

**From** Julius C.N.Okombo  
**Force Driving School.**

**To** Michelle Kagari  
**A** Commonwealth Human Rights Initiative  
**(East Africa)**

**Subject** Why police need policy on use of force

Please, reference is made to the above subject, I have read your article appearing on the Daily Nation dated 06.11.2003 about path to reform.

Where you categorically put it that the public perceives the police as corrupt, protecting criminals, brutal and trigger-happy. Be aware that Police Officers are fully aware of the ethical responsibilities of their position and strive constantly to live up to the highest possible standards of professional conduct, is in contradiction to your suggestion that the force be transformed into a professional, service- oriented, emphasizing crime prevention rather law enforcement.

The fundamental duties of a Police Officer include serving the community, safeguarding lives and property, protecting the innocent (and not criminals who violate the law), keeping the peace and ensuring the rights of all persons to liberty, equality and justice. Police Officers perform their duties impartially, without favor or ill will and without regard to status, sex, race, religion, or political belief. All persons are treated equally with courtesy, consideration and dignity contrary to your assertion that the police are aggressive and prone to excessive, brutal and improper use of force.

Police Officers in Kenya will never use unnecessary force but may use only that level of force necessary to effect a legitimate law enforcement objective. The principle of reasonableness, and the totality of the circumstances will guide the officer's actions and this is only to remind you that the Kenya Police is a disciplined force. In order to maintain a position of respect in the community, an officer's personal behavior must always be beyond reproach. This is covered under self-discipline and the enforced discipline chapters.

Consistent and wise use discretion, based on professional competence, will do much to preserve a good relationship with, and enhance the confidence of the public.

In your article, you suggested that police documents such as the police regulations and Force Standing order should be open to public scrutiny, remember that the force is formed on the basis confidentiality and integrity policies, whereas, whatever an Officer learns as a result of official duties shall be kept confidential, unless a legal process requires otherwise. The public has a right to security and privacy, and information obtained about them must not be improperly divulged. Also, Police Officers cooperate with all legally authorized agencies and their representatives in the pursuit of justice in the country. This is in response to your assertion that, if the police expect to improve their relationship with Kenyans, then independent institutions must be established with the authority to investigate and act against improper use of force.

Kenya Police Officers do not engage in any act of corruption or fraud, however, a small percentage engages in open-hand bribery. Mostly, they do not condone such acts either by themselves, members of the public or by other Police Officers. They tend to avoid any conduct which would compromise, or give the appearance of compromising, that integrity.

The continuum of force is a self-explanatory article as displayed in the Police Act, Force Standing Orders and Police Procedures. Just as you said; 1. Officer presence and the use of verbal

commands. 2. Passive resistance. 3. Active resistance. This level requires the application of hands, kicks, strikes, pepper spray etc. 4. Armed resistance. Where the suspects are armed with dangerous weapons.

In my view, the majority of the Kenyan population does not understand the above procedures of arrest, most likely, when they see an Officer kicking a suspect; they think that the officer is wrong. Or even where the Officers goes out to arrest a suspect and end up shooting him up, they don't want to know whether the suspect was armed or not and whether the officer was shooting to kill or to effect the arrest or to defend him/herself.

According to your argument that the policy should also lay down different types of weapons and ammunition needed is not right and ambiguous, in that, where there is an armed combat, the art of war prescribes any platoon weapon that can kill an enemy. The Kenya Police is also trained as an army support unit, but this is only secondary. Your argument is like some newspaper reporters who query why an officer shot a suspect with a 7.62mm caliber G-3, instead of 9mm Pistol similar to that of the suspect...or why didn't the officer run away since the suspect was only armed with a knife or a panga or a pistol that does not shoot far away? Where a suspect is armed in any way, and he intends to use that weapon against any person, where the use of a police baton is rendered ineffective, then the Police Officer may utilize warning shots where deadly force is justified.

On modernization of the force, you said that the government's plan for police reforms appears to be the purchasing of new equipments to enhance crime detection. This cannot be considered as reforms, as it is not a policy matter, therefore, it does not require decision making, and for that you should not hold the whole government at ransom as if it is a government of illiterates and capable of employing an illiterate police force. Be notified that, every moderate police officer you see patrolling the streets are intelligent people and has projections and common goals to achieve, the majority of whom are either university graduates or form four leavers who have undergone internal training. Also you can check with the recruitment requirements for one to join the force.

It may appear as if I am criticizing you, though you should also think of those Police Officers who loose their lives everyday while on duty and what the government should do to improve their lives. The same people it is serving never appreciate the sacrifice of the police. If you check the statistics of gun related crimes all over the country, you will find that Central and Nairobi Provinces are in the lead, followed by Coast and North Eastern. Eastern and Rift Valley are moderates, leaving Western and Nyanza as the only safe havens with lesser crimes. This also dictates the type of force to be used to effect an arrest in each province. What would you expect the officers to do when they are in an area where all criminals have guns?

In fact, the Kenyan communities are behaving badly or have jumped over both the statute and communal laws thus, harboring criminal elements among them. They favor corruption, and are unable to change those rules they consider to be draconian, they add more to it. Instead of harmonizing themselves for a better life, to change their attitudes and approaches towards one another, they choose to murder, slaughter, accuse falsely etc. no Kenyan will stand next to another unless he/she is stealing from him/her. I think this is why the Transport Minister has decided that they be tied to their seats to bring more peace amongst themselves because there would be no more pickpockets and so on. With this criminal mentality, they always put their heads in the air possibly to monitor possible police activities, making it impossible for the police to wipe out crime. The early bird may catch the worm, but it is always the second mouse that gets the cheese.

Best regards  
Contact: jokombo@yahoo.com

**From**           **Michelle Kagari**  
**Commonwealth Human Rights Initiative**  
**(East Africa)**

**To**               **Julius C.N.Okombo**  
**Force Driving School.**

**Subject**        **Re : Why police need policy on use of force**

Dear Julius C. N. Okombo

Thank you for your letter responding to my article on the Use of Force. I apologise for the delay in getting back to you. I have been away from the office and access to my official e-mail was sporadic.

I am delighted that you took time out to construct this comprehensive critique. Indeed the main purpose in publishing articles on policing issues is to stir up informed debate on the police – your response suggests that this objective is being met. I will attempt here to respond as comprehensively as possible, to the issues raised in your missive.

In response to your statement that the police are fully aware of their ethical responsibilities and that they strive to live up to the highest standards of professional conduct, I would like say that I agree with this notion and support any efforts by the police to maintain, and improve on the quality of their services to the public. With regard to the negative perception that the public has of the police, this is a perception that has been admitted to by the police themselves. I would invite you to read a conference report published by CHRI recently. I have attached the PDF version of the report for ease of reference. In this report, senior officers admitted that the negative public perception that the police are lazy, trigger-happy, brutal and corrupt is to a large extent, justified.

The Commissioner of Police, Edwin Nyaseda is on record that the police would like to change from being a police force, to a police service. Indeed, an analysis of the current draft strategic plan that has been developed by the Kenya police force shows a willingness by the police to change their approach to policing, where crime prevention initiatives will be prioritized. The Kenya police have recently established the Crime Prevention Advisory Committee, to implement this new approach, which emphasizes community-policing initiatives among others.

I agree that the police are mandated to enforce the law without fear or favour. However, it has been admitted both by the government and the Kenya police that in the past, the police have been subject to illegitimate political control and interference, which has led to officers implementing the law according to the wishes of few powerful individuals, rather than as per the dictates of the law. I would draw your attention to the Akiwumi report on the tribal clashes, which highlighted the less than impressive role played by the police during this terrible time in Kenya's history. I would also draw your attention to the handling of opposition rallies during the Moi regime, and the recent barring of the Hon. MP Gideon

Moi from holding a public rally. This latter action drew a lot of criticism from the Kenyan public generally, and politicians. Soon after, Gideon Moi was allowed to hold his rally. The Commissioner of Police is on record in the East African Newspaper on Monday, November 10 where he is quoted as saying “*We used to say “Yes Sir!” to any order no matter how stupid*”. These, and many other recorded examples show that contrary to the legal provisions, and your assertion, the police have in reality not enforced the law impartially.

I agree wholeheartedly with you that consistent and wise use of discretionary power, based on professional competence will do much to preserve a good relationship with and enhance the confidence of the public. I do not suggest that the police regulations and the Force Standing orders be made public documents. I recognize that these are documents for internal use and for the internal regulation of the force. What I do say however, is that a use of force policy can be found in these documents and because they are internal, the public does not know the details of how and when force should be used, and the mechanisms for investigation when lethal force is applied. I am suggesting that policy regulating the use of force should be public – the public needs to know under what circumstances force will be used, they need to understand the use of force continuum and also be aware of the mechanisms for internal and external review available when force is used.

I am advocating for the opening up of the force to public scrutiny, through the establishment of independent external oversight mechanisms, and the strengthening of existing internal mechanisms, the judiciary and parliament. There is a worldwide trend toward the establishment of independent institutions that allow citizens from outside the government to participate in overseeing the functioning of police force. Citizens and police officers alike for a number of reasons have embraced these institutions. First, they can help the police become more efficient and fair in certain aspects of their operations, such as in the handling of citizen complaints or in the disciplining of officers who engage in misconduct. Second, they can make administrative processes, like the promotion and transfer of officers, more transparent. Third, by making police processes more efficient, transparent, and fair, they can render the police more credible in the eyes of the public and thereby improve the relationship between the police and the public. This improved relationship, in turn, strengthens the capacity of the police to enforce the law.

The Kenya police are themselves advocating for the establishment of a Police Service Commission, which will act as an independent oversight mechanism, draw its members from a wide spectrum of society and work in collaboration with the police in helping to enhance police performance. These are as per representations made to the CKRC, at BOMAS and also in the draft strategic plan.

With regards to your assertion that the police do not engage in any act of corruption or fraud, I would like to draw your attention to the report of an investigation into the traffic police by KACA last year. The then police commissioner, Philemon Abong’o accepted this report, and admitted that corruption within the force was rife. More recently, the Kenya police took videotapes of police officers accepting bribes. This video was aired on National television. Senior officers within the force have told me that corruption is a big problem, and that many officers within the force reacted angrily to the airing of this tapes, saying that the senior officers have no moral justification for highlighting corruption within the force when they themselves are also corrupt.

I concur that many Kenyans do not understand police or criminal procedure and this has contributed to various misconceptions about policing in Kenya. One of the ways to remedy this is to enhance awareness of police procedure and practice, and allow them space to raise questions and have these responded to comprehensively.

I would stand by my argument that police weapons ought to be appropriate for the mission at hand. I am aware that there aren't sufficient arms in the armory, and arms are issued when officers are going on mission – according to my sources within the force, this has presented a problem when it comes to the use of force because firstly, the officer does not use the same weapon at all times and sometimes the gun is not properly aligned. I have been reliably informed that when lethal force is used and internal investigations are carried out, officers often claim that they did not actually aim at the heart, or head, but that the gun was not properly aligned and the bullet did not go where aimed. This situation ought to be remedied. Another aspect of appropriate tools includes the issuance of bulletproof vests and helmets to officers. The police should, as part of their reform programme, ensure that a wide array of tools is available to the officers. Officers going on a public order mission would require different tools as opposed to officers on the beat. I am aware that this happens to some extent within the force, but the public also needs to know.

I have been working with the police in the three EA countries for some time now, and I do agree that they are in large measure, very intelligent, committed and professional officers. As you say, society does have very high expectations of the force but they do not provide the force with the wherewithal to carry out their duties. It is encouraging that the plight of many officers, vis their salaries, housing conditions, and lack of comprehensive insurance cover among others, is now being brought to light. Many Kenyans are appalled by the conditions under which officer's work. Improving these conditions is a key priority. The modernization of the force forms part of the police reform strategy, as you may have seen in the draft strategic plan. It is critical that the police have sufficient and appropriate equipment if they are to carry out their functions professionally and efficiently. In any democratic society, the government is ultimately responsible for the development of comprehensive Internal Security Policy, and for ensuring that the police force is professional and efficient. It is therefore correct for citizens to demand that the government takes overall responsibility for ensuring that the force is one that everyone including the police, can be proud of.

I am in wholehearted agreement that bringing about a safe environment is not just the responsibility of the police. Every other sector has a role to play, and as you say, it is true that these other sectors have not been doing their bit as expected. Law reform is a key factor in bringing about change, and parliamentarians must do their part.

I hope that I have answered the issues raised and I look forward to discussing more with you. Please do not hesitate to get in touch, should you wish to chat, or get more information.

Kind Regards

Michelle Kagari