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

COMMONWEALTH HUMAN RIGHTS INITIATIVE

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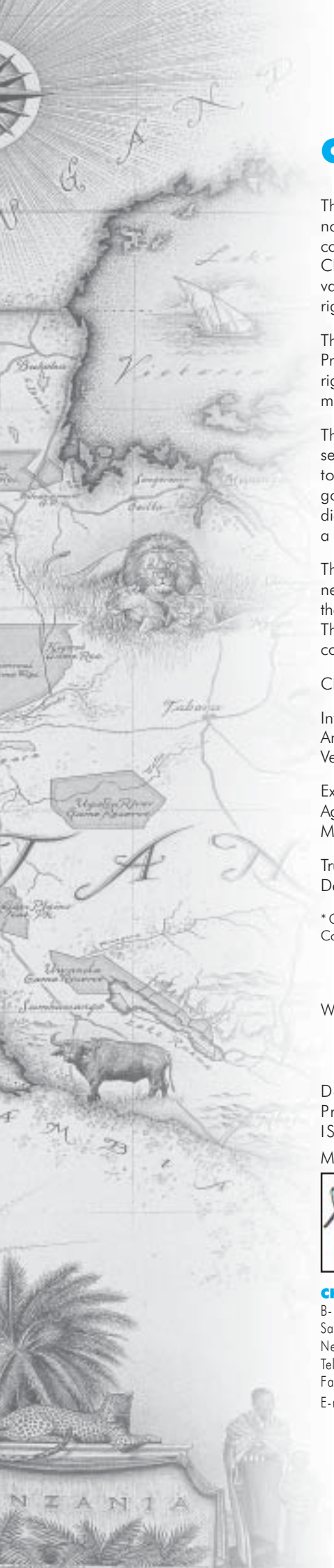

Commonwealth Human Rights Initiative

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* Commonwealth Journalists Association, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Parliamentary Association, Commonwealth Press Union and Commonwealth Broadcasting Association.

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THE PROJECT

In 2001, the Ford Foundation requested CHRI to build on its experience working on policing in India by conducting similar work in East Africa; the debate on improving policing was not then as open as it is now and it was hoped that a research study would provide a catalyst for discussion.

CHRI was tasked with undertaking a comparative study of the police in East Africa, specifically targeting two main issues. The first was the extent of illegitimate political control of the police in Kenya, Tanzania and Uganda and the impact of such control on the quality of police leadership and performance. Linked to this was 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 was to undertake an analytical study of policing budgets in the region, which explored the impact of levels of funding on police performance, the impact on crime management and the safety of citizens.

This report on policing in Tanzania is part of the larger comparative study and analyses the Tanzania police, looking mainly at illegitimate political control, the impact of that control on policing, and the reform answers that will provide a more democratic and more accountable police service to the Tanzanian people.

ABBREVIATIONS

ACP	Assistant Commissioner of Police
ASP	Afro-Shirazi Party
ATIP	Accountability Transparency and Integrity Project
CAC	UN Convention Against Corruption
CAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCM	*Chama Cha Mapinduzi* (Ruling political party)
CEDAW	UN Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CHRAGG	Commission on Human Rights and Good Governance
CID	Criminal Investigation Department
CP	Commissioner of Police
CPA	*Criminal Procedure Act* 1985 (Tanzania)
CPL	Corporal
CRC	UN Convention on the Rights of the Child
CUF	*Chama Cha Wananchi* (Opposition political party)
DCP	Deputy Commissioner of Police
DPP	Deputy Public Prosecutor
EAC	East African Community
EALS	East Africa Law Society
ESRF	Economic and Social Research Foundation
FFU	Field Force Unit
ICCPR	International Covenant on Civil and Political Rights
IGP	Inspector General of Police
JLOS	Justice Law and Order Sector
LAC	Legal Aid Clinic
LHRC	Legal and Human Rights Centre
LSRP	Legal Sector Reform Programme
MTS	Medium Term Strategy
NEC	National Executive Committee
NCO	Non-Commissioned Officer
OCD	Officer Commanding District
OCS	Officer Commanding Station
PC	Police Constable
PCB	Prevention of Corruption Bureau
PGO	Police General Orders
PRSP	Poverty Reduction Strategy Paper
PSRP	Public Service Reform Programme
REDET	Research and Education for Democracy in Tanzania
RPC	Regional Police Commander
SACP	Senior Assistant Commissioner of Police
SGT	Sergeant
SM	Sergeant Major
SP	Superintendent of Police
S/SGT	Staff Sergeant
SSP	Senior Superintendent of Police
SWAps	Sector Wide Approach

TANU	Tanganyika African National Union
TFL	Tanganyika Federation of Labour
TPDF	Tanzania People's Defence Force
UDHR	Universal Declaration of Human Rights
UDSM	University of Dar es Salaam
UTP	United Tanganyika Party

Police ranks[1]

Senior officers

Inspector General of Police (IGP)
Commissioner of Police (CP)
Deputy Commissioner of Police (DCP)
Senior Assistant Commissioner of Police (SACP)
Assistant Commissioner of Police (ACP)
Senior Superintendent of Police (SSP)
Superintendent of Police (SP)
Assistant Superintendent of Police (ASP)

Mid-ranking officers

Chief Inspector (CI)
Senior Inspector (SI)
Inspector (Ins)
Assistant Inspector (AI)

Junior officers

Sergeant Major (SM)
Staff Sergeant (S/Sgt)
Sergeant (Sgt)
Corporal (CPL)
Constable (PC)

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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 restrain freedom and ensure power for the governing regime. Holding the police to account for their plans, actions and decisions offers the essential 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.

Tanzania is ready for police reform. Mired in its colonial birth, history of single-party rule and the legal framework under which it developed, the work of the Tanzanian Police Force is defined by violence, illegality, illegal arrest and detention, torture, excessive use of force, corruption, partiality and abuse of process. The majority of Tanzanians associate the police with impunity, secrecy and violence.

Reform must begin with a strong legislative framework built around the principles of democratic policing. 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). Their value lies both in the ability to immediately check acute misfeasance as well as to examine yearly trends and bring in steady, if gradual, improvements to counter persistent 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. 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 Tanzania. The *Legal Sector Reform Programme: Medium Term Strategy and Action Plan* includes a plan to enhance democracy and the observance of constitutional and basic human rights in the police. The Minister for Public Safety and Security has said that the government plans to amend all repressive police laws inherited from the colonial government.[2]

This report examines the concepts of democratic policing and accountability in practice, in the Tanzanian context. It looks at the development of the Tanzanian Police Force, analyses the issues that the police are faced with, considers the legislative and political frameworks that the police operate within and critiques policing budgets in Tanzania. Finally, it suggests the reforms that need to take place in Tanzania and provides a roadmap for those reforms.

CHAPTER ONE
A HISTORY OF POLICING IN TANZANIA

> "Common colonial antecedents provide Commonwealth police structures a core resemblance but post-colonial histories have shaped present day policing in each country. . . . The evolution of policing values has been influenced by individual national histories."[3]
>
> *- CHRI's 2005 Report to the Commonwealth Heads of Government Meeting (CHOGM) on police accountability*

1. Tanzania's police: a product of history

Tanzania's police force is a product of its political history. Police in Tanzania have been a government tool since the 1880s and the days of German East Africa, when locals were recruited into the German military to suppress internal dissent and protect Tanganyika's borders. Police and politics have remained linked as Tanzania's recent history has unfolded. The Germans were replaced by the British, who formalised the police role as a protector of the ruling regime culturally and legislatively. Following independence and the unification of the mainland, Tanganyika, and the islands of Zanzibar (including Unguja and Pemba) the Government removed any vestiges of police independence by incorporating the force into the machinery of its one-party state. A more recent move to multi-party politics has not changed the fundamental nature of the police force; it continues to act as a partisan, ruler-focused organisation, with little regard for the concepts of modern policing or the needs of its community.

2. German East Africa 1886 – 1919

The East Africa region was divided into arbitrary regions by European colonialists in the mid-1800s. Under the *General Act* agreement of 1885 and the *Anglo-German Agreement* of 1886, the colonists ruled that mainland Tanzania would become a German colony, while Kenya, to the north, came under British control. Germany ruled mainland Tanzania, known as Tanganyika, from 1886 to 1919. Initially, this control was imposed through the German East Africa Trading Company, but in 1891 the German Government took direct control of the administration.[4]

The German colonialists did not establish a formal police force. Instead, they used the existing network of district and village level administrators, known as *akidas* and *jumbes*, to fulfill a local community policing role.[5] These administrators were a relic of Tanzania's traditional village system. Army and para-military officers were used to maintain law and order and protect the colonial administration. The army and para-military officers introduced Tanzanians to regime-style policing as they suppressed local opposition to the foreign rulers. Locals were conscripted into the German military and used to crush opposition and dissent, dividing the local population.

The outbreak of World War I in 1914 dramatically altered the political landscape of East Africa. German East Africa was the only German colony that did not fall within a matter of months. The German Military Commander, Colonel Paul Von Lettow-Vorbeck, held off British and South African forces using guerrilla warfare techniques. He reinforced his troops by conscripting more local soldiers, known as the *askari*. The *askari* fulfilled a dual role for the Germans; they protected them from external enemies, as well as against ongoing internal resistance.

German influence began to wane when British and South African troops took control of Tanzania in 1916. A civilian police force was quickly formed, made up of a group of South African soldiers sent to carry out civilian police duties in German settler areas. The 31 officers that constituted the police were under the command of a South African Major, and carried out policing duties until 1919, when the Germans were defeated and the rise of the British in the region began.

3. British rule 1919 – 1961

Mainland Tanzania was placed under the control of the British Colonial Authority in 1919. The British set about establishing a number of institutions, including a police force, known as the Tanganyika Police Force and Prisons Service. The police force was established by the Police and Prisons Proclamation in May 1919. For the first time in Tanzania's colonial history, the civilian police were separated from the military.

Though the police force was separated from the military, it was still in place to protect British interests. Senior ranks were filled with European appointments, middle ranks were made up of imported Asian officers and local recruits completed the junior ranks. In 1922, there were 68 Europeans (from Inspectors to Commissioners), 25 Asians (at Inspector rank) and 748 Africans (as junior rank and file officers).[6] This structure stayed in place while the numbers of local recruits grew – eight years later, in 1930, 78 Europeans were in senior positions in the police, 67 Asians made up middle management, and 1,719 Africans supported the junior ranks. Recruitment of Africans was also highly selective. Officers were chosen from tribes that were typically physically larger and who had a reputation for aggressive behaviour.[7] The African members of the police were not representative of the tribal mix in the population – by 1952, 87% of the local police were recruited from just 6 of Tanganyika's 120 tribes.[8]

African police officers were not just junior in the police hierarchy; they were also subject to discriminatory disciplinary and management practices. For example, if an African non-commissioned officer was insubordinate, he would be given the same punishment as a senior Asian or European officer, and additionally would be beaten using a cane.[9] Additionally, until 1949, shoes were not provided with uniforms for junior ranks, while different uniforms were provided to clearly mark the rank of the officer.

Police operations were generally confined to urban neighborhoods, unless a rural area had a high colonial settler population. In this case, 'detached local police posts' would be established in the area to patrol and protect settler farms.[10] This is a reflection of the emphasis placed on the maintenance of law and order to protect the British colonialists to the exclusion of policing for the local community.

World War II again changed East Africa's social and political landscape. The British administration embarked on an expansion and recruitment drive for the police, but this time made deliberate efforts to increase the number of African officers holding senior police roles. In 1949, the first group of Africans to be recruited into senior ranks joined the police. By 1960, on the eve of independence, there were 28 Africans in senior roles.

4. Zanzibar

For centuries, Zanzibar was a centre for the slave trade, as imprisoned Africans were ferried from the mainland, sold in its slave markets and then shipped to Arabia, China and India.[11] Since the late 17th Century, Zanzibar had been part of Oman – in 1840, the capital of Oman was

moved from Muscat in Oman to Zanzibar. In 1861, following a succession struggle, Zanzibar and Oman were divided into two principalities, each governed by their own Sultan. At this time, Zanzibar's land holdings included a major part of the East African coastline. In the 1886 colonial allocations of East Africa, Zanzibar's mainland territory was reduced to a ten nautical mile band along the coast. Between 1887 and 1892, this coastal area was lost to the colonial powers battling for the East African mainland, although parts were not formally ceded until later.

British influence over Zanzibar grew throughout this period. Britain played an instrumental part in banning the slave trade in 1873, establishing the first police force to enforce anti-slavery laws. The force was a mix of British forces and a group put together by the Sultan of Zanzibar. In 1877, the British Government appointed Lloyd Methews, a Royal Navy Commander, to lead a trained force of 1,300 officers to guard the coast and police anti-slavery measures. There were 300 African officers in the force.

Britain formalised its control over the islands in 1890, when Zanzibar became a British Protectorate, keeping the Sultan in place in a largely ceremonial role. In 1907, the Sultan disbanded the police, who had earlier gone on strike over low pay and poor working conditions, and replaced them with a new force of army reservists, drawing recruits from neighbouring mainland areas. As in Tanganyika, Police Commissioners were imported from overseas.

5. Independence

Tanganyika won independence from the British on 9 December 1961, and declared itself a republic on 9 June 1962. After independence, Tanganyika underwent radical social and political change as it shook off the shackles of almost a century of foreign rule. The new freedom brought with it a number of new political parties and organisations, including the Tanganyika African National Union (TANU), led by Mwalimu Julius Nyerere, the United Tanganyika Party (UTP), and the African National Congress (ANC), while non-political groups included the Tanganyika Federation of Labour (TFL). Tanganyika was ruled by TANU, which aimed to move away from a capitalist system to agricultural socialism. It set about putting in place this system, first creating a one-party system of politics. This began the repression of fundamental freedoms and the police role in enforcing authoritarian laws aimed at curbing political dissent. An example of laws passed to support this system is the *Preventive Detention Act*, passed in 1962, which allowed detention without trial,[12] while another is the *Deportation Ordinance*, a dormant piece of 1921 legislation, which the Government invoked to legitimise internal deportations.

The police were to play an important role in the enforcement of these laws. The British left behind police well versed in the tactics of regime policing and well practised at keeping the ruling party in power. The British also left behind a set of laws that stitched regime policing into Tanzania's legislative fabric. These laws are still largely in force today. Independence did see one major change, however – there was a shift in senior ranks as foreign officers were replaced with Africans. In a significant appointment in 1962, MNE Shaidi became Tanganyika's first African Commissioner of Police. Unfortunately, Africans in senior posts did not change the fundamental approach or mandate of the police.

Meanwhile, off Tanganyika's coast, the Zanzibar islands won their independence from Britain on 19 December 1963. Shortly after independence, the Sultanate Government was overthrown by the Afro-Shirazi Party (ASP). The ASP suspended the new Constitution, denied fundamental

rights and freedoms, and used the police to quell dissent. Three months later, Tanganyika joined with Zanzibar to form modern day Tanzania.[13] The two Governments agreed on a Political Union under which Zanzibar retains a separate government, President, judiciary and House of Representatives to deal with domestic issues,[14] while the Union Government rules mainland Tanzania and takes care of police, foreign affairs, national security and defence for both the mainland and the islands.[15] As policing was a Union responsibility, the Union Government repealed Zanzibar's police laws, and extended the former Tanganyika's *Police Force Ordinance* to Zanzibar's borders. The post of Inspector General of Police was created to head up the new Union force, and the post was filled by Shaidi, the former Commissioner for Police in both Tanganyika and Zanzibar.

6. Post-independence and single-party politics

The Tanzanian Government then set about incorporating the police machinery into its own rungs. Policies were drafted that made membership of the ruling party a prerequisite for a new police recruit. Police officers were appointed to various positions of power within the ruling party.[16] As police independence slipped from illusory to non-existent, single party rule was firmly established, allowing only for the operation of TANU on the mainland and the Afro-Shirazi Party in Zanzibar.[17] The opposition parties and groups that had become active after independence were banned, while their members were prevented from meeting and their leaders were deported or detained. The police were actively involved in the prevention of free speech and the detention and deportation of opposition leaders.

In 1975, political activities were further restricted with an amendment of the 1965 interim Constitution. The new section provided that "all political activities in Tanzania…[would]… be conducted by or under the auspices of the party". It also provided that "the functions of all organs of the State of the United Republic of Tanzania shall be performed under the auspices of the party". The implication for the police was clear – as an organ of the state, it was required by its national Constitution to support the ruling government.

In 1977, TANU and ASP merged to form the *Chama Cha Mapinduzi* (CCM) party. CCM has enjoyed a long period of power, marked with very few developments in terms of police reform or human rights. One positive development was the inclusion of a Bill of Rights in the body of the Constitution in 1984, following public pressure across Tanzania and lobbying from the Zanzibar Government, which could have passed a Bill of Rights to cover its own region, without the support of the Union Government. The Bill of Rights came into force in March 1985[18], but was suspended for three years to allow the Government to institute legislative reform to ensure that all laws complied with the Bill of Rights.[19]

The three year amnesty passed without any legislative reform. This was partly due to internal arguments within the Law Reform Commission regarding the constitutionality of a number of the laws. A 1992 commission into single or multi-party democracy headed by the then Chief Justice of Tanzania, Francis Nyalali, known as the Nyalali Commission, identified over 40 pieces of legislation that needed amending or repealing on the basis that they were oppressive and unconstitutional. A number of these laws were police related, including the *Criminal Procedure Act* 1985, the *Peoples' Militia Laws* 1973 and 1989, the *National Security Act* 1970, the *Preventative Detention Act* 1962 as well as several pieces of prison detention and local government related legislation.[20] None of the laws identified related to policing have been changed. The Law Reform Commission is charged with failing to get this work off the ground, although they are limited by a lack of political will. Some of these laws had been

tested in Court and found unconstitutional. For example, in *DPP V Daudi Pete*,[21] section 145(5)(e) of the *Criminal Procedure Act* 1985, which dealt with the right to bail, was declared inconsistent with the Bill of Rights, unconstitutional and void.

Throughout this period, the police force continued to act as a Government enforcer, imposing inconsistent or unconstitutional laws at the behest of the ruling regime. While Article 20 of the Constitution allowed for the right to peacefully assemble, form or belong to organisations or associations, the police continued to arrest, detain or internally deport those who tried to assemble or meet for political reasons.[22] For example, when a lawyer, James Mapalala petitioned the then Chairman of the ruling party to advocate for a change to multi-party democracy, he was exiled to Mafia Island. Members of the Tanganyika Law Society who had debated multi-party democracy with Mapalala were detained in custody for a number of days, as were those he consulted for political or legal advice in the weeks prior to his petition.

Despite the ruthless suppression of debate, pressure continued to mount for a move away from a single-party dictatorship. In February 1991, the Government mandated the Nyalali Commission to look at multi-party democracy and provide recommendations for reform within a year. The Commission made a number of observations, including those referred to previously concerned with unconstitutional laws, and recommended that multi-party democracy be established. The government disregarded the bulk of the observations, but amended the Constitution to allow multi-party democracy from 1 July 1992. Article 147(3) of the Constitution was also amended to prohibit "any member of the defence or security force to join a political party save only that they shall have the right to vote which is specified under Article 5 of the Constitution". This provides the illusion of some political independence for the police force, but the reality is that it continues to operate as a partisan body, protecting and supporting the government.

CHAPTER TWO
THE LEGISLATIVE FRAMEWORK

1. The Constitution

Tanzania's Constitution is largely silent with regard to the police. It does not define the police, although an entire chapter is devoted to the armed forces. It does not incorporate human rights ideals into the police mandate, despite the inclusion of a Bill of Rights. Nor does the Constitution require the police to be responsive, representative or accountable.

The Constitution reflects a political philosophy based around socialist ideology, citizen involvement and self reliance.[23] Article 27(1) places an obligation on all able-bodied Tanzanians to prevent crime and maintain peace and security. Article 146(2)(b) establishes a Local Government Authority to ensure the enforcement of law and public safety of the people, while Article 146(1) requires the "transfer of authority to the people". In practice, this focus means that often defence and security are dealt with at the village level, by local government in corroboration with the police. This is problematic as it means there are non-trained people performing sensitive police work without being held to account for their conduct through the police accountability structure. It can lead to serious human rights violations.

Article 9(g) sets out an equal opportunity policy for Tanzanians and requires all government bodies, including the police, to employ equal opportunity. Article 9(f) incorporates the United Nations Declarations of Human Rights and requires government bodies to comply with the Declaration. Article 9(h) calls on government bodies to eradicate all forms of injustice, discrimination, oppression and favouritism. These sections set out a good human rights platform for the police to work from. However, the Constitution also limits these obligations, as Article 30 states that any rights and freedoms enshrined in the Constitution do not invalidate any existing public order or public safety legislation.

The Constitution has been used by the judiciary to find some policing-related legislation invalid. For example, in *Chumchua s/o Marwa v Officer of Musoma Prison and Attorney General*,[24] Justice Mwalusanya declared a deportation order unlawful on the basis that it contravened the Constitution.

2. Domestic law

The police are primarily guided by the *Police Force and Auxiliary Services Act* 2002 ("the Police Act"), the *Police Force Service Regulations* 1995 ("the Police Regulations") and Police General Orders.

The Police Act establishes the police force, provides for the general regulation of the police and defines police force activity. The Police Act retains the outdated colonial model of policing that emphasises the police role in preventing and controlling crime and maintaining security, rather than placing an emphasis on responding to community needs. As a result, service-oriented functions and support for the rights and freedoms of people in the community are lacking.

The Police Regulations govern the appointment and termination of positions within the force, payments, allowances and pensions. The Regulations also incorporate sections of Police General Orders that deal with discipline and include a Code of Conduct.

Police General Orders detail day-to-day procedures for police business. The Orders cover administrative matters such as use of buildings or storage of arms. Another example is police patrols – the General Orders state that patrols should be carried out regularly in every village and populated area, set the duration of the patrols, designate an officer to be responsible for the actions, discipline and behaviour of the officers on patrol and require the patrolling officers to sign in at different stations along their route. General Orders also deal with how the police should exercise powers of entry, search and seizure, investigations, identification parades and statement taking.

Police General Orders are not available to the public.[25] However, the sections that deal with the disciplinary code for police officers is incorporated into the Police Regulations, which are published in the official Government gazette, and as such are available to the public.

Other domestic legislation that impacts on the police force and policing includes:

- *Penal Code:* Codifies the behaviour that is considered a criminal offence in Tanzania. Notably, the police themselves can be prosecuted under the Code; for example, an extra-judicial killing can be prosecuted as murder under the Code.
- *Criminal Procedure Act* 1985: Provides for procedures to be followed by all criminal justice agencies in criminal investigations and criminal legal proceedings in Tanzania. These include police powers and procedures. For example, section 11 of the Act provides for powers of arrest; Part IIB provides for powers and duties of police officers when investigating offences.
- *Evidence Act*: Sets out what will be accepted as evidence in court. For example, section 27 of the Act bars the admission of evidence obtained by force. Section 29 of the Act states that "no confession which is tendered in evidence shall be rejected on the ground that promise or a threat has been held out to the person confessing unless the Court is of the opinion that the inducement was made in such circumstances and was of such a nature as was likely to cause an untrue admission of guilt to be made".
- *Prevention of Terrorism Act* 2002: Broadens the definition of the police and those who can carry out policing functions.[26] The Act overrides any other legislation.[27]

3. International standards

Tanzania 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 Tanzanian law and practice so that they can become a stronger part of the police accountability framework.

3.1. United Nations standards

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

Tanzania is a signatory to a number of important United Nations treaties. However, it has failed to pass the necessary domestic legislation required to formalise its international obligations into law. Key treaties acceded to include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Covenant on Children's Rights (CRC).

Tanzania has also failed to ratify a number of key treaties relating to policing, including the

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT) (ratified by 129 of 189 UN Member states, the CAT commits governments to prevent and prohibit torture) and the Optional Protocol to the ICCPR (which allows individuals to submit complaints directly to the UN Human Rights Committee).

The Government has also fallen behind on its reporting obligations under a number of UN treaties. For example, it has not submitted a report under the ICESCR for 15 years – a report submission is required every 5 years under the Convention. Also, while it ratified the CRC in 1991, it has failed to submit a report every 5 years; it has only managed to submit one report, in 2001. Concerningly, when an NGO, the Legal and Human Rights Centre (LHRC), wrote to the Government asking why reporting requirements had not been complied with, the Department of Human Rights and Constitutional Affairs replied saying that it had complied with its obligations and querying which reports had not been provided. The Department did not allow the LHRC to ask follow up questions.[28]

3.2. Regional mechanisms

A number of regional mechanisms exist to promote and protect human rights that impact on policing. They include the African Union (AU), the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights.

3.2.1. 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, detention without trial and arbitrary arrest, while also recognising the right to a fair trial, an impartial judiciary and to have effective recourse to justice.

Tanzania became a member of the AU on 25 May 1963.[29] Although Tanzania 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 African Union is currently underway as part of the New Partnership for Africa's Development (NEPAD) programme. Part of this includes the African Peer Review Mechanism (APRM), where assessments are made in key governance areas. Tanzania agreed to the APRM in May 2004, but is yet to be assessed under the scheme.

3.2.2. 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 many argue that it is inadequately funded to achieve its mandate.[30]

Tanzania has failed to meet its reporting requirements to the Commission under the Banjul Charter. While it is obligated to submit a report every two years, it has only submitted one report, in July 1991.

3.2.3. 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 not yet fully functional. Tanzania acceded to the jurisdiction of the Court in the first sitting of Parliament in 2006. 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.

CHAPTER THREE
UNDERSTANDING THE POLICE

> "Maintenance of peace and tranquillity by reducing incidences of crime and fear of crime."[31]
>
> - *Vision of the Police Force in Tanzania*

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. The Police Force basics

The mission of Tanzania's Police Force is to enforce law and order, preserve peace and tranquility, prevent and detect crime, protect life and property and the detection, apprehension and prosecution of offenders.

The head of the police is the Inspector General of Police (IGP). The IGP is charged with the general superintendence and direction of the entire force. Under the IGP sits:

- five Commissioners (a Zanzibar Police Commissioner, a Director of Criminal Investigation, an Administration and Finance Commissioner, an Operations and Training Commissioner and a Dar es Salaam Zonal Commissioner);
- nine Deputy Commissioners (Chief of Administrative Police Zanzibar, Deputy for Criminal Investigation, Chief of Administration and Personnel, Chief of Finance, Chief of Development and Planning, Chief of Training and Manpower Development, Chief of Operations, Chief of Inspections and Chief of Legal, Research, Planning and International Relations);[32] and
- Senior Assistant Commissioners (in charge of the sections that fall under Commissioners and Deputy Commissioners).

Superintendents are on the bottom rung of the senior ranks. Inspectors make up the mid-range ranks, while non-commissioned officers and Constables fill the junior ranks.

The police are organised into branches and distributed according to regions. Tanzania is classified into 28 regions, 23 on the mainland and five on Zanzibar. Three of these regions are recent creations; the Dar es Salaam region was split into three new regions to combat rising crime rates. Each region is divided into districts, with an officer in charge of each district. The officer in charge is generally an Assistant Commissioner or a Superintendent, but the Commissioner can appoint any officer to the position.[33] Police posts sit below police stations. Posts are initial reporting and crime processing centres staffed by officers under the command of an inspector or senior non-commissioned officer. The posts operate under the supervision of a main station, but are often remote and inaccessible, so supervision is tenuous.

Police units of the Tanzania Police Force

The force includes a number of units that have specific expertise and work in particular areas. They are:

Airports Division
Air Wing Unit
Anti Drug Unit
Anti Robbery Unit
Anti Terrorism Unit
Central Railway Unit
Criminal Investigation Unit
Dogs and Horses Unit
Field Force Unit
Marine Unit
Police Building Brigade
Police Branch
Police Training Institutions
Police Vehicle Maintenance Unit
Stock Theft Prevent Unit
Tanzanian Zambia Railway Authority Unit
Traffic Unit

2. The police experience

There are not enough police to do the work they are given – and the police to population ratio has become worse over time. At the end of 1999, Tanzania had approximately 27,200 officers, for a population of 35,300,000 (a ratio of approximately 1:1,298).[34] In April 2003, the ratio of police to population had increased to 1:1,400 (Tanzania at that time had a population of about 34 million).[35] This compares poorly with the UN recommended standard of 1:450 and is insufficient to allow for the effective and adequate discharge of the police mandate.

Police pay is low and living conditions are poor. A constable who joined the police in 2003 would have earned Tsh 1,087,440 annually, as well as being provided with accommodation.[36] Living conditions are so poor that there have been reports of police without access to toilets or water, or forced to share facilities with students.[37] The welfare of officers and recruits is the responsibility of the Inspectorate Department, while senior officers are responsible for the welfare of officers directly under their command – the responsibility generally falls on the Officer Commanding Station, the Officer Commanding District or the Regional Police Commander. There is also a wider network of support services for police officers, such as banking facilities and access to a police hospital. Compensation is provided to officers who are injured while on duty. If they are killed, compensation is provided to their families. However, compensation rates are set in the *Workman's Compensation Act*, and are too low to really assist an injured officer or grieving family. Insurance cover is not provided.

The story does not improve when the police arrive at work. Basic equipment necessary to perform their duties is absent. They are often issued weapons that are unreliable or that they are not adequately trained to use. Even in major urban areas, such as Dar es Salaam, there is no forensic laboratory and only one identification bureau to deal with ballistics and fingerprinting.

Across the country there is insufficient computerisation and accessing information is slow and difficult. In rural areas, the lack of reliable or appropriate transport and communication networks means that the local force is often unable to respond to an incident.[38]

Generally, a rank and file officer is employed under a renewable three year service contract. After twelve years of continuous work, an officer has the option of continuing to work on a contract basis and receiving a gratuity or becoming permanent and being entitled to a pension. The choice does not always belong to the officer; his or her supervisor recommends an option based on each individual's circumstances.

Police work is difficult and dangerous yet there is little public account of the police experience as employees, professionals and 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.

CHAPTER FOUR
PUBLIC EXPERIENCE OF POLICING

> "The use of excessive force, police corruption, and impunity were serious problems. Citizens often complained that police were slow to investigate crimes and prosecute criminals. Although police are not attorneys, they prosecute most crimes in the lower courts; many judicial experts criticised this arrangement, saying that it allowed police to manipulate evidence in many criminal cases and sometimes resulted in cases being thrown out of court. According to NGO reports, police often lost evidence, and suspects with sufficient means successfully avoided prosecution by bribing police officers. Communities perceived a general lack of protection amid an increase in crimes committed by armed criminals. The general lack of trust in the police force and in the court system contributed to a high incidence of mob justice during the year."[39]
>
> *- US State Department*

The police are the first, and often the only, experience that people in the community have with the criminal justice system. Unfortunately, in Tanzania this experience is marred by illegal arrest and detention, torture and excessive use of force, corruption, partiality, extra judicial executions and abuse of due process. These are all hallmarks of a regime-style police force that is not held accountable for its actions.

1. Illegal arrest and detention

The right of every Tanzanian to privacy and security of the person is enshrined in the Constitution.[40] Under the Police Act and the *Criminal Procedure Act* (CPA), once a person is arrested, they must be kept in an authorised place, informed of the reason for their arrest and their right to a lawyer and be taken to court as soon as possible. Arrests can be made with or without a warrant – but if an arrest is made without a warrant, section 3 of the CPA requires the police officer to produce the arrested person before a court within 24 hours.

The reality is that these procedures are not followed. In the case of *Nancy C. Msabala v. Regional Crimes Officer*,[41] a woman was unlawfully arrested, detained, confined and prosecuted without probable or reasonable cause. She was not produced before a court for three days, and was only set free after two months, after legal intervention. The Legal and Human Rights Centre (LHRC) has raised concerns about illegal arrest and detention in unauthorised places in a number of its annual reports.

Deaths in detention

In November 2002, 17 detainees suffocated to death at the Mbarali police station in Mbeya. The President responded to public pressure to take action by stating that the prisoners had been kept in a small room without ventilation.[42] Most of the suspects were accused of committing minor offences.[43] One report stated that 112 suspects were being held in a room capable of housing 30 people.[44] The Mbeya Regional Commissioner formed a committee to investigate the deaths. Newspapers later reported that six officers, including the Officer Commanding District, were arrested for the overcrowding and the handling of the situation.[45] The Ministry of Home Affairs and the judiciary denied any blame, pointing fingers at each other and the police.[46] Subsequently, five police officers were dismissed and charged with seventeen counts of murder.[47]

2. Torture and excessive use of force

Torture is absolutely prohibited by Tanzanian law. Domestically, Article 13(6)(e) of the Constitution prohibits torture and other forms of inhuman or degrading treatment. National statues that govern the police, as well as the criminal law, prohibit acts of torture including assault, grievous bodily harm and attempted murder.

Internationally, Tanzania has ratified the International Covenant on Civil and Political Rights (ICCPR). In addition, at the 2003 session of the United Nations Commission on Human Rights Wilson Masilingi, the Minister for Good Governance, stated that Tanzania was in the process of ratifying the CAT. This has not yet happened.

Concerningly, there is no automatic prohibition of evidence obtained illegally or through the use of torture. Section 169(2) of the CPA states that a court has the discretion to refuse evidence unless it is satisfied that its admission would benefit the public interest without unduly prejudicing the rights and freedom of any person. Under section 169(3), judges are directed to consider "the seriousness of the offence in the course of the investigation of which the provision was contravened, with the urgency and difficulty of detecting the offender and the urgency to preserve evidence of the fact". This means that where a prosecutor can successfully argue public interest, evidence obtained via torture will be accepted by the court.

Despite domestic and international law, torture is a reality in Tanzania. For instance, in 2005 the LHRC reported that two men in the Mwanza region were detained by police and tortured in custody. They were released after their innocence was established. The LHRC also reported that in Dar es Salaam, a taxi driver claimed to have been beaten by police following arrest for theft. His arm was broken during the incident. There is also a history of the use of torture by police to extract confessions.[48] Media reports throughout 2004 relayed stories of suspects retracting confessions in court, claiming that they had confessed while being tortured.

Police torture to get confessions

In 2002, the Guardian newspaper ran a story about a suspect who claimed he had been tortured by the police. He told the Kisutu Resident Magistrates Court that he was tied naked over a wall and whipped by ten policeman using a star fish until he fainted.[49]

On 16 September 2003, Sasi Marwa accused police officers at the Stakishari Police Station in Dar es Salaam of beating him and tying his genitals with a bicycle tube to extract a confession.[50]

In April 2004, Mr Boscow was pictured in the Majira newspaper with broken legs. He claimed his legs had been broken by police in Shinyanga, as they tried to obtain a confession.

On 14 July 2004, the police department was reported to be investigating allegations of police torture. The allegations were that two suspects were beaten with canes and iron bars while being suspended naked between two chairs.[51]

3. Corruption

Police corruption is common and takes a number of forms. In 2002, in research conducted by the Economic and Social Research Foundation (ESRF) in five Tanzanian regions, more than 60% of those interviewed could relate stories of corrupt traffic police officers that they had heard, while 18% had directly experienced traffic police corruption themselves.[52] Another form of corruption is police officers taking bribes to protect criminals, while also charging innocent

people with framed allegations as a way of soliciting bribes. A common Swahili phrase, '*kuingia bure kutoka kwa pesa*', means that entry to a police station is free, but that you can only leave by paying a bribe. There is a practice of arresting and detaining suspects – or just people on the street – on Fridays, so that the prospect of a weekend in jail before court reopens on the following Monday allows corrupt police to demand bribes more effectively.

In 2000, 34 of 379 (9%) of police officers dismissed from the force were released from duty because they had engaged in corrupt activities. This dropped in 2001 to 5 of 241 (2.1%).[53] This could indicate that corruption was dropping, but it may also show that corruption is increasingly tolerated. The latter is a strong possibility, particularly with reports of senior officer involvement in bribe taking. Although most low-level corruption is engaged in by junior officers, senior officers often benefit with a percentage of the bribe.[54] It has been suggested that senior traffic police send junior officers on patrol to collect bribes for the senior officer.

In 1991, the Government established a Prevention of Corruption Bureau. The Bureau reported in 2003 that among all the Government departments, the police department was the most corrupt, with the highest number of reported corruption allegations.[55] In the Singida region alone, the Bureau reported that 43 of 185 corruption complaints involved the police.

Money for nothing

Paulo, a store worker in Ukonga Sabasaba, unwittingly paid a bribe to the police to drop charges against a person who had stolen a crate from his employer's house:

"One evening I chased a thief who had previously stolen an empty crate of sodas from my employer, after which I reported the incident to the Stakishari police post and I was given an RBO number for further reference. The culprit was tortured and confessed that he had sold the stolen item to the local brewers. The police went and recovered the stolen item. My employer after the recovery of the stolen goods did not want to pursue this case further since it was wasting a lot of our time. He asked me to drop the case. However, the police asked me to pay 5,000 Tsh which I paid anticipating a refund. The boss refused to refund my payment and went on to inform me that I had given a bribe to the police. He only agreed to refund me if I could provide an official receipt from the police station, which I could not obtain at all."[56]

4. Partiality

Election campaigns are a good example of partisan behaviour by the police. In a democratic system, the police are required to protect and support all political parties equally; in Tanzania they protect and support the ruling regime while suppressing the voices of opposition parties.

The law sets out the rights of the Tanzanian people to freedom of politics and freedom to express those politics. Article 29 of the Constitution protects the right to assemble, to demonstrate peacefully and to form or join any political organisation. However, legislation creates a firm base for the restriction of these rights by the police. Under the *Election Act* 1985, candidates provide the election office with a schedule of their proposed public meetings, which is passed on to the police.[57] Under the Police Act, police officers can stop or prevent any assembly or procession if they believe it is likely to cause a breach of the peace, prejudice public safety or if it is for an unlawful purpose.[58] All groups planning to organise a public rally have to get a permit from the police.

Opposition parties are consistently denied the permits that would allow them to hold public meetings. During 2001 and 2002, the main opposition party was consistently denied any permits at all. In 2003, some permits were granted but the majority were denied. In contrast, there is no record that a permit application by the CCM has ever been denied. In 2004, the Guardian newspaper reported the Minister for Home Affairs admitting that the police were seen as partisan to the ruling parties, but he blamed opposition groups for being confrontational. In the same article, Judge Lameck Mfalila said that police were politically biased and that the law was designed to oppress political opposition.[59]

Police partisanship goes beyond blocking rallies. After the 2000 elections, opposition supporters who demonstrated against election irregularities were arrested and detained indefinitely.[60] In a 2002 report, Human Rights Watch identified groups of ruling party members that had been involved in violent suppressions of demonstrations in Zanzibar – and noted that the violence included arbitrary executions and beatings of suspected opposition members with the complicity of the police. A witness in Wete described his experience: "in the police station, a citizen who is not any kind of security personnel but a CCM member, tried to cut me with a machete in the police station in front of the head of police".[61] In 2003, Opposition Chairman Lipumba was detained for two hours in a police station while being questioned about remarks he made about the Zanzibar President, Karume.[62]

5. Extra-judicial executions

There are a number of reports of Tanzanian police using lethal force against its community.[63] Police executions of armed bandits have been particularly common – very few alleged armed bandits are apprehended or charged in court, as most are killed in gunfights with police. There is often very little evidence that those shot by police were involved in armed banditry, or any other criminal activity. Parliamentary debate and political discussion often refers to the issue of the danger that armed bandits pose to police and other law enforcers, but again there is very little evidence that bandit activity is actually a safety issue, and certainly no evidence to show that it justifies a shoot-to-kill policy.

There are countless examples of police executions. In 2003, Samwel Mamaya died as a result of excessive bleeding and brain damage following a 207 day coma. The coma was the result of a police beating; Samwel had been accused of stealing a radio set in June 2002.[64] In April 2005, witnesses reported the police shooting a fisherman, Gration Gelvas, who was allegedly fishing illegally in Lake Victoria. On 16 July 2003, Ryoba Bwale Mkono was arrested for stealing bags of maize, beaten with a club by police and died of the resulting injuries the following day.[65] In Dar es Salaam alone, it was reported that 98 'bandits' were killed by police in 2003.[66]

6. Abuse of due process

There is regular police abuse of process. Examples include tampering with evidence, intimidating witnesses, corruption, false representations and refusal of bail. There are complaints that police investigations and prosecutions are slow. Commissioner Makaramba, of the Commission for Human Rights and Good Governance, has related stories of case files involving the sons of influential politicians disappearing, and the police failing to take any further action.[67] Detainees and suspects being held in prison complain of physical assault and lack of access to their families or a lawyer. Detainees also claim they are held on fabricated charges that are 'dumped' on them by police in order to close files that have remained open for some time.[68]

CHAPTER FIVE
POLICING BY OTHER BODIES

A telling indicator of the failure of Tanzania's police to operate effectively is the disturbing number of alternative groups that engage in policing activities. From the Auxiliary Police, which are designed to work in tandem with the police, to private security agencies, mob justice, community tribunals and Government-sanctioned community militia groups, policing work in the community is muddied by groups that are not clearly defined as police or subject to the same controls, discipline and accountability measures as the police.

1. Auxiliary Police

The Auxiliary Police are designed to help the regular police maintain order and protect property in declared areas. Under the Police Act, the IGP has general powers of command and supervision over the Auxiliary Police, while the Commander in Chief of the Armed Forces grants permission for the establishment of the body. The IGP also looks after training, salary, equipment and discipline for the Auxiliary Police. Part of this dual role for the IGP is aimed at avoiding overlapping jurisdiction between the regular police and the Auxiliary Police.

The Auxiliary Police have a number of police powers, such as the power to search and arrest. They are also entitled to the same immunities as a police officer, but must surrender an arrested person to the nearest police station following arrest.

In Dar es Salaam, an Auxiliary Police unit was established in 2001 to enforce city by-laws, guard city property and assist the Police Force in investigating crime and making arrests. They also have crime prevention duties, primarily through planned visible patrols. A *Project Evaluation Report* produced in 2003 found that the group had been successful in providing relief to the police, developing community relations and reducing congestion caused by small trader activity. The report also noted that there had been no reported cases of the use of excessive force,[69] although other reports differ on this, as seen below.

Auxiliary Police units

University of Dar es Salaam
Muhimbili National Hospital
Tanzania Harbours Authority
Tanzania National Parks
Sokoine University in Morogoro
Tanzania National Petroleum
Tanganyika Wattle Company
Mbeya Cement Factory
Mtera Dam (TANESCO)
Kidatu Dam (TANESCO)
Williamson Diamonds Ltd. Shinyanga
Dar es Salaam City Council and Municipal Council of Kinondoni, Temeke, Ilala
Bank of Tanzania
Grammack (T) Gemstones Co.
Polyester Co. Morogoro
Kilombero Sugar Company
Mtibwa Sugar Company

The claimed advantages of the Auxiliary Police are that they take pressure off mainstream police officers, cost less to recruit and maintain than the regular police, have detailed knowledge of a particular area and are more representative of – and responsive to – their community.[70] However, the use of auxiliary groups in policing raises a number of concerns, including:

- Auxiliary Police members are not adequately trained. General training is short and human rights training is inadequate;[71]
- some military skills are acquired during training – and there is a fear that those skills are used by members to commit crimes; and
- accountability is a major issue – the Auxiliary Police sit outside the regular police accountability mechanisms and often operate under unclear mandates.

Dar es Salaam Auxiliary Police – trading in violence

On 9 September 2003, Dar es Salaam Auxiliary Police raided a street trader area without giving any warning to disperse. Traders were beaten with clubs. On 7 November 2003, Auxiliary Police raided another street trader area, this time causing serious injuries, including one trader reporting a broken leg.[72] These actions continued through 2004 – and no action has been taken against any Auxiliary Police member for using excessive force.[73]

2. Private security agencies

Private security agencies are enjoying booming business in Tanzania, as they are hired by individuals or companies to protect life and property. Private security firms are required to register under the Companies Ordinance. The Registrar of Companies is supposed to consult with the IGP on the suitability of the firm.[74] Private security agencies are required to report crimes to the police, so in theory the police retain a formal law enforcement role. A policy to regulate the firms is still being developed.

Private security is problematic. Private security officers are not trained in policing or subject to the same accountability measures that are designed to keep police behaviour in check. There are already reports of security agency misconduct – such as the 20 June 2004 Mtanzania newspaper article that reported a security agency manager using a firearm against miners, while also reporting that his officers had imprisoned miners and set dogs on them.

3. Mob justice

Police ineffectiveness has led to incidents of communities taking matters into their own hands and engaging in mob justice – and the police appear to tacitly acknowledge mob murders as a form of crime prevention. In 2003, 2004 and 2005, LHRC released reports detailing mob violence ending in the deaths of alleged criminals, by beating, stoning or burning. There are no indications in these reports that the incidents are treated by the police as crimes and subsequently investigated or prosecuted.[75] In July 2003, a police officer was killed and a colleague severely injured in the Singida region by a mob who suspected they were bandits. In January 2003, a villager, Petro Nagumya, was killed by her community for allegedly causing the death of a child by witchcraft.[76] Throughout 2004, media reported incidents of mob justice; the victims were stoned, lynched, beaten, hacked to death with machetes or doused with gasoline and set on fire. Indicatively, on 26 April 2005, a 54 year old man was killed by a mob for allegedly stealing tomatoes; and then on 29 April 2005, a 50 year old man was killed by a mob who believed he was poisoning other villagers. In a report issued by the office of the Director for Criminal Investigations, 206 cases of mob justice were recorded between January 2005 and August 2005 alone. Dar es Salaam recorded the highest number of cases with 40 incidents. By the time the police became involved, the victim was either beaten or burnt to death. Most witnesses refused to testify and none of the perpetrators were arrested.[77]

4. Tanzania People's Defence Force

The police and the army are separate bodies, with separate mandates, cultures and hierarchies. However, in Tanzania the line between the police and the Tanzania People's Defence Force (TPDF) has sometimes blurred. The TPDF is renowned for its criminality, particularly violent assaults, but there is little evidence that disciplinary action is taken or criminal proceedings commenced against the perpetrators. This has led to the police being undermined, violent and brutal policing taking place without the benefit of police accountability measures, the erosion of police jurisdiction and guilt by association. It has also furthered the culture of impunity within the police by allowing actions done under the guise of special joint operations to go unchallenged, where they would not be permissible under the civilian policing regime.

An example of TPDF misconduct that crossed into civilian policing territory took place on 7 December 2003, when TPDF soldiers took to the streets of Dar es Salaam, harassing and beating people and destroying property. The Dar es Salaam Regional Police Commander reported that many people were seriously injured and 7 cars destroyed in the incident, which involved more than 100 soldiers.[78] Another example occurred after the death of a soldier in Arusha in early 2004, when soldiers again went on a rampage, beating civilians indiscriminately. It was estimated that 20 people were injured, some severely. By the end of 2004, no disciplinary action had been taken against the officers.[79] Civilian policing must be left to the police and military work to the TPDF.

5. People's militia

The Government's socialist policy emphasis on citizen involvement and self reliance feeds into the creation of people's militias. Two examples are the *Mgambo* and the *Sungusungu*.

5.1. *Mgambo*

The *Mgambo* is a paramilitary reserve force. At the regional level, *Mgambo* members are answerable to the police, although they are trained by the military. During wartime, the *Mgambo* answer to the military. They are only armed when called for duty and while under the supervision of the police.

5.2. *Sungusungu*

Another example of a people's militia is the *Sungusungu*, which are groups of community members who practice self-policing. They began as citizen patrols in cattle breeding regions to deal with cattle and stock theft and were endorsed by the CCM as an example of state-community cooperation. In these police-poor areas, they fulfilled a police role. However, they had no legal authority and after local police prosecuted *Sungusungu* members for vigilante activity, the Government amended legislation to formalise their role. They are now governed by a web of laws including the *People's Militia Law* 1973, *People's Militia (Compensation for Death or Injuries) Act* 1973, and the *Militia (Powers of Arrest) Act* 1975. Following the *People's Militia Law (Miscellaneous Amendments) Act* 1989, people's militia were defined as:

> "an organised group operating with the authority and under the aegis of government... for the protection of the sovereignty of the United Republic or for the protection of the people or the property of the United Republic by whatever known whether *Wasalama*, *Sungusungu*, or other, but does not include Police Force, any arm or branch of the Defence Force, the Prisons Service, the national service or the Immigration Services."

Members of a people's militia have some police powers such as the right to arrest. However, they do not have the right to carry arms nor are they granted powers of investigation that would allow them to usurp police functions. There are, however, numerous reports where a people's militia group has taken on a police or judicial role, holding ad hoc trials and then executing a sentence. For example, the Uhuru newspaper reports that in October 2003, three cattle theft suspects where whipped and then set on fire after a *Sungusungu* 'trial'.

The *Sungusungu* are not centrally organised or coordinated. Each group is complete within itself. In theory, the *Sungusungu*, and similar people's militias are accountable to the police, who have disciplinary powers. This is not the reality on the ground, however, as the nature of the groups vary from place to place. For example, in Dar es Salaam, the municipal authority sets guidelines for the *Sungusungu*, and the group reports to the Municipal Solicitor, except when it comes to policing or discipline matters, where it reports to a ward level police officer. In contrast, in the Mlala Kuwa area, the *Sungusungu* are only involved with the municipal authority, which has made financial contributions to the group compulsory for residents and if a person does not pay, they are brought before local tribunals to explain themselves.

6. Ward Tribunals

Ward Tribunals are quasi-judicial structures that have some role in community order and in the criminal justice process. They work at the grassroots community level. Ward Tribunals are established and function under the authority of the urban local government authority (township, municipal or city council).[80]

Under the *Ward Tribunal Act* 1985, the objectives of the Ward Tribunals are:

- to secure peace and harmony by mediation and alternative dispute resolution;
- to bring the legal system and the community together; and
- to reduce the volume of criminal cases in Primary, District and Courts of Resident Magistrates.

Members of the Ward Tribunal are elected by a Ward Committee. The local council chooses a chairperson from among the members and a secretary is appointed by the Municipal Director on recommendation of the Ward Committee.

Ward Tribunals can inquire into and determine disputes relating to certain, specified offences, including:

- abusive language and threats of violence;
- disturbing religious assemblies;
- abduction of girls under 16 years old;
- insulting the modesty of a women;
- desertion of children and neglecting to provide food;
- idle and disorderly persons;
- concealing the birth of a child; and
- criminal trespass.

Complaints are made to the tribunal orally or in writing. The Secretary of the Tribunal receives complaints and sets hearing dates. Hearings are upon to the public and the Tribunal has the power to call witnesses. While the rules of evidence are not applicable, the Tribunal is bound by the rules of natural justice (for example, the right to be heard and the right to know the reasons for a decision). Appeals are available through the regular court system.

CHAPTER SIX
THE GOVERNMENT AND THE POLICE

1. Presidential power

Tanzania's President is in absolute control of the police. The President appoints the IGP, allowing him to directly influence police operations and policy. There are no legislative guides or selection criteria for the appointment and the IGP serves entirely at the President's whim – he or she has no set term of office. The President is also head of the executive. In this capacity, he has the power to appoint the chairpersons and deputy chairpersons of all institutions and heads of department established by the Constitution. This includes key bodies such as the Human Rights and Good Governance Commission, the Electoral Commission, the Registrar of Political Parties, the Attorney General's office, the Auditor General's office and the Office of Public Prosecutions. In some cases, Parliament's approval is also required, but in reality this is just a rubber stamp. In many cases, the President can demote, remove or transfer his appointees as easily as he appointed them.

The President's power goes beyond the top jobs. In the police, he has the power to constitute or abolish any office, he appoints all officers of Senior Assistant Commissioner rank and above, while indirectly controlling the appointment of all other officers through his control of their appointing authority, the Police Force and Prisons Service Commission.

The President can also step in as operational head of the police, by declaring an emergency and displacing the IGP, under the *Emergency Powers Act* 1986. Under the Act, the President determines when an emergency is declared and its duration, with no endorsement from any other body required. This means that the President can declare an emergency on a whim, bringing the police and other public services under his direct command.

The President has the power to make regulations across the entire range of police functioning. He has the power to make regulations that relate to detention, imposition of curfews, censorship, control and prohibition of communication, prohibition of meetings, compulsory property acquisition, suspension of any law and any matter related to the preservation of public security.

2. Ministerial power

The President is not the only politician who can step in and direct the police. Under the *Preventive Detention Act* 1962, the Minister of Home Affairs can directly order the police to arrest and detain a person – overriding any police or judicial opposition to the arrest. While the Minister's actions are subject to an Advisory Committee, the Minister does not have to follow its advice. The effect is that the Minister can order the police to arrest any person and then detain them indefinitely.

The Minister of Home Affairs also interferes in the police in more subtle ways. In October 2004, following a number of arson attacks on churches in Zanzibar, the Minister of Home Affairs gave police seven days to produce suspects.[81] He was reported to have issued the directive after being dissatisfied with the search for the suspects. By the following day the police had produced two more suspects[82] – an investigate turnaround that raises questions about the tactics used to get quick results, and the standards breached in the process.

The police portfolio has been shifted to the new Ministry of Public Safety and Security. The Minister heading this Ministry will take on the powers of the Minister for Home Affairs regarding the police.

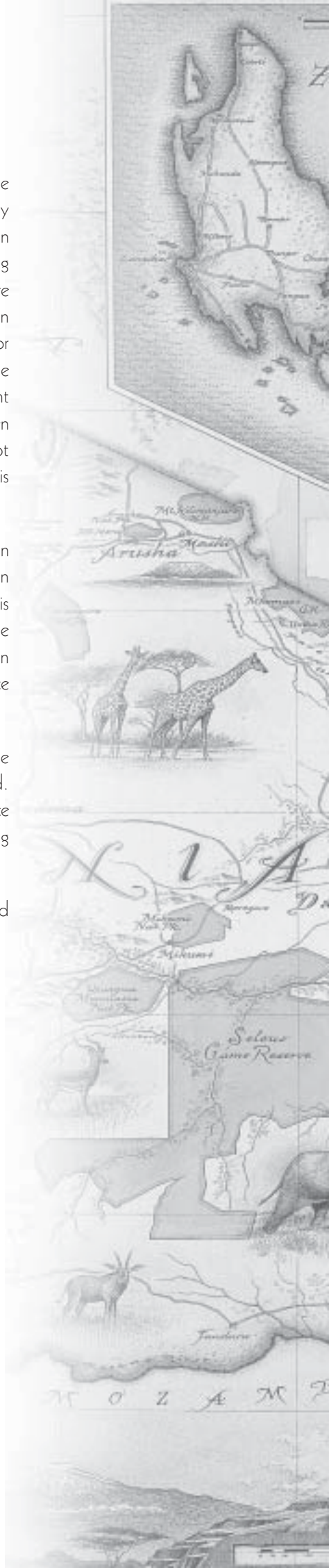
3. Policing and elections

Tanzania's first multi-party elections were held in 1995 and resulted in the re-election of the CCM. The elections were characterised by the violent police suppression of opposition party activities. The next elections, in 2000, were also marred by police violence, particularly in Zanzibar.[83] The media reported that police set up roadblocks to prevent people from attending opposition campaign rallies, while subjecting supporters to car and body searches. There were no reports of similar roadblocks or invasive searching on roads leading to CCM rallies. Campaign rules – such as rallies being shut down by 6pm – were zealously enforced by the police for opposition parties and ignored for the ruling regime. The 2005 elections followed the same pattern, despite opposition CUF member, Karim Said Otham, making a statement in Parliament in July 2004 that "we are saying that we are tired, we were denied our rights in 1995, then we reconciled. In 2000 again reconciliation but this time 2005 we are tired, we will not accept reconciliation again. We are not afraid but we respect the law, if the law is broken this time through the use of the police force, we are not to accept it this time".[84]

After clashes between Government and opposition supporters in Zanzibar, the police put in place Operation Dondola. The operation involved a massive increase in police presence in Zanzibar in the lead up to the election. This led to the Director of LHRC stating: "What is now going on in Zanzibar smacks of deliberate intimidation of would-be voters and people who are ready to express their feelings." Moreover, in provocatively naming the operation *dondola* [Kiswahili for a bee-like insect which stings without producing honey], the police seemed to be "threatening the very people they were supposed to protect".[85]

Up until the last moment the police were cancelling opposition campaign rallies. In one cancellation, witnesses claim the ensuing clash led to police gunfire that left 18 people wounded. While the Deputy Director of the Police Criminal Investigations Unit denied that the police used live bullets, a local doctor's examination of the victims showed eight of them were suffering from serious gunshot wounds.

The police, along with the army and the auxiliary forces, were also charged with electoral fraud during the 2005 elections.



CHAPTER SEVEN
A CONCEPTUAL FRAMEWORK FOR DEMOCRATIC POLICING

> "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".[86]
>
> *- 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. In Tanzania, this legacy has been compounded by its German colonial experience and years of single party government. 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*

The police are the gatekeepers of the criminal justice system. They are the first, and often only, contact 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 will carefully consider the methods they use to protect peace and order, and that incidents of police misconduct or abuse of powers will be dealt with harshly.

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 disciplinary systems of police organisations, and externally, in the criminal justice system.
- is accountable to democratic government structures. The police are a government agency and as such 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 to Treasury or Finance Departments, for their financial performance, and sometimes to 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 vulnerable.
- protects human rights, especially those which are required for political activity characteristic of a democracy. Democratic policing implies policing that is supportive and respectful of human rights, and 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 better able to 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 must be 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 constrained by professional regulations, codes of conduct and rules, as well as the law of the land as it applies to every citizen.

Tanzania has a long way to go in terms of regulating the use of force. In particular, its politicians need to review their understanding of the role of police. For example, on 20 January 2004, the Speaker of the National Assembly, Pius Msekwa, told the House of Representatives to abandon the idea of limiting police use of force, as police have the legal authority to use force against 'trouble makers' in the course of their duties. He continued by saying that this was why police carried batons.[87]

3. Benefits of democratic policing

Implementing a more democratic approach to policing provides positive benefits for the community, for police officers, and for 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 as allies in keeping the peace rather than instruments of oppression, they are more willing to share information that 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 sitting outside it. This is vital to the morale and professional pride of police staff and their effectiveness.

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, 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 some 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, 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 civil society). In this way, the role of holding the police accountable is not left to the democratic institutions that represent the people, but ordinary men and women 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".[88]

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 Ombudsman 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."

- Independent Commission on Policing for Northern Ireland[89]

Accountability requires transparency. The police cannot be held accountable if the community does not have information with which to assess police conduct and to evaluate claims of misconduct or malpractice. Nor can the police properly perform their policing functions, protect themselves and their colleagues from improper influence and discrimination or resist wrongful orders 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 supports police accountability. As long as law enforcement information that is genuinely sensitive is protected, there are few security reasons why the police cannot allow the public access to their records. The police should 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.

The *National Security Act* 1970 prohibits servants from disclosing a wide range of information. This extends to information that has no bearing on state security. The Act is a draconian piece

of legislation that gives the government and its organs complete scope to keep information out of the public domain. The communication of classified material is an offence under the Act – and it is no defence that an accused could not have reasonably known the information was classified.

Tanzania needs to revisit the information sharing provisions of the *National Security Act*, and introduce legislation that supports the right to information. This legislation needs to be introduced into a culture of openness and information sharing, rather than the current culture of secrecy and information protection.

CHAPTER EIGHT
INTERNAL ACCOUNTABILITY MECHANISMS

> "...effective disciplinary systems within the police should be a first-order priority in democratic reform."[90]
>
> - *David Bayley, Democratising the Police Abroad*

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. External mechanisms are also an integral part of the accountability structure and are discussed in Chapter 9. Internal systems can be developed to monitor performance, maintain discipline, investigate public complaints against the police, investigate allegations of abuse of power or outright corrupt and criminal behaviour and manage any resulting disciplinary procedures. They have aspects of both carrot and stick. Incentives within the police involve regular and quicker promotions, recognition and honours, while disincentives can include dismissal, reduction in rank, reprimand, fines and withholding or deferment of extra duty.

1. Internal discipline

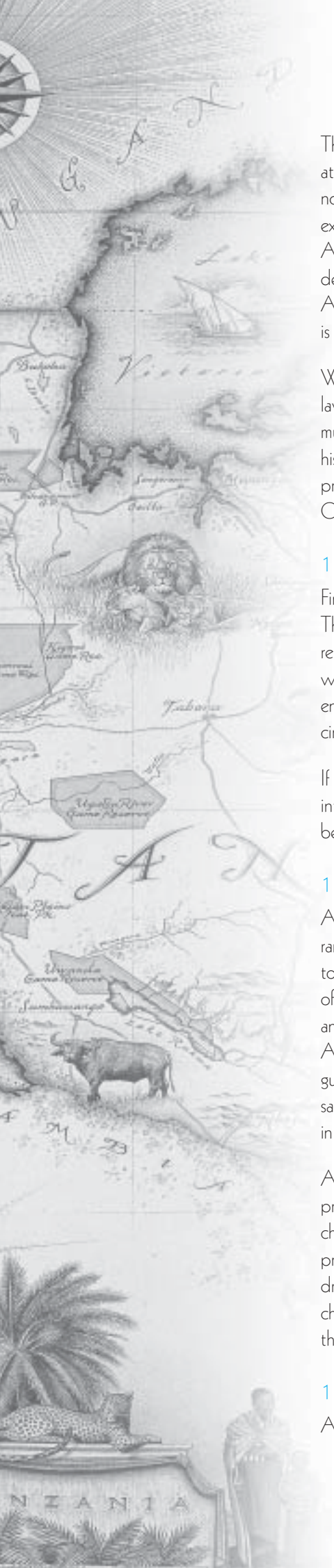
Under the Police Act, *Police Force Services Regulations* 1995 and Police General Orders, internal discipline applies according to rank. Senior officers are disciplined by the Principal Secretary of the Ministry of Public Safety and Security (formerly, this position was under the Ministry of Home Affairs), with the President as final authority. Officers above the rank of Assistant Inspector but below senior officer rank are disciplined by the IGP, formerly with the Police Force and Prisons Service Commission as ultimate authority. The Commission became defunct when the police portfolio was moved to the new Ministry of Public Safety and Security. It is expected that a similar commission will be established under the new Ministry. Junior officers are disciplined by more senior officers.

Disciplinary proceedings start with an allegation of misconduct by a fellow officer or member of the public.

1.1. Disciplining junior officers

If a junior officer is accused of indiscipline or misconduct, they are dealt with according to the provisions of Part IV of the *Police Force Services Regulations* 1995. Junior officers suspected of having committed a disciplinary offence may be arrested without a warrant by a more senior officer and detained in custody.[91] Where it appears to a senior officer that there is a case to be made against an accused, the senior officer sets out charges. He or she can then hear the charges or pass the charges on to a commanding officer. The commanding officer may hear the charge him or herself or send the case on to a more senior police officer with instructions to hear the charges or appoint an appropriate tribunal to hear the charges.

A disciplinary tribunal, known informally as *Maktab,* is not permanent.[92] Tribunals are constituted on a needs basis to hear one complaint at a time. Each tribunal consists of a hearing officer, who is a commanding officer or other appointed officer not below the rank of Inspector. The hearing officer conducts the proceedings and acts as prosecutor – if the accused objects to a particular officer hearing the case, the commanding officer has the discretion to appoint another officer. The accused represents him or herself. The tribunal takes place in the hearing officer's office.



The hearing begins with the accused appearing before the hearing officer. He or she stands to attention, but is not allowed to salute. The charges are read and the accused pleads guilty or not guilty. The tribunal then proceeds to hear the case. The hearing officer can summon and examine witnesses and require the production of evidence. He or she also records the proceedings. After the prosecution component of the hearing is completed, the accused can state their defence and call witnesses. The hearing officer can cross examine witnesses or refuse evidence. After the accused has finished stating their case, the hearing is closed and a date for judgement is fixed. The hearing officer then makes a decision beyond reasonable doubt.

Where an allegation is made of a disciplinary offence that also constitutes a criminal offence, the law allows the relevant officer to be prosecuted.[93] All cases that may require a court prosecution must be personally investigated by the Regional Commander or a gazetted officer acting under his personal direction. The Regional Commander drafts a set of recommendations before court proceedings are initiated and provides them to the Police Commissioner via the Director of Criminal Investigations.

1.2. Disciplining mid-ranking officers

First, an Inspector's commanding officer determines whether a case exists to support the allegation. The Inspector is asked to respond to the allegation in writing. The commanding officer then reports the details of the case to the IGP who decides whether a charge will be laid and, if so, what the charge will be. The charge is then served on the accused who is given seven days to enter a plea in writing. If the accused pleads guilty, they are able to include any mitigating circumstances, and the matter is dealt with by the IGP.

If an Inspector pleads not guilty, or the IGP does not accept a guilty plea, the IGP can inquire into the case him or herself or appoint a tribunal. During an inquiry, the accused has the right to be represented by another Inspector or, with the approval of the IGP, a more senior officer.

1.3. Disciplining senior officers

Although the Force Regulations state that a disciplinary offence committed by a senior officer (any rank above Inspector) is dealt with by the regulations, the regulations only set out discipline relating to junior officers. Though the *Civil Service Act* 1989 sets out a discipline regime, the particular offences are not set out in detail and it is left to the disciplining authority to identify and categorise an offence. A senior officer's hearing can take the form of a formal hearing or a summary proceeding. A formal hearing is put in place where a disciplining authority believes that if the officer was found guilty of an allegation, the finding would warrant their dismissal, reduction in rank or reduction in salary. A summary proceeding is instituted where a finding would not warrant dismissal or reduction in rank or salary. This leaves considerable discretion in the hands of the disciplining body.

A senior officer is protected by more safeguards than a junior officer. For example, no formal proceedings can be instituted unless the senior officer has been served with a copy of the charge, which must set out the nature of the offence and the allegations made. The charge is prepared by the disciplining authority, which can conduct a preliminary investigation before drawing the charge, and can request assistance from the Attorney General when putting the charge together. The disciplinary authority can hold an inquiry and conduct an investigation as they see appropriate.

1.4. Appeals

Appeal grounds are limited and insufficient. An officer has a right to appeal a decision if it

leads to a reduction in rank (unless the officer was acting in a higher capacity or was on trial), a reduction in salary, removal from service or dismissal from duty. The President has the power to allow appeals on other grounds by setting the alternative grounds out in legislation, but this has not happened.

2. Performance monitoring

Senior officers are required under Police General Order 46 to conduct performance monitoring visits of police stations each month. The inspection visits must cover:

- the condition of equipment;
- station books such as the exhibit register, detention register, default register (which contains information on disciplinary cases) and the investigations register;
- the number of detainees, the legality of their detention and the standard of their treatment;
- frequency and efficiency of patrols; and
- knowledge of Police General orders, duties and simple law.

3. Complaints process

The complaints process is set up by Police General Orders where any member of the public can file a written complaint regarding bribery, corruption, oppression, intimidation, neglect, non-performance of duty or other police conduct. Police General Order 103 states that "every complaint or allegation, however trivial, against a member of the force shall be reported at once to the regional commander of the region in which the complaint or allegation is made". Police General Order 106(6) further states that "every complaint and allegation against any police officer by a member of the public shall be investigated with the greatest care".

Complaints can be filed at any police station or reported to a senior officer through any means. Complaints have been made orally, by telephone, by letter or by formal written submissions.[94] Police General Order 103 requires that all complaints must be entered into a station's report book and must be investigated immediately. However, the police are not required to give feedback or information regarding the outcome of a case to the complainant (except if the investigation is going to be stopped – then the Officer Commanding Station must inform the complainant).

At a local level, a public complaint is the responsibility of the relevant Regional Police Commander, although in practice she or he delegates the handling of the complaint to other officers. The Regional Commander is still directly responsible for the thorough and immediate investigation of all complaints. In any case that they believe requires disciplinary or court proceedings, the Regional Commander is obliged to submit a full case file with a detailed covering report to the Police Commissioner within 14 days. Where a case is being heard by a Regional Commander who does not command the accused officer, the file must be sent to the IGP for his or her comments.

Police officers can also make a complaint about a colleague. An Inspector or more junior officer can file a complaint against an officer of any rank, including a complaint that a more senior officer has failed to deal with an earlier complaint (unless the complaint was related to a disciplinary offence).[95] Concerningly, there are severe penalties for groundless, frivolous or vexatious complaints made by junior officers against senior officers and a complaint made in "a spirit of recrimination... from vindictive, personal or any other motives not directly concerned with the good of the force" is also subject to penalty. This is a clear disincentive for a junior officer to make a valid complaint against a more senior officer. Anonymous complaints are prohibited[96] and a complaint

must be filed with an officer more senior than the complainant's supervising officer. Many junior officers approach the University of Dar es Salaam Legal Aid Clinic for assistance in complaining against their senior officers.[97]

The complaints system throws up a number of concerns. The process is not transparent, complainants may not be able to access information about their complaint and the system benefits senior officers, which dissuades junior offices from making complaints and it is easy for complaints to disappear into the police bureaucracy, never to return.

4. Internal accountability measures have failed

Despite the network of internal accountability mechanisms put in place by legislation and Police General Orders, the police continue to act with impunity, with violent and brutal consequences, while failing to fulfill their role. The lack of transparency involved with the mechanisms, the disincentives for junior officers to make complaints and protective police culture compound the ineffectiveness of the internal accountability mechanisms.

CHAPTER NINE
EXTERNAL ACCOUNTABILITY MECHANISMS

External accountability mechanisms are the systems, processes and means by which the police, as individuals and as an institution, can be made responsible for their actions. The mechanisms operate outside the police and complement internal procedures. External accountability mechanisms must be strong, independent and credible. For example, a civil society group can gather evidence and information to prove criminal or unethical behaviour, but without an independent and sympathetic media it is unlikely to be able to raise awareness in the general population. Furthermore, prosecution services must be strong and teamed with an independent and honest judiciary. In Tanzania, external police accountability covers parliamentary oversight, civil and criminal action through the courts, the Commission on Human Rights and Good Governance, the media and community policing. Formerly, the Police Force and Prisons Service Commission had an external oversight role.

1. Parliamentary oversight

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 and by examining policing issues through the parliamentary committee system. What then becomes important are the kinds of questions raised by legislature, whether they received comprehensive and satisfactory responses and whether the legislature see itself as acting as a police oversight body.

1.1. Parliamentary committees

The police are answerable to two parliamentary committees. The first is the Defence and Security Committee of the Parliament of the United Republic, which receives regular reports on police operations. The second is the Public Accounts Committee of the Parliament of the United Republic, which exercises supervision over the police budget. Each year, when the Ministry of Home Affairs presents its annual budget, the legislatures debate the Ministry's performance – and this includes the police budget. This process will continue for the police under the new Ministry of Public Safety and Security.

1.2. Question time

Question time allows Members of Parliament to raise questions relating to police behaviour. The National Assembly, the unicameral federal Parliament, has the power to raise questions, oversee and advise the Government in the exercise of its duties. This includes putting any question to any Minister on matters of public affairs that fall within that Minister's portfolio.[98]

The CCM Government holds 295 seats in the Parliament (93% of the total) and so opposition voices are limited. However, Parliament has been known to mobilise and oppose the Government. For example, the controversy surrounding the non-payment of compensation due under a Government-Opposition agreement in the wake of election violence in January 2001 shows the ability of Members to highlight issues during parliamentary debate. Prior to the 2005 elections, opposition Members also made a number of statements regarding police brutality during election periods.

Below is a table that sets out the numbers of policing-related questions asked by MPs in the House from 1999–2004.[99] This also includes the number of responses given.

Police questions 1999-2004

1999-2000

Theme	Total questions	%
1. Citizen safety and protection	8	42%
2. Facilities	6	31%
3. Incentives and benefits	4	21%
4. Police transfer	1	5%

2000-2001

Theme	Total questions	%
1. Citizen safety and protection	11	23%
2. Reforms	2	4%
3. Facilities	13	28%
4. Incentives and benefits	10	21%
5. Lack of police	2	4%
6. Police transfer	2	4%
7. Police housing	7	15%

2001-2002

Theme	Total questions	%
1. Citizen safety and protection	35	37%
2. Reforms	1	1%
3. Facilities	21	22%
4. Accountability and corruption	5	5%
5. Incentives and benefits	5	5%
6. Lack of police	3	3%
7. Human rights violations	10	11%
8. Police transfer	2	2%
9. Prison reforms and conditions	8	9%
10. Police housing	4	4%

2002-2003

Theme	Total questions	%
1. Citizen safety and protection	9	28%
2. Reforms	5	16%
3. Facilities	4	13%
4. Accountability and corruption	3	9%
5. Incentives and benefits	3	9%
6. Lack of police	3	9%
7. Human rights violations	1	3%
8. Muafaka	1	3%
9. Treatment of people in custody	1	3%
10. Police housing	2	6%

2003-2004

Theme	Total questions	%
1. Citizen safety and protection	121	21%
2. Reforms	5	1%
3. Facilities	102	18%
4. Accountability and corruption	71	12%
5. Incentives and benefits	86	15%
6. Lack of police	10	2%
7. Human rights violations	39	7%
8. Policing election and Muafaka	17	3%
9. Police transfer	9	2%
10. Police housing	80	14%
11. Prison conditions/reforms	29	5%

Government replies are often unsatisfactory. Instead of engaging with the question asked, responses are often a discourse on the problems of policing generally and focus on armed banditry or lack of funds. Shortage of funds is a standard response when a question is asked about continued inaction or slow responses on facilities for officers.

Members that raise questions do not challenge the general nature of the responses and often there is no change in the approach or tenor of their subsequent questioning.

In some cases the Government does promise to undertake an inquiry or investigation into a particular incident. However, the Hansard reports give the impression that questions are raised as a token gesture rather than out of the expectation of obtaining information or affecting any change.

2. Legal proceedings

2.1. Criminal proceedings

Police can also be held accountable through the courts – although the options are limited. Where a disciplinary offence is also a criminal offence, officers can be charged with that criminal offence.[100] Prosecutions are run by staff at the Director of Public Prosecution's (DPP) office. The DPP is appointed by the President and answerable only to the President,[101] and so is vulnerable to illegitimate political interference. In 2004, the US State Department reported that the DPP was causing considerable delay in the prosecution of cases referred by the Prevention of Corruption Bureau, stating:

> "During the year, the PCB continued to refer cases to the Deputy Public Prosecutor (DPP); however, the prosecution of corruption cases remained slow and inefficient. The PCB usually required 2 years to investigate a case of corruption. If the PCB referred the case, the DPP typically required an additional 2 years to review the case's merits and decide whether to prosecute it. Only about 5 percent of corruption cases reported to the PCB's regional offices during the last 5 years have been heard by a court of law."

Often, officers are granted immunity for their behaviour under laws such as:

- Section 29(6) of the *Prevention of Terrorism Act*, which states that an officer shall not be liable, in civil or criminal suits, for death or injury caused by use of necessary force under the Act;

- Section 33(8) of the *Prevention of Terrorism Act*, which provides that police officers are protected from being sued for seizures under the Act done in good faith;
- Section 3 of the *Preventive Detention Act*, which states that no order given under this law can be questioned in court;
- Section 26 of the *Emergency Powers Act*, which states that no acts done under the Act can be called into question in a court and no civil or criminal proceedings can be instituted against any person acting under the Act;
- Section 78 of the *Penal Code*, which provides that authorised people may use all force to disperse a riotous crowd and they will not be criminally or civilly liable for any death or injury occasioned; and
- Section 6 of the *Criminal Procedure Act*, which states that the police have to comply with the provisions of the Penal Code but where they do not, it cannot lead to a civil suit being filed or exclusion of evidence in a matter.

Prosecutions against the police

Year	2001	2002	2003	January – March 2004
Total reportedcases	16	35	31	7
Excessive cases	9	30	22	5
Soliciting bribes	6	5	8	2
Failure todischarge duty	1	0	1	0

Source: DPP Office

2.2. Civil proceedings

Individuals can institute private prosecutions, however, there is reluctance amongst lawyers to take on cases against the police and the government. This is partly because of the history of intimidation against lawyers who act on these cases. Advocate Dr Masumbuko Lamwai made an application to privately prosecute police alleged to have beaten suspect Teredid David Nkunda so badly that he later died of his injuries. The application was refused an appeal on the grounds that the Director of Public Prosecutions has absolute control over criminal prosecutions that would not benefit from interference by private prosecution although no public prosecution was ever forthcoming in this case. The advocate and his family received anonymous threats for taking the case.[102] Under the *Advocates Ordinance* 1954, High Court judges have the power to suspend a lawyer from practising, or remove the lawyer's name from the roll. This significantly reduces a lawyer's independence and jeopardises the integrity of any proceedings.

In the past, civil claims have also been limited by a requirement that an applicant receives permission from the Attorney General to go ahead with a case that involves the Government. For example, in 1984, Scarion Bruce issued civil proceedings claming compensation for physical injuries allegedly inflicted by police in 1981. By the time he died in 1987, the Attorney General had neither given nor denied consent to go ahead with the action.[103] However, the law has changed. While consent is no longer required, a notice must be given.

2.3. The High Court

The High Court has some powers over the police. For example, the Court has the power to

review police exercise of powers, illegal detention or in cases where a police officer violates the Constitution (Article 30 of the Constitution says that any person whose Constitutional rights and freedoms have been violated can bring the matter before the High Court). In a recent case, *LHRC and 2 others v Attorney General*, the applicants claimed that recent amendments to the *National Election Act* 2002 were unconstitutional. The amendments allowed people to offer an election candidate gifts – a traditional practice known as *takrima*. The High Court held that the new law was unconstitutional and struck out the offending provisions of the Act.

2.4. Judiciary

The judiciary forms one of the key components of any criminal justice system. Its role, especially in adversarial legal systems like Tanzania, is to ensure that everyone brought before it has a fair and public hearing by a competent, impartial and independent tribunal. The judiciary has a police accountability function hearing cases of police misconduct and settling civilian suits related to the police. However, in Tanzania this role is severely compromised.

Judges, for instance, are appointed by the President. The President's control over the appointment of senior judges leaves them open to illegitimate political interference. Magistrates are appointed by the Chief Justice, so the President has an indirect control over their appointment.

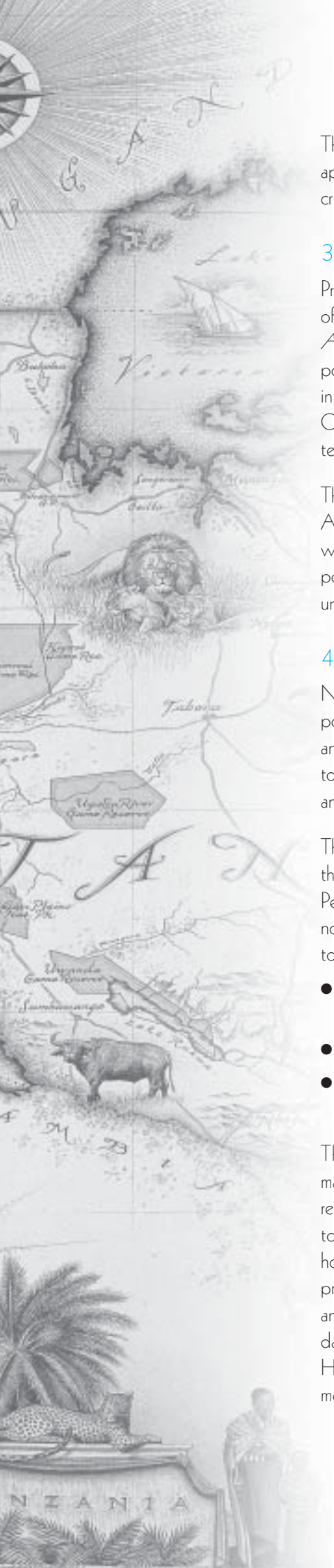
The judiciary also appears to have little power over the executive. The courts may find legislation unconstitutional but often the executive or legislature do not take the findings seriously. For example, in 1991, the *Deportation Ordinance* 1921 was declared unconstitutional and void,[104] but Parliament passed an amendment that purported to make good the offending part of the decree – even though the ordinance no longer existed in law. In another case in 1993, the response of the legislature and executive to a finding that it was unconstitutional to require a permit to hold a political rally was to pass an amendment that changed the Constitution rather than the offending legislation.[105]

Although there are numerous instances quoted of judicial integrity, there is also evidence that the judiciary is generally not considered to be independent and impartial. A recent preliminary report on the Project to Strengthen Capacities to Improve Human Rights Standards in Tanzania by Raoul Wallenberg Institute of the Human Rights and Humanitarian Law 2002 reported:

> "Numerous examples indicate that justice is not dispensed fairly and the outcome of a case will not necessarily depend on legal aspects only. In addition the critical funding situation has deteriated the whole judiciary, in particular, the lower courts where the majority of Tanzanians seek justice. The lower courts are constrained by weak capacity, inadequate working tools and buildings, all factors which are jeopardizing the administration of justice."[106]

A 2004 US State report found that:

> "the judiciary remained underresourced, corrupt, inefficient, and subject to executive influence, although there were no reports of executive interference during the year. Independent observers continued to criticize the judiciary, particularly at the lower levels, as corrupt and inefficient, and they questioned the system's ability to provide a defendant with an expeditious and fair trial. Clerks took bribes to decide whether or not to open cases and to hide or misdirect the files of those accused of crimes. Magistrates occasionally accepted bribes to determine guilt or innocence, pass sentences, withdraw charges, decide appeals, and determine whether cases were judged as civil or criminal matters. In addition, there were few courts available to citizens, and the cost of traveling to the nearest court was often prohibitive."[107]



The judiciary appears to have been successfully undermined and at the moment does not appear to be an adequate accountability mechanism to limit or prevent the abuse of power by criminal justice agencies and state agents that come before them in their courts.

3. Police Force and Prisons Service Commission

Previously, the Police Force and Prisons Service Commission acted as an external oversight body of the police. The Commission was set up under the *Police Force and Prisons Service Commission Act* 1990 and dealt with the appointment, promotion, termination and discipline of senior police. However, 10 of its 12 members were part of the Commission because they had a role in the executive – and this role generally relied on presidential appointment. As a result, the Commission had little independence and the President had control over appointment, promotion, termination and discipline of senior police.

This Commission has been wound down as part of the police move from the Ministry of Home Affairs to the new Ministry of Public Safety and Security. The new Ministry was created without adequate preliminary planning for a replacement Commission. This means that senior police officers due for promotion are not able to move up the ranks – and will not be able to until a new Commission is set up. This is expected to happen in the near future.

4. Commission on Human Rights and Good Governance

National Human Rights Institutions can be particularly important bodies in terms of promoting police accountability because they can have a broad mandate to investigate rights violations and theoretically they operate independently of the state. To be effective they should adhere to the UN Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (Paris Principles).[108]

The Commission on Human Rights and Good Governance (CHRAGG) was established by the *Commission for Human Rights and Good Governance Act* 2001[109] and took over from a Permanent Commission of Enquiry which had been in place since 1967. The Commission has no formal jurisdiction over Zanzibar although the Governor has agreed to allow the Commission to operate there. The Commission's aims are to:

- promote human rights within the community, primarily through research, education, and lobbying on the signing of international treaties;
- monitor human rights compliance; and
- act as an advisory body on human rights and good governance issues to public institutions and government.

The Commission has the power to investigate complaints of human rights abuses or maladministration reports. It is also empowered to take steps to intervene to end, reverse or remedy human rights abuses or maladministration, including instituting court proceedings[110] and to investigate complaints of poor governance in public or private institutions or individuals holding office in public or private institutions.[111] The Commission also has the power to proactively investigate places of detention. There is another general duty to "promote, protect and where necessary to provide assistance to persons whose human rights have or are in imminent danger of being violated".[112] This is vague and difficult to effectively interpret in practice. However, it implies that the Commission will become involved proactively in individual cases, meaning that it may be a useful way to oversee police misconduct.

Where the Commission finds that a human rights violation has taken place, it can make a recommendation to the offending institution. The institution then has three months to advise the Commission in writing how it proposes to act on the recommendation. The Commission can take action, including court proceedings, to enforce the recommendation but there is an emphasis on negotiation and mediation.[113] Failure to comply with a recommendation is an offence.[114] This gives the Commission scope to act as a police oversight body – by making recommendations following human rights violations and requiring a police response.

Landmark ruling for the Commission[115]

On 12 November 12, Alexander Lyimo ordered 135 residents of Nyamuma village in the Serengeti district, Mara region, to be evicted from their homes, whereupon their houses and granaries were burnt to the ground. This was apparently retribution for living in an 'unauthorised' area. The residents of Nyamuma village filed a case with the Commission against the District Commissioner and the officer with the help of the Legal and Human Rights Centre.

The Commission found both officials guilty of criminal acts that were cruel and oppressive, as well as dehumanising and threatening. It recommended that the Government resettle all the villagers, compensate all those who were physically assaulted during the eviction, compensate all losses suffered by the villagers and order the return of all evicted villagers to Nyamuma. The Commission also called for an immediate and permanent end to the perpetration of human-rights violations in the area, noting that they contravened the Constitution, as well as other written laws, and gave the Government three months to report back on the implementation of its directive.

The Government has declined to implement any of the recommendations and in a letter dated 18 May 2005, that the Attorney General stated the Government would refuse to compensate any of the victims as ordered, as its own investigations had found no human rights violations, its law enforcement officials were blameless and the Commission's findings were based on misleading evidence from exaggerated witnesses. The CHRAGG has instructed LHRC to take the matter to the High Court to enforce the recommendations.

The Commission is supposed to be independent and free from the direction or control of any person or authority.[116] The composition and procedures for appointment of Commissioners appear to allow for independence. The President, on the recommendations of an Appointments Committee, appoints the Commissioners and Assistant Commissioners. The Appointments Committee is established and follows procedures according to regulations made by the Minister – Ministers are not independent of Government, but they can be independent of direction. In addition, while the Commissioners have security of tenure[117] the President sets their salaries.[118] It would seem that there is some scope for political interference, but there are also structures in place that would allow for independence and security for the Commissioners and the Commission.

The Commission is bound by the Constitution not to investigate or bring proceedings against the President. Also, the President can direct that an investigation not be carried out if there is a real and substantive risk of prejudicing national defence or security. However the President has to give notice in writing and the complaints' right to seek redress in the High Court is not affected.[119]

A 2005 report by the Chairman of the Commission for Human Rights and Good Governance

stated that the Commission's lack of legal powers means that it is 'toothless', causing national leaders and the public to lose faith in it.[120] In the report, the Judge criticised leaders and public servants for ignoring Commission recommendations. The Judge stated that they delayed or refused to respond to letters from the Commission, effectively hindering their investigations. He said that the laws establishing the Commission, which stipulated that its recommendations were not enforceable, impaired the work of the Commission. As a result, public confidence in it as a human rights enforcement mechanism was low.[121]

5. Other bodies

The police are also answerable to the Public Leadership Code of Ethics Secretariat (as police in leadership positions are obliged to act ethically), the Prevention of Corruption Bureau (on issues of police corruption) and Local Defence and Security Committees. Local Defence and Security Committees work on regional and district levels. While they work in partnership with the police, they can also question the police on their activities.

6. Civil society

> "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."[122]
>
> - *Samuel Walker, Police Accountability: the Role of Civilian Oversight*

A key requirement for democratic transformation is the development of a vibrant civil society. Civil society has played an important role in strengthening democracy all over the world by raising civic awareness, promoting debate on important issues, monitoring the performance of government institutions, exposing misconduct, demanding public participation, transparency and accountability and championing reforms.

There are many civil society organisations in Tanzania that are working directly or indirectly on human rights issues. Among these are the Legal and Human Rights Centre, Tanganyika Law Society, Tanzania Media Women Association, Southern African Human Rights Non Governmental Organisations Network (Tanzania Chapter), Women's Legal Aid Centre, Tanzania Women's Lawyers Association, Zanzibar Legal Service Centre and *Umoja wa Walemavu* Zanzibar (Organization of People with Disabilities).

The activities of civil society organisations relating to the police are broadly of two types. The first are the groups that deal with violations of human rights committed by police officers (some of them work with particularly vulnerable groups such as women and children). The second are those concerned with systemic reforms in the working of the police organisation. In Tanzania, civil society has mostly engaged with police as human rights violators and there has been less work done on systemic reform.

The Legal and Human Rights Centre

The Legal and Human Rights Centre (LHRC) undertook human rights training with the police from 1996 to 2004, training over 200 police in that time. It has also produced a human rights training manual for the police and a publication, *Wajibu Wa Polisi na Haaki Za Raia,* outlining rights of arrest and limitations of police powers. The human rights training programme initially targeted junior officers, but it was found that their training was often in conflict with orders from senior officers. As a result, LHRC started

meeting with the IGP, Commissioners and regional officers to improve their human rights understanding. The meetings appeared to build trust and the LHRC is now a facilitator who is able to feed both community experiences to the police and police ideas to the public. In 2003, the LHRC conducted human rights training for all the District Investigation Officers – 82 officers. In 2002, the LHRC trained all the Police District Official Commandants in the country – a total of 101 commandants.

Given LHRC expertise in training police in human rights, the city council asked them to conduct human rights training for their Auxiliary Police. Earlier, the Auxiliary Police had been trained by officers in the police training college in Moshi, but the training did not include a human rights component. The LHRC accepted this role and trained 80 Auxiliary Police in 2002. Afterwards, LRHC followed up to monitor how the Auxiliary Police were going about their duties. Responses were mixed - in some interviews it was reported that the Auxiliary Police were handling people gently, but in some instances, especially in eviction cases, they were also seen to be rough.

7. Media

The media can play an important police watchdog role, revealing unlawful activity, getting information into the public domain, making comments and creating public awareness. The media is also a vital part of any police reform effort. Strategic media coverage of police abuses can be a way to put pressure on the government to reform the police, to create oversight mechanisms, or to prosecute errant officers. The visual drama and human interest stories associated with the police and their activities sell papers and find an abundance of space in print and television.

The media is at risk, however. The right to free expression in the Constitution is subject to the law of the land[123] and the legislation enacted has been highly restrictive. For example, the *Newspaper Act* 1976 regulates the operation of newspapers in Tanzania. Section 25 of the Act gives the responsible Minister a wide discretion to interfere with news presses, including the power to prohibit publication. Between 1993 and 2000, eleven newspapers were temporarily banned under the provision.[124] Another example is the *National Security Act* 1970, which prohibits public servants from disclosing a wide range of information – including information that has no bearing on state security.[125] A third example is the *Broadcasting Services Act* 1993, which regulates broadcasting on the mainland. The Act established a Broadcasting Commission, which has only ever used its powers to make sure only government owned radio and television stations are ever issued with the required registration.

The media at risk

On 10 September 2005, more than 36 residents of Ukonga, Dar es Salaam were forcibly evicted from their homes by the Ukonga Prisons Department. Prison staff entered the homes at 6am using tear gas and force. During the course of the violence, two journalists were attacked by prison staff and were seriously injured. A journalist who was severely injured went to the police station to get a Form 3, which would allow him to go to hospital without raising suspicion that he had committed a criminal act While the police provided the form, they refused to give any information regarding the incident or offer any further assistance.

The Government has also allegedly discouraged independent or critical reporting. For instance, the Government has withheld lucrative public advertising from newspapers deemed too critical of the administration.[126] The situation in Zanzibar is particularly bad. For example, the editor of the only locally produced independent newspaper, Dira, had his citizenship revoked in

March 2003 following routine criticism of the Government. The newspaper was banned in December 2003.[127]

These different restrictions and harassments have caused the media to self-censor and so the media has not developed its potential as an accountability mechanism. A survey of media reporting on policing carried out for CHRI shows examples of reporting of allegations of police use of torture, extra judicial-killings and corruption but also identified a lack of follow up carried out by the media. For example in a case of police misconduct, the police officers involved were identified and promises of investigation were made by the police, but the paper did not investigate whether this promised action had been carried out or what the end result was.

Happily, there have been some exceptions to media self-censorship. For example, in late 2004 and early 2005 a number of investigative reports resulted in Government agency corruption scams being revealed. One of these dealt with the police, where the media revealed that police in the Manzese area of Dar es Salaam had consistently turned a blind eye to crime and criminal conduct after receiving bribes from the perpetrators of the illegal conduct.[128] In addition, the President launched an initiative in March 2003 to improve public access to information. This initiative involved the President appointing communication officers in various Government departments to increase transparency and provide the public with timely information. The President also asked Government leaders to avoid hindering the media's attempt to disseminate information.[129]

8. International mechanisms

International standards also have an accountability role. The international standards and mechanisms that come into play in Tanzania are discussed in Chapter 2.

CHAPTER TEN
REFORM INITIATIVES

> "The challenges facing the Tanzania Police are human rights abuses by the police, including torture of suspects, arbitrary detentions, failure to comply with laws and minimum standards with regard to detention in police cells, the unlawful restriction on freedom of assembly. The police also face the challenge of having inadequate facilities especially in the area of police cells for remand prisoners, housing for police officers, and operations vehicles and lack of fuel…Moreover, they are faced with the problem of lack of public trust and confidence in the performance of the conduct of the Force."
>
> - *Legal Sector Reform Programme Medium Term Strategy 2005, 2006, 2007*

Police reform initiatives in Tanzania have been part of wider reform programmes, rather than police-specific reform projects. Examples of the initiatives are the Legal Sector Reform Programme and the Poverty Reduction Strategy Papers. Community policing concepts have also begun to be discussed, offering further reform opportunities.

1. The Legal Sector Reform Programme[130]

The Government's commitment to reform the legal sector goes back to April 1993 when it established the Legal Sector Task Force, anticipating increased commercial activity following the adoption of economic liberalisation policies. The aim of the review was to form recommendations to build the capacity of key legal institutions, such as the judiciary, the Attorney General's office and the Law Reform Commission, through training and reform of relevant legislation, guidelines and regulations.[131] Unfortunately, the police were not a target of this programme for two reasons.[132] First, the World Bank, which had sponsored the project, did not fund police or prisons work. Second, the Ministry of Home Affairs, which had the police in its portfolio, was not a full Ministry at the time and did not have the administrative processes or resources to collaborate with other Ministries.

The Legal Sector Task Force report was published in January 1996. The Government accepted the report and developed a *Legal Sector Reform Programme: Medium-Term Strategy and Action Plan (2000-2005)* in response. The Legal Sector Reform Programme (LSRP) was launched in 1999. A number of initiatives were developed as part of the LSRP, attracting a number of different development partners. For example, DANIDA participated in strengthening the Law Reform Commission and contributed to the establishment of the Commission on Human Rights and Good Governance. In 2001, the World Bank provided a project preparation facility to lay the groundwork for a proposed Tanzania Accountability Transparency and Integrity Project.

In spite of this work, reforms were not having the required impact and the quality of legal services in Tanzania remained poor which led the Government to re-evaluate the strategy. This appraisal led to the realisation of the pivotal role of police in the legal reform programme and a sector wide approach was planned. In April 2004, the Ministry of Justice and Constitutional Affairs, under the LSRP, developed a Medium-Term Strategy to replace the existing strategy. This revised strategy includes the police in its scope.

The revised strategy identifies a number of priority targets and outcomes that impact policing. They include:

- the national legal framework;

- ensuring independence of legal sector institutions with a view to promoting transparency and accountability;
- a unified criminal prosecution system under the DPP;
- a separation of prosecution and investigative functions in the criminal justice sector;
- improved access to justice for the poor and the disadvantaged (partly through police training);
- human rights and administrative justice;
- the professional legal community's knowledge and skills (including a review of the police training academy curriculum); and
- service delivery capacity in key legal sector institutions (this covers reduced congestion in police custody, and increase in personnel, adequacy of office space and detention areas and an accommodation and transport scheme for police officers).[133]

2. Poverty Reduction Strategy Paper

"The well-being of the poor is also dependent on personal security afforded by the state's PRSP."[134]

- Legal Sector Reform Programme Medium Term Strategy 2005/06-2007

The Government's overarching policy strategy is the Poverty Reduction Strategy Paper (PRSP) launched in 2000. The PRSP sets out the criteria for allocation of public funds – any financial obligation incurred by the Government must be aligned with a priority area outlined in the PRSP. One of the PRSP's five priority areas is the Legal and Judicial System. Security is a priority area under the PRSP.

The Government has committed itself to increasing the budget allocation of priority sectors. It has also committed itself to balancing budget allocations between key players since the effective operation of each agency is necessary for efficient dispensation of justice and the maintenance of law and order. The key sectors in the legal priority are the police, prisons, judiciary, the Attorney-General's Chambers, the Law Reform Commission of Tanzania and the Commission for Human Rights and Good Governance. In its March 2004 review report, the Government found that in the 2003/2004 budget there was an increase in resources for the legal sector, including for security agencies.

3. Community policing

Community policing programmes can prove to be a valuable reform tool. However, there is no formal community policing programme in place in Tanzania. The new Ministry has plans to establish a policy on community policing, but the current emphasis is on understanding the basics of the approach. Informally, some communities are collaborating with their police station to identify and solve community problems. Unfortunately, discussion around community policing concepts has misunderstood community policing as an another alternative community police force, rather than seeing it as a community and police communication and collaboration.

CHAPTER ELEVEN
BUDGET

> "The Police Force . . .success in the discharge of its responsibility depends largely on the availability of adequate working equipment including staff accommodation and office. Over the years it has not been able to meet the demand due to financial constraints." [135]
>
> *- Permanent Secretary Ministry of Home Affairs*

The budget for the police force between 1993 and 2003 covered less than 50% of the actual financial requirements of the police. Analysis of the police budget since the 2000-2001 financial year reveals that the force remains grossly under-funded despite its priority status. During this period, the police experienced large funding deficits in both recurrent and development expenditures. However, this appeared to be the general trend across all sectors - a consequence of the Government's inability to generate sufficient funds to meet its budgetary obligations. Due to inadequate financial resources, the force's capacity to manage crime and guarantee a reasonable level of citizen safety is severely compromised, resulting in a loss of public confidence in the police. This chapter cites various specific areas of difficulty that result from limited resources that hinder effective policing.

1. Budget process

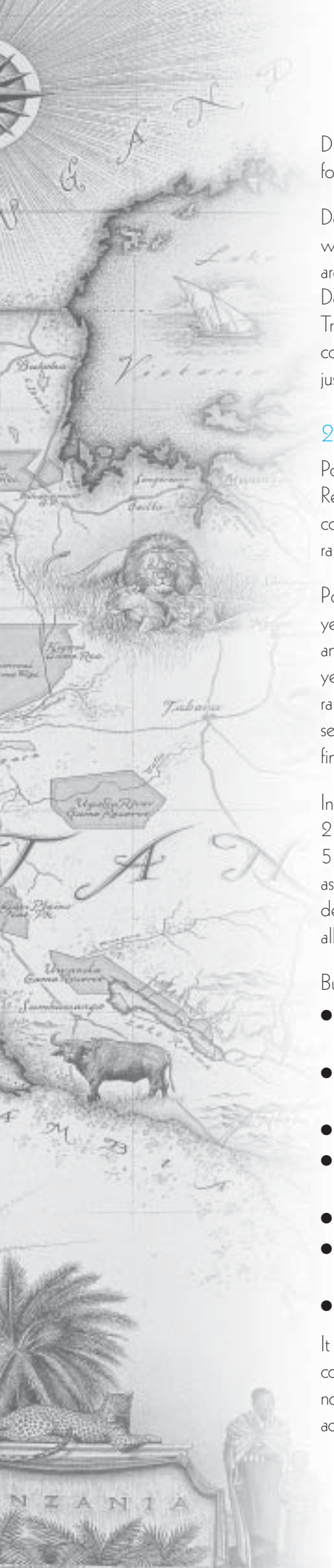
Policing is a Union power, so the budget is passed by the Union Government. The budgetary process is underpinned by the Medium-Term Expenditure Framework. The framework is a resource management tool that has been applied to Government planning and budget processes for the past six years. The objectives of the framework are:

- to improve the predictive value of government budgets by adopting and enforcing a medium term expenditure framework;
- to assist the integration of donor finance into the government;
- to enhance budget sustainability by ensuring that targets set in the sector programmes when totaled, are affordable within the available resources;
- to ensure an increased shift of donor finance towards broader budget support for programmes – both overall and across sectors; and
- to strengthen an output oriented budget that focuses on service delivery improvement.

Key features of the framework include:

- ministries, departments and agencies operate within known budget limits in three year periods;
- a performance based approach to budget preparation, implementation, monitoring and evaluation;
- an emphasis on service delivery and meeting the needs of priority stakeholders;
- a consultative, participatory approach to budgeting; and
- mechanisms to assess whether identified activities are the most effective way to achieve goals.

At the start of each financial year, the Planning Commission (under the Ministry of Planning and Privatisation) prepares a performance review of the previous year's budget. In September, the Policy Analysis Department (part of Treasury) prepares the National Planning and Budget Guidelines, as well as Indicative Expenditure Ceilings, Revenue Targets and Mid-year Review



Directives. The Inter-Ministerial Technical Committee submits these to the Cabinet Secretary for approval. Later, it submits budget guidelines to the Cabinet for approval and implementation.

Departments start preparing ministerial guidelines and estimates in October and November, which involves individual sections/units within the police preparing sectional budgets. These are consolidated to form a departmental budget that is submitted to an accounting officer. Departmental budgets are consolidated to form a Ministerial budget, which is submitted to Treasury to form a national budget. The final step in the process is the preparation of a consolidated budget and annual plan, which is subject to parliamentary discussions and approval just before the end of the financial year.

2. Police budget trends

Police budgets are woven in with the larger justice sector budgets. In a Public Expenditure Review carried out by the Government in the 2001/2002 financial year, the Government committed itself to enhancing and sustaining budget allocations in the justice sector and to rationalise allocations to the named bodies.

Police were included as a budget priority sector for the first time in the 2002-2003 financial year. Funding was largely directed towards enhancing justice delivery through speedy investigation and prosecution and improving equipment levels. The focus for the following two financial years was on undertaking training and recruitment in order to reduce the police to population ratio. It also looked at removing budgetary pressures through the use of people's militia, private security, auxiliary police and community policing. While this may make sense from a purely financial perspective, it is concerning from a policing or human rights point of view.

In the 2000-2001 financial year, the police force's outstanding domestic debt topped 20,137,305,065 TSh. In the 2001-2002 financial year, it had dropped to 5,805,573,944 TSh. The drastic drop in outstanding debt was a result of European Union assistance to the Government to help it meet its domestic debt. While the actual nature of this debt varies, it mostly comprises unsettled supply bills, accrued utilities unpaid salaries and other allowances.

Budget allocation impacts on the police in a number of ways:

- the force's capacity to discharge its legislative responsibilities has been undermined or compromised by inadequate budgetary allocations;
- the police to population ratio is below the UN standard, contributing to incomplete work and understaffing;
- poor equipment, inadequate communication facilities and vehicle shortages;
- human rights abuses, for example, lack of adequate places of detention, the use of torture to expedite case closures;
- inadequate training;
- poor living and working conditions, including sub-standard housing, low wages and inadequate facilities; and
- corruption due to low wages.

It is commendable that the Government has recognised the important role that the police plays in the community and as such has given it priority status in budget allocations. However, paper budgets are not enough. For the police to operate effectively and live up to the promise of a democratic, accountable service, they must be adequately funded and resourced and this is not happening.

CHAPTER TWELVE
AGENDA FOR CHANGE

> "The police have too much power and discretion under the law with little or no accountability..."[136]
>
> - *Commissioner Makaramba, Commission for Human Rights and Good Governance*

Observations

There are a number of observations that can be made about Tanzania's police:

- Tanzania's colonial history left it with a regime-style police force that prioritised keeping the rulers in power and tolerated violence and illegality to achieve political wins. Its post independence history reinforced its policing style, with a single party rule that has not allowed dissent or opposition;
- the police are characterised by misconduct and human rights violations; illegal arrest and detention, torture and excessive use of force, corruption, partiality, extra-judicial execution and abuse of due process;
- internal and external mechanisms to ensure accountability within the force are inadequate;
- accountability is overwhelmed by a culture of secrecy within the police force and a culture of protection of information in the Government and Government bodies;
- the police to population ration, at 1:1200, is well below the UN recommended 1:450; and
- the police force has been operating without adequate funding for many years and has not been able to provide its staff with adequate working equipment, transport facilities, office accommodation or staff quarters.

These observations include specific legislative deficiencies. These include:

- Tanzania's laws do not reflect international human rights obligations or good governance principles;
- the *Police Force and Auxiliary Services Act* 2002 supports regime style policing;
- the *Police Force and Auxiliary Services Act* 2002 sanctions illegitimate political interference into the police; and
- the lack of a legislated right to information enables a culture of secrecy.

In addition, there are operational concerns, including:

- presidential control over the police allows for illegitimate political interference;
- the rewards of honest police work do not stand up against the temptation to commit illegal conduct;
- poor police welfare and working conditions are inimical to developing a sense of professional pride; and
- there is inadequate information in the public domain about the police which makes it difficult to assess how effectively they are doing their jobs and how deeply they are compromised.

Recommendations

- Shift in policing philosophy: Regime policing must give way to democratic policing.
- Budget increase: The police must be adequately resourced.
- Officer recruitment: More police officers must be recruited and adequately trained.
- Undertake legislative reform: Laws must be reformed to reflect democratic principles of policing, best practice internal and external accountability mechanisms, international legal obligations, good governance and the right to information.
- Defined roles: Police roles, responsibilities and disciplinary procedures should be clearly defined.
- Strengthen accountability mechanisms: Accountability mechanisms must be strengthened so that they are strong enough to ensure police accountability and to buffer the police against illegitimate political interference. This includes strong internal and external accountability to ensure that the police are accountable to the judiciary, parliament and community, and in particular to an independent statutory institution, preferably one that is dedicated to dealing with public complaints about the police.
- Ensure independent senior leadership: Presidential control of the police must be reduced.
- Political will must be strengthened: Strategies can be developed, but if there is no genuine political will at the top, obstacles to reform will be tolerated or encouraged and the situation will remain the same.
- Police living and working conditions must be improved: Police work is onerous and risky. Police officers can only perform their duties efficiently and effectively if they are supported by the conditions of their service. They are entitled to reasonable pay, housing, medical treatment and retirement benefits, commensurate with the risks inherent in their jobs.

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. Tanzania acceded in 1976.

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. Tanzania has not signed.

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. Tanzania ratified CEDAW in 1985 and acceded to the Optional Protocol in 2006.

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. Tanzania has not signed.

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. Tanzania ratified in 1991.

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")

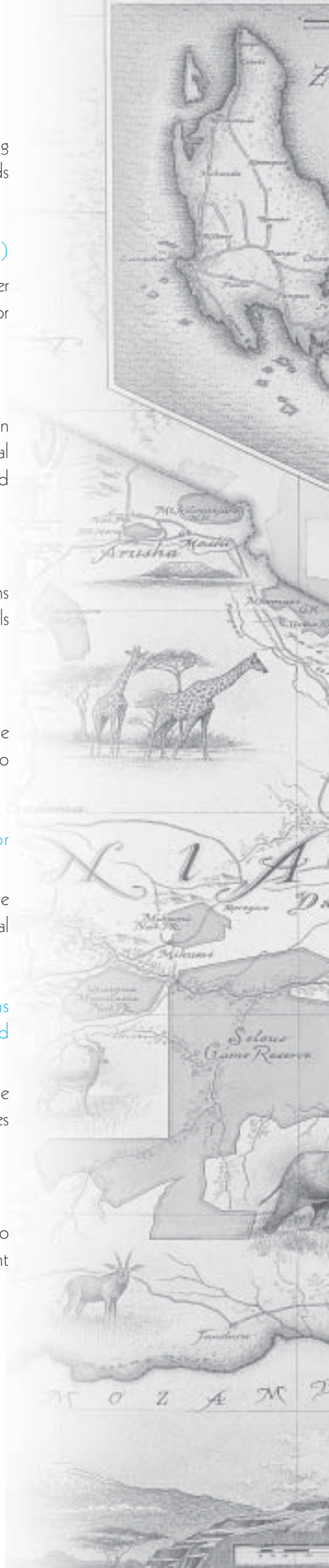
Set of internationally recognised standards created to guide states in the setting up of effective human rights commissions. The Paris Principles were endorsed by the United Nations General Assembly in December 1993.

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
UNITED NATIONS BASIC PRINCIPLES ON THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS

For POLICE OFFICERS, the UN BASIC PRINCIPLES are:[137]

- 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 differentiate 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
INTERVIEWS CONDUCTED

Mr Laurean M. Tibasana, Commissioner of Police, Operations and Training
Mr L. Saanya, Deputy Commissioner of Police
Mr Mwamasoli, Deputy Commissioner of Police, Administration
Mr Hemed Rashid, Deputy Commissioner of Police, Training
Mr Peter P. Mosha, Deputy Commissioner of Police, Research and Planning
Mr Neven I. K. Mashayo, Assistant Commissioner of Police, Personnel Administration Rank and File
Mr Manumba, Deputy Commissioner of Police, CID
Mr Mugasa, Assistant Commissioner of Police, CID
Commissioner Robert Makaramba, Commission on Human Rights and Good Governance
Mrs Caroline Mdundo, Programme Administrator/Accountant – Legal Sector Reform Programme, Ministry of Justice and Constitutional Affairs
Mr Gabriel Mbunda, Director Policy and Planning Department, Ministry of Home Affairs
Justice Anthony N. Bahati (retired), Chairman, Law Reform Commission, Tanzania
Ms Helen Kijo-Bisimba, Executive Director, Legal and Human Rights Centre, Dar es Salaam
Professor Chris Peter Maina, Legal Aid Clinic, University of Dar es Salaam
Ms Anna Mtane, Project Coordinator, Safer Cities Project, Dar es Salaam
Mr Samwel E. A. Lyimo, Deputy Coordinator, Safer Cities Project, Dar es Salaam
Mr Wilbert TK Kaahwa, Counsel to the Community, East African Community
Ms Isabelle Waffubwa, Legal Officer, East African Community Secretariat
Ms Njeri Mwangi, Special Rapporteur, East African Community
Ms Kajsa Marsk, Programme Analyst Democratic Governance, UNDP
Mr Jakob Henningsen, First Secretary, Royal Danish Embassy
Professor Rwekaza Mukandala, Chairman, REDET
Mr Mdope, Programme Manager, REDET
Mr Don Deya, Chief Executive Officer, East Africa Law Society
Mr Clodwin Mtweve, Commissioner of Police, Administration and Budget
Mr Alfred Tibaigana, Commissioner of Police, Dar es Salaam Zonal
Mr Mabina, Superintendent, Police Headquaters (Head of Statistics Unit)
Mrs Alice Mapunda , Head of Dar es Salaam Police College
Mr A. Kaniki, Chief Instructor, Dar es Salaam Police College
Mr Mwakambonja, Instructor, Dar es Salaam Police College
Ms Ama Munisi, former Programme Coordinator for Justice, Law and Order Sector
Mr Andulile Mwaisaka, Current Programme Coordinator for the Justice, Law and Order Sector
Dr Palangyo, responsible for police officers, Kilwa Road Hospital
Dr Lyon Mwanyika, Assistant Commissioner, Coordinator of HIV programme
Mr Richard Shilamba, Deputy Coordinator SAHRINGON (Tanzania Chapter)
Ms Jane Magigita, Head Legal Aid Department (Women's Legal Aid Center- Dar es Salaam)
Mrs Flora Masoy, Morogoro Paralegal Center for Women and Children

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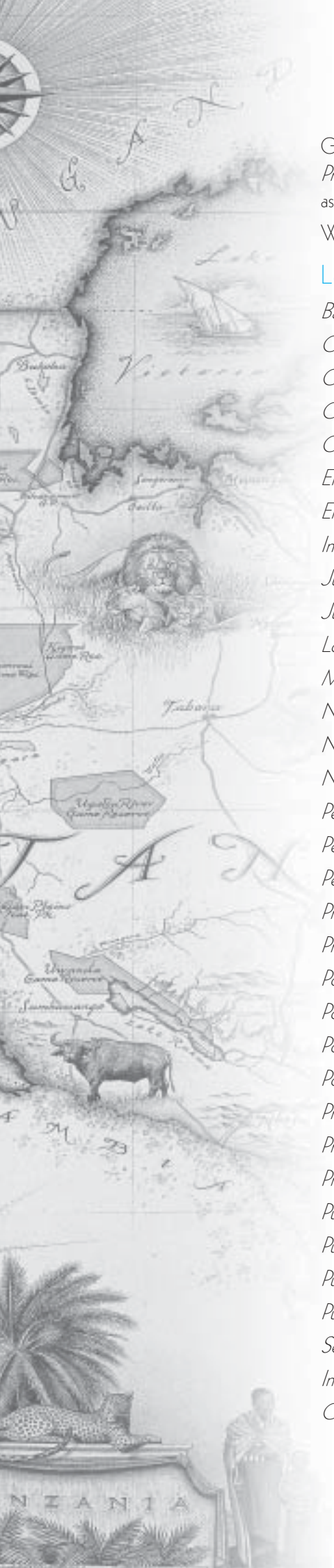

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[95] Section 61, *Police Force and Auxiliary Services Act* 1995 (Tanzania)

[96] Sec 47(1), *Police Force and Auxiliary Services Act* 1995 (Tanzania)

[97] Interview with Professor Maina, University of Dar es Salaam Legal Aid Clinic, 2004

[98] Article 63(2), 63(3), *Constitution of the United Republic of Tanzania* (1977)

[99] The collation was an informal survey and the figures should be taken as an approximation. Some of the questions were arguably about other agencies. In addition we did not have access to all the Hansard material so could not obtain some information.

[100] Regulation C21, *Police Force Service Regulations* 1995 (Tanzania)

[101] Section 89, *Criminal Procedure Act* 1985 (Tanzania)

[102] *DPP v Ephata Iema and 5 Others*, Criminal Appeal No 142 of 1989, High Court of Dar es Salaam

[103] Maina (1997) *Human Rights in Tanzania: Selected Cases and Materials*, Kolne, p. 725

[104] *Chumchua s/o Marwa v Officer i/c of Musoma Prison and the AG* as cited in Maina (1997) *Human Rights in Tanzania: Selected Cases and Materials*, Kolne, p. 745

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[110] Section 6(e), 6(i), 15, *Commission for Human Rights and Good Governance Act* 2001 (Tanzania)

[111] Section 6(g), *Commission for Human Rights and Good Governance Act* 2001 (Tanzania)

[112] Section 6(2), *Commission for Human Rights and Good Governance Act* 2001 (Tanzania)

[113] Section 28, *Commission for Human Rights and Good Governance Act* 2001 (Tanzania)

[114] Section 37, *Commission for Human Rights and Good Governance Act* 2001 (Tanzania)

[115] Interview with Stanley Kamana, Special Correspondent, the East African, Nairobi, on 20 December 2004

[116] Section 14(1), *Commission for Human Rights and Good Governance Act* 2001 (Tanzania)

[117] Section 8, 10, *Commission for Human Rights and Good Governance Act* 2001 (Tanzania)

[118] Section 8, 3, *Commission for Human Rights and Good Governance Act* 2001 (Tanzania)

[119] Section 16, *Commission for Human Rights and Good Governance Act* 2001 (Tanzania)

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[128] See the Guardian newspaper, 24 January 2005

[129] Bureau of Democracy, Human Rights and Labour (2004) *Tanzania Country Report on Human Rights Practices 2003*, http://www.state.gov/g/drl/rls/hrrpt/2003/27756.htm as on 17 May 2006

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[132] Interview with Caroline Mdundo, Programme Adminstrator/Accountant – Legal Sector Reform Programme, Ministry of Justice and Constitutional Affairs, 2004

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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. From time to time CHRI conducts fact finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

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. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

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 through public education and has developed web-based human rights modules for the Commonwealth Parliamentary Association. In the run up to elections, CHRI has created networks of citizen's groups that monitor elections, protest the fielding of criminal candidates, conduct voter education and monitor the performance of representatives.

ACCESS TO JUSTICE

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizen's 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.

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