Sunday Nation*, 9 May 1999

Kwalia (2003) "Woman assaulted for exposing brew racket", *Daily Nation*, 2 May 2003

KTN-TV (2004) *9pm News*, March 7 2004

Muiruri (2005) "Ali: Suspects won't be shot", *Daily Nation*, 28 March 2005

Muiruri (2006) "Protests display artistic creativity, ingenuity", *The Standard*, 8 March 2006

Wabala, (2003) "It's a tall order as Narc administration grapples with law", *Sunday Nation*, 25 May 2003

Communiques, declarations, resolutions and treaties

African Union (1998) *African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*

Council of Europe (1950) *European Convention of Human Rights*

United Nations (1990) *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*

United Nations (1988) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*

United Nations (1979) *Code of Conduct for Law Enforcement Officials*

United Nations (2003) *Convention Against Corruption*

United Nations (1959) *Convention on the Rights of the Child*

United Nations (1993) *Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights*

United Nations (1990) *Rules for the Protection of Juveniles Deprived of their Liberty*

United Nations (1985) *Standard Minimum Rules for the Administration of Juvenile Justice*

United Nations (1990) *Standard Minimum Rules for Non-custodial Measures*

United Nations (1948) *Universal Declaration of Human Rights*

Constitutions and laws

Constitution of Kenya 1963

Bomas Draft Constitution of Kenya 2002

Wako Draft Constitution of Kenya 2002

Constitution (Amendment Act) No 7 1982 (Kenya)

Constitution (Amendment) Act No 14 1986 (Kenya)

Constitution (Amendment) Act No 4 1988 (Kenya)

Anti-Corruption and Economic Crimes Act 2003 (Kenya)

Children's Act 2001 (Kenya)

Criminal Procedure Code (Kenya)

Emergency (Criminal Trials) Regulations 1952 (Kenya)

Emergency (Emergency Assizes) 1953 (Kenya)

Kenya National Commission on Human Rights Act 2002 (Kenya)

Miscellaneous Amendments Act 2002 (Kenya)

Official Secrets Act 1968 (Kenya)

Penal Code (Kenya)

Police Act 1988 (Kenya)

Police Regulations 1988 (Kenya)

Preservation of Public Security Act 1966 (Kenya)

Public Order Act, 1965 (Kenya)

Standing Orders 2001 (Kenya)

ENDNOTES

- ¹ Kenya Police (2003), *Kenya Police Service Strategic Plan 2003-2007 Draft 2*, Kenya p. 11
- ² Ghai & McAuslan (2001), *Public Law and Political Change in Kenya*, Oxford University Press, Nairobi and New York p. 4
- ³ For detailed account of the beginnings of the police force in Kenya see Clayton & Killingray (1989), *Military and Police in British Colonial Africa*, Ohio University Press, Ohio
- ⁴ Mulei, *Theories on the Role and Function of the Police*, University of Nairobi, Nairobi
- ⁵ Police legislation was passed in India in 1861. It was a colonial law that reinforced British rule in India, and was based on regime policing practices.
- ⁶ Above, n 2 p. 37
- ⁷ Above, n 2 p. 40
- ⁸ Kenya Police (2004), *Kenya Police Reports Framework June 2004*, Kenya p. 7
- ⁹ Ruteere & Pommerolle (2003), "Democratizing Security or Decentralizing Repression? The Ambiguities of Community Policing in Kenya", *African Affairs*, Volume 102, 587—604
- ¹⁰ Above, n 4
- ¹¹ For further details see Foran (1960), *Kenya Police 1887*, Robert Hale Ltd, London
- ¹² Above, n 8 p. 8
- ¹³ Elkins (2005), *Britain's Gulag: the Brutal End of Empire in Kenya*, Jonathan Cape, London pp. 37, 43
- ¹⁴ Above, n 13 p. 44
- ¹⁵ Above, n 13 p. 44
- ¹⁶ Above, n 13 p. 84
- ¹⁷ *Emergency (Criminal Trials) Regulations 1952 (Kenya)* and the *Emergency (Emergency Assizes) 1953 (Kenya)*
- ¹⁸ The proposals also entailed breaches of numerous rights under the Conventions, including the right to be free from torture, the right to a fair trial, the right to be equal before the law, the right to political opinion and freedom of association.
- ¹⁹ Above, n 13 pp. 96, 129, 314
- ²⁰ Caroline Elkins quotes from the East African Standard, December 1953, "That any member of the public in custody as a suspect can be handed over to a body that has no standing or statutory duty in the investigation of crime for the purposes of extracting confessions or evidence that the police have failed to obtain by normal methods of examination is something that should cause very real concern" as cited in Elkins (2005), *Britain's Gulag: the Brutal End of Empire in Kenya*, Jonathan Cape, London
- ²¹ Jomo Kenyatta was an active campaigner against colonialism and a leader of the Kenyan resistance. As far as the settlers were concerned he was a danger to the status quo. In 1953, he was sentenced to imprisonment having been convicted for managing the Mau Mau uprising. He denied any involvement in the uprising; some say he distanced himself from the movement. The trial was notoriously rigged. Key prosecution witness Rawson Macharia swore an affidavit in 1958 that he had accepted a bribe and lied on oath during the trial.
- ²² There were many reasons why the Constitution was deemed inadequate for the purposes of the time, including the financial burden of implementing a bureaucratic and regionalised structure.
- ²³ Ghai, Y., Constitution of Kenya Review Commission (2002) *The Constitution and the Economy*, Institute of Economic Affairs p. 62
- ²⁴ *Constitution (Amendment Act) No 7 1982 (Kenya)*
- ²⁵ *Constitution (Amendment) Act No 14 1986 (Kenya)*
- ²⁶ *Constitution (Amendment) Act No 4 1988 (Kenya)*

- ²⁷ Kairuki (1999) "Torture- Move to End Enduring Evil by Police", *The Sunday Nation*, 9 May 1999
- ²⁸ Kenyan Human Rights Commission (1994), *Independence Without Freedom: The Legitimation of Repressive Laws and Practices in Kenya*, Kenya p. 27
- ²⁹ See Commonwealth Secretariat (1993), "Presidential, Parliamentary and Civic Elections in Kenya, 29 December 1992: The Report of the Commonwealth Observer Group", *Election Observer Group Reports*, London and the National Election Monitoring Unit (1993), *The Multi-Party General Elections in Kenya: The Report of the National Election Monitoring Unit*, Nairobi p. 1003
- ³⁰ Human Rights Watch (1993), *Divide and rule: state sponsored ethnic violence in Kenya*, USA
- ³¹ Above, n 30
- ³² Article 23 (1), *Constitution of Kenya*, 1963
- ³³ Standing Committee on Human Rights (2003), *Seventh Report of the Standing Committee on Human Rights*, Nairobi p. 10
- ³⁴ Stavrou, Safer Cities Program (2002), *Crime in Nairobi: Results of a Citywide Victim Survey : Safer Cities Series 2*, UN Habitat
- ³⁵ Above, n 34
- ³⁶ The newspaper reported that there were 6,464 incidents of serious crime in January and February 2005 as compared to 7,817 for the same period in 2004. The total crime figures are reported as being 65,482 in 2004, 77,340 in 2003 and 70,423 in 2002.
- ³⁷ The Small Arms Survey 2004 by the Graduate Institute of International Studies reports that there is 'significant' illicit trafficking in small arms between Uganda, Sudan and Kenya. The report also states that in 2002 Kenya police and army confiscated and destroyed over 8000 small arms and light weapons.
- ³⁸ Graduate Institute of International Studies (2004), *Small Arms Survey 2004*, Kenya p. 233
- ³⁹ Above, n 34
- ⁴⁰ UN-HABITAT (April 2002), *Survivors Speak: A Snapshot Survey on Violence Against Women in Nairobi*, Nairobi
- ⁴¹ Kenya Institute for Public Policy Research and Analysis (2004), *Security Risk and Private Growth in Kenya*, Nairobi p. 10
- ⁴² InterPress Service News Agency (2004), February 2004
- ⁴³ Paragraph 21, Chapter 49 of the Standing Orders allow for the detention of women only 'when absolutely necessary'. Paragraph 9, Chapter 3 of the Police Manual prohibits women from being placed in the same cell as a male prisoner.
- ⁴⁴ Kinyungu (2005), "Crime Suspects Worst Nightmare", *Daily Nation*, 2 March 2005
- ⁴⁵ US State Department (2004), *Kenya Country Report*, USA
- ⁴⁶ Children's Rights Project of the Community Law Centre (1999), *Article 40*, Volume 1, Number 2, August 1999
- ⁴⁷ Such children are now classified as being 'in need of care and protection' under the *Children's Act* 2001. See CRADLE, USK and CSC (2004), *Street Justice and Juvenile Justice in Kenya*, www.eldis.org/static/DOC16852.htm as on 20 March 2005 at 18
- ⁴⁸ It is the most comprehensive law on juvenile justice in Kenya as it reflects the principles of the Convention on the Rights of the Child and the United Nations' Standard Minimum Rules on the Administration of Juvenile Justice (also known as the Beijing Rules). See CRADLE, USK and CSC (2004), *Street Justice and Juvenile Justice in Kenya*, www.eldis.org/static/DOC16852.htm as on 20 March 2005 p. 17

⁴⁹ Otieno Ouko (2004), *Research Report on Police Excesses*, Kenyan Human Rights Commission, Nairobi

⁵⁰ Section 5, *Police Act 1988* (Kenya)

⁵¹ Section 53(2), *Police Act 1988* (Kenya)

⁵² Section 4, *Police Act 1988* (Kenya)

⁵³ Mamdani (2004), 'Beyond Settler and Native as Political Identities: Overcoming the Political Legacy of Colonialism', *First Conference Of Intellectuals*, Dakar, 6 – 9 October 2004

⁵⁴ Above, n 1

⁵⁵ Amnesty International (2005), "Kenya - The impact of "anti-terrorism" operations on human rights", 23 March 2005, www.web.amnesty.org/library/Index/ENGAFR320022005?open&of=ENG-325 as on 20 March 2006

⁵⁶ Section 53(2), *Police Act 1988* (Kenya)

⁵⁷ Section 58, *Police Act 1988* (Kenya)

⁵⁸ Section 14, *Police Act 1988* (Kenya)

⁵⁹ Sections 26 and 27, *Police Act 1988* (Kenya)

⁶⁰ Section 16(1), *Police Act 1988* (Kenya)

⁶¹ Section 45, *Police Act 1988* (Kenya), Part V, Police Regulations

⁶² Part VI, *Police Act 1988* (Kenya)

⁶³ Paragraph 2 of Chapter 2 of the Standing Orders states 'the Commissioner of Police shall be responsible to the President for the efficient administration of the Force and shall have command, superintendence and direction of the Force and a general responsibility for keeping the President informed as to the discharge of his / her functions.'

⁶⁴ Section 4, *Police Act 1988* (Kenya)

⁶⁵ National Task Force on Police Reforms (2005), *Draft Report 4*, Kenya, 4 February 2005

⁶⁶ Above, n 65 p. 61

⁶⁷ Above, n 65 p. 61

⁶⁸ *Police (Police Council) Regulation 4 1988* (Kenya)

⁶⁹ Section 20(1), *Police Act 1988*(Kenya)

⁷⁰ Anonymous discussions held with officers or views expressed during discussions at Kenya Human Rights Commission human rights training sessions.

⁷¹ Above, n 8 p. 3

⁷² Above, n 8 p. 54

⁷³ Above, n 8 p. 21

⁷⁴ Paragraph 46(1), *Police Regulations 1988* (Kenya)

⁷⁵ Above, n 8 p. 79

⁷⁶ ___ (2003) "Nyaseda blames poor pay for rise in crime", *Daily Nation*, 5 July 2003

⁷⁷ Wabala, (2003) "It's a tall order as Narc administration grapples with law", *Sunday Nation*, 25 May 2003

⁷⁸ Above, n 8 p. 57

⁷⁹ Above, n 8 p.79

⁸⁰ Above, n 8 p.87

⁸¹ (2003) "Police Say They Aren't Safe From Criminals", *East African Standard*, 6 June 2003

⁸² (2005) "30 police Chiefs are moved in major reshuffle", *Daily Nation*, 8 April 2005

⁸³ Compare to April 2000 when a Minister in the Office of the President publicly applauded the killing of eight criminal suspects, saying "law enforcement officers should continue doing the same." Thus the police were incited to commit criminal offences by their political masters, yet

were blamed by civil society when they did so. The Kenya Human Rights Commission has found evidence that extra judicial executions increased from 201 that year to 251 in 2001.

⁸⁴ Above, n 34

⁸⁵ Transparency International-Kenya (2004), *Kenya Bribery Index 2004*, <http://www.tikenya.org/pub/KENYA%20BRIBERY%20INDEX%202004.pdf> as on 20 March 2006

⁸⁶ Above, n 8 p. 25

⁸⁷ Above, n 8 p. 25

⁸⁸ Above, n 8 p. 3

⁸⁹ Above, n 85

⁹⁰ Above, n 9

⁹¹ Kenya Human Rights Commission, February 2002 interviews – available from KHRC

⁹² Above, n 10

⁹³ Above, n 49

⁹⁴ Above, n 9

⁹⁵ (2004) *"I bribed police officers, woman tells magistrate"*, *East African Standard*, 8 January 2004

⁹⁶ Kwalia (2003), *"Woman assaulted for exposing brew racket"*, *Daily Nation*, 2 May 2003

⁹⁷ The Convention on Torture defines torture to be: Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act a third person has committed or is suspected of having committed, or intimidating or coercing him or third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation or with the consent or acquiescence of a public official or other person acting on official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

⁹⁸ United Nations (2000), *Untitled*, 6 April 2000 <http://www.unhchr.ch/huricane/huricane.nsf/view01/6DC7D1B632E9DAD0802568B9004F826E?opendocument> as on 20 March 2006

⁹⁹ Independent Medico Legal Unit (2003), *Under the Mask of Democracy*, Nairobi

¹⁰⁰ Kenya Human Rights Commission (2005), *2005 Annual Report*, Nairobi p. 15

¹⁰¹ Amnesty International (2003), *2003 Annual Report*, www.web.amnesty.org/report2003/Ken-summary-eng as on 20 March 2006

¹⁰² Above, n 99 p. 19

¹⁰³ Above, n 49

¹⁰⁴ KTN-TV (2004), *9pm News*, March 7 2004

¹⁰⁵ Above, n 49

¹⁰⁶ Above, n 45

¹⁰⁷ United Nations (2005) *Human Rights Committee Concludes Consideration Of Kenya's Report On Compliance With Covenant On Civil And Political Rights*, 15 March 2005, <http://www.un.org/News/Press/docs/2005/hrct658.doc.htm> as on 20 March 2006

¹⁰⁸ (2004) *"Rise in Police Killings of Suspects"*, *Daily Nation*, 26 January 2004

¹⁰⁹ Above, n 49

¹¹⁰ __ (2004) *"Uproar over Rising Crime Deaths in City"*, *Daily Nation*, 26 January 2004 as cited above, n 95

¹¹¹ Information provided by the community policing team in Korokocho, Nairobi at a KHRC focus group discussion on 15 February 2004. All 16 members present confirmed Mr. Sigei's statement.

- ¹¹² Muiruri (2005), "Ali: Suspects won't be shot", *Daily Nation*, 28 March 2005
- ¹¹³ Above, n 33
- ¹¹⁴ Sections 36 and 37, *Criminal Procedure Code* (Kenya)
- ¹¹⁵ *CHRI and KHRC Roundtable Conference on Police Reform in East Africa*, Nairobi, April 2003
- ¹¹⁶ *Official Secrets Act* 1968 (Kenya), Section 3
- ¹¹⁷ ___ (2003) "Police row as graft suspect is released from cells", *Daily Nation*, 4 February 2003
- ¹¹⁸ Above, n 45
- ¹¹⁹ ___ (2005) "Police Chiefs Charged With Stealing Sh250,000", *Daily Nation*, 29 July 2005
- ¹²⁰ Kenya Human Rights Commission (1998), *Killing the Vote: State Sponsored Violence and Flawed Elections in Kenya*, Nairobi
- ¹²¹ Kenya Human Rights Commission (2001), *Internally Displaced Persons and the Right to Return in Kenya*, Nairobi
- ¹²² (2002) "Dismissals a violation of human rights", *Daily Nation*, 1 November 2002
- ¹²³ Article 108(2), *Constitution of Kenya*, 1963
- ¹²⁴ Article 108(2) b (i), *Constitution of Kenya*, 1963
- ¹²⁵ ___ (2003) "Former police chief speaks out on the 'Mwakenya' crackdown", *Sunday Nation*, 2 March 2003
- ¹²⁶ Article 85, *Constitution of Kenya*, 1963
- ¹²⁷ Section 4(1), *Preservation of Public Security Act* 1966 (Kenya)
- ¹²⁸ Section 4(2), *Constitution of Kenya*, 1963
- ¹²⁹ Section 85(2), *Constitution of Kenya*, 1963
- ¹³⁰ Section 85(6), *Constitution of Kenya*, 1963
- ¹³¹ Section 85(2), *Constitution of Kenya*, 1963
- ¹³² Section 59(2), *Constitution of Kenya*, 1963
- ¹³³ ___ (2003) "Police row as graft suspect is released from cells", *Daily Nation*, 4 February 2003
- ¹³⁴ ___ (2003) "Better pay and gear for police on the way", *Daily Nation*, 21 February 2003
- ¹³⁵ Muiruri (2005) "Ali: Suspects won't be shot", *Daily Nation*, 28 March 2005
- ¹³⁶ Independent Commission on Policing for Northern Ireland (1999), *A New Beginning: Policing in Northern Ireland - The Report of the Independent Commission on Policing for Northern Ireland*, Northern Ireland at 18 on *Security Sector Reform*, http://www.gfn-ssr.org/good_practice.cfm?id=27&p=13 as on 20 March 2006
- ¹³⁸ Above, n 136
- ¹³⁹ Above, n 23 at 62
- ¹⁴⁰ Article 282(1), *Bomas Draft Constitution* 2002 (Kenya)
- ¹⁴¹ Article 282(6), *Bomas Draft Constitution* 2002 (Kenya)
- ¹⁴² Kenya's report is UN document number CCPR/C/KEN/2004/2. The response to it is summarised at United Nations (2005) <http://www.un.org/News/Press/docs/2005/hrct658.doc.htm> as on 20 March 2006
- ¹⁴³ Kioko (2005), "The African Union and the Implementation of the Decisions of the African Court on Human and Peoples' Rights", *Interights Bulletin*, Volume 15, Number 1 pp. 7-8
- ¹⁴⁴ Article 7, *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*

¹⁴⁵ *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*

¹⁴⁶ Article 30, *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*

¹⁴⁷ Article 31, *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*

¹⁴⁸ Article 32, *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*

¹⁴⁹ Bayley (2001), *Democratizing the Police Abroad*, National Institute of Justice, US Department of Justice, Washington pp. 40-41

¹⁵⁰ Joseph (2003), "Good cops and bad cops collide in the Cape", *Cape Argus*, 17 July 2003, http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=vn20030717100905648C971925 as on 20 March 2006

¹⁵¹ (2005), "4 CID men executed Kaiser, MP alleges", *East African Standard*, 16 August 2005

¹⁵² Kibunja (2003), *Conference Statement: Police as a Service Organisation: An Agenda for Change*, Nairobi, April 24-25 2003

¹⁵³ Section 3(10), *Police Regulations 1988* (Kenya)

¹⁵⁴ Paragraph 33, Chapter 20, *Standing Orders 2001* (Kenya)

¹⁵⁵ Paragraph 34, Chapter 20, *Standing Orders 2001* (Kenya)

¹⁵⁶ Paragraph 35, Chapter 20 *Standing Orders 2001* (Kenya)

¹⁵⁷ Standing Committee on Human Rights (2002), *Sixth Report of the Standing Committee on Human Rights*, Nairobi

¹⁵⁸ Above, n 8 p. 23

¹⁵⁹ Parliament of Kenya Hansard, 5 March 2003, p. 268

¹⁶⁰ Parliament of Kenya Hansard, 16 July 2002 p. 310

¹⁶¹ United Nations (1992) *Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights* ("Paris Principles")

¹⁶² Kenya National Commission on Human Rights (Undated), "KNCHR Sues the Police" <http://www.knchr.org/news.asp?ID=18> as on 20 March 2006

¹⁶³ International Commission of Jurists (Kenya Section) (2004), *Strengthening Judicial Reforms in Kenya: The Anti-Corruption Court in Kenya*, www.icj-kenya.org/publications/sir_9.pdf as on 20 March 2006

¹⁶⁴ Section 7, *Anti-Corruption and Economic Crimes Act 2003* (Kenya)

¹⁶⁵ Section 89, *Criminal Procedure Code* (Kenya)

¹⁶⁶ Paragraph 2, Chapter 46, *Standing Orders 2001* (Kenya)

¹⁶⁷ Section 18, *Police Act 1988* (Kenya), Chapter 41, *Standing Orders 2001* (Kenya)

¹⁶⁸ UN document number CA 54/1989 H.C.Cr.A No 417 of 1987

¹⁶⁹ Section 85, *Criminal Procedure Code* (Kenya)


¹⁷⁰ Section 30(1), *Police Act 1988* (Kenya)

¹⁷¹ Legal Resources Foundation (2004), *Pilot Prisons Paralegal Project Evaluation Report*, p. 1

¹⁷² Walker (2002), *Police accountability: the role of civilian oversight*, Wadsworth, Belmont

¹⁷³ Neild (1999), *From national security to citizen security: civil society and the evolution of public order debates* http://www.wola.org/publications/pub_security_civil_society_national_sec_to_citizen_sec.pdf as on 20 March 2006

¹⁷⁴ This study was conducted by Stephen Muirur, Chief Crime Editor of the Nation, on behalf of CHRI



¹⁷⁵ Penalties for a first time offence for failure to pay registration fees include three to five years in jail. Journalists who fail to abide by the law requiring them to submit newspaper editions for approval before circulation are liable to jail sentence of not less than five years.

¹⁷⁶ Muiruri (2006), "Protests display artistic creativity, ingenuity", *The Standard*, 8 March 2006

¹⁷⁷ (2005) *Kenyan Media Facing Credibility Crisis*, AllAfrica.com, 25 May 2005

¹⁷⁸ Ministry of Finance and Planning (2001), *Poverty Reduction Strategy Paper for the Period 2001-2004 Volume 1 and 2*, Nairobi p. 51

¹⁷⁹ Above, n 65 p. 11

¹⁸⁰ At a validation workshop of Kenya Police, with the Kenya Human Rights Commission and Commonwealth Human Rights Initiative

¹⁸¹ Above, n 65 p. 64

¹⁸² Above, n 65

¹⁸³ Above, n 65

¹⁸⁴ Above, n 65

¹⁸⁵ Above, n 10

¹⁸⁶ Above, n 10 p. 599

¹⁸⁷ Above, n 8 p. 96

¹⁸⁸ United Nations (1990) *United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*

CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, as well as a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Human Rights Advocacy: CHRI makes regular submissions to official Commonwealth bodies and member governments. CHRI has conducted fact finding missions and coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights.

ACCESS TO INFORMATION

Right to Information: CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy makers.

Constitutionalism: CHRI believes that constitutions must be made and owned by the people and has developed guidelines for the making and review of constitutions through a consultative process. CHRI also promotes knowledge of constitutional rights and values and has developed web-based human rights modules for the Commonwealth Parliamentary Association.

ACCESS TO JUSTICE

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

Prison Reforms: The closed nature of prisons makes them prime centres of violations. CHRI aims to open up prisons to public scrutiny by ensuring that the near defunct lay visiting system is revived.

Judicial Colloquia: In collaboration with INTERIGHTS, CHRI has held a series of colloquia for judges in South Asia on issues related to access to justice, particularly for the most marginalised sections of the community.

KHRC Programmes

The KHRC pursues its Strategic Objectives through the following programmes:

Outreach and Education: The programme's strategy is to deepen the appreciation of rights by all people. It does this by creating rights awareness through educational and outreach activities. It is the flagship programme of the KHRC within the context of the Vision 2012 Strategy, which seeks to root rights in communities. The KHRC has zoned the country into six regions; Coast, Western, North Rift, South Rift, Eastern, and Northern, and partners with local rights activists to energize community-based rights advocacy.

Advocacy: The programme's strategy is to curb rights violations by offering various forms of redress to victims and pressurizing the state to hold violators to account. The programme campaigns and lobbies at the local, national and international levels to promote rights-compliant policy and legal change. Its ongoing initiatives include the Right to Information and Anti-Impunity campaigns, Constitutional Reform Advocacy and the Prisons and Police Reform, Labour Rights and Public Funds Monitoring projects.

Monitoring and Research: The programme's strategy is to curb rights violations by documenting and publicizing them. Reports of violations are received daily and also in monthly rights clinics. These reports, and information on violations from other sources, are incorporated into the bi-annual Human Rights Report-a leading Kenyan publication on rights violations, issues and policy. The Research component conducts in-depth inquiries into selected, topical rights issues and provides research support to the organization.

The KHRC is committed to mainstreaming gender in all its policies, programmes and activities.

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

CHRI is based in New Delhi, India, and has offices in London, UK, and Accra, Ghana.

International Advisory Committee: Sam Okudzeto - Chairperson. Members: Eunice Brookman-Amisah, Murray Burt, Jean Corston, Maja Daruwala, Alison Duxbury, Nihal Jayawickrama, B.G. Verghese, Zohra Yusuf.

Executive Committee: B.G. Verghese - Chairperson; Maja Daruwala - Director. Members: Anu Aga, B.K. Chandrashekar, Bhagwan Das, Nitin Desai, K.S. Dhillon, Harivansh, Sanjoy Hazarika, Poonam Muttreja, R.V. Pillai, Moolchand Sharma.

Trustee Committee: Nihal Jayawickrama - Chairperson. Members: Meenakshi Dhar, John Hatchard, Derek Ingram, Neville Linton, Colin Nicholls, Lindsay Ross, Peter Slinn, Elizabeth Smith.

Kenya Human Rights Commission

The Kenya Human Rights Commission (KHRC) is a national non-governmental organization founded in 1992. It has observer status with the African Commission on Human and People's Rights and is a member of the International Federation of Human Rights (FIDH). It is the 2005 recipient of the Utezei (Defender) Award conferred by the Kenya National Commission on Human Rights.

Mission: To promote, protect and enhance the enjoyment of rights for all.

Vision 2012: The KHRC has developed the Vision 2012 Strategic Plan, which seeks to root rights in communities by stimulating the development of community-based rights advocacy initiatives. Through this approach it is expected that a Human Rights State will emerge in the country by the year 2012.

Strategic Objectives: Communities organized around specific human rights issues strengthened and developed into powerful advocacy networks by 2012; accountable human rights-centred governance amongst state and key non-state actors enhanced by 2008 and attained by 2012; capacity of the KHRC as a leader in human rights discourse, advocacy and democratic development enhanced by 2008 and attained by 2012; the KHRC's capacity to learn, adopt and innovate attained by 2008; financial sustainability of the KHRC significantly secured by 2008 and attained by 2012.

Board of Directors: Makau Mutua – Chairperson; Mwambi Mwasaru – Vice-Chairperson; Members: Njeri Kabeberi, Helena Kithinji, Karuti Kanyinga, Mumina Konzo, Kaari Murungi, Wanjiku Miano – Executive Director

ISBN: 81-88205-28-1

Material from this report may be used, duly acknowledging the source.

CHRI Headquarters

B-117, First Floor
Sarvodaya Enclave
New Delhi - 110017, INDIA
Tel: +91-11-2685-0523, 2686-4678
Fax: +91-11-2686-4688
E-mail: chriall@nda.vsnl.net.in

CHRI London Office

C/o Institute of Commonwealth Studies
28, Russell Square
London WC1B 5DS, UK
Tel: +44-020-7-862-8857
Fax: +44-020-7-862-8820
E-mail: chri@sas.ac.uk

CHRI Africa Office

C/o The British Council
PO Box GP 771
Accra, Ghana
Tel: +233-21-683068, 683069
Fax: +233-21-683062
E-mail: CHRI@gh.britishcouncil.org

KHRC

PO. Box: 41079
00100 GPO
Nairobi, Kenya
Tel: +254-020-387-4998/9
Fax: +254-020-3874997
E-mail: admin@khrc.or.ke

Website: www.humanrightsinitiative.org

Website: www.khrc.or.ke

