

A FORCE FOR GOOD?

IMPROVING THE POLICE IN KENYA, TANZANIA AND UGANDA



CHRI

Commonwealth Human Rights Initiative

working for the practical realisation of human rights in the countries of the Commonwealth



Hurinet (U)

Human Rights Network-Uganda

Commonwealth Human Rights Initiative

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

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

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

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HURINET-U

Human Rights Network Uganda (HURINET- U) is a national umbrella civil society organisation, established in 1993 by a group of eight human rights organisations and formally registered as an independent, non-partisan and not-for-profit organisation in 1994. The identity of HURINET-U lies with its diverse membership of 53 NGOs drawn from organisations that are committed to a wide range of human rights issues which are complementary in terms of areas of focus including: civil and political rights; economic, social and political rights; child rights; gender and women's issues; peace building and conflict resolution; prisoners' rights.

HURINET-U has remained a reputable institution and a member of regional and international campaigns. It is a hub to a number of national civil society campaigns and coalitions including: Coalition on Freedom of Information; Uganda Coalition on the International Criminal Court; Coalition on Economic, Social, Cultural Rights; Coalition on Police Accountability and Reform among others.

The institutional vision is to work towards "a society free from human rights abuse" with the mission of fostering the promotion, protection and respect of human rights in Uganda through linking and strengthening the capacity of member organisations at national, regional and international levels.

HURINET-U's work is guided by the following objectives:

1. To promote and protect human rights as provided for in the regional and international instruments that Uganda is party to and as provided in the Constitution of Uganda.
2. To encourage close collaboration and networking among human rights organisations in Uganda.
3. To encourage optimum sharing of information and resources, both human and material, among human rights organisations in Uganda.
4. To continually assess a collective impact in Ugandan society, occasioned by several programmes of human rights organisations in Uganda, among others.

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and written by**

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“We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights.”¹

Kofi Annan

Former UN Secretary-General

“Partly because of the waves of crime noted above which seemed out of control and the unsatisfactory state of affairs within the force the image and credibility of the police force to the public suffered. In particular, there was perception that corruption had entrenched itself within the Police Force. Without repairing that image policing would be difficult to carry out.”²

Tanzania Police Force Reform Programme

“Efforts to monitor and reform policing so that it is carried out with respect for human rights do not mean being ‘soft’ on crime. Security policies only truly provide security if the rights of all – victims, the general public, police, and criminals – are respected. The violent police response to crime has done nothing to promote security.”³

Philip Alston

Former UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

1 Report of the UN Secretary-General, “In Larger Freedom: Towards Development, Security and Human Rights for All”, 2005.

2 Ministry of Home Affairs Tanzania Police Force, “Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15”, Draft, 4 May 2010, p. 13.

3 Philip Alston, “Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Addendum Mission To Kenya”, UN Doc A/HRC/11/2/Add.6, 26 May 2009, p. 12.

Foreword

BY THE DIRECTOR OF KATIBA INSTITUTE KENYA
CHAIR OF CHRI INTERNATIONAL ADVISORY COMMISSION

Democratic police agencies are critical to the long-term security and development of Kenya and to our neighbours and partners in Tanzania and Uganda. For too long these agencies, which are vested with vast powers to protect the law and the people, have been misused by politicians and others in the pursuit of their own personal and illegitimate interests, and to subjugate the people to the will of the government in violation of the constitution. Coupled with a lack of oversight and accountability – which often results when the Executive wishes to “control” the police – the police agencies in Kenya, Tanzania and Uganda suffer from significant corruption, abuse of powers and poor leadership. To improve security and development, the police agencies must be reformed so that they can operate without political interference and in accordance with the law and prescribed procedures. Police agencies need to be given operational independence – the freedom to exercise professional judgement without ties to external influences – but within the confines of the law and subject to civilian oversight and accountability. Such a democratic police force is necessary to provide security and safety, which in turn provides the freedom for people to live, work, visit and invest in the region.

CHRI has worked since 2001 in East Africa to promote democratic policing. In 2006, CHRI published three ground-breaking reports on the status of policing in Kenya, Tanzania and Uganda, the first of its kind in the region. CHRI also analysed the impact of the budget on police activities in Kenya and Uganda. Eight years on, this report considers whether any improvements have been made to policing in each of these countries and the challenges that face the realisation of democratic policing. Some great improvements have been made – often led by the police themselves – in each of the three countries. It is hoped that, by sharing these good practices, countries can learn from each other. Likewise, countries should learn from the challenges facing their neighbouring police agencies and try to ensure that similar problems do not occur, or are addressed.

Good policing is too important to neglect and too urgent to delay. It is by discussing existing mechanisms which work and assessing and reforming those which need improvement that we will improve peace, security, human rights and consequently development in East Africa for everyone.



A handwritten signature in black ink, appearing to read 'Yashpal Ghai'.

Yashpal Ghai

Director of Katiba Institute Kenya
Chair of CHRI International Advisory
Commission

Foreword

BY THE DIRECTOR OF
COMMONWEALTH HUMAN RIGHTS INITIATIVE

Some of the best policing in the world is found in the Commonwealth, and also some of the worst. By and large, its 1.8 billion people do not have the policing they deserve.

CHRI advocates for and works towards democratic policing in the Commonwealth. We have slowly expanded and laid the foundations for civil society to engage in various regions in the Commonwealth and we are proud to be associated with constitutional moments in Kenya and Tanzania. In South Asia, CHRI publishes a report every two years examining the pace of police reform in the Commonwealth South Asian countries of Bangladesh, India, Maldives and Pakistan. CHRI has also established a regional network, Network for Improved Policing in South Asia (NIPSA), which promotes learning and exchange of information via workshops, conferences, the NIPSA website and NIPSA newsletter. We regularly highlight developments from East Africa on the website and through the newsletter.

It is through such South-South co-operation and a recognition of the deep relationships in history and across culture that tie East Africa and India together to this day that CHRI hopes to promote good practices and learning throughout the Commonwealth.

CHRI has long advocated for the Commonwealth Secretariat to have an expert group on policing that will lay down the principles of policing that meet the standards of the Commonwealth Charter: policing that is democratic, human rights compliant and non-discriminatory. We cannot afford any more in the modern world to lie entrapped in the mire of old colonial policing. To change this a deep breath is needed – if societies are to truly prosper, then the roots of this progress lies in strong rule of law, good governance, open government and most importantly a police system that is responsive to the needs of the community.

This report is a collaboration across continents, and CHRI acknowledges and is deeply appreciative that this would not be possible without our regional partners who either assisted with research, editing or provided critical information through interviews for this report.



A handwritten signature in black ink that reads "Maja Daruwala".

Maja Daruwala
Director, Commonwealth
Human Rights Initiative

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Sarah Mount of CHRI researched, wrote and project managed this report. Rikky Minocha of CHRI edited and proofread this report. Our Uganda partner HURINET-U, and in particular staff Caroline Kanyago, Emmanuel Mugisha and Patrick Tumwine, undertook further research and edited the Uganda chapter, whilst Yash Ghai edited the Kenya chapter. Aspire Design New Delhi designed the report. CHRI would like to thank all staff and associates that assisted: Alexandra Tindale for assisting with both primary and secondary research; Melissa Hewitt and Aman Banerji for secondary research; and Devika Prasad for guidance.

CHRI extends a special thanks to other experts that reviewed all or part of each country chapter. Most importantly, CHRI would like to thank all those interviewed for this report or who otherwise provided information.

CHRI would also like to thank everyone who has assisted to increase our knowledge and understanding of policing in Kenya, Tanzania and Uganda over the past few years, the experts, members of civil society, members of oversight commissions, members of the police and government officials.

Methodology

CHRI conducted all research in Kenya and Tanzania, and worked with country partner HURINET-U to undertake research in Uganda. Interviews were undertaken with members of the police, oversight bodies, members of specialist police accountability bodies; National Human Rights Institutes; civil society groups that work on policing and human rights matters; and the public. The names of those interviewed are provided in the report, except where the person interviewed expressed a desire to have their name withheld. In addition to this primary research, CHRI also reviewed national constitutions and legislation; international and regional conventions, reports, general comments, policies and standards; judicial decisions; expert reports; government policies; oversight body performance and annual reports; and media commentary.

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Executive Summary

In 2006, the Commonwealth Human Rights Initiative (CHRI) published a review of the status of policing in Kenya, Tanzania and Uganda, including recommendations for reform. CHRI's 2006 reports found that the police agencies in each of the three countries suffered from a variety of challenges and problems which prevented efficient, professional and effective policing, including: militarisation, lack of oversight and accountability, lack of leadership, corruption, misconduct and the consequent lack of public trust in the police. CHRI recommended that democratic policing be instituted in each of the three countries to ensure that the police – who are entrusted with significant powers to prevent and detect crime, maintain order and help the public – carry out their functions and powers in accordance with the law and with integrity.⁴

The **purpose** of this report is to analyse the current status of policing, the challenges facing policing and the initiatives undertaken to improve the police in Kenya, Tanzania and Uganda since CHRI's last reports in 2006. For an in-depth discussion of the history of policing and status of policing in each country up until 2006, please see these previous country reports. By focusing on improvement initiatives undertaken in these three East African countries, CHRI hopes to highlight initiatives that have worked, and could be replicated in other East African states, and to likewise draw attention to the current challenges as well as flaws in the reform initiatives so as to facilitate improvement in the future. The **audience** for the report is therefore policymakers within the relevant government ministry, members of parliament, leaders and managers within police agencies and members of civil society that are advocating for improved policing. It is by discussing existing mechanisms which work and assessing and reforming those which need improvement that we will improve peace, security, human rights and consequently development in East Africa for everyone.

4 Commonwealth Human Rights Initiative and Kenya Human Rights Commission, "The Police, The People, The Politics: Police Accountability in Kenya", 2006; Commonwealth Human Rights Initiative, "The Police, The People, The Politics: Police Accountability in Tanzania", 2006; Commonwealth Human Rights Initiative, "The Police, The People, The Politics: Police Accountability in Uganda", 2006; United Nations Office of Drugs and Crime, "UNODC Handbook on Police Accountability, Oversight and Integrity", 2011, p. 5.

SUMMARY OF THE GOOD AND THE BAD⁵

In **Kenya**, there have been several improvements as part of the systemic police reform process: the coordination of the two police services under one Inspector General of Police; the establishment of an independent authority whose chief mandate it is to oversee the police; the establishment of the National Police Service Commission (NPSC); the creation of a more sophisticated internal police oversight body – the Internal Affairs Unit; the entrenchment of independence of the police; and the improved regulation of the use of firearms in accordance with international standards. In **Tanzania**, the leadership of the Tanzania Police Force headed a review of its operations and the experience of the public with policing, resulting in the comprehensive Tanzania Police Force Reform Programme. Under this programme, various good initiatives have been implemented, including instituting Gender and Children’s Desks throughout Tanzanian police stations and to reform of the Police General Orders. In **Uganda**, civil society worked with the Ugandan Police Force to establish an improved internal oversight unit, the Professional Standards Unit, and a standard complaint form that includes a receipt for the complainant. Additionally, a review of policing coordinated by the Uganda Police Force was undertaken, although the findings have not yet been published publicly. An anti-torture law was enacted, and a road map for implementation was prepared and funded. In a great initiative, the Uganda Police Force prepared guidelines to improve prevention and response to incidences of torture and cruel treatment by the police.

However, despite steps towards reform, many challenges exist in effective implementation of these changes. Additionally, many of the problems that CHRI noted in the 2006 reports still exist: political interference; poor leadership and performance management; corruption; excessive use of force and torture; extrajudicial killings; and a lack of effective oversight and accountability. Perhaps most importantly, it appears that the commitment to reform and the oversight of the police is lacking from national leaders, including members of the government, parliament and senior police. This is unfortunate, as national leaders should realise that security sector reform will, in addition to providing greater security and justice to the people as is the duty of the state, improve investment and development within their countries. This is outlined below – democratic policing is good for everyone.

DEMOCRATIC POLICING IS GOOD FOR EVERYONE

CHRI argues that the way forward in addressing these problems is to institute and be committed to *democratic policing*. This requires a shift from the “colonial-style” of policing –using the security forces to ensure political control, rather than maintaining law and order impartially. Democratic Policing requires impartial and professional policing in accordance with the public interest.⁶ This means that the police must be free to exercise independent professional judgement to discern the best course of action in accordance with the law, regulations and the public interest, and not be influenced to act arbitrarily by politicians or members of the public.

Democratic policing is characterised by:

- ⊙ Oversight by civilian authorities;
- ⊙ Sufficient autonomy to exercise powers in accordance with law, regulations and policies (operational independence);

⁵ A more detailed summary of the ‘good’ and ‘bad’ policing developments in each country follows at the end of this Executive Summary, and further detail is provided in each country chapter.

⁶ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, “The Police, The People, the Politics – Police Accountability in Kenya”, 2006; United Nations Office of Drugs and Crime, “UNODC Handbook on Police Accountability, Oversight and Integrity”, 2011, p. 6.

- ⊙ Independence from political influences;
- ⊙ A high degree of professionalism and discipline;
- ⊙ Being responsive to the public and acting on the basis of public consent (with public trust);
- ⊙ Comprehensive systems to ensure transparency and accountability;
- ⊙ Staff that represents the diversity of the country; and
- ⊙ Adherence to human rights and fundamental freedoms.⁷

The systems to ensure civilian oversight, transparency and accountability should guarantee that police are accountable to authorities that are not part of or within, the military or the police: - so the police should be accountable to government ministries; to parliament; to the courts; to external oversight commissions; and to civil society. These external oversight and accountability mechanisms act together with internal police mechanisms to monitor police performance and ensure it is in accordance with the law and professional standards, and to hold officers accountable where misconduct does occur. The mechanisms aim to prevent police abuse of powers and illegitimate interference in policing, thereby increasing police professionalism and integrity and improving public trust in the police.⁸ Hence, democratic policing also means that the police seek to foster a relationship of trust and respect with the community, rather than just strictly enforce “law and order”. CHRI has emphasised in the past that this means a shift in the attitude and identity of the police as a *force* that imposes the law, to a *service* that upholds the law.⁹

Security sector reform is critical to long-term sustainable development and poverty alleviation¹⁰, by ensuring that safe and fair systems to enable people to work and business to operate.¹¹ Underdevelopment fuels criminalisation and insecurity, and vice versa. It is now commonly accepted that development and security are inextricably linked.¹² Not only is policing necessary to ensure individual safety, it is also necessary to ensure access to social services and ensure stability during political processes such as elections. Critically, independent and fair policing is vital for the protection of human rights, particularly the rights of the most vulnerable and the poor, who often suffer disproportionately from insecurity.¹³ In short, democratic policing and respect for the rule of law is vital to improve development by ensuring safe, secure and fair environments for people to work, travel, invest, participate in national affairs and to enjoy their lives.

7 United Nations Office of Drugs and Crime, “UNODC Handbook on Police Accountability, Oversight and Integrity”, 2011., pp. 6-7.

8 Ibid., pp. 6-9.

9 Commonwealth Human Rights Initiative, “Feudal Forces: Reform Undermined – Failing to Move from Force to Service in South Asian Policing”, 2012, pp. 6-7.

10 Dylan Hendrickson, “Security Sector Reform and Poverty Alleviation: Options for DFID Programming in Cambodia”, CSDG Policy Studies 1, June 1999, p. 4.

11 Department for International Development, United Kingdom, “Understanding and Supporting Security Sector Reform”, 2002, p. 7; World Bank, “Voices of the Poor”, 2000.

12 Organisation for Economic Cooperation and Development, “OECD DAC Handbook on Security System Reform: Supporting Security and Justice”, 2007, p. 13.

13 Ibid., p. 13.

WIDER CRIMINAL JUSTICE REFORM ALSO NEEDED

Police reform must take place together with efforts to improve the other aspects of the criminal justice system, such as the courts, the prosecution service and prison services. Some of the people interviewed for this report were concerned that, even if the police operate within the law, the judiciary and/or prosecution service may be corrupt, legal assistance may not be accessible to the majority of the population, and bail and bond may be prohibitive.¹⁴ This frustrates improvements to the police and other legal programmes. It inhibits the working of the justice system, and slows down growth and development of the country.

BRINGING ABOUT CHANGE: NOT JUST LEGISLATION BUT NEW PEOPLE, NEW STORIES

Transforming the police has historically proved extremely difficult, even with constitutional change and strong legislation and regulations. In countries that have gone through a transformation of the entire society, such as South Africa, the police system has still proved difficult to change, as, despite changes in legislation, the police system tends to remain structurally and procedurally authoritarian.¹⁵

A number of reasons have been put forward to explain the difficulty in changing police culture. Once an institution is established it is very difficult to change its structure and culture; institutions retain rules and people regardless of change in politics; police agencies tend to maintain historical behaviours and ideologies, which in the case of East Africa, arise from the colonial legacy of coercive policing; and the generally conservative, macho and pessimistic culture features of “police identity”.¹⁶

Policing in East Africa comes with a unique set of circumstances, and any change that seeks to address cultural issues must first acknowledge the difficulty and complexity of problems faced by police in their work. Police officers work in highly stressful environments which often result in officers turning to traditional coping mechanisms to deal with this stress, such as maintaining a “macho” demeanour in public in order to preserve coercive authority over citizens.¹⁷ In bringing about change to police institutions, numerous aspects of the system must be addressed and improved including the legal and regulatory framework; the policy framework; leadership, management and structure of policing; the fostering and championing of new “stories” for the police to associate with and respect; a change in the police officers themselves to organise and lobby for better conditions, which may result in increased personal investment and pride in their roles; and ensuring police internal processes, such as recruitment, promotion and transfer, are fair and transparent, to cultivate respect for the institution and the values of transparency and due process.¹⁸

14 CHRI Interviews with Eva Kimani of Usalama Reforms Forum, Victor Kapiyo of International Commission of Jurists Kenya, Josephat Peter of Muslims for Human Rights, Peter Mageloh of Advocates Coalition for Development and Environment, September and November 2013.

15 Monique Marks, “Transforming Police Organisations From Within: Police Dissident Groupings in South Africa”, *British Journal of Criminology*, 40, 2000, pp. 557-573.

16 Ibid.; E.A. Paoline III, “Taking Stock, Toward a Richer Understanding of Police Culture”, *Journal of Criminal Justice* 31, 2003, pp. 199-214.

17 Kappeler, V. E., Sluder, R. D., & Alpert, G. P., “Forces of Deviance: Understanding the Dark Side of Policing” (2nd ed.), 1998, Prospect Heights, IL: Waveland Press.

18 Monique Marks, “Transforming Police Organisations From Within: Police Dissident Groupings in South Africa” *British Journal of Criminology*, 40, 2000, pp. 557-573, at: <<http://bjc.oxfordjournals.org.ezp.lib.unimelb.edu.au/content/40/4/557.full.pdf+html>>.

The Good...

Since CHRI's last review in 2006, the police agencies in the three East African countries have improved some of their processes and practices. These improvements are commendable, and demonstrate that an understanding exists that the police agencies need to change in order to improve security, rule of law and adherence to human rights. A summary of the good practices developed in each of the three East African countries is provided below, followed by a summary of the challenges facing the realisation of democratic policing and recommendations for the way forward. Further detail is provided in each country chapter.

KENYA

New Constitution¹⁹ that establishes:

- ⦿ Police as an independent service for the people of Kenya;
- ⦿ Key policing objectives including professionalism, respect for human rights and accountability;
- ⦿ A Police Service Commission to manage recruitment, promotions, transfers and discipline, and oversee training and standards within the police service;
- ⦿ A comprehensive Bill of Rights.

New policing legislation,²⁰ that among other things: criminalises torture by members of the police; regulates use of firearms in accordance with international principles and the Constitution; institutes comprehensive processes for appointment and removal of police leaders and generally reduces political interference; establishes that all police officers must be vetted; establishes community policing; and establishes an Internal Affairs Unit that reports directly to the Inspector General (more details below).

19 See full version of the Constitution of Kenya at: <https://www.kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf>.

20 See National Police Service Act 2011, National Police Service Commission Act 2011. The National Police Service Commission Act, 2011, has been weakened recently through legislative amendments. Amendments to alter the National Police Service Act, 2011 were passed on 30 April 2014 and are believed to wind back some of these reforms including amending the regulation of use of firearms so that police officers can use firearms to protect property. This is not in accordance with international principles.

Establishment of a more **sophisticated internal police oversight unit**, the Internal Affairs Unit, which reports directly to the Inspector General of Police (IG) which:

- ⊙ Is separate from the wider Police service;
- ⊙ Investigates complaints of police misconduct, or initiates its own investigations into policing issues;
- ⊙ Recommends disciplinary action to the IG. If the IG decides to institute discipline, for serious disciplinary measures, he must send his recommendations to the National Police Service Commission for assessment and disciplinary hearings must follow where necessary.

Establishment of the **National Police Service Commission**²¹ which:

- ⊙ Is comprised of civilian experts, police leadership and retired police officers;
- ⊙ Is responsible for the recruitment and selection process of the IG and Deputies;
- ⊙ Oversees and manages recruitment, transfers, promotions, discipline and standards of police service;
- ⊙ Conducts vetting of all police officers to ensure integrity and effectiveness;
- ⊙ Ensures professional standards within the police service including training and curriculum;
- ⊙ Is responsible for police welfare, staff associations and housing of employees.

Establishment of the **Independent Policing Oversight Authority (IPOA)**,²² an external police oversight body:

- ⊙ Is an independent body, with a comprehensive selection process to appoint Members of the Board;
- ⊙ Investigates all deaths and serious injuries caused by police action or in police custody;
- ⊙ Takes complaints of police misconduct; can investigate policing issues at its own initiative; and monitors the investigations of the Internal Affairs Unit. The IPOA keeps a record of every complaint lodged on police misconduct, whether lodged with the police, the IPOA or National Police Service Commission;
- ⊙ Has strong powers to obtain information; summon witnesses; and require police cooperation – failure to cooperate is an offence;
- ⊙ Can recommend disciplinary action, prosecution of police officers, compensation and change to police practices;
- ⊙ Can go to court to enforce recommendation;
- ⊙ IG of Police implement and act on IPOA recommendations;²³
- ⊙ Publishes findings regularly;
- ⊙ Inspects police premises and detention facilities.

21 See National Police Service Commission website at: <http://www.npsc.go.ke/>. The National Police Service Commission Act, 2011, has been weakened recently through legislative amendments.

22 See Independent Policing Oversight Authority website at: <http://www.ipoa.ke.org/>; see Independent Policing Oversight Authority Act 2011.

23 S10(1)(m), (t) National Police Service Act 2011.

- ⦿ The police are becoming **more open and transparent**: participated in IPOA Baseline Survey and is working with civil society on improving community policing and monitoring crime trends.
- ⦿ Establishment of **strong civil society coalitions**: Police Reform Working Group and The Usalama Reforms Forum.
- ⦿ Review of the **Service Standing Orders**.
- ⦿ Moves underway to **civilianise prosecution service** and provide **legal aid**.
- ⦿ **Baseline Survey** on Policing completed by IPOA: provides critical data on key problems and gaps in policing that need to be addressed.

TANZANIA

- ⦿ Development of a comprehensive **Tanzania Police Force (TPF) Reform Programme**, that is owned by the TPF and was developed by it with expert assistance and consultations with the public. Unfortunately, there is limited implementation of plan due to a lack of funding and prioritisation.
- ⦿ **Review and amendment of Police General Orders** in 2006.
- ⦿ Moves underway to create new and improved **Police Commission**.
- ⦿ **Strong leadership** by former Inspector General of Police, Said Mwema.
- ⦿ Establishment of **Gender and Children's Desks** in over 417 police stations and posts, with over 1,000 police officers trained in responding to violence against women and children.
- ⦿ Move to **civilianise the prosecution service**, so that police officers no longer need to prosecute and can focus on investigation only.
- ⦿ **Community policing** initiatives that are working, such as Nyumba 10, and Outreach activities, such as playing sport and games with community members.
- ⦿ **Police reforms considered as part of wider Legal Service Reforms**, although it receive limited funding from the "basket funding".

UGANDA

- ⦿ The **Uganda Police Force (UPF) Review Process** resulted in many recommendations to improve the UPF.
- ⦿ Establishment of the internal Uganda Police Force **Professional Standards Unit** to receive and investigate complaints of police misconduct.
- ⦿ Establishment of internal **Legal and Human Rights Directorate** of the Uganda Police Force, with Human Rights officers posted in regions across Uganda.
- ⦿ Development and formal gazetting of **standard police complaints form** that includes tear-off receipt with all details for the complainant, providing evidence of lodgement of complaint.
- ⦿ Development of **complaint registers** for every Professional Standards Unit – with a copy of the complaint form. The registers demonstrate progress. They allow for the complainant or person assisting the complainant to return to the station to check on progress.

- ⦿ **Passage of anti-torture law**, prohibiting and criminalising torture and cruel and inhuman treatment or punishment – Prevention and Prohibition of Torture Act, 2012.
- ⦿ Drafting of **Uganda Police Force Guidelines** to prevent and respond to incidences of torture.²⁴ Drafted by the Uganda Police Force themselves in collaboration with key civil society organisations.
- ⦿ **Road map** to implement Prevention and Prohibition of Torture Act developed by key stakeholders. Funding obtained for Uganda Human Rights Commission to begin implementation.²⁵

24 For guidelines see: <http://www.actvuganda.org/sites/default/files/UPF%20-%20Guidelines%20on%20the%20Anti-Torture%20Act%202012.pdf>.

25 For the road map see: <http://www.apr.ch/content/files/region/africa/Roadmap%20for%20the%20effective%20implementation%20of%20the%20Anti-torture%20Act.pdf>.

...& The Bad

Despite the good practices that developed or improved since 2006, broadly speaking, the police institutions of all three countries continue to face the same challenges. These challenges must be addressed to build on improvements in policing and to ensure democratic and accountable police services. The common challenges faced in these countries are outlined below in summary form. The country chapters provide more detail in relation to country-specific issues and full recommendations for the way forward.

Lack of Independence from the Government

Owing to a common history of colonial-style policing, the police forces of Kenya, Tanzania and Uganda suffer from political interference and do not as yet have sufficient mechanisms in place to ensure that the police can operate with independence. This kind of independence – operational independence – means that the police must have the autonomy to exercise impartial judgement in carrying out their duties. It also requires the Inspector General and the police service to:

“To date the police has been too politicised and the police have been at the beck and call of politicians.”

- ⊙ Have a high degree of professionalism and independence from political influences;
- ⊙ Act in conformity with the law and established policies;
- ⊙ Operate on the basis of public consent (within the framework of the law), as evidenced by levels of public confidence;
- ⊙ Take responsibility for their decisions and operations, accepting liability when required, and exhibit full transparency in decisions and openness to external scrutiny.²⁶

In Kenya, steps were taken to ensure that the police force is independent of the Executive. However as discussed in greater detail in the Kenya section, these steps have been undermined by new amendments to legislation. Police complaints of political interference in Kenya remains, with some officers claiming that politicians direct them in policing matters.²⁷ In both Tanzania and Uganda civil society and police sources are concerned about political interference in policing.²⁸ In both countries, there are frequent

26 United Nations Office of Drugs and Crime, “UNODC Handbook on Police Accountability, Oversight and Integrity”, 2011, p. 7.

27 CHRI Interview with National Police Service member, November 2013.

28 CHRI Interviews with members of civil society and police sources in Tanzania and Uganda, November 2013.

media reports of the police limiting the rights of the political opposition from protesting, with the police being used as the instrument to stop political protests regardless of their legality.

Lack of Commitment to Change

It appears that commitment to changing the police in all three countries is not as strong as it could be. Although moves towards improving the police in each country have been undertaken, with extensive planning, consultations and consolidated recommendations for reform, progress towards implementing these recommendations has been slow. In Kenya, although legislation was passed to amend parts of the policing service, there are moves underway to amend this legislation and unwind some of the most progressive reforms, including in relation to police independence and police use of firearms. Additionally, the implementation of the new legislation and other reforms is slow, with long and unexplainable delays in the publishing of legislation; appointing key personnel; and the establishment and funding of oversight bodies. In Tanzania, despite the step forward in preparing the Tanzania Police Force Reform Programme²⁹, the programme does not appear to be a priority with the government and insufficient resources have been allocated so that the goals of the programme remain unmet. In Uganda, despite undertaking a thorough review of the police between 2007 and 2011, the review has not yet been made public, indicating a lack of commitment to the recommendations for reform.

Poor Leadership and performance management

Although there are many examples of excellent leadership in the police organisations, in all three countries there are unfortunately more examples of senior police officers not providing efficient or effective leadership. In Kenya, the on-going police vetting process exposed a number of problems including senior police officers who have personal wealth incompatible with their salaries; officers drawing a salary when not entitled to it; and internal police recommendations being ignored regularly for years. When questioned about the causes of corruption in the vetting process, senior officers cited a lack of leadership among other factors. In all three countries junior officers complain that recruitment, transfers, promotions and disciplinary processes are frequently not decided on the basis of performance and may be subject to the unobjective criteria of senior officers; often criteria which revolve around bribes paid by aspiring staff.

“The issue of police leadership is important... we need the leadership to give us a new direction. We cannot use the same tactics and the same excuses for performance. We must see policing in a new context, and revamped through new leadership thinking. We want result- based performance; they need a results-based performance system.”

Corruption: Both in the Police and Further Afield

In the 2013 Transparency International Bribery Index, the police services of all three countries were rated as the most corrupt institution in their respective countries, the “first time a single institution or sector performs uniformly poor across all the countries”.³⁰ Corruption includes asking for bribes, extorting other favours from the public and making police decisions as a personal favour or for personal gain rather than in accordance with law and procedure. Compounding the problem for those seeking justice for criminal offences, or

“Corruption is problem number 1.”

29 Ministry of Home Affairs, Tanzania Police Force, Draft, “Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15”, 4 May 2010.

30 Transparency International Press Release, “East African Bribery Index 2013: Bribery remains high in East Africa, but 90% of citizens will not report”, 24 October 2013, at: http://www.transparency.org/news/pressrelease/bribery_remains_high_in_east_africa_but_90_of_citizens_will_not_report.

those caught in the system unnecessarily, is the fact that the judiciary is also perceived as one of the most corrupt institutions in each of the three countries according to the 2013 Transparency International Bribery Index.³¹ Political parties, Parliament and public officials are also viewed as being very corrupt according to the same Index.³²Corruption, illegal conduct and discrimination (discussed below) can be reduced by instituting comprehensive internal and external oversight mechanisms, through strong leadership within the police service and through ensuring police operational independence.

Illegal Conduct: Arbitrary Arrest and Detention, Torture, Extrajudicial Killings

“[Detainees] interviewed complained that the Police use torture methods to extract confessions from suspects once they are apprehended.”

Torture and cruel and inhuman treatment and punishment by the police are often the most common human rights violation in each country. People often report more subtle forms of torture and cruel treatment as well, such as refusing access to medication for serious diseases.³³ In many cases, police arrest and detain people without a proper reason, in order to extort money or to otherwise harass the person. Illegal and arbitrary arrest and detention exposes the

person to a high risk of torture as well. Extrajudicial killings by the police are frequent occurrences in the three East African countries. There are allegations of police officers: shooting suspects who are unarmed; shooting suspects that have already been arrested and disarmed, often terrorist suspects; shooting suspects of minor crimes such as petty theft based on facts that do not legally justify a firearms response; shooting civilians in fake “shoot-out” situations; carrying out clandestine killings as part of criminal activity; killing people in custody through excessive force; and carrying out hangings and beatings. All these killings by police officers are illegal. Under international and national laws police officers must only use force when it is both necessary and proportionate to the crime, and only to the minimum extent necessary to achieve a legitimate policing objective.

Discrimination Against Particular Groups

“There is social status profiling and discrimination.”

The police in each country have been known to harass and discriminate against particular groups including members of the political opposition, asylum seekers and refugees, ethnic or religious minorities, people of a particular sexual preference, sex workers and people who use drugs. Young men are often treated with suspicion regardless of any evidence.

Discrimination against the poor occurs in all three countries, in the sense that the police will often only provide policing services for a “fee”. Additionally, the police are less likely to pursue cases against wealthy and influential members of society.

“Generally the police in Kenya is a business. If you pay, you get justice.”

Lack of Adequate Internal and External Oversight, Lack of Accountability

All the problems outlined above – torture, extrajudicial killings, arbitrary arrest and detention, discrimination and corruption – can be reduced by instituting comprehensive internal and external

31 Ibid.

32 Ibid.

33 CHRI Interview with Independent Policing Oversight Authority member, Tom Kagwe, September 2013.

police oversight and accountability mechanisms, ensuring police operational independence and through strong leadership. Internal oversight includes mechanisms within the police agency to monitor police actions, and where misconduct may have occurred, to investigate and discipline officers appropriately. This includes the chain of command and internal affairs units. External civilian oversight includes monitoring the performance of the police to ensure professionalism and adherence to the rule of law. This includes a body external to the police, ensuring police accountability, by receiving complaints of police misconduct, investigating them and recommending appropriate action. Experts have repeatedly found that failing to hold police officers accountable for their actions through investigation, prosecution, conviction and disciplinary procedures, is one of the significant causes in continued police misconduct. Instituting either internal or external oversight but not both, is often insufficient; a comprehensive, system-wide oversight approach is necessary. Such an approach must include: strict incident reporting, crime-scene and evidence preservation rules; efficient and effective internal police oversight and disciplinary mechanisms; independent external police complaints and investigation mechanisms; independent forensic services; impartial and well-functioning prosecution services and criminal justice system; and effective witness protection services.³⁴ In all three countries, the internal and external police oversight mechanisms are inadequate, although there are moves underway to improve these. However, even in Kenya, where an independent external police oversight authority, the Police Internal Affairs Unit and the Police Service Commission are established, many improvements are still needed. These external and internal mechanisms must be properly funded, have sufficient staff and equipment, access to independent forensics and have strong powers to investigate, obtain information, summon witnesses and require police cooperation.

“Part of the systemic problems of the police comes to the fore because of impunity.”

Lack of Financial Resources

Police interviewed in Kenya regularly cited low pay and lack of incentives, limited police equipment and resources and lack of sufficient training as factors that impede their performance.³⁵ A review of equipment in the Tanzania Police Force found that there was a substantial gap between the equipment required to effectively carry out police duties and the present reality.³⁶ During the police review process in Uganda, it is understood that a lack of police equipment and resources were cited as key problems.³⁷ Police institutions need to be sufficiently resourced to provide adequate salaries for a sufficient range of staff; to purchase necessary equipment, furniture and stationary; to maintain the functioning of equipment and vehicles; and to enable necessary training and up skilling as required. All of these, especially the procurement aspects, need to be robustly transparent and ethical, and the police budget must be prioritised in accordance with public interest concerns. In addition to the police agencies themselves, oversight bodies must also be resourced to enable them to properly carry out their mandate: to enable monitoring, investigations and outreach to all regions within their respective countries.

“They need to ‘strengthen’ the institution, resourced more; they need to be properly motivated in terms of remuneration and training. They need to be facilitated with modern equipment.”

34 Philip Alston, “Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions”; Philip Alston, Addendum, “Study on Police Oversight Mechanisms”, A/HRC/14/24/Add.8, 6-7.

35 See for example: Independent Policing Oversight Authority, “Baseline Survey on Policing Standards and Gaps in Kenya”, 2013, p. 10.

36 Ministry of Home Affairs, Tanzania Police Force, Draft, “Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15”, 4, May 2010, p. 12.

37 Information provided by HURINET-U who were members of the Uganda Police Force Review Process steering committee.

Summary of Recommendations

KENYA RECOMMENDATIONS

GOVERNMENT AND PARLIAMENT

1. Ensure Political Will - Security sector reform is good for everyone and police reform efforts must not be wound back.
2. Maintain full essence of 2011 Police Reform Legislation.
3. Increase funding to Police Service, NPSC & IPOA in order to improve investigative services, acquire and maintain equipment, establish systems for monitoring, install case management systems and enable comprehensive and regular training of Police.
4. Pass Coroner's Service Bill, strengthen witness protection and pass law prohibiting torture (although we note that, in relation to police, torture is already criminalised)..
5. Build on reforms to wider criminal justice system; ensure independent prosecution service and institute legal aid throughout Kenya.

POLICE INSTITUTIONS (NATIONAL POLICE SERVICE, IAU, NPSC AND IPOA)

6. Work together to encourage cultural change in the police institutions and foster police leadership.
7. Work together to improve compliance of Police Service through training, education, monitoring and oversight.
8. Work together to change public perceptions on policing and the criminal justice system through public awareness programmes.

NATIONAL POLICE SERVICE

9. Foster cooperation and coordination between the KPS and APS.
10. Continue cooperation with policing bodies, civil society & implement recommendations of police oversight bodies.
11. Finalize new Standing Orders.
12. Ensure Transparency: publish key documents and information on operations.
13. Establish responsive community policing forums.

**INTERNAL
AFFAIRS UNIT**

- 14. Conduct internal and external awareness on IAU.
- 15. Secure independent forensic assistance.
- 16. Enact critical policies and implement case management system for improved case handling.
- 17. Institute agreements with other key bodies such as IPOA and NPSC.

NPSC

- 18. Continue with thorough vetting of Police Service.
- 19. Ensure that the information coming out of Police vetting prompts systemic reforms.

IPOA

- 20. Comment on key incidents in the media.
- 21. Institute Public Outreach Programme.
- 22. Implement case management system.
- 23. Investigate police non-cooperation and recommend appropriate action.
- 24. Create standard form for police reporting and recording of deaths and serious injuries that includes reminders in relation to preservation of the scene, taking of photographic evidence and other important information.
- 25. Establish database on deaths caused by police action or omission.
- 26. Consider Creation of One-Stop Shops with other Oversight bodies.

**CIVIL SOCIETY
ACTORS**

- 27. Work together to ensure the promise of Police reforms is realised.

TANZANIA RECOMMENDATIONS

ALL STAKEHOLDERS

1. Seize opportunity to cement reforms in new Constitution: consider provisions from other recent Constitutions, including:
 - Renaming the Force as a Service
 - Setting out the functions of the IG, including having independent command of the police and only taking directions from others (apart from police oversight bodies) in relation to policy, and in writing
 - Setting out the basic provisions for appointment and removal of IG.
 - Consider establishing an independent police oversight unit or body.

GOVERNMENT, TPF AND CIVIL SOCIETY

2. Ensure independence of police; establish strong and effective Police Commission.
3. Create independent policing oversight unit or body through legislation, which is adequately resourced, independent and transparent.
4. Review, amend and implement TPF Reform Programme.
5. Reform of the Police Service Act, Police Regulations and the Police General Orders is required after the adoption of the new Constitution.
6. Reform of Police General Orders to address gaps.
7. Draft regulations to guide People's Militia and Community Policing.

GOVERNMENT

8. Increase funding to TPF but ensure budget prioritised in order to reform.
9. Ratify UNCAT , enact domestic prevention of torture legislation and carry out wider criminal justice reform such as ensuring Inquests Act is operating and Coroner's Service is functional and independent..

TPF

10. Combine and strengthen Internal Police Complaints Unit and the Integrity Unit.

TPF AND CIVIL SOCIETY

11. Work together to institute campaigns to increase public awareness and trust in the police.
12. Re-evaluate and redefine reform initiatives regularly.

CIVIL SOCIETY

13. Continue to work together to advocate for improved policing and criminal justice systems.

UGANDA RECOMMENDATIONS

GOVERNMENT, PARLIAMENT AND UPF

1. Improve independence of the UPF
 - Establish a Police Commission to oversee appointments, promotions, transfers.
 - Amend the Police Act to include transparent processes of appointment and removal of the IGP independent of the ruling government, set term limits for the IGP, ensure the mandate of the IGP is not directly set by the government.
 - Establish an external oversight unit or body to improve UPF accountability.
2. Establish a Police Commission comprising of IGP, retired police officers and five experienced people of integrity as recommended by previous police reviews.
3. Improve external oversight of the UPF by ensuring independent oversight that meets the standards recommended by the United Nations Special Rapporteur.
4. Improve budgeting; prioritise resources for improvement of police facilities, equipment and wages rather than for public order.
5. Pass witness protection legislation.
6. Ensure military only undertakes military operations and is not involved in policing activities; develop policy to clearly differentiate between military and policing activities.

UGANDA POLICE

7. Publish police review process report and being implementing recommendations.
8. Improve Internal Oversight: Ensure rolling out of Police Form 105 and complaint registry on police misconduct whilst establishing greater transparency.
9. Create a police culture of upholding rights, rather than enforcing the law.
10. Ensure training of all new police officers recruited, all former Special Police Constables hired prior to the 2011 elections to be re-trained.
11. Improve training of all police officers.
12. Institute specialised training for policing post-conflict communities; develop SOPs and a Code of Conduct for policing in these regions.
13. Improve relations and understanding between the police and the community through public education; review and improve community policing framework.

UGANDA HUMAN RIGHTS COMMISSION AND CIVIL SOCIETY

14. Continue to monitor and oversee police actions, lobby for change and work with Police for better guidelines and regulations.



KENYA

A. HISTORY OF POLICING AND GOVERNANCE

From the Colonial Period to 2007

The Kenya police was established by the British administration in 1906 and often used to control the population and secure the Imperial British East Africa Company's assets rather than secure safety for the people. The British imported laws from India that they had successfully used to strengthen the control of assets through the East India Company, and as a result the Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and Police Ordinance formed the framework on which the police of Kenya were established. During the First World War, Kenyan police were deployed in military service to fight alongside Kenyan Soldiers, and when in 1920 the modern Kenyan Police force was founded, European and Asian Officers made up the higher ranks and Africans the lower. Two distinct police forces were created over the years: the Tribal Police to monitor customary law and the Kenya Police to manage other policing matters.³⁸ In 1958, the Tribal Police became the Administration Police Force.³⁹

The distance between the police and the local population, already quite large, became crudely polarised during the emergency period from October 1952 to January 1960, when changes to the criminal justice system including regulations that allowed for the disbanding of political parties and detention without trial.⁴⁰ Add to this the interchangeable role played by the Kenyan military in internal and cross-border security during this period and the result was a police culture of regime support continuing as Kenya moved into self-rule.

The emergency period ended in 1960, and in 1961, the first general elections in Kenya were held. In 1963 the country became independent and in 1964, the country became a Republic with Jomo Kenyatta as President. The 1963 Constitution included provisions designed to establish an independent, professional and decentralised police force, but amendments in 1964 reversed these positive developments and the police became once again an extension of the administration, with power in the hands of the President.⁴¹ This pattern was continued by the next President, Daniel Arap Moi, who also transformed Kenya into a one-party state till 1991. Political assassinations were a hallmark of this period and the police were often implicated in the deaths of people who opposed the government.⁴²

In 2001, there was a move towards change, with the establishment of the Constitution of Kenya Review Commission (CKRC). The CKRC recommended constitutional entrenchment of police independence and professional and democratic standards of policing. The government watered down the CKRC draft, and put the revised draft Constitution for referendum in 2005. The referendum was not successful.⁴³

From 2007 Onwards

In December 2007, general elections were held in Kenya. The result was disputed and violence erupted between the parties and various ethnic groups, resulting in over 1,100 deaths and the displacement of

38 Commonwealth Human Rights Initiative, "The Police, The People, The Politics: Police Accountability in Kenya", 2006, pp. 12-13; Administration Police service website, History, at: <<http://www.administrationpolice.go.ke/History.html>>

39 Under the Administration Police Act, 1958.

40 Caroline Elkins, "Britain's Gulag: the Brutal End of Empire in Kenya", Jonathan Cape, London, 2005, pp. 7, 43; Commonwealth Human Rights Initiative, "The Police, The People, The Politics: Police Accountability in Kenya", 2006, pp. 3-5.

41 Ibid., p. 6.

42 Truth, Justice and Reconciliation Commission, "Report of the Truth, Justice and Reconciliation Commission Part IV", 2013, pp. 7, 10.

43 Commonwealth Human Rights Initiative, "The Police The People The Politics: Police Accountability in Kenya", 2006, pp. 7-8.

hundreds of thousands of people.⁴⁴ After a process of negotiation, a series of accords were agreed to, and a new coalition government was formed. One of the major components of settlement was a commitment to constitutional and institutional reform, including police reform,⁴⁵ and the establishment of the Commission of Inquiry into the Post-Election Violence (the Waki Commission). In October 2008, the Waki Commission released its report, documenting widespread allegations of extrajudicial killings, rapes and excessive use of force by the police, as well as cases where police deliberately chose not to respond to situations of violence. In early 2012, the public prosecutor stated that it had opened approximately 5,000 files relating to the violence. However as at April 2013, this had resulted in the convictions of only sixteen people.⁴⁶

The Ransley Report

In May 2009, the Kenyan National Task Force on Police Reform, led by retired Justice Philip Ransley was established. The Ransley Report, which coincided with constitutional review efforts, recommended, among other things, increased coordination between the two services through one leadership, the Inspector General of Police, and the policy direction of the National Policing Council. It also recommended the creation of two new organisations to improve the independence and accountability of the police: the National Police Service Commission; and the Independent Policing Oversight Authority.⁴⁷

Visit from UN Special Rapporteur

The United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, visited Kenya in February 2009. He reported on the existence of widespread extrajudicial killings by the police force, including the existence of a police death squad (the *Kwekwe*) to execute members of the notorious criminal gang, the *Mungiki*, and other high-profile suspected criminals.⁴⁸ Alston notes that the existence of the *Kwekwe* was confirmed by then Minister of State for Provincial Administration and Internal Security, Professor George Saitoti.⁴⁹ In addition to the death squads, Alston points to a lack of police accountability for killings resulting from the absence of effective internal or external oversight mechanisms. Due to this ongoing impunity, one of the recommendations of Alston's report was the dismissal of the Attorney-General and the former Police Commissioner, Major General Ali. The latter happened when Ali was replaced with Commissioner Itere.

ICC Process

The Waki Commission also recommended that the government set up a national tribunal to prosecute those responsible for the worst crimes during the post-election violence. To ensure some form of accountability, the Commission instructed Kofi Annan to pass on material collected by it to the International Criminal Court (ICC) if national prosecutions did not occur. As the Kenyan Parliament failed to establish a national tribunal, the ICC reviewed the Waki Commission materials and decided to

44 The Report of the Commission of Inquiry on Post Election Violence (the Waki Report), 2008, pp. 383, 272.

45 Agenda Item Four, African Union Panel of Eminent African Personalities, Kenya National Dialogue and Reconciliation; Kenya National Dialogue and Reconciliation, Statement of Principles on long-term issues and solutions, 23 May 2008.

46 Human Rights Watch, "Kenya: human rights priorities for the new administration", 23 April 2013, at: <<http://www.hrw.org/news/2013/04/23/kenya-human-rights-priorities-new-administration>>.

47 Peter Gastrow, Vice Chairman National Task Force on Police Reform, "The Kenya National Task Force on Police Reform: Some key recommendations summarised", 3 November 2009, at: <http://www.ipinst.org/images/pdfs/summary_policereformreport.pdf>.

48 Philip Alston, "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Addendum Mission to Kenya", UN Doc A/HRC/11/2/Add.6, 26 May 2009), pp. 8-9.

49 Ibid., p. 12.

instigate proceedings. In December 2010, the ICC summoned six suspects before the court for crimes against humanity including former Police Commissioner, Mohammed Hussein Ali.⁵⁰ The ICC confirmed charges against four of the accused, but declined to continue the trial of two of the accused, including Ali. Later, the ICC also dropped charges against another one of the accused. The ICC expressed alarm throughout the trial regarding attempts to interfere with witnesses, and there were claims that witnesses disappeared and were murdered.⁵¹ The trial of politician and current Deputy President William Ruto and radio presenter Joshua Sang for crimes against humanity began on 10 September 2013. The trial of politician, and current President, Uhuru Kenyatta for crimes against humanity has been delayed numerous times and is now scheduled to begin in October 2014.⁵² The government of Kenya has repeatedly attempted to stop the ICC trial process – both before and after the elections in March 2013.

New Constitution and Laws

Constitutional reform was required under the peace accords. In 2009 a Committee of Experts provided a first draft, and after a process of public consultation and drafting, a final draft was submitted to the National Assembly. In August 2010, after the National Assembly failed to agree on any amendments, the draft was submitted to a referendum where it was approved by 68 per cent of the voters. The Constitution is a landmark document and, among other things, sets up: a Presidential system with a National Assembly and a Senate, County governments and County Assemblies; a comprehensive Bill of Rights; standards for leadership and integrity in public office; and, most importantly for this report, a professional and democratic police service.⁵³

Despite setting up basic frameworks, the Constitution is not as strong as it was originally intended to be. The initial constitutional proposals were to abolish the Administration Police, give the National Police Service Commission the authority to recommend the appointment of the Inspector General of Police, and include the establishment of an independent police complaints authority. Although these last two proposals were included in the subsequent police legislation, neither is entrenched in the Constitution, as a Parliamentary Select Committee persuaded the Committee of Experts to retract these provisions. Consequently, the policing section of the Constitution is not as strong as the 2002 CKRC and even the 1963 draft.⁵⁴

New police legislation was enacted in 2011 to reflect the changes to the police system established in the 2010 Constitution (discussed more in the next section). It established three new bodies: a more professional coordinated National Police Service, a new National Police Service Commission (NPSC) and new Independent Policing Oversight Authority (IPOA).

New Government

In March 2013, a new government was elected – the Jubilee Coalition government – and Uhuru Kenyatta and William Ruto were elected President and Deputy-President respectively. Both leaders are charged

50 See documents of the International Criminal Court: <http://www.icc-cpi.int/iccdocs/doc/doc1050845.pdf> and <http://www.icc-cpi.int/iccdocs/doc/doc1050835.pdf>.

51 BBC News Africa Online, "Claims of witnesses in Kenya ICC trial 'disappearing'", 8 February 2013; <<http://www.bbc.co.uk/news/world-africa-21382339>>.

52 See website of the International Criminal Court: http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200109/related%20cases/icc01090211/Pages/icc01090111.asp; "Hague Court sets new trial date for Kenyan president", *Reuters* (Online), 31 March 2014, at: <http://www.reuters.com/article/2014/03/31/us-kenya-icc-kenyatta-idUSBREA2U19E20140331>.

53 See Constitution of Kenya 2010.

54 Yash Ghai and Sarah Mount, "Uhuru's Choice: Either Rule By Consent Or Continue With Coercion" *The Star* (Kenya), 27 July 2013, at: <http://www.the-star.co.ke/news/article-129702/uhurus-choice-either-rule-consent-or-continue-coercion#sthash.reYQAF3Y.dpuf>.

with crimes against humanity by the ICC in relation to the 2007-2008 post-election violence. In 2013, the Attorney-General introduced a number of concerning bills in Parliament to wind back some of the police reforms. These bills were passed in early 2014 and are discussed below.

B. REFORM INITIATIVES: TWO STEPS FORWARD, ONE STEP BACK?

Some key reforms to the police service have occurred through the passage of the new Constitution of Kenya 2010 and subsequent enabling legislation: the National Police Service Act 2011 (Police Service Act), the National Police Service Commission Act 2011 (NPSC Act) and the Independent Policing Oversight Authority Act 2011 (IPOA Act). However, some of the primary reform initiatives have been undermined in implementation⁵⁵ or may be undermined through amendments to legislation. Legislation was passed to amend both the NPSC and Police Service Acts in the first half of 2014. The final legislation inclusive of the amendments was not published at the time of writing.

The main reform initiatives and the improvements made, coupled with challenges that have arisen in each area, are set out in this chapter below.

1. One Police Service, Greater Coordination?

The new Constitution provided for the replacement of the old policing system with the National Police Service (police service) headed by one Inspector General of Police (IG). The police service combines the Administration Police and the Kenya Police Force into the one National Police Service,⁵⁶ although each retains an independent Chief Executive in a Deputy Inspector General of Police.⁵⁷

Although the Ransley Report recommended that the two police bodies still exist separately under one leadership, it also recommended that, in order to reduce duplication of services and competition between the two police bodies, new legislation should provide a “clear demarcation of functions and duties to avoid overlap and duplication”.⁵⁸ The Police Service Act does not adequately do this, with numerous functions overlapping between the KPF and the APF. It also appears that the competition between the two services still exists to a significant extent, especially in the upper echelons, with police officers often referring to the continued difference between the two services.⁵⁹ Key institutions and the public also still view the APF and KPF differently, with recent surveys on corruption ranking the KPF and APF separately.⁶⁰ According to a member of the police service, the two police organisations, although headed by the one IG, continue to operate largely separately and see themselves as different organisations.⁶¹

The IG must be aware of this competition and ensure that he, and his deputies, work together to reduce competition and enhance cooperation between the police bodies. The new Service Standing Orders

55 There have been long and unexplainable delays in the publishing of legislation; appointing key personnel; and the establishment and funding of oversight bodies, see Amnesty International, “Police Reform in Kenya: A Drop in the Ocean”, 2013..

56 Article 243, Constitution of Kenya, 2010.

57 Article 245(3), Constitution of Kenya, 2010.

58 Peter Gastrow, Vice Chairman National Task Force on Police Reform, “The Kenya National Task Force on Police Reform: Some key recommendations summarised”, 3 November 2009, at: http://www.ipinst.org/images/pdfs/summary_policereformreport.pdf.

59 This difference was noticed in interviews with members of the National Police Service, November 2013.

60 Ethics and Anti-Corruption Commission Survey 2012, in Olive Burrows, “Kenyans Pay sh4,000 Bribe On Average”, Capital FM (Kenya), at: <http://allafrica.com/stories/201311121323.html>.

61 CHRI Interview with member of the National Police Service, November 2013.

(discussed further below), should also ensure coordinated procedures and enhance cohesion between the bodies.

2. Implementing New Police Values and the Law

According to the Constitution, the police service must work in accordance with the national security principles including the rule of law, democracy, human rights and fundamental freedoms⁶² and respect the cultural diversity of Kenya. The Constitution also clearly lays out the functions and objects of the police service. As this is the supreme law of Kenya, the police and the leaders of the police must ensure that the organisation:

- ⊙ Strives for the highest standards of professionalism and discipline among its members;
- ⊙ Prevents corruption and promotes and practises transparency and accountability;
- ⊙ Complies with constitutional standards of human rights and fundamental freedoms;
- ⊙ Trains staff to the highest possible standards of competence and integrity and respect for human rights and fundamental freedoms and dignity;
- ⊙ Fosters and promotes relationships with the broader society.⁶³

The Constitution also enshrined a Bill of Rights, including important rights for those arrested, detained and under trial, as well as leadership principles for those in positions of power. Kenya remains bound by all international treaties it has ratified, with these international conventions becoming law automatically under the Constitution.

Among other things, the Police Service Act, IPOA Act and the NPSC Act provide:

- ⊙ That the IG and the police service is independent;
- ⊙ That police officers cannot torture or carry out cruel or inhuman treatment or punishment, and those that do so are liable to 15 to 25 years imprisonment;
- ⊙ That police officers can only use firearms when there is a threat of serious injury or death to a person (although it is believed this provision was amended by the National Assembly in April 2014);
- ⊙ That any death or serious injury caused by the police must be reported to the IPOA immediately, who then must investigate this matter;
- ⊙ That police officers must cooperate with the IPOA, and if a police officer does not cooperate the officer commits an offence;
- ⊙ That police can only use force when necessary, and that force must be proportionate to the threat;
- ⊙ That a person arrested and detained must be brought before a court within 24 hours (also in the Constitution);
- ⊙ For the management of police human resources including discipline by the NPSC;
- ⊙ For the investigation and oversight of particular policing issues by the IPOA and NPSC.

However, the objects of the police service and the laws enforcing these objectives are often not implemented. Some of the key reasons cited for this lack of implementation include lack of political commitment; lack of oversight and accountability for misconduct; lack of education and information such as copies of the laws explaining the changes to the police service; capacity gaps in the police service itself in investigations and other core policing skills; under-resourcing, leading to the above

⁶² Article 238(2), Constitution of Kenya, 2010.

⁶³ Article 244, Constitution of Kenya, 2010.

problems and including lack of police officers and critical equipment.⁶⁴ On a positive note, it has been noted that the police service is generally receptive to any assistance that they receive, and that the reforms are broadly welcomed at the junior levels.⁶⁵ Some of these challenges and suggested solutions will be discussed throughout this chapter.

3. Implementing Police Independence

The Constitution and subsequent legislation attempts to enshrine the independence of the police service in several different provisions. Such independence of the police service is new to Kenya, and its implementation has been contentious.

Appointment and Removal of Leadership of Police Service

The Police Service Act ensures that the appointment and removal of the Inspector General, Deputy Inspectors-General and Director of Criminal Investigations follow a thorough and transparent process to ensure greater independence from the Executive. In relation to the appointment process, the National Police Service Commission (NPSC) advertises widely, conducts interviews and provides a shortlist of candidates to the President in order of preference. The President then nominates one person from this list to the National Assembly.⁶⁶ If the National Assembly rejects the nomination, the President must nominate another person from the shortlist. In relation to removal, any person may submit a petition to the NPSC for removal on grounds set out in the law. The NPSC must then investigate and decide whether to recommend removal to the Assembly. If the Assembly is persuaded by the recommendation, the President will appoint an independent tribunal to fully consider the matter.⁶⁷ These thorough appointment and removal processes provide the leadership of the police service security of tenure and ensure that they can act in accordance with the law, regardless of the impact or views of the government.

In December 2012, a new IG, David Kimaiyo, was appointed in accordance with the process described above. It was the first time the head of the police was not appointed solely by the President. Later in 2013, the Deputy IGs and the Director of Criminal Investigations were also appointed in accordance with the new process. Although these appointments occurred according to the law, there was concern about the time taken to appoint the members of the NPSC and the new IG, considering that the legislation became operational in 2011 although it was only published in mid-2012.

Challenges to These Reforms

In a recent retrogressive move, before the reformed laws even have a chance to take root, amendments to the Police Service Act were passed by the National Assembly on 30 April 2014. These amendments affect the IG appointment and removal process and may reduce the independence of the IG. Although a final version of the amended Police Service Act was not available at the time of writing, it is believed that the NPSC is removed from the process of appointing an IG, instead providing that the President will appoint a panel of representatives from various bodies, to interview and short-list candidates.⁶⁸ The amendments are believed to also remove the NPSC's role in any possible removal of the IG from office, so that any petition to remove the IG is provided directly to the National Assembly, which, if persuaded by

64 CHRI Interviews with Eva Kimani of Usalama Reforms Forum, Victor Kapiyo of International Commission of Jurists Kenya, Tom Kagwe of Independent Policing Oversight Authority, Josephat Peter of Muslims for Human Rights, and Hadley Muchela of Independent Medico-Legal Unit, September and November 2013.

65 CHRI Interview with Victor Kapiyo of International Commission of Jurists Kenya, September 2013.

66 S12, National Police Service Act, 2011.

67 S15, National Police Service Act, 2011.

68 Hansard of the National Assembly of Kenya, 29 and 30 April 2014

the petition, will ensure that an independent tribunal with the power to make binding recommendations is instituted to make a decision on the matter.⁶⁹ Other concerning aspects of the amendment legislation, including allowing the police to use firearms to protect property, are discussed further in the External Oversight section of this Chapter, under “Spotlight On: Police Shootings”.

The amendments may mean that the appointment and removal of the IG will no longer be as independent and transparent as it could be. Of concern is the level of control of the President over the appointment of the IG, particularly if the President has the power to directly appoint members of the panel appointing the IG. However, if the bodies sitting on the panel can nominate their own representative and are themselves constituted in accordance with an independent process (not appointed directly by the President), and a transparent appointment process in accordance with set criteria is undertaken, then concerns regarding the this process will be reduced. The NPSC was constituted to manage processes such as this however, and questions still remain. The final amendment bill will need to be scrutinised once available.

Most importantly, the amendments must not result in the implication that the IG needs to cultivate the President to keep his or her role, rather than an IG who feels confident about making impartial, lawful or unpopular decisions regardless of any political fall-out. The process of the appointment and removal of the IG must continue to be independent, transparent and in accordance with set criteria in order to ensure that the findings of the Ransley Report - which noted that the earlier police system which ensured that the head of police was accountable to and hence reliant on the President alone resulted in political interference in the role of policing - are addressed.⁷⁰

Limiting Interference in Policing

The Constitution strictly forbids the police service from acting in a biased manner, furthering a political interest or prejudicing a political interest or cause that is legitimate.⁷¹ The IG exercises “independent command”, and cannot be given directions from any person in relation to investigations of particular offences, enforcement of the law against a particular person or group of persons or the employment, assignment, promotion, suspension or dismissal of a police officer.⁷² The Cabinet Secretary for the Interior and Coordination of National Government is lawfully only permitted to give a direction to the IG in relation to policy affecting the police.⁷³ The Director of Public Prosecutions can also direct that the IG ensure investigation of particular matters.⁷⁴ However, these policy and investigation directions must be in writing,⁷⁵ which guarantees that all directions given to the Inspector General can be checked.

It is difficult to know if these laws are followed in practice. It is unclear how a member of the public can check written directions given to the IG, to check for any illegal directions. For example, in the YouTube clip titled “Kenyan Security Chief Threatens to Kill”, the Cabinet Secretary in the Samburu region of Kenya stated that the police would use force to recover guns even if people died as a consequence.⁷⁶ Although the Cabinet Secretary can give policy directions to the IG, this statement appears to indicate that he is giving a direction that is illegal to the broader police service, rather than the IG, as police can only legally use firearms if there is a threat to life or danger of imminent serious injury to a person. Some police

69 Ibid..

70 Peter Gastrow, Vice Chairman National Task Force on Police Reform, “The Kenya National Task Force on Police Reform: Some key recommendations summarised”, 3 November 2009, at: <http://www.ipinst.org/images/pdfs/summary_policereformreport.pdf>.

71 Article 239(2) Constitution of Kenya, 2010.

72 Articles 245(2)(b) and 245(4) Constitution of Kenya, 2010.

73 Article 157(4) Constitution of Kenya, 2010.

74 Ibid.

75 Article 245(5) Constitution of Kenya, 2010.

76 “Kenyan Security Chief Threatens to Kill”, InformAction Kenya, Youtube, 19 July 2013, at:<<http://www.youtube.com/watch?v=3ElAkajiJN0>>

officers have also complained that they receive orders from provincial politicians, some of who used to directly control the Administration Police in the province but do not under the new Police Service Act.⁷⁷

There has also been debate between the IG and the NPSC on whether the constitutional prohibition giving the IG a direction on human resource related matters, extend to the NPSC, which is mandated in a separate section of the Constitution to manage these issues. This is discussed further in the External Oversight Section.

4. Holding the Police to Account

The new legal framework establishes a more comprehensive police oversight framework, providing stronger internal and external police accountability mechanisms.

Common Police Misconduct and Patterns of Reporting

In January and February 2013 the newly established IPOA (to be discussed in greater detail below) conducted a baseline survey to determine policing standards and gaps in Kenya. The survey provided critical information on the reality of policing in Kenya, and enables institutions and bodies to respond to close these gaps and address the concerns.

The survey was sent to 5,082 households from 36 counties across Kenya and 515 police officers from various ranks and regions were interviewed.⁷⁸ In relation to police misconduct, 30 per cent of household respondents had experienced police misconduct in the previous twelve months, including: assault, falsification of evidence, bribery and threat of imprisonment.⁷⁹ Only 30 per cent of those who experienced this misconduct reported it, while the majority (61 per cent) live in rural areas. Additionally, the incidence of police misconduct against men was higher (62 per cent) than on women and people under 35 years of age, it was 64 per cent.

Of the 515 police officers that responded to the survey, 53 per cent stated that they experienced incidents where police misconduct occurred during the previous twelve months, but only 32 per cent reported these cases.⁸⁰ Those that did not report stated that they feared reprisals for their actions – being transferred or otherwise punished. This again underscores the need for an independent police service, a strong NPSC and a fully functional and efficient IPOA. A much smaller number of officers claimed that they did not report because they believed no action would be taken anyway, and also owing to not knowing where to report the incident.⁸¹

Internal oversight: Internal Affairs Unit

The Internal Affairs Unit (IAU) is a new unit that is meant to serve as the prime mechanism for internal police accountability. It is different to the earlier complaints desks in that it is established clearly as a separate unit in the legislation, with separate and stronger powers and functions.

It is responsible for receiving and investigating complaints of police misconduct, keeping a record of all complaints and promoting uniform standards of discipline in the service. The IAU reports to the Assistant IG, who then reports to the IG, and must have an effective relationship with the IPOA, NPSC,

77 CHRI Interview with National Police service officer, November 2013.

78 Independent Policing Oversight Authority, “Baseline Survey on Policing Standards and Gaps in Kenya”, 2013, p. 6.

79 Ibid., p. 7.

80 Ibid., p. 7.

81 Independent Policing Oversight Authority, “Baseline Survey on Policing Standards and Gaps in Kenya”, 2013, p. 7.

Chief Firearms Licensing Officer and the Coroners Service, once it is established.⁸² It also investigates if directed by a senior officer, the IG or IPOA and may initiate its own investigation.⁸³ Any complaint made to the police must be recorded and reported to both the IAU and IPOA with all relevant documents, and a copy must be maintained at the station. This ensures that the IPOA (which receives a copy of all complaints lodged about the police at any institution) is the central body with data on all complaints lodged about the police. It also means that the IPOA can monitor the investigations and performance of the IAU.

The IAU does not investigate deaths or serious injuries in police custody or as a result of Police Service Action as this falls within the mandate of the IPOA.⁸⁴ Matters of grave public concern or those that have a have serious implications on the police are also likely to be investigated by the IPOA and not the IAU. For all other complaints, the IAU decides to investigate the matter itself, or, for less serious matters, forwards the complaint to the relevant division for local investigation. The criteria and procedure for referring cases to the local division is yet to be formalised. Currently, the IAU sends the majority of less serious cases to local divisions for investigation and resolution. However, it is reported that in several cases, local divisions do not take action to investigate or resolve the complaints.⁸⁵ Policies and processes must be prioritised to ensure that cases are referred properly in accordance with set criteria. Before any referral, complainants must be informed of their right to withdraw their complaint if they wish. Complaints should be tracked at the headquarter-level and complainants must be informed of progress. Additionally, the IAU must work with the IPOA to ensure that police officers at the division level understand the need to investigate complaints and the consequences that follow for non-compliance, and to establish monitoring mechanisms.

In undertaking investigations into complaints, the IAU is empowered to require information, be able to summon witnesses and take statements under oath/affirmation. Following its investigation, it reports to the IG and the NPSC with recommendations for disciplinary action. The IAU requires confirmation and approval of the NPSC before implementing the disciplinary measure, save for reprimands and suspensions, which can take effect before subsequent confirmation by the NPSC.⁸⁶ The NPSC holds a disciplinary hearing during which it may summon witnesses, receive written/oral statements and require information.⁸⁷ A member of the police may appeal the NPSC decision to a court.

The IAU began operating around August 2013, and as of late November 2013, had investigated and finalised approximately 35 cases.⁸⁸ These cases covered complaints on a range of police misconduct, including complaints about corruption; mishandling of suspects; not following law and procedures in relation to arrest; use of force; and misuse of uniforms, including not wearing identification tags. Interestingly, it is believed that the IAU also received complaints from within the police service, about promotions, salaries and interference.⁸⁹ It is important to stress once again, that the nature of these complaints from the police reinforces the need to have a well-functioning NPSC.

As of December 2013, the IAU had 30 investigators, who were transferred into the Unit from the APS and KPS, and eight management and administration staff, including the head of the IAU, former Kenya Police Provincial Police Officer. Draft policies and procedures to regulate operations and investigations

82 S 87(9) National Police Service Act 2011.

83 S 87(4) National Police Service Act 2011.

84 S 25(1) Independent Policing Oversight Authority Act 2011.

85 CHRI Interview with Simon Martin, police expert assisting IAU and IPOA, February 2014.

86 S 89(1) and (6) National Police Service Act 2011.

87 National Police Service Commission Act 2011.

88 CHRI Interview with police service officer, November 2013.

89 CHRI interview with police service officer, November 2013; Independent Policing Oversight Authority, "Baseline Survey on Policing Standards and Gaps in Kenya", 2013.

were developed, and are awaiting the approval of the IG along with a draft code of ethics. A training curriculum is also being developed, with the current officers having undertaken only a two-day induction course.⁹⁰ Apart from the lack of training and officers, there is also a need to implement an efficient and comprehensive case management system to record, sort and manage the progress of complaints, and to ensure complainants are updated on the progress or referral of their complaints. Additionally, there is no Memorandum of Understanding in place to formalise interaction, including referrals and recommendations, with the IPOA or the NPSC. This must be undertaken in the near future to ensure better coordination between the bodies and effective and efficient handling of complaints.

IAU officers were not subject to the NPSC vetting process before their transfer, as the process was not ready when the unit was established. The NPSC vetting process began in December 2013, and it is believed that the IAU officers will be among the first groups of officers to be vetted.

The Unit is to be located in offices separate from the rest of the police service.⁹¹ In Nairobi, the only IAU office established to date, is located in the Office of the Inspector General in Jogoo House. Whilst this is common practice in other countries, it is unclear if it is consistent with the Police Service Act. The IAU intends to keep all other offices separate from the police service, particularly at the county level.⁹² As the IAU currently does not have sufficient equipment or resources, it sometimes seeks the assistance of other police departments, such as the Directorate of Criminal Investigations, to investigate a matter.⁹³ Whilst it is recognised that it takes time and resources to set up such a unit properly, it is disturbing that the IAU maintains close connections with other departments of the police service. These connections may compromise the confidentiality and independence of investigations. Even if they are not compromised in reality, the appearance of non-independence could cause the public and police to believe that a complaint made to the IAU may not remain confidential. As stated earlier, many police officers have stated that they would not report misconduct of other police officers as they believed police complaints systems were not transparent and confidential and would result in negative consequences for themselves.

Reliance on other parts of the police service owing to lack of resources is largely because the IAU does not have a specific allocation within the police budget, and is under-funded.⁹⁴ Apart from the problem of funding and capacity, there is a wider problem of awareness with many police officers reportedly not knowing about the Unit. To address this, the AP officers within the IAU will focus on educating the police service, after which it will raise awareness in the wider community.⁹⁵ Unfortunately this is another example of division with the Administration Police Officers of the IAU focusing on raising awareness within the APS, rather than the Service as a whole. It is unclear if the Kenya Police officers of the IAU are raising awareness as well.

5. Holding the Police to Account: External Oversight

The police are subject to civilian authority through Parliament, the Judiciary and external oversight bodies including the NPSC, IPOA and the Kenya National Commission on Human Rights.

The National Assembly debates the police budget; decides on appointments of senior leaders (being the final authority); reviews policing matters; reviews the reports of the different police bodies and raises

90 CHRI Interview with Simon Martin, Police Expert, November 2013.

91 S 87(7) National Police Service Act, 2011.

92 CHRI Interview with Simon Martin, Police Expert, November 2013.

93 Ibid.

94 CHRI Interview with National Police Service Officer, November 2013.

95 Ibid.

issues; and passes legislation affecting the police. The Departmental Committee on Administration and National Security of the National Assembly, Chaired by Asman Kamama MP, and comprising 28 other Members of Parliament, is the specialist committee mandated to oversee police and national security matters in detail. Parliament can clearly not be the only oversight body, for, as is often the case in democratic countries, the party or coalition that is in power normally votes along the “party line”. Although the President is the head of the Executive, his status of being a Jubilee member may mean that parliamentary members of the Jubilee coalition vote in agreement with his position. For example, if the President is keen to nominate a particular person as the IG, the current Parliament, which has a majority of Jubilee members, may do nothing more than rubber-stamp it.

For police reform to really work, and other reforms taking place in Kenya, it is critical that the legislature effectively monitors and checks the Executive’s actions and policies to provide an adequate balance in the governance of the country. Members of Parliament should read all reports submitted by the IG, IPOA and NPSC carefully and operate independently and freely in raising questions and concerns. The new County Assemblies must also perform the same role, and critically analyse the reports of the County Policing Authorities.

The Cabinet Secretary for the Interior and Coordination of National Government is responsible for providing policy direction to the police. To ensure the IG’s operational independence and reduce political interference, the Constitution states that the Cabinet Secretary can only provide directions to the IG in writing, and cannot direct the IG regarding particular cases or in employment matters.⁹⁶ Some of the amendments to the Police Service Act and NPSC Act discussed above propose to provide greater powers to the Cabinet Secretary.

The Judiciary shall rule on cases relevant to policing and ensure adherence to the police legislation and Constitution. Cases of criminal conduct are referred to the Department of Public Prosecutions from the Police or IPOA, and it decides whether to prosecute. Reforms to this service are discussed in greater detail below.

National Police Service Commission

The National Police Service Commission (NPSC) is expected to drive reforms to the police system by managing and overseeing professional standards and conditions of service, including housing, training, welfare, human resource management and discipline. Specifically, the NPSC is given the powers in the Constitution to “recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the police service; observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service; and perform other functions.”⁹⁷ It is also mandated to vet serving police officers at the time the commencement of the new Police Service Act, to ensure they meet the new standards of professionalism, integrity and competence. Officers who do not meet the vetting criteria will be dismissed.⁹⁸ Additionally, the NPSC provides recommendations to the government on the standards of policing and reports on implementation.

The NPSC is quasi-independent, and comprises nine members including a Chairperson; the IG; the two Deputy IGs; two retired police officers of each gender who held the rank of senior superintendent or above; and three other persons of integrity and experience. The process for selecting members of

⁹⁶ Article 245(4)(5), Constitution of Kenya, 2010.

⁹⁷ Article 246, Constitution of Kenya, 2010.

⁹⁸ S7, National Police Service Act, 2011.

the NPSC is thorough enough to ensure impartiality, integrity and capability.⁹⁹ The quorum that makes decisions was amended from five to six, with the passage of the NPSC Amendment Bill in late February 2014, with these six members consisting of four civilians and any two members of the three leaders of the police service.¹⁰⁰ On one hand this is a positive development, as once a quorum is established, the current and retired police officers would not have a constant majority. However, on the other hand, in order to have a quorum for decisions, either the IG and a Deputy, or both Deputies without the IG, are required to be in attendance. This amendment could have negative consequences, such as the IG or Deputies deliberately not attending meetings, and thereby ensuring that the NPSC cannot make decisions. It is hoped that this will not occur, and all members of the NPSC will cooperate.

The NPSC and IG have voiced differing opinions in the recent past. In a highly publicised dispute early in 2013, there was a dispute about whether the constitutional prohibition on giving the IG a direction on human resource related matters extended to the NPSC, which is mandated separately in the Constitution (as set out above) to “recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers”.¹⁰¹ The IG went on to appoint, transfer and promote a number of police officers without consulting or getting the approval of the NPSC, including County Commanders.¹⁰² The matter was brought before the High Court. In December 2013, the High Court held that the Constitutional provisions providing powers to the police and the NPSC should be read together to ensure consistency, as two centres with the same powers would create administrative confusion.¹⁰³ In this case, and a later one in March 2014, the High Court confirmed that the IG has “no unilateral powers” to recruit and appoint persons to particular offices, and that while the IG has the power to recruit and appoint members of the service, the NPSC has the power to appoint these members to particular offices within the Service.¹⁰⁴ The High Court held that the distinct power to determine promotions and transfers solely lay with the NPSC, although the IG did have the power to temporarily assign police officers to particular offices for security reasons. Any permanent transfer or promotion made without NPSC approval would be illegal and therefore null and void.¹⁰⁵ The High Court has emphasised that the IG and NPSC must work together and avoid competition, reminding the institutions that the Constitution requires that “Executive authority shall be exercised in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit.”¹⁰⁶

These decisions clarify the different roles of the IG and the NPSC in recruitment, appointment, promotion and transfer. The decisions cement the role of the NPSC in managing movement of police officers within the service, and are welcome, as part of the reason for the establishment of the NPSC was to improve impartiality and professionalism in the appointment, promotion and transfer of police officers. In the past, these powers were reportedly used to punish junior ranks that did not follow orders, regardless of

99 A selection panel, comprising one person from each of the following bodies: the Office of the President, the Office of the Prime Minister, the Judicial Service Commission, the Independent Ethics and Anti-corruption Commission, the Kenya National Commission on Human Rights, the National Gender and Equality Commission and the Association of Professional Societies of East Africa, shortlists three person for the position of Chairperson and eight people as members of the Commission. Following the nomination by the President and vetting by the National Assembly, approved candidates are appointed by the President through a notice in the Kenya Gazette.

100 Notice, National Assembly, Republic of Kenya, Order Paper 110, Thursday 5 December 2013.

101 Article 246(3)(a), Constitution of Kenya, 2010.

102 Eric Lungui, “Leaders oppose Inspector General David Kimaiyo’s police appointments”, *The Standard Digital*, 16 June 2013, at: <http://www.standardmedia.co.ke/?articleID=2000086114&story_title=leaders-oppose-county-police-appointments>

103 *Republic v Deputy Inspector General of National Police & 32 others* [2013]eKLR MISC. CIVIL APPLICATION NO. 93 OF 2013 (JR).

104 *International Centre for Policy and Conflict v Attorney General & 2 others* [2014] eKLR MISC. CIVIL CASE NO. 226 OF 2013.

105 Ibid.

106 Wahome Thuku, “‘You are off track’, court tells David Kimaiyo on transfers”, *The Standard Digital*, 12 January 2014, at: http://www.standrdmedia.co.ke/mobile/?articleID=2000102172&story_title=you-are-off-the-track-court-tells-kimaiyo-on-transfers.

the legality of those orders. The Ransley Report noted this, stating that the centralisation of power in the Commissioner of Police (now the IG) made the police vulnerable to “hierarchical misuse”.¹⁰⁷

In late 2013, the Commission and IG appeared to have mended, to some extent, the rift with the IG, publicly stating that there is a “cordial relationship” between the police service and the NPSC, and that there is a “clear understanding of their respective mandates”.¹⁰⁸ It appeared that after initial confusion and disagreement about how the two police bodies would work in practice, the regulations put in place by the NPSC satisfied all stakeholders that the operations of the NPSC would complement the police service rather than hinder it.¹⁰⁹ This is a positive development, and as one member of the NPSC noted, shows that “initial teething problems” with new institutions can be worked out through mature discussion and the institution of agreed rules and procedures.¹¹⁰ However, some cracks began to reappear in mid-February 2014, with mounting concern that the IG continues to transfer officers without the NPSC’s approval. If true, these actions undermine the previous statement of the IG, that there is a clear understanding of the respective mandates of the police service and the NPSC and a cooperative and professional relationship had developed. Furthermore, transfers undertaken without approval of the NPSC are illegal.

Unfortunately many functions of the NPSC were weakened by the passage of the NPSC Amendment Act in February 2014. The amendments significantly limit the exercise of the Commission’s disciplinary control, vested in it under the Constitution, to merely developing and monitoring disciplinary procedures and hearing appeals on “disciplinary matters relating to transfers, promotions and appointments”.¹¹¹ The amendments also change the current legislation so that the Police Commission can only develop and keep under review matters relating to the human resource policies of the police service “on the recommendation of the Inspector General”.¹¹² The effect of these amendments effectively reassign the management of human resources and discipline to the IG and the Executive, which is contrary to the purpose and constitutional mandate of the NPSC.¹¹³ As noted earlier, police officers themselves complain of arbitrary transfer and promotions, underscoring the need for the NPSC to retain management of these functions.

The Police Service Amendment Bill also proposes to remove the powers of the NPSC to appoint special police officers, stating that these appointments will be done by the IG and the National Security Council,¹¹⁴ and that, instead of the NPSC, the “Chairperson of the Council of Governors” will, in consultation with the Cabinet Secretary, issue and publish guidelines for the nomination, appointment, removal and vacancy of members of the County Policing Authorities (CPA).¹¹⁵ It is believed that these changes were approved by the National Assembly. On a positive note, the original amendments in the Police Service Amendment Bill to establish a “Service Examination Board” comprising members directly appointed by the Cabinet Secretary and the IG, is believed to have been altered and now falls under the power of the NPSC.

In summary, these amendments may undermine the very purpose of establishing the NPSC and, in some

107 Peter Gastrow, Vice Chairman National Task Force on Police Reform, “The Kenya National Task Force on Police Reform: Some Key Recommendations Summarised”, 3 November 2009, at: http://www.ipinst.org/images/pdfs/summary_policereformreport.pdf.

108 David Kimaiyo, Inspector General of the National Police Service, “National Police Service reforms are on course and there’s no room for conflict”, *The Standard*, 29 November 2013.

109 CHRI Interview with a member of the National Police Service Commission, November 2013.

110 Ibid.

111 Clause 4, National Police Service Commission (Amendment) Bill, 2013; Article 246, Constitution of Kenya, 2010.

112 Clause 3(b), National Police Service Commission (Amendment) Bill, 2013; Article 246, Constitution of Kenya 2010.

113 Clause 34, National Police Service (Amendment) Bill, 2013.

114 Clause 32, National Police Service (Amendment) Bill, 2013.

115 Clause 26, National Police Service (Amendment) Bill, 2013.

cases, are clearly unconstitutional. The President should return both bills to the National Assembly for review to ensure constitutionality and conformity with the Ransley Report and international law and principles. Additionally, the leadership of the Police Service, as members of the NPSC, should work together with the NPSC and deal with any areas of concern through respectful discussion and agreed processes.

SPOTLIGHT ON:

Vetting an Entire Police Service to Bring about Change

For many Kenyans, vetting is essential to change the police and vital to the reform process. It provides a way to remove and replace police officers with a tainted record with new, trained officers without a history in the earlier policing system. According to IPOA Board Member, Tom Kagwe, vetting will act to help the police force transition; restore legitimacy to the police as an institution; help to create a police service based on “democratic policing” values; provide a new beginning for a fair and proper police process, with all police personnel treated equally and in accordance with due process protections; assist in solving some of the problems the police face regarding resources and investigations by reducing corrupt and inefficient officers.¹¹⁶ Kagwe has emphasised, Kenya has a new Constitution, a new legislation and new institutions - it now needs new people to implement these changes.¹¹⁷

The scale of vetting is impressive; with every Kenyan police officer serving when the Police Service Act was passed required to be vetted.¹¹⁸ The process is undertaken in accordance with The National Police Service (Vetting) Regulations, 2013¹¹⁹ by vetting panels, comprising members of the NPSC and experts co-opted by the NPSC.¹²⁰ Before vetting the police officers, the public have the opportunity to provide information on these officers and put forward questions. The police officer being vetted must submit the following information: self-assessment questionnaire; national identity card; certificate of appointment; academic certificates; completed declaration of income, assets and liabilities; bank statements for the last two years of all bank accounts of the officer, spouse and children under the age of 18; tax certificates; any other such document that the NPSC deems necessary. The Panel then interviews the police officer and assesses suitability according to the following standards: satisfaction of constitutional and other legal criteria for recruitment and appointment; past conduct, discipline and diligence; integrity and financial probity; and the human rights record of the officer.¹²¹ A decision can be appealed to the vetting appeal panel under the following circumstances: discovery of new information; on the basis of apparent error on the face of the record; or any other just and proper reason.¹²²

116 Tom Kagwe, “Remarks by IPOA Board Member, Tom Kagwe, at the Police Vetting Retreat in Naivasha on 8 November 2013”, Independent Policing Oversight Authority website at: <http://ipoa.go.ke/ipoa-media/press-releases/195-oversight-authority-releases-report-on-policing-standards-and-gaps-3.html>.

117 Tom Kagwe, IPOA Board Member, Presentation at Conference, 20 November 2013, Nairobi, Kenya.

118 Approximately 78,000 officers; CHRI Interview with member of the National Police Service Commission, November 2013.

119 Accessible at Police Commission website at: <http://www.npsc.go.ke/index.php/acts-and-forms/national-police-service-vetting-regulations/finish/10-national-police-service-vetting-regulations-2013/24-national-police-service-vetting-regulations-2013>.

120 Regulation 10, The National Police Service (Vetting) Regulations, 2013.

121 National Police Service Commission, Vetting Process Guidelines, pp. 4,5; Regulations 13 and 14, The National Police Service (Vetting) Regulations, 2013.

122 Regulation 33, The National Police Service (Vetting) Regulations, 2013.

The vetting process began on Tuesday, 17 December 2013.¹²³ Of the first seven senior officers vetted, three were dismissed, including a Senior Deputy Commissioner in charge of police reform.¹²⁴ All three officers are appealing.¹²⁵ According to the vetting procedures of appeal, an officer who intends to appeal the outcome of the vetting has to do so first to the Appeals Board chaired by retired judge Sarah Sendeyo within one month of the decision. Any officer dissatisfied by the decision of this board can then appeal to the court. The three officers all appealed directly to the court, thus ignoring the Board. A number of police officers and members of the public have also queried the integrity of the Appeal Board, noting that the chair was removed from the courts due to incompetence.¹²⁶ Although it is a police officer's right to appeal, if this pattern continues, the vetting process for each officer will be a long, administrative one, including the panel, appeal panel and possibly the courts.

At the time of writing, a further 23 Deputy Commissioners of Police and 166 Senior Assistant Commissioners of Police and Assistant Commissioners of Police had been vetted. The vetting process exposed that a number of the Deputy Commissioners of Police were either very wealthy, undertaking the wrong duties or earning a salary despite not working. One officer, Deputy Head of the Directorate of Criminal Investigations, reportedly had a fortune of over 100 million shillings, which was incompatible with his salary.¹²⁷ The officers were also asked about critical issues, including corruption, which some stated was due to poor leadership, poor enforcement of laws, lack of supervision and small salaries. One of the leads of Community Policing also admitted that it had failed,¹²⁸ whilst another senior police officer who headed the Kenya Police Inspectorate, admitted that years of recommendations had never been acted upon. A number of senior officers opted out of the process for personal reasons.

Although still in its infancy, the vetting process appears to be a step forward to improve the quality of police officers and to remove those associated with misconduct. Additionally, the process itself is noteworthy, with the NPSC ensuring public participation. Updates, photographs, videos and police answers to vetting questions are regularly posted on the NPSC Twitter feed¹²⁹ and the media reports regularly on the daily events of the vetting both through print and television. The NPSC is open to feedback, and on a request from the civil society coalition, the Police Reform Working Group, Kenya, extended the deadline for the public to provide information on police officers.¹³⁰ The information about the police service that is becoming public is also of great benefit, and will help to identify problem spots that need to be improved.

Despite the positive aspects of the vetting, several concerns have been raised to date. In February

123 Olive Burrows, "Kenya: Much Awaited Vetting Kicks off Tuesday", *Capital FM and All Africa*, 15 December 2013, at: <http://allafrica.com/stories/201312160284.html>.

124 Cyrus Ombati, "Three police bosses dismissed after being found unsuitable to hold office", *The Standard Digital* (Kenya), January 3 2014, at: <http://www.standardmedia.co.ke/the-counties/article/2000101412/three-police-bosses-dismissed-after-being-found-unsuitable-to-hold-office?pageNo=1>.

125 "Top officer sacked by vetting panel is back", *Daily Nation*, 21 January 2014, at: <http://www.nation.co.ke/news/Top-officer-sacked-by--vetting-panel-is-back--/1056/2155248/-e71k7xz/-/index.html>.

126 CHRI Interview with Eva Kimani of Usalama Reforms Forum, March 2014.

127 Cyrus Ombati, "Vetting of top officers enters crucial phase", *The Standard Digital*, 12 January 2013, at: http://www.standardmedia.co.ke/?articleID=2000102113&story_title=vetting-of-top-officers-enters-crucial-phase.

128 Cyrus Ombati, "Vetted Police Officers admit corruption is deep rooted", *The Standard Digital*, 7 January 2014, at: http://www.standardmedia.co.ke/?articleID=2000101785&story_title=vetted-police-officers-admit-corruption-is-deep-rooted&pageNo=1.

129 @NPSC_KE.

130 Independent Medico-Legal Unit Press Release, "Police Vetting Process a Case for Public Participation", 14 January 2014, at: <http://www.imlu.org/2011-08-04-18-06-26/news/item/76-police-vetting-process-a-case-for-public-participation.html>.

2014, three co-opted members of the vetting panel resigned, stating that their advice was not being appropriately considered in decision-making.¹³¹ Civil society groups have raised concern that the vetting has primarily focused on financial probity and not sufficiently scrutinised the human rights record, professionalism and competence of the officers.¹³² However, it was noted that providing sufficient evidence of human rights violations was difficult, as many members of the public were afraid to appear before the panel in person.¹³³ In response to requests from the public and civil society, the NPSC has agreed that anyone with new evidence on the already vetted officers can still come forward if they have significant evidence.¹³⁴ There is also concern that the process is being undermined: there are reports that the police service is not sending officers who appeal a vetting decision on leave, contrary to the regulations and the orders of the NPSC¹³⁵; and concern that sufficient funding will not be provided for the full process.

The vetting process is critical to restore trust in the police service and remove officers with a history of misconduct. The government must ensure that funds are consistently provided so that the process can continue and the police leadership should work together with the NPSC - as it is part of the NPSC - and agree on whether police officers should be sent on leave whilst appealing their decision. Parliament must also ensure that the vetting section of the Police Act is not amended, and that the process continues under the NPSC. Finally, the NPSC should ensure as far as possible that all co-opted members of the vetting panel are clear on decision-making processes and that all vetting criteria, including human rights compliance and integrity, are sufficiently scrutinised.

The vetting process must be more than an end in itself. As a member of the IPOA noted, while vetting is a critical part of reforming the police, people need and want more than just "police being grilled in public and some being fired". Another civil society member called for extensive retraining.¹³⁶ The information that has already come to light demonstrates severe problems of competence and lack of integrity. This raises further questions regarding why police leaders did not know or stop these practices earlier, whether those leaders will be held to account, and how the police service and NPSC plan to institute change to ensure these practices do not continue or later re-emerge. It also raises concern about further loss of public confidence in the police. On this point, the NPSC is apparently planning a public awareness campaign on changes to the police service, to try and address the lack of public confidence in the service.¹³⁷ All of these concerns underscore the need for full political commitment and necessary resources for the entire police reform process as a whole, not just individual parts. Unfortunately, although there appears to be financial commitment to modernising equipment, there is less investment and prioritisation on training and recruiting police officers,¹³⁸ and political commitment appears to be lacking considering the attempts to windback reform legislation.

131 Dominic Wabala, "Three Members of Police Vetting Team Resign", *The Star* (Kenya), 26 February 2014.

132 Independent Medico-Legal Unit Press Release, "*Police Vetting Process a Case for Public Participation*", 14 January 2014, at: <http://www.imlu.org/2011-08-04-18-06-26/news/item/76-police-vetting-process-a-case-for-public-participation.html>

133 Comment by Eva Kimani of the Usalama Reforms Forum in Mathews Ndanyi, "Will Vetting Clean Up Kenya's Police?" Institute for War and Peace Reporting (Online), 3 March 2014, at: <http://iwpr.net/print/report-news/will-vetting-clean-kenyas-police>.

134 CHRI Interview with Eva Kimani of Usalama Reforms Forum, March 2014.

135 Zaddock Angira, "Police bosses still in office despite sack", *Daily Nation*, 12 February 2014

136 Tom Kagwe of the IPOA as quoted from Mathews Ndanyi, "Will Vetting Clean Up Kenya's Police?" Institute for War and Peace Reporting(Online), 3 March 2014, at: <http://iwpr.net/print/report-news/will-vetting-clean-kenyas-police>.

137 Ibid.

138 Ibid. Reportedly, a modernisation plan will be launched for the period 2014-2018, with a 2.3 billion USD budget, with only 3 per cent allocated to recruit and train officers.

Independent Policing Oversight Authority

The Independent Policing Oversight Authority (IPOA) investigates complaints of police misconduct, recommends action, monitors places of police detention, monitors the operations of the police that affect the public, detects patterns of police misconduct and monitors and oversees the handling of complaints by the Internal Affairs Unit.¹³⁹ It must investigate all deaths and serious injuries in police custody, or which were the result of police actions.¹⁴⁰ Police officers are required by law to report such deaths and serious injuries within 24 hours to the IPOA and to secure evidence; failure to do this is an offence punishable by a fine and/or up to three years imprisonment.¹⁴¹ Based on its investigations and monitoring, the IPOA can make recommendations to improve the police or hold particular police officers accountable. It is designed to enhance the professionalism, transparency, accountability and discipline in the police service. Although not entrenched in the Constitution, it is one of the recommendations of the Ransley Report, and is established through the IPOA Act.

To carry out its investigations the IPOA has reasonably strong powers, including: requesting documents from the police, entering premises with a warrant, interviewing and taking statements, seizing and removing objects and requesting assistance from any government body, person or international organisation.¹⁴² The police, and every other government officer and institution, has to cooperate with the IPOA; failure to do so constitutes an offence punishable by fine and/or imprisonment. Police officers are also protected from reprisals from within the police service if they make a complaint or cooperate with the IPOA.¹⁴³ Following its investigation, the IPOA may recommend prosecution, disciplinary action and improvement of certain process or other suitable courses of action.¹⁴⁴ If a recommendation made by the IPOA is not followed, then the IPOA can apply to the court for enforcement of its recommendation.¹⁴⁵ The IPOA publishes the outcomes and findings from its investigations, reviews and monitoring work in its six-monthly performance report. It may also refer complaints to the IAU or other relevant Commission if appropriate, or may take over an IAU investigation if it is delayed or is clearly unreasonable.

The IPOA is overseen by an independent Board of Directors appointed by a thorough, transparent process via the formation of a selection panel and the involvement of the National Assembly and the President. The Board of Directors was appointed and sworn in on 4 June 2012. None of the Directors are serving police officers, or people who have served in the police force for the past five years.

At the time of writing, the IPOA had released two performance reports (June to December 2012 and January to June 2013) during the period of its operation. In this establishment period the IPOA prioritised matters critical to its establishment including: developing internal policy; drafting regulations; training board members; acquiring office space; recruiting staff; and collaborating with key stakeholders.¹⁴⁶

Several members of civil society and the public have expressed disappointment in the IPOA's silence when key incidents occur, such as police shootings, that the IPOA is obliged to investigate. The IPOA responded to this criticism in its initial performance report, stating that lack of capacity, coupled with lack of understanding and support from the police service and problems in procuring equipment and staff caused delays in IPOA investigations.¹⁴⁷ However in late 2013, commentators were still critical of the

139 S5-6, Independent Policing Oversight Authority Act, 2011.

140 S25, Independent Policing Oversight Authority Act, 2011.

141 S31, Independent Policing Oversight Authority Act, 2011.

142 S7, Independent Policing Oversight Authority Act, 2011.

143 S31, Independent Policing Oversight Authority Act 2011; S49(12), National Police Service Act, 2011.

144 S29, Independent Policing Oversight Authority Act 2011.

145 S29(1)(2), Independent Policing Oversight Authority Act, 2011.

146 The Independent Policing Oversight Authority, "Inaugural Performance Report: June to December 2012", pp. 4-5.

147 Ibid., pp. 6-7.

“silence” of the IPOA in response to critical incidents.¹⁴⁸ An IPOA member stated that the body prefers to take a diplomatic approach and only use the media when necessary.¹⁴⁹ The member emphasised that the diplomatic approach is not weak, that discussions are frank and serious, and at times, the IPOA will not close a meeting till answers are forthcoming.¹⁵⁰ While there are benefits in this approach, the IPOA should remember that if the public does not perceive it to be investigating some of these key incidents, then it may lose confidence in the IPOA. The public needs to know that the IPOA exists and is acting on police misconduct. The media plays a key part in this process: it can be used to comment on critical events, and to create public awareness of the IPOA. Any comment made to the media can be phrased in diplomatic language.

The second IPOA (January to June 2013) report notes that 663 complaints were received in the six month reporting period. Of these 663 complaints, the IPOA reported that 12.8 per cent were identified for investigation, and 45.3 per cent were yet to be reviewed. The remaining complaints were referred to other bodies or were withdrawn. It is unclear where the complaints were referred, whether they were investigated, and what the outcomes of investigations were at this stage. Common complaints from the public related to illegal arrest and detention, harassment, assault, extrajudicial killings and death in police custody and inordinately long investigations. Complaints from the police related to unfair and arbitrary dismissals, transfers and promotions.¹⁵¹

At the time of writing, the IPOA had twelve complaints officers and 22 investigation officers, and had developed tools for the investigators to ensure that thorough investigations take place.¹⁵² The IPOA is processing agreements with other oversight bodies to ensure efficient handling of complaints, and has acquired forensic equipment to improve their forensic investigation capacity. Although the IPOA's capacity is growing slowly, it clearly needs more resources to undertake its mandate and to educate both the public and the police. A thorough case management system must be put in place to ensure efficient management and recording of complaints, and to ensure that complainants are updated on progress.¹⁵³ The IPOA has confirmed that it plans to implement a case management and analysis system before the release of its third performance report.¹⁵⁴

As of February 2014, it was reported that the IPOA had received a total of 1,090 complaints since it became operational in June 2012, of which 27 were under current investigation.¹⁵⁵ The KNCHR has criticised the progress of the IPOA, asserting that they were not using their powers fully to demand police cooperation and that the police were capitalising on this approach. The Usalama Reforms Forum also urged the IPOA to use their powers to firmly deal with officers obstructing its work.¹⁵⁶

The IPOA itself has also identified that it faces challenges in implementing its mandate including: insufficient budget and lack of human resources; failure of the police to report deaths and serious injuries to the IPOA as required under law; police officers deliberately obstructing investigations by ignoring summonses and tampering with evidence; lack of public awareness of the IPOA and its functions and mandate; and, in a direct quote from the Chairperson, the act of “stalling the reform

148 Comments and questions from civil society organisations to Tom Kagwe, Nairobi, Conference, 20 November 2013.

149 Tom Kagwe, IPOA Board Member, Conference, 20 November 2013.

150 Ibid.

151 The Independent Policing Oversight Authority, “Performance Report: January to June 2013”, p4-5

152 “US donates forensic equipment to IPOA”, *The Star* (Kenya), 12 February 2014.

153 Interview with civil society member mentioned that some complainants are not kept updated on status of investigation, September 2013.

154 The Independent Policing Oversight Authority, “Performance Report: January to June 2013”, p5

155 Is IPOA toothless police watchdog?, *The Standard Digital* (Online), 22 February 2014, at: http://www.standardmedia.co.ke/m/?articleID=2000105207&story_title=Is-Ipoa-toothless-police-watchdog

156 Ibid.

agenda through backward amendments to the National Police Service Act”.¹⁵⁷ In a positive development, in late April 2014 however, the Chairperson asserted that the IPOA now is fully operational, and will ensure all police officers that commit misconduct are held accountable.¹⁵⁸

In terms of public confidence and awareness, the Kenya National Commission on Human Rights found that, over a year since the IPOA became operational, 58 per cent of respondents believed that no action would be taken if they reported police misconduct.¹⁵⁹

The challenges faced by the IPOA to date highlight the urgent need for it use its powers to demand cooperation and, where necessary, investigate police officers who have committed an offence through non-reporting, non-cooperation or tampering with evidence. After such investigations, the IPOA should recommend prosecution of such officers for such offences and/or a fine as appropriate. Adequate resources must be provided to the IPOA to: hire more staff, including investigators, forensic staff and public awareness staff; increase the capacity of staff use the full suite of legislative powers to require cooperation in investigations; and to enable the IPOA to independently monitor and record all cases of deaths and serious injuries regardless of whether such events are reported or not. This last recommendation could take the form of a database that other oversight bodies or groups also have access to, and could be publicly available. The IPOA should remember that any police officer that commits torture or cruel, inhuman or degrading treatment, commits a serious offence under the Police Act and, where there is satisfactory evidence after an investigation, the matter should be referred to the Office of the Director of Public Prosecutions. The police service and IPOA must also work together to train police personnel on their legal obligations, what they must report to the IPOA and how they must preserve evidence at the scene. Standard forms for reporting deaths and serious injuries should be created to ensure police officers capture all relevant information and are reminded of various obligations and tasks.

Additional or improved legislation is also required to assist the work of the IPOA and other oversight bodies. The Coroners Service Bill must be passed to ensure that the investigations into the cause of death are carried out independently, whilst the Witness Protection system must be strengthened to protect those that do come forward with information about police misconduct.

SPOTLIGHT ON:

Police Shootings

The IPOA's claim that the police were not reporting deaths and injuries is backed by a preliminary survey conducted by the KNCHR and the Independent Medico-Legal Unit (IMLU). The survey found that 120 people were shot dead by police in ambiguous circumstances between May and August 2013, and that the police did not report to the IPOA as required under the Police Service Act.¹⁶⁰ In March 2014, IMLU released more findings, stating that 143 deaths were caused by

157 Is IPOA toothless police watchdog?”, *The Standard Digital* (Online), 22 February 2014, at: http://www.standard-media.co.ke/m/?articleID=2000105207&story_title=Is-Ipoa-toothless-police-watchdog; The Independent Policing Oversight Authority, “Performance Report: January to June 2013”, p. ii.

158 Joe Kiarie, “Independent Policing Oversight Authority probes police for fatal shootings”, *The Standard Digital* (Online), 20 April 2014 <www.standardmedia.co.ke/?articleID+200010971&story_title=Kenya-ipoa-probes-police-for-fatal-shootings>

159 Mathews Ndanyi, “Will Vetting Clean Up Kenya’s Police?” Institute for War and Peace Reporting (Online), 3 March 2014, at: <http://iwpr.net/print/report-news/will-vetting-clean-kenyas-police>.

160 Human Rights Watch, “Kenya: Don’t Expand Police Powers,” 12 September 2013 at: <http://www.hrw.org/news/2013/09/12/kenya-don-t-expand-police-powers>; Mathews Ndanyi, “Will Vetting Clean Up Kenya’s Police?” Institute for War and Peace Reporting (Online), 3 March 2014, at: <http://iwpr.net/print/report-news/will-vetting-clean-kenyas-police>.

police shootings between January and December 2013, of which, 98 were summary executions, 30 were executed in unclear circumstances and 15 shot in order to protect another person's life.¹⁶¹

In 2013, questions were raised on whether the police had an unspoken "shoot-to-kill" policy for people suspected to be members of criminal gangs or terrorists.¹⁶² On 29 December 2013, *Citizen News* reported that the IG gave police officers shoot-to-kill orders against cattle rustlers.¹⁶³ According to a media report, in late March 2014 a County Commissioner reportedly said that the government would, if they captured criminals, "kill them on the spot", with the particular County Commissioner urging police to also do this.¹⁶⁴ The police service is clearly currently using firearms when it is not necessary or proportionate to save a person from imminent serious injury or death, in violation of the law and the constitutional rights to the presumption of innocence, the right to life and the right to a fair trial. This is demonstrated by the very high numbers of police shootings outlined in the IMLU study.

Shoot-to-kill policies – intentionally using lethal force against certain groups – is an arbitrary use of power and is illegal. The right to life requires the government to ensure its agencies protect the life of the people in Kenya, and do not kill any person in a situation where it is not necessary (no imminent threat to life or serious injury) or proportionate to a legitimate policing aim.¹⁶⁵ The right may also require adequate and efficient investigations into deaths and an appropriate punishment. The European Court of Human Rights has held that if a security agency is involved in a death, the investigation into that death must be independent of that security agency.¹⁶⁶ Furthermore, not only is legality of such a violent response questionable, it also does not help to improve security. In his report on Kenya, former UN Special Rapporteur on summary, arbitrary or extrajudicial executions, Philip Alston, noted that the violent response to crime doesn't help improve security. This is because innocent bystanders are shot by the police, the public don't trust the police to protect them after such actions and that police fail to properly address the roots of crime through proper investigation and prosecution.¹⁶⁷

Unfortunately, it is believed that the amendments to the Police Service Act passed on 30 April 2014 reintroduce wide powers for the police to use firearms, including to "protect property" and to stop a person charged with a serious crime from escaping custody, or a person trying to help such a person escape.¹⁶⁸ The powers to use firearms to protect property must be "justifiable"¹⁶⁹, however it is unclear when using lethal force to protect property would be justifiable (necessary and proportionate action to meet a legitimate aim) save for when there is an imminent threat to life or a threat of serious injury to a person. The current legislation already provides that police officers can use firearms to protect a person, including themselves, from death or serious injury, so these changes imply that even if death

161 Independent Medico-Legal Unit, "Police Killings from Jan 2013-Feb 2014", at: <http://www.imlu.org/2011-08-04-18-06-26/news/item/82-police-killings-from-jan-2013-feb-2014.html>

162 Nderitu Gichure, "Interior Secretary Joseph ole Lenku, police boss David Kimaiyo faulted over shoot-to-kill order", *The Standard Digital*(Online), 16 September 2013, at: http://www.standardmedia.co.ke/?articleID=2000093711&story_title=police-bosses-faulted-over-shoot-to-kill-order.

163 "IGP gives shoot to kill orders on cattle rustlers", *Citizen News*, 29 December 2013, at: www.citizennews.co.ke/2012/local/item/15985-igp-gives-shoot-to-kill-orders-on-cattle-rustlers.

164 "Kenya police ordered to shoot to kill terrorists", *TurkishPress.com* (Online), 26 March 2014, at: <http://www.turkishpress.com/news/396661/>

165 Article 26 Constitution of Kenya 2010; General Comment 6 of the United Nations Human Rights Committee.

166 *Al-Skieni and others v. The United Kingdom*, Application 55721/07, Council of Europe: European Court of Human Rights, 7 July 2011.

167 Philip Alston, "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Addendum Mission To Kenya", UN Doc A/HRC/11/2/Add.6, 26 May 2009, p. 12.

168 National Police Service Amendment Bill, 2013.

169 See Hansard of National Assembly of Kenya 29 and 30 April 2014.

or serious injury is not posed, police can “justifiably” use guns to stop a person suspected of property damage or other minor crimes.¹⁷⁰ If passed, this amendment alone would be a huge step back for Kenya, which, as outlined above, has a violent history of policing and still suffers from extremely high levels of police shootings.

The President must not sign the Police Service Amendment Bill into law, and must demand that this clause be revised to ensure compliance with international principles and the Constitution of Kenya.

SPOTLIGHT ON:

‘National security’ operations

On 2 April 2014, the Kenyan government began ‘Operation Usalama Watch’ in response to a number of attacks in Nairobi and Mombasa. The security operation was undertaken in the majority ethnic Somali district of Eastleigh in Nairobi, with the purpose of identifying people without legal immigration documentation. At least 4000 people have been arrested and detained in the operation, and large-scale human rights abuses by the police have been reported. Apart from arbitrary arrest and detention, human rights groups have documented many people being held for longer than 24 hours without being brought before a court, women and men are being held in the same cells, beatings and other excessive use of force, extortion of detainees and deportation to Somalia - possibly in breach of the non-refoulement principle.¹⁷¹

The specialist Anti-Terrorism Police Unit (ATPU) has also been accused of committing human rights violations in the coastal region. The Open Society Justice Initiative and Muslims for Human Rights have documented credible allegations of unlawful killings, arbitrary arrest and detention, use of excessive force, torture, disappearances and discrimination by the ATPU.¹⁷²

Both of these incidents, and previous documented police abuse against minority communities,¹⁷³ again underscores the need for, amongst other things: rigorous scrutiny of the police by all police oversight mechanisms, both internal and external; full and comprehensive funding of all police oversight bodies by government and the Parliament to ensure this oversight can be carried out; prompt and comprehensive reporting of deaths and serious injuries caused by police action or inaction to the IPOA; comprehensive training on human rights and non-discrimination, especially in relation to minority communities; thorough investigations into all deaths and disappearances; and training on the legal use of lethal force.

National security policies must also be reviewed and changed to ensure that sections of Kenyan society are not marginalised. The International Crisis Group has warned that, although the terrorist threat in Kenya is real, it must be dealt with through building community and national cohesion. Mass targeting, and constant harassment by the police, marginalises ethnic Somalis, promotes division and can lead to increased radicalisation.¹⁷⁴

170 See Sixth Schedule, National Police Service Act, 2011.

171 Human Rights Watch, ‘Kenya: Halt Crackdown on Somalis’, 11 April 2014 <www.hrw.org/news/2014/04/11/kenya-halt-crackdown-somalis>

172 Muslims for Human Rights (MUHURI) and the Open Society Justice Initiative, “We are tired of taking you to Court”, November 2013, 13-14.

173 See for example: Human Rights Watch, “You Are All Terrorists: Kenyan Police Abuse of Refugees in Nairobi”, 29 May 2013.

174 Cedric Barnes, “Losing Hearts and Minds in Kenya”, *International Crisis Group Blog: The African Peacebuilding Agenda*, 16 April 2014 <<http://www.crisisgroupblogs.org/africanpeacebuilding/2014/04/16/losing-hearts-and-minds-in-kenya>>

Other Oversight Bodies

Several other commissions are also tasked with ensuring police accountability and oversight. These include the Ethics and Anti-Corruption Commission that investigates complaints on corruption, the Kenya National Commission on Human Rights that investigates complaints on violations of human rights and the National and Gender and Equality Commission tasked with monitoring gender equality and investigating complaints on violations. Similarly, the Commission on Administrative Justice (Ombudsman) investigates complaints of misuse of office, unethical conduct, breach of integrity, maladministration, etc. Any police complaint filed with any other commission is recorded and reported to the IPOA so the IPOA has a database of all complaints made against the police. The case may then be referred to the IPOA if it is within its mandate or the respective Commission may conduct its own investigation. Although there is concern about the overlap between the different Commissions that have an oversight function, the second IPOA performance report notes that these bodies refer matters to the IPOA when it falls within the latter's mandate.¹⁷⁵ Hopefully, this means that these bodies are aware of each other's different functions, and are comfortable in referring when appropriate, reducing duplication or investigations by unqualified bodies. The IPOA also reported that it referred a large number of complaints made directly to it to other bodies.¹⁷⁶

6. Police Service Implementing Reforms: Standing Orders, Code of Conduct, Strategic Plan, Reform Committees

The police service is developing new Standing Orders to ensure adherence to the new legal framework in collaboration with the civil society body, The Usalama Reforms Forum. The fact that the police service is working with a civil society body on this project is highly commendable. The revised draft of the Service Standing Orders was developed with a team of senior and junior officers¹⁷⁷ and released on 19 February 2014 for consultation and feedback.¹⁷⁸

A new code of conduct has also been developed and is being distributed throughout the service. In addition to other mechanisms outlined below, this code provides a means of improving conduct standards and professionalism with the service, as well as providing an accountability tool. The police service is also developing a Strategic Plan 2013-2017 to guide the police service and implementation of the reforms over the next four years. Additionally, as outlined by the IG, it has established seven reform committees to steer reforms in particular areas: General Reform Committee; Traffic Reforms; County Policing Authority Command Structure and Reporting Mechanisms; Curriculum and Training; Audit of Police Stations and Operations; Police Housing and Welfare Audit; and the establishment of Research, Partnership and Early Warning Mechanisms.¹⁷⁹

Although highly commendable, the police service has been criticised for the slow implementation of the reform process. These actions must be monitored by police oversight bodies, civil society organisations and the media to ensure that the police reform process continues to proceed as quickly and comprehensively as possible, and that consultation on critical matters, such as the Service Standing

175 The Independent Policing Oversight Authority, Kenya, "Performance Report: January to June 2013", p. 4.

176 Ibid., p. 5.

177 CHRI Interview with Eva Kimani of the Usalama Reforms Forum, September 2013.

178 Cyrus Ombati, "Police now have new manual of operations", *The Standard Digital* (Online, Kenya), 19 February 2014, at: http://www.standardmedia.co.ke/?articleID=2000105057&story_title=police-now-have-new-manual-of-operations/.

179 David Kimaiyo, "Police service willing to reform and provide enhanced security" (Letters), *The Standard Digital* (Online), 24 January 2014, at: http://www.standardmedia.co.ke/?articleID=2000103131&story_title=police-service-willing-to-reform-and-provide-enhanced-security&pageNo=2

Orders, is thorough and inclusive. The wide circulation of the Service Standing Orders indicates that the police service is undertaking a comprehensive process.

7. Greater Openness and Transparency

A critical improvement in the police service is their increased cooperation and interest in working with civil society organisations and oversight bodies. Although required under law to cooperate with the IPOA, the police cooperation on the IPOA Baseline Survey is commendable. Additionally, as well as working with the Usalama Reforms Forum on the Service Standing Orders, the police and Usalama work together on a “crime observatory project”. This project improves crime data collection in partnership with other stakeholders in the community who deal or interact with victims or perpetrators of crime. This information is collected through data intake forms and keyed in to the CRIME CLOCK system that is situated at the police station.¹⁸⁰ This is also an example of a good new community policing initiative.

This openness and transparency is admirable, and should continue into the future, especially in relation to ensuring key documents, such as the Service Standing Orders, are available to the public both in print and online. Previously, these Orders were not available, creating confusion as to the role and powers of the police. Other critical documents should also be easily available online, such as the police budget and updates as to how the budget was spent.

8. Community Policing and Devolution

The Ransley report noted that the former police force was highly centralised, with little emphasis on policing in regional areas in Kenya. It recommended moving away from this model to a system that devolved powers and responsibilities to the lower ranks, by providing greater autonomy over operations and budgets to the provincial, district and station levels.¹⁸¹

The Constitution instituted a devolved system of governance, by establishing County Governments to govern over particular matters at the local level. County Policing Authorities (CPA) and Community Policing Committees (CPC) are tasked with ensuring police accountability by providing financial oversight, ensuring compliance to policing standards and monitoring community policing. CPAs and CPCs form vital parts of the community policing doctrine, designed to improve transparency and accountability of the police service to the community. Additionally, under the National Security Council Regulations a new framework was instituted to establish county security committees under the national committee.¹⁸² Unfortunately, once again the Police Service Amendment Bill may undermine these reforms, with one suggested amendment being to remove the functions of the CPA to “facilitate public participation on county policing policy”, reducing community input.¹⁸³ Currently members of civil society have pointed to problems in the police’s community policing strategy, stating that it needs to be localised, to meet the particular needs of the community.¹⁸⁴

In October 2013, the government formed a committee to oversee the implementation of “Nyumba Kumi”, an initiative by which the government encourages people to get to know their neighbours as a means

180 CHRI Interview with Eva Kimani of the Usalama Reforms Forum, September 2013.

181 Peter Gastrow, Vice Chairman National Task Force on Police Reform, “The Kenya National Task Force on Police Reform: Some key recommendations summarised”, 3 November 2009, at: http://www.ipinst.org/images/pdfs/summary_policereformreport.pdf.

182 Joseph Muraya, “Kaguthi to spearhead Nyumba Kumi initiative”, *Capital FM* (Nairobi), 25 October 2013, at: <http://www.capitalfm.co.ke/news/2013/10/kaguthi-to-spearhead-nyumba-kumi-initiative/>.

183 Clause 26, National Police Service (Amendment) Bill, 2013.

184 Mathews Ndanyi, “Will Vetting Clean Up Kenya’s Police?” Institute for War and Peace Reporting (Online), 3 March 2014, at: <http://iwpr.net/print/report-news/will-vetting-clean-kenyas-police>.

of improving their security and the security of the community and to strengthen relationships of trust between the police and the community. The Cabinet Secretary directed that the initiative be incorporated into community policing. The initiative is based on the Nyumba 10 programme in Tanzania (explained in more detail in the Tanzania section) and is aimed at getting those that live or work near each other to get to know each other, share information and track activities taking place in the neighbourhood.¹⁸⁵ The initiative was criticised by members of the opposition, some of whom claim that it will create a police state. Others in civil society have encouraged the initiative.¹⁸⁶ The Kenyan national and county governments should be careful to ensure that the initiative does not lead to vigilantism and mob justice.

There are other community policing initiatives underway as well, including the joint collection of crime data outlined above, police station visits and forums between the community and police.¹⁸⁷

9. Improved Quality of the Police and Gender Ratios

The Police Service Act lays down the qualifications for any applicant to the position of IG or DIGP including: applicant must be a citizen of Kenya, with a degree from a recognized university and 15 years of experience in related fields and more. The Act also lays down a clause for gender equity in these three positions as both genders must be represented across the three positions of IG and his or her two Deputies. Similar qualifications including citizenship, knowledge and experience in criminal investigation or policing, relevant experience in one or more of the following areas: management, law, economics, change management, finance, governance or public administration and meeting the requirement of Chapter 6 of the Constitution are laid down by the act for the post of the Director of the DCI. Within the wider police service, there is a requirement that, as far as practicable, those appointed must reflect the ethnic and regional diversity of Kenya and that 30 per cent of new recruits must be female.¹⁸⁸ The pass marks for recruits was also raised to 'C plus' in the last two rounds of recruitment.¹⁸⁹

SPOTLIGHT ON:

Sexual Harassment

Members of civil society and oversight bodies have noted that sexual harassment of female officers is commonplace within the police service, with some of the male members requesting sexual favours in return for employment benefits such as a promotion.¹⁹⁰ There has been concern about the treatment of women in police training institutes and that the facilities are not sufficiently able to cater to female officers. Once again, this example underscores the need for a strong and well-functioning NPSC and IPOA. The IPOA has already indicated that they will consider the systemic issue of sexual harassment, and are also inquiring into the state of some police buildings.¹⁹¹

185 Joseph Muraya, "Kaguthi to spearhead Nyumba Kumi initiative", *Capital FM* (Nairobi), 25 October 2013, at: <http://www.capitalfm.co.ke/news/2013/10/kaguthi-to-spearhead-nyumba-kumi-initiative/>; Hassan Khalid, "Why Cord should support Nyumba Kumi initiative", *Standard Digital*(Kenya), 29 November 2013, at: http://www.standardmedia.co.ke/?articleID=2000098991&story_title=why-cord-should-support-nyumba-kumi-initiative&pageNo=2.

186 Ibid.

187 The Usalama Reforms Forum has conducted initiatives to get local communities to get to know their police station. The Keep Alive Societies Hope in Kisumu conducts forums and other initiatives to bring minority communities and the police together.

188 S5, National Police Service Act, 2011.

189 CHRI Interviews with policing expert Simon Martin, January 2014.

190 CHRI Interview with Tom Kagwe of Independent Policing Oversight Authority, September 2013.

191 Ibid.

10. Reform of the Wider Criminal Justice System

Reform of the wider criminal justice system must take place to ensure that the police reforms are effective. These reforms are underway, with the judiciary being subject to vetting to ensure greater integrity and efficiency, and the gradual replacement of police prosecutors with state prosecutors. As of mid March 2014, approximately 80 per cent of the cases were being handled by state prosecutors.¹⁹²

The Director of Public Prosecutions has stated that he plans to have a total of 900 state prosecutors over the next few years so that all prosecutions will be handled by his office. Greater funding was allocated to the Office of the Director of Public Prosecutions (ODPP), part of which was used to improve employment conditions in order to encourage lawyers to join.¹⁹³

Members of the police and the legal fraternity welcomed the move to phase out police prosecutors, stating that detectives who investigate and prosecute are often overwhelmed and under-qualified, and hence regularly bring insufficient evidence and present faulty charge sheets.¹⁹⁴ This is backed by the IPOA Baseline Survey when it reviewed 203 closed felony case files in a select number of police stations.¹⁹⁵ It found that 64 per cent of the cases did not meet evidentiary requirements to charge a person with the relevant offence.¹⁹⁶ This is an astounding number and underscores the need for police and criminal justice reform to reduce the high number of people unnecessarily and illegitimately caught in the criminal justice system, creating backlogs and violating rights. Such reforms will also improve the chance of successful prosecution against those who have committed crimes, and therefore improve security in Kenya.

In addition to hiring more state prosecutors, the ODPP will be producing new policy documents that bring its Public Prosecution Policy, Code for Ethics and Behaviour and specialised guidelines in line with the ODPP Enabling Act and the Constitution. In those documents the ODPP will require the decision to prosecute to be documented for the first time. This should decrease the number of meritless cases. As a result of less meritless cases (as stated above at 64 per cent), the 25 per cent conviction rate should increase.¹⁹⁷

Many people use informal justice systems as they believe the criminal justice system is too slow. Work is underway to understand these systems better and link them to the formal justice system.¹⁹⁸ In the words of one interviewee, “Hardly anyone can access legal assistance.”¹⁹⁹ To address this lack of free or low cost legal assistance for people in need, the Legal Aid Bill, 2013 was developed and published in early 2014,²⁰⁰ although it is understood that no real practical change has occurred yet.²⁰¹ The Constitution also enshrines the right for a person arrested to seek assistance from any person (so paralegals and other NGOs can provide assistance), and to be assigned legal assistance from the State if lack of legal

192 Information provided by civil society member, March 2014.

193 Julius Kithuure, “Kenya hiring more state prosecutors to handle complex criminal cases”, *SababiOnline* (Kenya), 1 January 2014, at: http://sahabionline.com/en_GB/articles/features/2014/01/01/feature_01.

194 Ibid.

195 Case file assessments drawn from Kamukunji, Kilimani, Kariobangi and Huruma Police Stations on the following crimes: robbery with violence; preparation to commit a felony; and theft by servant.

196 Independent Policing Oversight Authority, “Baseline Survey on Policing Standards and Gaps in Kenya”, 2013, p. 8.

197 CHRI Interview with civil society member, March 2014.

198 The Usalama Reforms Forum in Kenya currently has a project in this area.

199 CHRI Interview with Eva Kimani, the Usalama Reforms Forum, September 2013.

200 Editorial, “Free Legal Aid for the Poor Would Be a Transformational Step”, *The Star* (Kenya), 1 February 2014.

201 CHRI Interview with civil society member, March 2014.

assistance would result in substantial injustice.²⁰² A range of actors are helping to train and coordinate paralegal assistance to detainees and others.²⁰³

11. Civil Society Working Together

Another important development in Kenya is the recognition by civil society groups that they need to work together on police reform matters to ensure maximum impact and use of resources. In 2008, after the post-election violence and Peace Accord, groups working on security and police matters in Kenya joined together to form one advocacy forum, the Usalama Reforms Forum (Usalama). Usalama grew from four members to a strong forum of fourteen international, regional and national organisations. It began as a forum to put forward agreed advocacy positions to the Ransley Taskforce and other subsequent police reform initiatives. It grew over the years to an implementing organisation with funding, a structure and a neutral organisation as the Secretariat. Additionally, another large group of organisations came together to form the Police Reforms Working Group, Kenya (PRWG-K), of which Usalama is a party. This is now the primary joint-advocacy forum, as Usalama has transitioned into an implementing organisation, from being solely an advocacy forum. PRWG-K has jointly advocated for full and effective implementation of police reforms and regularly meets to coordinate and plan action.

Both these groups and the organisations involved provide extensive support and oversight in the implementation of police reforms through dissemination of education and awareness materials, assisting with policy documents, monitoring the progress of reforms, determining gaps in policing and crime profiles and assisting in achieving better connectivity between the police and community. These joint initiatives are important, and recognise the need for civil society to work together to ensure the best possible outcome for the people of Kenya. Civil society in Kenya must continue to share information and cooperate. While working as one on many issues, a range of approaches may be necessary to have maximum effect, depending on the project and impact that is desired.

C. CEMENTING THE REFORMS IN PRACTICE: RECOMMENDATIONS

FOR THE GOVERNMENT AND PARLIAMENT

1. Political Will – Security Sector Reform is Good for Everyone

The new Jubilee government has put forward legislation to amend the police legislation, less than two years after passing the laws.²⁰⁴ These two bills²⁰⁵, which have both already passed through the National Assembly, undermine parts of the police reform process as set out in the various sections above. This indicates a lack of political support for real reform, and a desire for political control of the police.

The Government of Kenya should realise that full reform of the police will result in improved development and economic opportunities, strengthening the country's economy. Security sector reform is critical to

202 Articles 48 and 50, Constitution of Kenya, 2010.

203 CHRI Interview with Josephat Peter of Muslims for Human Rights, September 2013.

204 Although the laws were passed and apparently signed into law in 2011, the NPS Act was not available till one year later in the middle of 2012.

205 The National Police Service Act Amendment Bill, 2013; The National Police Service Commission Act Amendment Bill, 2013.

long-term sustainable development and poverty alleviation,²⁰⁶ through ensuring safe and fair systems for business and infrastructure investments.²⁰⁷ Underdevelopment fuels criminalisation and insecurity, and vice versa, and it is now commonly accepted that development and security are inextricably linked.²⁰⁸ To create a safer, more prosperous Kenya, as is surely the responsibility of the Government and Parliament, the police reforms must continue on track and not be wound back. Amending the current police legislation and police oversight bodies undermines the progress made in creating a democratic, accountable and professional police service for the people of Kenya.

2. Maintain Essence of Police Reform Legislation as Enacted in 2011

Apart from minor changes to amend spelling mistakes, wrong references and a small number of provisions, the National Police Service Act and the National Police Service Commission Act as enacted in 2011 provides for independence of the police service, thorough internal and external oversight and regulation of the use of force and firearms in accordance with international standards and the spirit of the Constitution. Any amendments to this legislation must guarantee the continued independence of the police service and the strong oversight mechanisms of the NPSC and the IPOA. The amendments must ensure that the IG is appointed after a thorough and independent process, including advertisement, interviewing and shortlisting by an independent body in accordance with set criteria, then submitting those shortlisted to the President for nomination to the Parliament. Additionally the removal of the IG must also be independent and transparent, and the NPSC must maintain strong powers to manage the transfers, promotions, appointments and discipline of the police service. Amendments to allow the police service to use firearms to protect property must be rejected as a significant and dangerous retrogressive move. As both the NPSC Amendment Bill and the Police Service Amendment Bill have already been passed by Parliament, the President should refuse to sign the bills into law on the grounds that certain provisions contradict the Constitution and recommendations of the Ransley Report, and return it to Parliament for full and further discussion with key bodies and civil society.

3. Resourcing of Key Policing Bodies: Police Service, NPSC and IPOA

To ensure that these critical police reforms can actually be implemented in practice, the police service, NPSC and the IPOA must be provided with sufficient funding. All three organisations have cited a lack of resources, which then results in lack of information, training, equipment and staff, as key factors that is stifling the potential of the reforms and the ability of these bodies to implement their mandates. As set out above, the government should fully commit to the police reform process, as it is critical to ensuring security and stability in Kenya. In particular, resources should be provided for investigative services at the IAU and the IPOA, including equipment, monitoring systems (to independently monitor cases of police misconduct without requiring reporting), case management systems and sufficient staff to enable effective investigations within a satisfactory timeframe. Immediate funds must also be released to ensure the vetting process continues. The bodies should also be fully resourced to carry out effective and extensive public awareness and training of the police service.

206 Dylan Hendrickson, “Security Sector Reform and Poverty Alleviation: Options for DFID Programming in Cambodia”, CSDG Policy Studies1, June 1999, p. 4.

207 Department for International Development, United Kingdom, “Understanding and Supporting Security Sector Reform”, 2002, p. 7; “Voices of the Poor”, World Bank, 2000.

208 Organisation for Economic Co-operation and Development, “OECD DAC Handbook on Security System Reform: Supporting Security and Justice”, 2007, p. 13.

All budgets and funding, especially the procurement aspects, need to be robustly transparent and ethical. External funders must consider the compliance of the bodies to the law when determining funding as well, and not fund particular units that regularly commit gross human rights violations.

4. Pass Coroner’s Service Bill, strengthen witness protection and pass prevention of torture law

Legislation to establish an independent and effective Coroner’s Service must be passed to assist in investigating and determining the cause and effect of deaths caused by police action or inaction. Additionally, the witness protection scheme in Kenya needs to be strengthened to properly protect witnesses that come forward, and to encourage potential witnesses to provide evidence.

Although the police service is already prohibited from carrying out torture or cruel, inhuman or degrading treatment and punishment, the Executive and Parliament should draft and pass comprehensive legislation on this subject to cover all sectors of society.

5. Build on Reforms of the Wider Criminal Justice System

Policing is a critical part of the criminal justice system. Reform to one part of this system may be ineffective if the broader system does not work. Reform of the justice system is taking place in Kenya, such as vetting the judges and magistrates. More work needs to be done however, and the Government should ensure that the plan to civilianise and train the prosecution service is fully resourced, along with drafting and passage of other key legislation such as the Bail and Bond Bill. Additionally, legal aid services should be prioritised and instituted throughout the country.

FOR THE NATIONAL POLICE SERVICE, NPSC AND IPOA

6. Cultural change in police institution – fostering police leadership

Changing an institution such as the police service is notoriously difficult. Part of the key to changing police systems and attitudes is to ensure that the leadership of the police champions the change and that the police service has a degree of ownership over the changes. If police officers believe from the outset that their views and opinions are of value, and that the change is of use to them, then it is more likely that large-scale change can take place. The police leadership must be part of the reforms. Leaders must have integrity and respect; promote and implement the new policing system in their divisions with new “stories” and ways of working; and ensure buy-in and adherence to the reforms in the lower ranks.

This means that police leaders must be chosen with care, after passing the vetting process and careful consideration of the information provided during this process, as well as their past performances. This is a critical job for the Inspector General, the Deputies, the Director of the Criminal Investigation Department and the NPSC. Additionally, the NPSC and IPOA must collaborate with the police (as with the Baseline Survey) to research and analyse key issues and challenges within the police service to ensure that the police service continues to improve for its officers and the public that it serves.

7. Improve Compliance of Police service: Training, Education and Monitoring

A portion of the police service appear to be unaware of the new laws and policing system, despite their becoming operational in 2011. The police service must be comprehensively trained on the new systems, reporting requirements, processes and procedures to ensure full implementation of the law. Police education tools such as copies of the legislation, procedures, code of conduct and other pocketbooks, posters and materials must be provided. All policing bodies – the police service, NPSC and IPOA – have indicated that this is planned for the future. These bodies must ensure that training is comprehensive, tools are left behind to remind the police of their duties, and that refresher courses are frequently carried out. Additionally, adherence to the new system must be monitored and mechanisms put in place to tackle non-compliance.

8. Changing Perceptions on Policing and the Criminal Justice System

All policing bodies must discuss and collaborate on a strategy to address public misconceptions about crime and the criminal justice system. For example, many Kenyans are happy for the police to kill suspected criminals, regardless of the crime or whether the person is innocent or guilty. This results from a lack of understanding about why the criminal justice system is in place and how it works. Policing bodies must get together with civil society and plan to address this misunderstanding, perhaps through community policing initiatives. Although it needs considerable improvement, the criminal justice system is the best way to improve security for the everyday person if it is working properly and if it is reformed. The new system will increase trust in the police and justice systems, resulting in communities and criminal justice systems working together to help reduce crime and improve security.

FOR THE NATIONAL POLICE SERVICE (IN ADDITION TO THE ABOVE)

9. Foster Cooperation and Coordination Between the KPS and APS

The IG and police leadership must act to enhance cooperation between the two largely independent police services, to ensure that competition is reduced to the extent possible, and that the bodies work together to improve policing and security in Kenya. The revised Service Standing Orders provides a key opportunity to create coordinated processes.

10. Continue to Cooperate with Policing Bodies, Civil Society and Implement Recommendations

As noted earlier, the police service has cooperated to a degree with the NPSC, IPOA and civil society bodies, demonstrating openness to change and involving external actors in the transition of the police service. This inclusive approach of the IG in relation to engagement with external stakeholders in the reform process including international development partners, NGOs and civil society is commendable and should be sustained to enable the potential benefits of police reform to be realised. The earlier

competition between the NPSC and the IG in particular is counterproductive, and the IG and police service should work with the NPSC, as they are an integral part of it.

The police service must also be seen to cooperate with and implement the recommendations of the police oversight bodies.

11. Finalise New Standing Orders

The police service is currently amending its Standing Orders to ensure compliance with the new police legislation. These Standing Orders are critical to changing the day-to-day operations of the police to ensure compliance with the new improved legal framework. They must be finalised as soon as possible, subject to a thorough public consultation process, and revised as necessary in accordance with feedback.

12. Ensure Transparency: ensure key documents are public

The draft and final Service Standing Orders must be made public, in print and online, to ensure to comply with constitutional requirements of public consultation and participation, and to ensure transparency and public trust in police processes. Other critical documents, such as the police budget, should also be easily accessible to the public, to ensure transparency in police operations and the use of funds.

13. Establish Responsive Community Policing Forums

The police service must work with civil society and other actors to ensure that community policing committees and groups are established that fosters trust and understanding between the local police and the community. These groups can provide a key way for the community to voice concern about local safety issues, and to work with the police to address these matters.

FOR THE INTERNAL AFFAIRS UNIT OF THE POLICE SERVICE

14. Educate the Police and the Public on the Mandate

The Internal Affairs Unit must carry out extensive education on their mandate and processes for both the police service and the public. This will ensure that both the police and the public are aware of the new unit, how it operates and how it is different from previous mechanisms. This will encourage people to report to the IAU.

15. Secure Independent Forensic Assistance

Instead of using the forensic assistance of the Directorate of Criminal Investigations, the IAU should use facilities that are external to the police and therefore reduce any chance of interference. The IAU could use hospitals for examination purposes, government chemists for analysis and make greater use of photographic evidence in their investigations.

16. Enact Critical Policies and Implement a Case Management System

The IAU is in the process of finalising a code of conduct, policies and case handling procedures. These policies, as well as a case management system, are critical to ensure the efficient and professional running of the Unit. They must be finalised and implemented as soon as possible considering that the IAU is already operating. Additionally, the IAU must work with the IPOA to ensure that police officers understand the need to follow up on cases referred by the IAU and the consequences for non-compliance, and to establish monitoring mechanisms.

17. Institute Agreements with Other Key Bodies

In addition to these internal policies and systems, the IAU must institute agreements with the other key police complaint bodies, including the IPOA and the Commission, to ensure clarity between the bodies on their roles and referral processes.

FOR THE NPSC

18. Continue the Thorough Vetting of Police Service

The NPSC is to be commended for the comprehensive vetting process that had only just begun at the time of writing. This process must continue, with sufficient time for the public to put forward information, and with sufficient scrutiny of all vetting criteria, to ensure a police service that is comprised of officers that have a record of integrity and adherence to the law.

19. Ensure that the Information Coming from Vetting Prompts Systemic Reform

The information that is revealed in the vetting process must be analysed and used to fine tune further systemic reforms within the police service. For example, the information that arose in the vetting of the first 23 senior officers revealed significant corruption, lack of leadership, lack of implementation of key recommendations and the failure of programmes in the police service. These issues and their causes must be addressed by the NPSC and other appropriate policing bodies, as a critical part of the reform process.

FOR THE IPOA

20. Comment on Key Incidents in the Media

The IPOA has been criticised by civil society and the public for constantly being silent in the wake of police misconduct. Even though the IPOA may be addressing these issues with the police behind the scenes, it is imperative that it also makes statements to the media, to reassure the public that it is aware of the matter and is taking action. This would also raise general awareness of the IPOA's existence and

its mandate. The IPOA can do this in a way that does not compromise sensitive discussions that it is having. It can merely release a simple statement generally reiterating its mandate and stating that it is investigating a particular incident comprehensively.

21. Institute Public Outreach Campaign

In addition to using the media to increase public awareness of its mandate and presence, the IPOA should institute a broader public outreach campaign, particularly in rural areas, to ensure that people are aware of it, and learn how they can use its services.

22. Implement a Thorough Case Management System

The IPOA must institute a case management system to ensure efficient, professional and responsive handling of complaints. To date, there have been complaints that the IPOA does not regularly (or at all) provide progress updates to complainants, and therefore the complainant is unaware of the progress of the investigation. The IPOA must ensure that the complainant is provided regular feedback, and that before any complaint is referred, the complainant is notified and given a chance to withdraw it if they wish. This is because a complainant may not want their matter referred to the IAU, regardless of the fact it is separate from other parts of the police service.

23. Investigate police non-cooperation and recommend action

The IPOA has reported that its investigations into deaths caused by police action have been frustrated by police failure to report such events or through obstruction of the investigation process. These actions are offences that carry quite severe penalties. The IPOA must investigate officers that fail to cooperate and recommend action to the Office of the Director of Public Prosecutions and/or the NPSC. The IPOA must demonstrate that failure to meet obligations to report and obstruction of the IPOA work, are serious offences and offenders will be held accountable.

24. Create standard form for police reporting and recording of deaths and serious injuries

To ensure the police provide all relevant information when reporting deaths and serious injuries, the IPOA should work with the police service to create a standard form to report these deaths and serious injuries. Such a form could set out all the information that the Officer in Charge must provide to the IPOA, and include reminders for preservation of the scene, taking of photographic evidence and other important information.

25. Establish database on police deaths

The IPOA should consider establishing a database to monitor all deaths and serious injuries caused by police action of inaction, regardless of whether these events are officially reported. The database could distinguish between officially reported deaths, those mentioned in other sources (such as the media), and those notified by other organisations.

26. Creation of One-Stop Shops with other Oversight Bodies

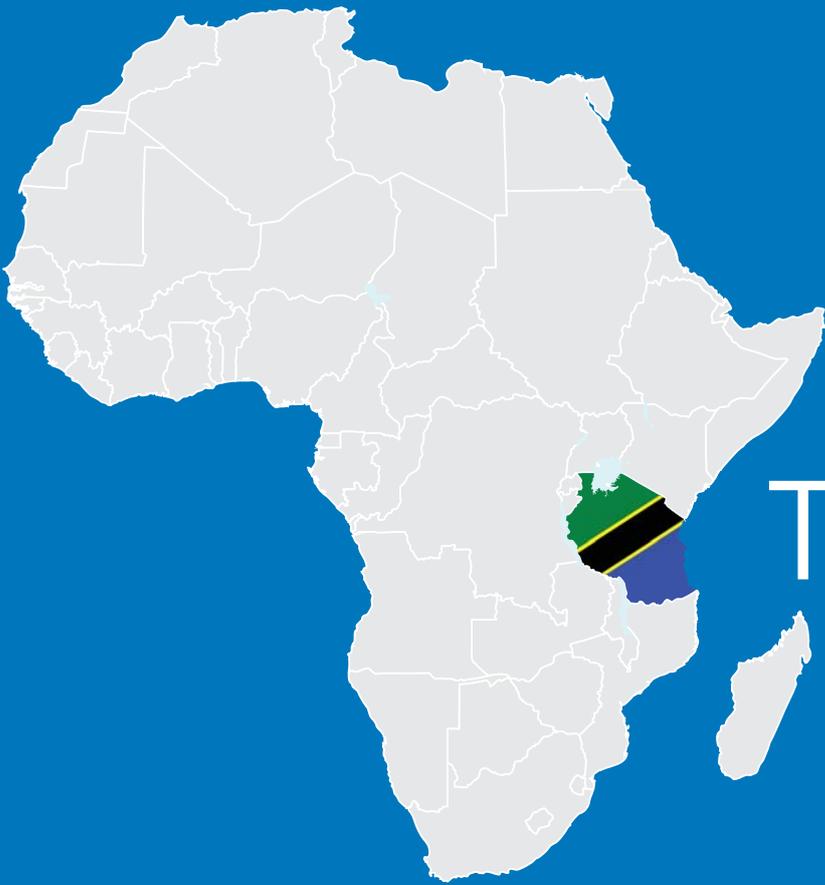
There has been discussion for some time about creating “One-Stop Shops” that combine in the one office building, but with adequate separation, the IPOA and other external oversight bodies, such as the Kenya National Commission on Human Rights and Gender Commission. This would allow members of the public to come to the one “office” and be referred to the correct oversight staff, without having to travel to another location. Some believe that the IAU could also be included in such combined one-stop shops, to provide a more informal setting that is separate from police premises.

FOR CIVIL SOCIETY ACTORS

27. Working Together to Ensure that the Promise of the Reforms is Realised

Civil society should continue to work with the police service, NPSC and IPOA to assist in improving understanding and the functioning of police systems and the wider criminal justice system, within the service itself and the public. They should also continue to work together to monitor and oversee implementation of the reforms. This coordination will ensure that resources are used to the best extent possible by minimising overlap, and reducing possible confusion in the public. Additionally, it should be remembered that different civil society organisations have different strengths and approaches, and each is useful depending on the project, audience and intended outcome.

A range of different approaches can be taken and each civil society member has its strength. These approaches include: working with the police service to improve change from within; working with other police bodies such as the IPOA and NPSC on particular projects including training the police, educating the public; carrying out strategic litigation in relation to particular matters; assisting complainants to make detailed complaints to the IPOA or IAU as appropriate regarding policing matters; monitoring adherence to the new police standards and publishing findings; advocating for full and effective implementation of the police reforms.



TANZANIA

A. HISTORY OF POLICING AND GOVERNANCE

In 1919 the British established the Tanganyika Police Force and Prisons Service, Tanzania's first civilian police force that was separate from the military.²⁰⁹ During this period, the role of the police was largely as the protector of the British ruling regime. In 1961 when Tanganyika gained independence, it did so as a multi-party state, but just four years later in 1965, it adopted a single-party political system. Between 1977 and 1992 Chama Cha Mapinduzi (CCM) was the only party permitted to operate in Tanzania.²¹⁰ Tanzania's independence also brought with it strict rules regarding the appointment of police officers into positions of power. Membership in the ruling party became a prerequisite for a new police recruit,²¹¹ eliminating any appearance of independence.

The system began to change when a commission into democratic political reform, headed by the then Chief Justice of Tanzania, Francis Nyalali, was established. The Nyalali Commission recommended that a multi-party democracy be established, and identified over 40 pieces of legislation that needed amending or repealing on the grounds that they were oppressive and unconstitutional. The government disregarded the bulk of the recommendations, but amended the Constitution to allow multi-party democracy from 1 July 1992. The Constitution was also amended to prohibit members of the security forces from joining a political party. Though the Nyalali Commission made recommendations to change police related laws,²¹² the police force continued to act in a way that indicated allegiance to the ruling party. In particular, while Article 20 of the Constitution allowed for the right to peacefully assemble, form, or belong to an organisation or association, the police continued to arrest, detain, or internally deport those who tried to assemble for political reasons.²¹³ Though there is an increase in the participation of political parties, the CCM remains dominant in both government and parliament, and is frequently accused of impeding the efforts of other parties.²¹⁴

Police Reform Process

In 2006 the then Inspector General of the Tanzania Police Force spearheaded a comprehensive review of the police. The reform programme was developed after an extensive process, including drafting by a team of 27 police officers and six academics, consultation with a broad number of groups from across Tanzanian society and seeking the views of over 2,500 police officers via a questionnaire.²¹⁵ This process and plan is discussed in more detail throughout the report.

Constitutional Reform

In 2012 the government established a commission to consider reform of the Constitution in accordance with the Constitutional Review Act, 2012. The Commission is mandated to coordinate a review of the Constitution and seek the opinions of the public, and is made up of an equal number of members from

209 Commonwealth Human Rights Initiative, "The Police, The People, The Politics: Police Accountability in Tanzania", 2006, p. 3.

210 Mohammed Omar Maundi, "Tanzania" in Gavin Cathraet al (Eds), *Security and Democracy in Southern Africa*, Wits University Press, Johannesburg, 2007.

211 Oluyede, "Administrative Law in East Africa", 1973, East African Literature Society, Nairobi, Executive Summary on Designated Legislation in the Nyalali Commission Report, Government Printer Dar es Salaam, 1996, p.3.

212 Maina, *Human Rights in Tanzania: Selected Cases and Materials*, Kolne, 1997.

213 Dagne, "Tanzania: Background and Current Conditions", Congressional Research Service, 2010.

214 Ibid.

215 Daniel Scher, "Restoring Police Service with a Community Vision: Tanzania 2006-2009", *Innovations for Successful Societies*, Princeton University, at: <http://www.princeton.edu/successfulsocieties/content/data/policy_note/PN_id123/Policy_Note_ID123.pdf>, pp. 3-8.

mainland Tanzania and the Republic of Zanzibar.²¹⁶ The Commission sought submissions on the Constitution in January 2013 and published a Zero Draft on 3 June 2013.²¹⁷ Further consultations were undertaken and a second Draft Constitution was presented to the President on 30 December 2013,²¹⁸ and is before the Constituent Assembly. The Constituent Assembly comprises of 104 members, 40 of whom will come from political parties and the remaining from civil society. It will debate each article of the Draft Constitution and, once agreed, the new Proposed Constitution will be put to a referendum.²¹⁹ The constitutional reform process and the possibility of police reform are discussed further in Section C. In addition to establishing oversight bodies, of particular significance to the operations of the police in Tanzania is how a more comprehensive bill of rights regime in the Tanzanian Constitution would affect their operations.

The Tanzania Police Force (TPF) are primarily guided by the Police Force and Auxiliary Services Act, 2002 (the Police Act), the Police Force Service Regulations, 1995 and Police General Orders. The Act retains the outdated colonial model of policing that emphasises police role in preventing and controlling crime and maintaining security, rather than upholding rights and responding to community needs.

B. CHALLENGES FACING REALISATION OF DEMOCRATIC POLICING

This Section B describes some of the challenges facing realisation of democratic policing in Tanzania. There are several problems facing Tanzania's policing and wider criminal justice systems that may hinder their ability to deal with increases in the crime rate and new types of criminal conduct.²²⁰ They include: lack of independence; poor management systems; illegal conduct and lack of accountability for such conduct, stemming from inadequate oversight mechanisms; lack of resources to improve police processes and reach throughout Tanzania.

However, the TPF and Tanzanian government have taken some steps to address some of the problems outlined in this section through the Tanzania Police Force Reform Programme (TPF Reform Programme). Section C sets out these initiatives, and highlights some of the gaps. As the challenges and reform initiatives overlap, both in this section and the following, recommendations on how to improve policing - the way forward - will be highlighted. These recommendations are brought together and summarised in the final Section D.

1. Lack of Independence and Poor Performance Management

Currently, the Police Act vests power in the Minister of Home Affairs to direct and order the Inspector-General of Police (IG) in matters of "operational control".²²¹ Operational control is not defined in the Police Act, and so it is possible that the Minister could improperly influence everyday police operations, such as investigations or arrests. In addition to the undefined "operational control" which the Minister has over the police, the Minister also has the power to order the police to arrest and detain a person indefinitely underneath the Preventive Detention Act, 1962. The Legal and Human Rights Centre (LHRC) also states that the independence of the police at the regional and district levels is compromised, as the

216 The Constitutional Review (Amendment) Act 2012.

217 Information provided by the Tanganyika Law Society, July 2013.

218 The Media Council of Tanzania, "Proposed Constitution guarantees press freedom", 24 March 2014, at: <<http://www.mct.or.tz/index.php/component/content/article/42-news/rokstories/273-proposed-constitution-guarantees-press-freedom>>.

219 CHRI interview with Harold Sungusia, Legal and Human Rights Centre, November 2013.

220 Elrena van der Spuy and Ricky Röntsch, "Police and Crime Prevention in Africa: A Brief Appraisal", International Center for the Prevention of Crime, 2008, p.66.

221 S7, Police Force and Auxiliary Services Act, 2002.

police are directed by the Committee of Security and Order for the relevant region or district, which is chaired by a Commissioner, a political appointee.²²²

At the time of publishing, the President of the United Republic of Tanzania has the power to appoint, promote and discipline (including dismiss) police officers from the rank of Senior Assistant Commissioner of Police to IG.²²³ There appears to be no selection criteria for appointments, meaning that the President can appoint a person to the senior leadership of the police at his discretion. Additionally, there is no set term of office for the IG, vesting all power in the President to dismiss or retain the IG. These senior officers can only be removed on disciplinary charges and after they have had a chance to be heard, however the final authority rests with the President. This Presidential control over the appointment, discipline and removal of the senior leadership of the police reduces the ability of these officers to act independently.

Police officers of the rank of Assistant Inspector to Assistant Commissioner of Police are meant to be appointed, promoted or otherwise confirmed in other postings by the Police Force and Prisons Service Commission²²⁴ (Police and Prison Commission). The Police and Prison Commission comprises of ministerial staff, senior officers of the police and prison service, and two members appointed directly by the Minister of Home Affairs.²²⁵ Reportedly, the Police and Prison Commission does not really function in practice,²²⁶ and is not independent. Members of civil society believe that the IG appoints all senior police officers.²²⁷ All officers below the rank of Assistant Inspector are appointed, promoted or otherwise confirmed in postings by the IG, in a manner that the Minister directs.²²⁸ In practice, the junior officers are moved in accordance with their performance, which is assessed by their managing supervisor once a year, and approved by the IG.

Consequently, the President, the Minister for Home Affairs, and the IG control police promotions and transfers of senior officers, while the IG and senior police officers control the transfer and promotion of juniors. This could result in the implication that those police officers work to support the interests of the government, such as dispersing opposition political protests, are rewarded. Likewise, those who do not act in the interests of the government could face arbitrary transfer.

SPOTLIGHT ON:

Political Policing of Protests?

The strict rules regarding freedom of assembly in the Police Act gives the police prohibitive rather than regulatory powers regarding public assemblies. In other words, the Police Act gives the police the discretion to prohibit protests. In Tanzania, the police has often been accused of prohibiting or impeding opposition party protests, even if there are no reasonable public order reasons (as required under the Police Act) to stop such demonstrations.²²⁹ Under the current law, if a police officer believes an assembly is likely to cause a breach of peace or prejudice the maintenance of public order, the public assembly may be denied. However, it is unclear

222 Legal and Human Rights Centre and Zanzibar Legal Services Centre, “Tanzania Human Rights Report 2012”, 2013, p. 220.

223 S6(2) and S7(2) Police Force and Prisons Service Commission Act 1990.

224 S6(3), Police Force and Prisons Service Commission Act, 1990.

225 S4, Police Force and Prisons Service Commission Act, 1990.

226 CHRI Interview with Alexander Hassan of the Commission on Human Rights and Good Governance, November 2013.

227 CHRI Interview with Harold Sungusia of Legal and Human Rights Centre, November 2013.

228 S12, Police Force and Auxiliary Services Act, 2002.

229 Fumbuka Ng’wanakilala, “Tanzania police fire teargas at protesters near blast site”, *Reuters* (US Edition), 18 June 2013, at: <<http://www.reuters.com/article/2013/06/18/us-tanzania-politics-protest-idUSBRE95H11820130618>>.

what qualifies as “prejudicing public safety” or “public order,” and the law fails to set out how officers are to judge when an assembly is “likely” to cause a breach of peace. This gives the TPF ample power to apply subjective and arbitrary standards that may even violate constitutional rights.²³⁰ This should be rectified through review and amendment of the Police Act following constitutional review.

Additionally, previously transfers and promotions were not based on standard performance assessments and set criteria, and could be quite a subjective process. The TPF Reform Programme that has been instituted has tried to improve these processes, and the TPF has reportedly developed some criteria and guidelines for recruitment and promotion of officers. It is unclear if these guidelines are followed however, or the performance management process overseen in any way.²³¹ This could lead to abuse of the promotion and transfer system by senior officers who evaluate and confirm the performance of juniors, resulting in incompetent police officers being promoted to the wrong positions.

TPF officers have complained of: non-payment of entitlements; not being promoted for a long time; remaining at one police station without transfer for a long period; not being provided with opportunities to study and raise skills; and that disciplinary measures outlined in the Police Service Regulations are unfair towards junior officers.²³² Some of the data coming out of the new Kenyan police oversight bodies confirms that many complaints from police officers concern their employment, underscoring the need to check promotions, transfers, recruitment and discipline independently, to ensure that these processes are fair, impartial and professional.

Way forward

The draft Constitution does provide that the IG shall exercise his duties “without fear, favouritism or hatred and in accordance with the provisions of the Constitution”.²³³ Consideration should also be given to clearly stating in the law that the IG exercises operational independence over the TPF and no direction may be given to the IG in relation to criminal investigations, the enforcement of laws against particular persons and the employment, transfer, promotion or discipline of officers, save for the directions provided by oversight bodies. These legal provisions were adopted in the Kenyan Constitution in 2010.²³⁴

In relation to independent and performance management of the police, the draft Constitution includes a provision establishing a Commission for the Service of the Police Force mandated to control all issues related to the service of the TPF, including recruitment.²³⁵ Any new Police Commission should be civilian led and ensure that police officers, especially the senior leaders, are recruited, appointed and removed in accordance with a transparent and independent process. The Police Commission should also manage and oversee transfers, promotions and discipline, to improve performance management of the TPF and ensure that these processes are impartial.

In overseeing all matters relating to the TPF, a new Police Commission could also conduct inquiries into particular policing issues, and make recommendations. Such a body is critical in ensuring civilian oversight of the police, and will act to improve professionalism, efficiency and public trust in the TPF. A

230 Commonwealth Human Rights Initiative, “Policing of Public Assemblies in Tanzania: Analysis of the Legal Framework”, 2012, at: <http://www.humanrightsinitiative.org/programs/aj/police/intl/docs/CHRI%20Brief_The%20Law%20regarding%20Policing%20of%20Public%20Assemblies_summary.pdf>.

231 Ministry of Home Affairs, Tanzania Police Force, Draft, “Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15”, 4 May 2010, p. 39.

232 Commission for Human Rights and Good Governance, Tanzania, “Ten Years of the Commission for Human Rights and Good Governance: Reflection of a Journey 2002-2012”, 2012, p. 40.

233 Article 246, Draft Constitution of the United Republic of Tanzania, 2013.

234 See Articles 245(2)(b) and 245(4), Constitution of Kenya, 2010.

235 Article 247, Draft Constitution of the United Republic of Tanzania, 2013.

new Police Commission must not comprise solely of the police leadership and Executive officers, as is currently the case, and could be modelled on the Kenyan Police Service Commission, such as:

- ⊙ An independent person of integrity that has sufficient experience as the Chairperson
- ⊙ The Inspector General of Police
- ⊙ Deputy Inspector General of Police
- ⊙ A retired police officer
- ⊙ Three members of the public who do not have ties to the police or the Executive.

2. Community Policing and other policing bodies

Community policing is widely used in Tanzania, and has been an area that former IG Said Mwema focused considerably on as part of the TPF Reform Programme. One of the arms of community policing, “other policing bodies” are discussed further below and have blurred the lines between vigilantism and community policing. However it should be noted that other community policing initiatives undertaken by the TPF were largely very positive, including:

- ⊙ Safiri Salama: involving the community in monitoring vehicles in order to reduce road accidents;
- ⊙ Usalama Wetu Kwanza and Klabu za Marafiki: public education on police and safety issues, particularly for school children;
- ⊙ Youth Sports Programmes where the police encourage young people to play sport as a way to keep young adults busy and to meet and build trust between the police and the community;²³⁶
- ⊙ Nyumba 10: this initiative divides the community into groups of ten houses, and encourages and teaches these groups to work together, share information and watch out for any safety and security issues. The police meet with representatives from these groups to gain an understanding of security issues within the community.²³⁷

Despite these initiatives, the programmes are hampered by a lack of resources and training. The lack of training is concerning, and could easily lead to vigilantism or other human rights violations. Often, other police officers do not understand the programmes, resulting in confusion as to the roles of the community policing members and the police.²³⁸

Other “Policing” bodies – Confusing and Lacking Oversight

There are a range of other bodies that perform policing functions, including the People’s Militia. These civilian bodies with policing functions create confusion regarding their roles, legal powers and status and have led to vigilantism. Some are part of formal community policing programmes and have caused confusion about what community policing is. These groups are often not subject to the same laws and regulations as the TPF, are not appropriately trained, paid or accountable for their actions.

236 Ministry of Home Affairs, Tanzania Police Force, Draft, “Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15”, 4, May 2010, p. 55.

237 Open Society Foundations Crime and Violence Prevention Initiative (OSF CVPI) & Open Society Initiative for Eastern Africa (OSIEA), “Tackling the Dangerous Drift: An Assessment of Crime and Violence in Tanzania & Recommendations for Violence Prevention and Reduction”, June 2013, pp. 80-81.

238 Ibid. p. 237.

People's Militia, also known as *Valantia*, *SunguSungu* or *Wasalama*, originated as local policing groups to assist in addressing criminal activity such as cattle rustling.²³⁹ They are regulated under the Peoples Militia (Powers of Arrest) Act, 1975 and Peoples Militia (Compensation for Deaths or Injuries) Act, 1973 and are defined as an "organised group...operating with the authority of and under the aegis of the government and which is receiving any military training or participating in any military, quasi-military or law enforcement exercise...for the protection of the people or the property of the United Republic..."²⁴⁰ These groups have been likened to a "neighbourhood watch"²⁴¹ and "local policing groups"²⁴² and are often called community police, or Police Jamii. They are supposed to ensure security at the local neighbourhood level, with some community neighbourhoods paying for regular night patrols.²⁴³ These groups are effective to an extent in reducing crime and increasing security and safety, although there have been incidents of vigilantism, and severe abuses, such as beating and killing suspected criminals.²⁴⁴

In 2012, the Legal and Human Rights Centre reported that the *SunguSungu* killed a person suspected of stealing chickens near Musoma.²⁴⁵ The police did announce an investigation, but it is unclear what the result of this investigation was. Human Rights Watch and the Wake Up and Step Forward Network (WASO) reported that suspected *SunguSungu* members in Dar es Salaam killed Abdullah Yunus. According to people who were interviewed, *SunguSungu* members claimed that Abdullah was a thief and beat him with concrete blocks, stones and machetes.²⁴⁶ It was also documented that sex workers were scared of members of the *SunguSungu* and were subject to physical and sexual attacks by them.²⁴⁷ Although the members are not allowed to carry firearms or machetes, and only sticks or clubs as weapons, it was found that People's Militia members often carry machetes.²⁴⁸

Like the Auxiliary Police, the People's Militia is formed on an ad-hoc basis.²⁴⁹ The groups operate independently of the police, although they do work with the police and municipal authorities.²⁵⁰ Members of the Peoples Militia have the same power to search and arrest as a police constable, and are subject to the same limitations and conditions that apply to the police.²⁵¹ The TPF has admitted that the "chain of command between the local policing groups... is not clear", leading to ambiguity on the responsibilities of these groups, and the role of the TPF in relation to these groups.²⁵² There are no regulations or

239 Commonwealth Human Rights Initiative, "The Police, The People, The Politics: Police Accountability in Tanzania", 2006, p. 20; Ministry of Home Affairs, Tanzania Police Force, Draft, "Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15", 4 May 2010, pp. 55-56.

240 The United Republic of Tanzania, Act No. 9 of 1989, "An Act to amend laws pertaining to the powers and operations of People's Militia".

241 UN Habitat, "Crime and Policing Issues in Dar es Salaam, Tanzania, focusing on: Community Neighbourhood Watch Groups – 'SunguSungu'", at: <http://www.unhabitat.org/downloads/docs/1825_12883_sungusungu.pdf>.

242 Ministry of Home Affairs, Tanzania Police Force, Draft, "Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15", 4, May 2010, pp. 55-56.

243 Temeke community in Dar es Salaam, see "Tackling the Dangerous Drift: An Assessment of Crime and Violence in Tanzania & Recommendations for Violence Prevention and Reduction", Open Society Foundations Crime and Violence Prevention Initiative (OSF CVPI) & Open Society Initiative for Eastern Africa (OSIEA), June 2013, p. 91.

244 United States Department of State, Bureau of Democracy, Human Rights and Labor, "Country Reports on Human Rights Practices for 2012", p. 8.

245 Ibid.; Legal and Human Rights Centre and Zanzibar Legal Services Centre, "Tanzania Human Rights Report 2012", 2013, p. 21.

246 Human Rights Watch and WASO, "Treat us like human beings: Discrimination against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania", June 2013, p. 10.

247 Ibid.

248 Ibid.

249 United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2012, pp. 7-8.

250 Ibid., p. 8.

251 The United Republic of Tanzania, Act No. 9 of 1989, An Act to amend laws pertaining to the powers and operations of People's Militia.

252 Ministry of Home Affairs, Tanzania Police Force, Draft "Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15", 4, May 2010, p. 57.

rules to regulate the operations of the People's Militia, despite the Minister of Home Affairs having this power.²⁵³ As the United Nations Office of Drugs and Crime (UNODC) notes, "While local watch groups can provide important additional support to police they must operate within the law and in support of wider police activities".²⁵⁴

There is also confusion as to whether these groups are part of "community policing", and what community policing generally means to the public and to the members of the TPF.²⁵⁵ Some members of the TPF and the public believe that community policing involves the community taking over the role of policing in that area, often leading to mob justice,²⁵⁶ which is understandable given the prominence of the *SunguSungu* in Tanzania's history. The lack of clarity on the role of these groups, and their position within the framework of community policing, has led many people to be wary of community policing.

Way forward – building on reforms

The TPF Reform Programme identifies community policing and building trust with the public as a key area in need of improvement. The Programme aims to do the following over the 2010/11-2014/15 period:

- ☉ Develop a policy framework on involving the community in policing function;
- ☉ Reinforce community policing awareness campaigns;
- ☉ Strengthen the capacity of the community to prevent and solve crime;
- ☉ Strengthen the capacity of the police to work with the community.²⁵⁷

The TPF Reform Programme notes that the concept of community policing was introduced without any policy to clarify how to involve the community, the relationship with the TPF and other public institutions and how community policing fits into a wider movement of decentralisation.²⁵⁸ It is unclear to what extent these issues and goals have been addressed and projects to improve these areas implemented between 2010 and 2013. These aims are very broad, and more detailed projects under these aims need to be worked out, in consultation with all relevant stakeholders.

A coherent community policing strategy needs to be developed to clarify what community policing is in Tanzania and how each programme operates. The UNODC notes the difference between support from local security organisations and a "community-oriented approach" to policing by the official police organisation. A community-oriented approach to policing by the TPF could involve coordination and oversight of unarmed local community watch groups. Tanzania could learn from Kenya, where non-government organisations Saferworld and PeaceNet developed a community-based approach to policing in collaboration with the national police, which was tailored to the particular needs of Kenya.²⁵⁹ A different civil society group is helping to create trust and understanding between the local community and the police by bringing the local community to the police station to "get to know their police station".²⁶⁰ Kenya has also established new County Policing Authorities and Community Policing Committees in legislation.²⁶¹

253 Tackling the Dangerous Drift, p. 35.

254 United Nations Office of Drugs and Crime, "Introductory Handbook on Policing Urban Space", 2011, p. 94.

255 Ministry of Home Affairs, Tanzania Police Force, Draft "Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15", 4, May 2010, p. 56.

256 Ibid., pp. 56-57.

257 Ministry of Home Affairs, Tanzania Police Force, Draft "Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15", 4 May 2010.

258 Ibid., p. 56.

259 Saferworld, "Implementing community-based policing in Kenya", 2008, p. 3.

260 The Usalama Reforms Forum Kenya.

261 Part XI, National Police Service Act, 2011.

In addition to a coherent community policing strategy, regulations regarding the operations of the the *SunguSungu*, *Wasalama* and Police Jamii must be drafted as a priority to ensure that the groups operate within the law, are coordinated by the police, are adequately trained and are the subject of sufficient oversight. These regulations must be drafted after broad consultations with affected stakeholders.

3. Police Corruption and Human Rights Violations

In 2007 Parliament passed new legislation to create an improved corruption body – the Prevention and Combating of Corruption Bureau (PCCB).²⁶² This body, self-described as a law enforcement institution “to prevent corruption, educate society on the effects of this problem and enforce the law against corruption” replaced the former Prevention of Corruption Bureau. The latter reported in 2003 that among all the government departments, the police department was the most corrupt, with the highest number of reported corruption allegations. Unfortunately not much has changed in the ten years since then. In 2013, Transparency International ranked the TPF as the most corrupt institution in the whole of the East African Community.²⁶³

Police General Order 104 provides, among other things that police officers who are aware of corrupt officers but do not report them should be considered accessories to corruption, and that any victimisation of persons who assist in the detection of the corruption should result in instant dismissal from the Force.²⁶⁴ Additionally, police officers that report on corrupt officers can receive half the bribe amount as a reward (up to ten thousand Tanzanian shillings) if the charges are confirmed.²⁶⁵

The United Nations Development Fund (UNDP) has also worked to reduce corruption in the TPF and other government agencies through supporting the National Anti-Corruption Strategy and Actions Plan. In evaluating results for the 2008-2011 period, UNDP notes that new TPF “integrity committees” established in every region and district have improved reporting on corruption and ethics. Additionally some TPF officers engaged in unethical conduct were transferred, and awareness programs have increased public understanding of the police and how to make complaints. Overall the report noted improved public trust in the police.²⁶⁶ However some of these results raise further questions, such as whether officers transferred for unethical conduct were also disciplined, and whether more substantive reform to internal oversight mechanisms (discussed later) might be a better approach.

Despite these initiatives, the 2013 Transparency International report indicates that the TPF and other parts of the criminal justice system is heavily corrupt. Efforts to decrease corruption have proved difficult owing to lack of public access to government information and government officials refusing to make information available.²⁶⁷

Illegal Arrest and Detention

The Police Act and the Criminal Procedure Act, 1985 dictate that a person arrested – with or without a warrant – must be kept in an authorised place, informed of the reason of their arrest, their right to an attorney, and to be taken to court as soon as possible. If an arrest is made without a warrant, the

262 Prevention and Combating of Corruption Act, 2007.

263 Tanzania Police the “most corrupt” in East Africa, *The Citizen*, October 29 2013, at: <http://www.africareview.com/News/Report-says-Tanzanian-police-the-most-corrupt-in-East-Africa/-/979180/2051704/-/dc2egd/-/index.html>.

264 Tanzania Police Force General Order 104: CHRI understands that these provisions still exist despite reform of the Police General Orders between 2006-2008.

265 United Nations Convention Against Corruption, Tanzania Self-Review, 18 September 2011, p. 55.

266 United Nations Development Fund, “UNDP Tanzania Success Stories: Fighting Corruption”, 2013, 6.

267 Bureau of Democracy, Human Rights and Labor, “Tanzania Country Reports on Human Rights Practices for 2011”, p. 23.

arrested person must be brought before a court within 24 hours.²⁶⁸ Unfortunately, these procedures are not consistently followed, with arrested people being detained for longer than 24 hours, and sometimes not being informed of the reason for their arrest.²⁶⁹ People are also arrested without adequate evidence of criminal activity, especially members of minority groups, and then asked for money or other favours in order to secure their release.²⁷⁰ Illegal arrest and detention is closely linked to corruption, as it is used to intimidate people and encourage the payment of money or the provision of other “favours”.

Torture, Mistreatment and Discrimination

Tanzania’s Constitution states that “no person shall be subjected to torture or inhumane or degrading punishment or treatment,”²⁷¹ but Tanzania has not signed or ratified the United Nations Convention against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT). At its last Universal Periodic Review at the UN Human Rights Council in 2011, Tanzania accepted member states’ recommendations to ratify the Convention against Torture,²⁷² but as of January 2014, the government had not ratified it. Torture is not a crime in Tanzania, and those that suffer it can only get recourse under other criminal provisions or a civil claim for compensation for a violation of constitutional rights.

There are allegations of torture by the police in both mainland Tanzania and on the island of Zanzibar. In Zanzibar, the LHRC reported that several allegations of torture related to torture during police interrogations to force a confession or information from a suspect.²⁷³ Other cases relate to treatment of the accused held in remand, with some people alleging that those detained are denied the right to worship or even change their clothes and are placed in solitary confinement.²⁷⁴ In 2012 in mainland Tanzania, Human Rights Watch and WASO documented a series of cases of violent assaults by the police against the following groups: lesbian, gay, bisexual, transgender and intersex people (LGBTI); people who use drugs; and sex workers. “Dozens” reported being tortured, subjected to sexual violence and/or ill-treatment from the police.²⁷⁵ Of the 66 current or former sex workers interviewed by Human Rights Watch and WASO, eighteen adults and five children reported police forcing them into having sex with them.²⁷⁶

Police Killings: Unnecessary, Arbitrary and Extrajudicial

Extrajudicial killings, broadly defined as killings by public officials without legal sanction, are prevalent in Tanzania. LHRC has asserted that 246 people were killed unlawfully by the Tanzania security forces between 2003 and 2012.²⁷⁷ These extrajudicial killings occurred during policing operations at protests

268 S32 Criminal Procedure Act, 1985.

269 United States Bureau of Democracy, Human Rights and Labor, “Country Reports on Human Rights Practices for 2012: Tanzania”, at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

270 Human Rights Watch and WASO, “Treat us like human beings: Discrimination against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania”, June 2013, p. 10, at: <https://www.hrw.org/node/116263/section/9>.

271 Article 13(6)(e), Constitution of the United Republic of Tanzania (last amended 1985) [United Republic of Tanzania], April 26, 1977.

272 UPR Info, “Recommendations and Pledges: Tanzania”, June 2012, p. 7, at: http://www.upr-info.org/IMG/pdf/recommendations_to_tanzania_2012.pdf.

273 Legal and Human Rights Centre and Zanzibar Legal Services Centre (2013), “Tanzania Human Rights Report 2012”, p. 317.

274 Ibid.

275 Human Rights Watch and WASO, “Treat us like human beings: Discrimination against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania”, June 2013, pp. 2-3, at: <https://www.hrw.org/node/116263/section/9>.

276 Ibid.

277 Legal and Human Rights Centre (2012), “Report on Extrajudicial Killings”, p. 8.

and rallies, in policing mining areas and national parks, and in the course of detaining suspects.²⁷⁸ The Inquests Act, 1980 provides that a coronial inquest can be undertaken to determine the cause of violent, sudden or otherwise mysterious deaths. Unfortunately this law is rarely used in Tanzania, and according to LHRC, it has never been used to investigate and determine the cause of death in suspected extrajudicial police killings.²⁷⁹

SPOTLIGHT ON:

Deaths caused by police

Throughout 2012 and 2013 the police were implicated in the deaths of civilians during demonstrations, including that of TV journalist, Daudi Mwangosi and newspaper vendor, Ally Zona. Mwangosi was killed in September 2012 by a tear gas canister fired at him at close range by a police officer during reported “clashes” between police and protestors from the opposition party, Chama cha Demokrasia na Maendeleo²⁸⁰ (CHADEMA). His death came one week after the death of Zona and serious injury of others caused by police firing tear gas during protests to disperse opposition protestors in Morogoro.²⁸¹ Due to public pressure, the government announced an inquiry into Mwangosi’s death, with all members being appointed directly by the President. The subsequent report, which exonerated the actions of the police, was criticised by the Media Council of Tanzania and the Tanzania Editors’ Forum who also undertook an investigation to document the events leading up to Mwangosi’s death.²⁸² The Media Council investigation found that “there clearly was use of unwarranted force against unarmed people.”²⁸³

The Commission for Human Rights and Good Governance (CHRAGG) also criticised the report and conducted their own inquiry. CHRAGG found that the police and the office of the registrar of political parties were not making independent and impartial decisions, and hence were compromised in the matter.²⁸⁴ CHRAGG noted that there was confusion regarding the legality of the protest in the first place, with the Iringa Regional Police Commander arbitrarily and illegally banning the protest that had previously been approved by the Mufindi Officer Commanding District.²⁸⁵

The junior police officer who fired the canister was charged with murder. At the time of writing, the case is still awaiting trial. According to the Media Council of Tanzania, none of the other six police officers involved in the confrontation with Mwangosi were charged or disciplined. The Regional Police Commander at the time was reportedly subsequently promoted to Deputy Commissioner of Police in 2013.²⁸⁶

278 Legal and Human Rights Centre and Zanzibar Legal Services Centre (2013), “Tanzania Human Rights Report 2012”, p. 24.

279 Ibid., p. 24.

280 Swahili for ‘Party for Democracy and Progress’.

281 Reuters, *Tanzanian journalist killed reporting police-opposition clash*, 4 September 2012, <http://in.reuters.com/article/2012/09/04/tanzania-journalist-idINL6E8K4G0F20120904>

282 Report by Special Team formed by Media Council of Tanzania (MCT) and Tanzania Editors’ Forum (TEF) to investigate circumstances of the killing of journalist Daudi Mwangosi on September 2 2012, at Nyolo Village in Mufindi District, Iringa Region.

283 Ibid, p 21.

284 *Christopher Majaliwa*, ‘Tanzania: Rights Body Deplores Police ‘Brutality’’, *Tanzania Daily News in All Africa*, 11 October 2012 <<http://allafrica.com/stories/201210110228.html>>

285 Ibid.

286 Tom Rhodes, ‘The Invisible Plight of the Tanzanian Press’, *Committee to Protect Journalists*, 6 August 2013 <<http://www.cpj.org/reports/2013/08/the-invisible-plight-of-the-tanzanian-press.php#more>>

Harassment and Violence Towards Human Rights Defenders and Political Opposition

Human rights defenders in Tanzania suffer from significant harassment from the police. They include those working for human rights, the rights of LGBTI groups, for greater transparency and accountability in the extractive industry and journalists.²⁸⁷ In particular, journalists that record material relating to police abuse of power (extortion or excessive use of force) have reportedly been followed, intimidated and harassed. One journalist has sought refuge in another country to ensure safety.²⁸⁸

A lack of strong independent bodies to oversee and hold the police accountable for the above-mentioned misconduct has contributed to a culture where police believe their actions will not be reviewed, checked or punished.²⁸⁹ The lack of these accountability mechanisms is discussed below.

4. Lack of Internal Accountability Mechanisms

Despite the occurrence of police misconduct as outlined above, the current internal police system of receiving and investigating complaints and overseeing discipline is complicated, uncoordinated and inefficient. Members of the public and police officers themselves can make a complaint about the behaviour of a police officer to the police themselves, or to a “Complaints Desk” at a police station, if the police station has one. Members of the public can also send a text message to the IG, raising any issue.²⁹⁰ However, once a complaint is made, the system of investigation and discipline is murky and not widely known or understood. According to Police General Order 103, every complaint must be recorded in the station diary and reported immediately to the relevant regional commander.²⁹¹

The disciplinary procedures that follow depend on the rank of the police officer, and the disciplinary measure being implemented. For a criminal offence, the matter should be referred to the Directorate of Public Prosecutions, although it is unclear whether this is common practice.

Authority for Officers Above the Rank of Assistant Commissioner

As stated earlier, the President has final disciplinary authority over police officers above the rank of the Assistant Commissioner, so therefore over the Inspector General, Commission and Deputy Commissioner of the TPF.²⁹²

Authority for Officers of the Rank of Inspector to Assistant Commissioner

Complaints about police of the rank of Inspector or higher are forwarded to the Complaints Unit, who then investigates the matter. CHRI understands that the Complaints Unit is not well resourced and uses the Criminal Investigation Department, when required, to assist with the investigation.²⁹³ This may result in police officers that who are the subject of the complaint learning about the matter, especially

287 CHRI Interview with John Foley and Stella Murungi, Eastern Horn of Africa Human Rights Defenders Project, November 2013.

288 Ibid.

289 Legal and Human Rights Centre and Zanzibar Legal Services Centre (2013), *Tanzania Human Rights Report 2012*, 24.

290 CHRI Interview with Harold Sungusia of Legal and Human Rights Centre, November 2013.

291 CHRI believe that Police General Order 103 is still in place; Commonwealth Human Rights Initiative, “The Police, The People, The Politics: Police Accountability in Tanzania”, 2006, pp. 29-32.

292 S7(2) Police Force and Prisons Service Commission Act, 1990.

293 CHRI Interview with member of civil society, November 2013.

if the subject of the complaint is a CID officer. The final disciplinary authority for officers of the rank of Inspector to Assistant Commissioner appears to lie with the IG, or with the Police and Prisons Commission²⁹⁴ except for dismissals, which require the approval of the Minister of Home Affairs.²⁹⁵ As set out earlier, the Police and Prisons Commission is reportedly not working in practice.

Police officers must be informed of any charge against them, given a chance to answer the charge, and an inquiry must be held. Police officers that want to appeal a decision can appeal to the President.²⁹⁶

Authority for Officers Below the Rank of Inspector

A complaint about an officer below the rank of Inspector is dealt with by the head of the region, who oversees investigation of such matters. If the issue involves a complaint regarding an offence against discipline as listed in the Police Service Act²⁹⁷ then the regional officer in charge can hold an inquiry and impose a punishment. The type of punishment depends on the rank of the officer.²⁹⁸ In more serious cases, the matter is referred to the relevant Superintendent or the IG. The Superintendent also has the option to investigate the case himself, referring it back to the police officer for investigation, or referring to his or her Assistant Commissioner or the IG. All disciplinary inquiries must allow the police officer adequate opportunity to be heard and the final disciplinary authority rests in the IG.²⁹⁹ If disciplinary or court proceedings are recommended or instituted, then the investigation file and report must also be sent to an Assistant Commissioner within 14 days. Although an officer below the rank of Inspector can appeal the disciplinary measure, he or she can normally only appeal within the TPF to a higher officer. It is unclear if these junior officers can appeal to the Police and Prisons Commission or Ministry of Home Affairs. The records are maintained at regional offices and no copy of the complaint and subsequent investigation is sent to the Complaints Unit or other TPF central body.

Apart from being inefficient and highly confusing, the oversight is limited, which means that police officers may be investigated and disciplined incorrectly and arbitrarily. Additionally, there are no protections for members of the public who make complaints to local and regional stations, where the police officer that is the subject of the complaint may easily find out about the matter. Even matters investigated by the Complaints Unit are compromised by the use of the CID or other police bodies. Reprisals against citizens who make complaints have reportedly occurred.³⁰⁰ There is no process for citizens to be informed of the status of their complaint, or any subsequent investigation. No receipt or documentation of the complaint is required to be provided.

SPOTLIGHT ON:

Recent Internal Discipline Cases

Early in 2013 it was reported that six police officers were suspended for bribery, drug trafficking, filing false charges and conspiring to carry out illegal mining. One of those suspended was a Senior Assistant Commissioner, who reportedly accepted bribes from 95 cadets in order to gain employment in the TPF. Despite the large number of bribes accepted, the Senior ACP was only suspended for one month. The case was forwarded to the President who has the power to

294 S7(3), Police Force and Prisons Service Commission Act, 1990.

295 S56 Police Force and Auxiliary Services Act, 2002.

296 S9(1)(2), Police Force and Prisons Service Commission Act, 1990.

297 Part VII, S50, Police Force and Auxiliary Services Act, 2002.

298 S53, Police Force and Auxiliary Services Act, 2002.

299 S7, Police Force and Prisons Service Commission Act, 1990.

300 CHRI Interview with Harold Sungusia of Legal and Human Rights Centre, November 2013.

dismiss senior officers, although it is unclear if dismissal or any other punishment occurred. Other senior police officers were suspended for drug trafficking, and were also taken to court.³⁰¹

The Integrity Committees (or Unit) described above do not respond directly to complaints but do report on issues of corruption and ethics. The Committees appear to primarily work to improve the integrity of the TPF through awareness raising and activities of its own initiative. Such activities have included investigations to uncover corruption in the traffic police, but there are questions regarding the efficiency of such operations considering the low number of officers caught. As set out earlier, it is unclear if these Committees have addressed any of the underlying problems of corruption and misconduct or prompted the institution of long-term internal oversight reforms. It appears that some TPF officers were transferred when misconduct was uncovered, merely shifting the problem rather than addressing it.³⁰²

There have been moves undertaken to reform both internal and external oversight through the TPF Reform Programme, although the current problems outlined above still remain. This is discussed further in Section C, under Point 5, with recommendations for the way forward.

5. Lack of External Oversight and Accountability Mechanisms

Both internal and external police oversight mechanisms are needed to ensure satisfactory oversight of the police. The former United Nations Special Rapporteur on extrajudicial, arbitrary or summary executions, Philip Alston, completed a study of police oversight mechanisms in 2010, and found that one of the most important factors in high incidences of police misconduct was the lack of accountability - the failure to effectively investigate, prosecute, convict and punish those responsible.³⁰³ In combating this impunity, Alston recommends both internal and external oversight mechanisms. He notes that internal accountability mechanisms are important, but are often not completely satisfactory as they are not fully independent from the police organisation.³⁰⁴

Currently, the following external police oversight mechanisms exist in Tanzania:

- ⊙ The Police and Prisons Commission (this is not completely external and independent as it comprises serving police officers);
- ⊙ The Ministry of Home Affairs;
- ⊙ The Prevention and Combating of Corruption Bureau (PCCB);
- ⊙ The Commission for Human Rights and Good Governance;
- ⊙ Office of the Ombudsman (not discussed in this chapter);
- ⊙ The Parliament and Judiciary (Not discussed in this chapter: provide role of checking on use power of executive through scrutiny and passage of laws; Parliamentary question time; Parliamentary oversight of budgets; and judicial review of any actions or decisions).

The **Ministry of Home Affairs** has a Complaints Division which handles complaints lodged against institutions that fall under the Ministry. Although external to the TPF, the Complaints Division of the

301 "6 Tanzania police officers suspended for misconduct", *SabahiOnline*, 11 March 2013, at:<http://sabahionline.com/en_GB/articles/hoa/articles/newsbriefs/2013/03/11/newsbrief-02>

302 United Nations Development Fund, "UNDP Tanzania Success Stories: Fighting Corruption", 2013, 6.

303 Philip Alston, "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Addendum, Study on Police Oversight Mechanisms", A/HRC/14/24/Add.8, p. 6.

304 *Ibid.*, pp. 9-10.

Ministry actually refers complaints made to it from the public to the TPF to investigate. Complaints made by police officers, largely regarding promotion, transfer or dismissal, are investigated by the Ministry.³⁰⁵ The Ministry does not perform the usual oversight role, such as assistance in setting policy and priorities, checking the budget and monitoring the overall performance of the police, leaving a large gap in management and administration. There is also no Strategic Plan for the TPF.

The **PCCB** is an independent body set up to prevent, investigate and prosecute acts of corruption on mainland Tanzania.³⁰⁶ Although independent, the Director General heading the organisation is appointed by the President. It can investigate complaints of police corruption if received. Under the Police General Orders, police officers must report other officers who they believe are asking for bribes or extorting people. In practice, owing to the uncoordinated police complaints system, and lack of public information on the system, the PCCB may not be receiving all complaints. Additionally, many Tanzanians believe that it is easier to pay a bribe than refuse to pay and making a complaint. This is because it is faster to pay the police, and people are scared that refusal to pay will create larger problems for them.³⁰⁷

When the PCCB does receive a complaint, it investigates it and sends the completed investigation to the Director of Public Prosecutions (DPP) for review. If the DPP consents, the PCCB can proceed with prosecution. In some cases (although presumably not police-related cases), the DPP may refer the matter to the police for further investigation and then the DPP would prosecute. In its self-review under the United Nations Convention Against Corruption, the PCCB stated that police who report on other corrupt officers are paid a reward equal to half the amount of the bribe, up to ten million Tanzanian shillings, but only after the investigation is confirmed. According to the self-review, rewards have been paid recently.³⁰⁸

The **Commission for Human Rights and Good Governance (CHRAGG)** is mandated to promote and monitor adherence to human rights, inspect places of detention and investigate violations of human rights and good governance. CHRAGG operates in mainland Tanzania and Zanzibar and the President appoints its Commissioners after they are short-listed and recommended by an Appointment Committee.³⁰⁹ The members of the Appointment Committee include the Chief Justice of the Court of Appeal, the Chief Justice of the Zanzibar High Court, the Speaker of both houses of Parliament and the Deputy Attorney General.³¹⁰ As the members of the Appointment Committee are themselves appointed by the President, the Committee may be inclined to short-list Commissioners that will be favourable to the government.

Once an investigation has taken place, CHRAGG can make recommendations regarding the matter to the police (or other relevant institution). If the recommendation is not acted on within three months, CHRAGG can institute court proceedings to enforce the recommendation.³¹¹ Additionally, not complying with CHRAGG's recommendation is an offence.³¹² Despite these relatively strong powers, CHRAGG has faced challenges in meeting its oversight functions. The funding allocated to the Commission is reducing annually, meaning that although powerful on paper, it does not have the capacity to carry out

305 Commonwealth Human Rights Initiative, "The Police, The People, The Politics: Police Accountability in Tanzania", 2006; CHRI Interviews, name withheld, November 2013.

306 Prevention and Combating of Corruption Bureau, Mandate, at: < <http://www.pccb.go.tz/index.php/about-pccb/all-about-the-pccb/mandate>>.

307 CHRI Interviews with members of the public, November 2013.

308 United Nations Convention Against Corruption Self-Review Tanzania, 8 September 2011, p. 55, at: http://www.pccb.go.tz/images/stories/global_initiatives/Tanzania_Chapter_III-20121.pdf.

309 S7(2), Commission for Human Rights and Good Governance Act, 2001.

310 Legal and Human Rights Centre and Zanzibar Legal Services Centre (2013), "Tanzania Human Rights Report, 2012", p. 216.

311 S28 Commission for Human Rights and Good Governance Act 2001.

312 Ibid., S37.

its mandate.³¹³ Some believe that CHRAGG is not investigating possible human rights violations due to fear of political repercussions.³¹⁴

Despite these challenges, CHRAGG did inspect 255 police stations between 2002 and 2012 to determine the conditions, equipment and resources of the station/post, concerns of officers and conditions of the holding cells. Additionally, there have been some improvements in case management, including the instalment of a computerised Case Management System to record, track and process complaints.³¹⁵

The above mechanisms have not been adequate in overseeing the TPF and holding police officers accountable for misconduct, and it appears only a small number of incidents were investigated. CHRI, LHRC and others in civil society³¹⁶ recommend strengthened external oversight as explained further in Section C. Additionally, the Coroner's Service (through the Inquests Act) should be resourced and empowered to effectively carry out inquests while determining the cause of death when the police are suspected to be involved, in order to assist with the investigation.

6. Lack of Resources: Police Officers, Money, Equipment

The Police Force has serious budgetary constraints, which affects their efficiency, effectiveness and overall ability to control crime. These constraints have led to: inability to respond in a timely manner to policing matters, as there are no vehicles available; the hiring of personnel with inadequate professional skills; lack of basic equipment at the station level and during investigations; poor morale of police officers owing to inadequate living conditions and low salaries; and high police involvement in extortion and corruption.³¹⁷

As an example, the LHRC highlighted the case of the Kishapu Police Post, which is also the designated District Police Office in a converted garage that is “small, old, dilapidated” and has only one main room, and one cell to keep those arrested and detained. Consequently, women detainees are made to sleep in the main room, which is also the reception and staff office used by three officers.³¹⁸ Worryingly, in many areas, police lack essential equipment such as vehicles and petrol, which, according to one Officer Commanding the District “does lead to us selling our autonomy to ensure justice prevails and as such favour those who donate towards our cause”.³¹⁹

After inspecting 255 police stations between 2002 and 2012, CHRAGG also found that:

- ⊙ Most stations do not have reliable means of transport and hence face problems in transporting suspects, attending calls for assistance and investigating crimes.
- ⊙ There is a shortage of accommodation for police officers, and those that do exist are in need of repair.
- ⊙ Although there are separate cells for men and women, there are no separate cells for children as required under law, and so children are held in detention with adults.
- ⊙ In some cases, the cells are overcrowded and too small for the number of detainees.

313 CHRI Interview with Harold Sungusia of Legal and Human Rights Centre, November 2013; LHRC Report, 2010.

314 Legal and Human Rights Centre and Zanzibar Legal Services Centre (2013), “Tanzania Human Rights Report 2012”, p. 217.

315 Commission for Human Rights and Good Governance, Tanzania, “Ten Years of the Commission for Human Rights and Good Governance: Reflection of a Journey 2002-2012”, 2012, p. xx.

316 Haki na Usalama forum members: CHRI, LHRC, Tanganyika Law Society, National Organisation for Legal Assistance and Lawyers Environmental Action Team.

317 Legal and Human Rights Centre and Zanzibar Legal Services Centre, “Tanzania Human Rights Report 2012”, 2013, p. 221.

318 Ibid.

319 Ibid. pp. 222-223.

- ⊙ Some cells had poor ventilation and inadequate lighting, and most cells still used buckets as toilets, and had problems accessing safe drinking water.
- ⊙ There was often a shortage of police officers to staff the station, and a lack of sufficient equipment.³²⁰

There are currently 41,416 police officers in the TPF, and an additional 3,385 new recruits in training.³²¹ Although the recruitment of a further 3,000 officers is a positive development, even once these officers are trained and join the TPF, it will still result in only one police officer for every 1,002 persons in Tanzania.³²² Additionally, officers who are hired are reportedly not used efficiently. CHRAGG noted that many police officers are used to guard a small number of important people or carryout administrative and traffic duties, significantly reducing the number of police available for other police duties.³²³

C. CURRENT SHIFTS TOWARDS REFORM: OPPORTUNITIES

Large-scale public sector reform is taking place in Tanzania, with several programmes being developed and implemented in the past decade including the: Local Government Reform Programme; Public Financial Management Reform Programme; Public Service Reform Programme; National Anti-Corruption Strategy and Action Plan; Legal Sector Reform Programme; Health Sector Reform Programme/Health Sector Strategic Plan; and Education Sector Development Programme. As part of this nationwide reform movement, reform of the Police Force is also planned, and to some extent, has been implemented. Since 2012, constitutional reform was added to this mix. The current and recent moves towards reform are outlined below, including recommendations for improvement.

1. Constitutional Reform

Tanzania is currently in the process of drafting a new Constitution. The draft Constitution addresses the issue of policing more adequately than the old Constitution. The draft requires the police observe the following in carrying out their functions:

- ⊙ High level of professionalism and discipline among its staff;
- ⊙ Protection and promotion of human rights;
- ⊙ Principles of transparency and accountability; and
- ⊙ Good relations with the public.³²⁴

The draft Constitution also states that the Tanzania Police Force will work together with other partner state agencies in carrying out any future investigations into crimes against humanity, corruption and fraud offences.³²⁵ As discussed in Part B earlier in this chapter, the draft also includes a provision establishing a Commission for the Service of the Police Force and independence of the IG.³²⁶ This is a great step forward, and has the potential to address issues of oversight, accountability and non-independence in performance management (human resources), discipline and professionalism of the TPF.

320 Commission for Human Rights and Good Governance, Tanzania, “Ten Years of the Commission for Human Rights and Good Governance: Reflection of a Journey 2002-2012”, 2012, pp. 39-40.

321 Information provided by the Office of the Inspector General of Police, March 2014.

322 The population of the United Republic of Tanzania according to the 2012 census is 44,928,923, see Government of Tanzania, National Bureau of Statistics at: < <http://www.nbs.go.tz/> >.

323 Commission for Human Rights and Good Governance and Commonwealth Human Rights Initiative, “101 Things that You Always Wanted to Know About the Police But Were Too Afraid to Ask”, 2013, p. 9.

324 Article 244(1), Draft Constitution of the United Republic of Tanzania, 2013.

325 Article 244(2), Draft Constitution of the United Republic of Tanzania, 2013.

326 Articles 247 and 246 Draft Constitution of the United Republic of Tanzania, 2013.

Way forward

Tanzania could also look to Kenya and consider including some additional provisions to those already included in the draft Constitution to secure the independence of the TPF and improve oversight. Some ideas from other Constitutions that the Constituent Assembly may wish to consider include:

- ⊙ Renaming the Force as a Service.
- ⊙ Setting out the functions of the Inspector-General of Police, including:
 - a. Having independent command over the Police Service, and only taking directions from the others (apart from the Police Commission or oversight bodies) in relation to policy and in writing.
 - b. Authority to manage and coordinate policing operations.
 - c. Duty to ensure public order and safety in accordance with the law.
 - d. A duty to uphold human rights and fundamental freedoms at all times while exercising their functions.
- ⊙ Setting out the basic provisions for the appointment and removal of the Inspector General and any Deputy, such as:
 - a. An independent commission to advertise, vet and send a short-list of three candidates to the President.
 - b. The President to nominate one candidate to Parliament.
 - c. Parliament to approve or reject the nomination.
 - d. If Parliament rejects the nomination, the President to nominate one of the other candidates short-listed by the independent Commission.
- ⊙ Clarifying how instructions can be provided to the Inspector-General of Police to ensure independence. For example, the Constitution of Kenya provides that any direction given to the IG must be in writing. Additionally, and no direction may be given to the IG in relation to criminal investigations, the enforcement of laws against particular persons and the employment, transfer, promotion or discipline of officers³²⁷ save for the directions of a few bodies such as the Police Commission and DPP.
- ⊙ Consider establishing an independent police oversight body.

If a new constitution is passed, the police legislation, regulations and Police General Orders should be reviewed with relevant stakeholders and amended. Such a review would be welcome and provides an opportunity to improve provisions in the current Act and General Orders.

2. Tanzania Police Force Reform Programme

As set out earlier, in 2006 the TPF recognised the need for reform, realising that crime had risen significantly since the mid-1990s and that the TPF was not sufficiently equipped and resourced to deal with this increase. Additionally, the public had, through the process of democratic political reform, become more aware of their rights, and demanded a better and more efficient police force.³²⁸ As stated above, the then IG Said Mwema recognised this, and initiated the TPF Reform Programme. The Programme was developed after an extensive process, including drafting by a team of 27 police officers and six academics, consultation with a broad number of groups from across Tanzanian society and

³²⁷ See Articles 245(2)(b) and 245(4), Constitution of Kenya, 2010.

³²⁸ Ministry of Home Affairs, Tanzania Police Force, Draft, “Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15”, 4, May 2010, p. 1.

seeking the views of over 2,500 police officers via a questionnaire.³²⁹ Mwema also had the support of the political leadership, including the President, who recognised the importance of peace and security in achieving the social and economic goals of the Tanzania Development Vision, 2025.³³⁰

The TPF Reform Programme focuses on improving seven “key result areas”, which were originally grouped under three clusters – modernisation, professionalism and community policing:

1. Systems for Improving Policing Operations
2. Legal, Regulatory and Institutional Structure
3. Information and Communication Technology (ICT)
4. Systems for Improving Human Resource Management
5. Infrastructure, Tools and Equipment for Effective Policing
6. Involving the Community in Policing
7. Programme Governance and Management Arrangements.³³¹

In 2009, the TPF reviewed the implementation of the plan and noted some of the achievements, set out below. An amended plan was then developed to build on this achievement and address any outstanding concerns – the Tanzania Police Force Reform Programme for 2010/11 to 2014/15. It is highly commendable that the TPF undertook such an extensive process, ensuring that the reform programme was informed and owned by the Police, and that the initial programme was reviewed, analysed and subsequently amended to ensure improvement. The 2009/10 to 2014/15 Reform Programme is also called Phase Two and focuses primarily on improving operational and logistical capacity through implementing systems and enhancing infrastructure. Phase Three will commence in the 2015/16 financial year. At this stage the plan is to focus on institutionalising and internalising the systems set up in Phase Two within the TPF and educating the public on these.³³²

Some of the different parts of the Reform Programme project are highlighted below, and in points 4, 5 and 7. Others are addressed separately under performance management and oversight mechanism headings.

Reform of the Police General Orders

Between 2006 and 2009, the Police General Orders were reviewed and amended in order to ensure compliance with the law and modern democratic police standards.³³³ Revised Orders were drafted by two members of the University of Dar es Salaam Law Faculty, and amended as necessary with a working group of police officers drawn from the relevant unit. According to a report published by Princeton University, the project won the support of the police by emphasising that the revised Orders would be a significant improvement in assisting police work.³³⁴ However, the 2009/10 to 2014/15 plan notes that there are still gaps in the Police General Orders that need to be addressed to ensure that the TPF meets

329 Daniel Scher, “Restoring Police Service with a Community Vision: Tanzania 2006-2009”, *Innovations for Successful Societies*, Princeton University, at: <http://www.princeton.edu/successfulsocieties/content/data/policy_note/PN_id123/Policy_Note_ID123.pdf>, pp. 3-8.

330 Ministry of Home Affairs, Tanzania Police Force, Draft, “Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15”, 4, May 2010, p. 15.

331 Ibid.

332 Ibid., p. 11.

333 CHRI interview with officer of Office of the Inspector General of Police.

334 Daniel Scher, “Restoring Police Service with a Community Vision: Tanzania 2006-2009”, *Innovations for Successful Societies*, Princeton University, at: <http://www.princeton.edu/successfulsocieties/content/data/policy_note/PN_id123/Policy_Note_ID123.pdf> 6-7

regional and international best practices.³³⁵ A member of the Office of the Inspector General confirmed that the Orders are revised and updated continuously, with recent model regional procedures developed in consultation with CHRI, the African Policing Civilian Oversight Forum and the East African Community Police Experts Group, being incorporated into the Police General Orders.³³⁶ New laws regarding human trafficking and money laundering were also enacted during this period, which would require changes to the Police General Orders.

Recognition of Challenges in Reform: Cultural Change, Management and Resources

The TPF Reform Programme recognises the challenges in implementing reform, stating that both “a critical mass of champions” to drive the reforms, as well as ownership through “involving all members of the organisation” is needed.³³⁷ The Programme outlines the creation of a Reform Team composed of at least seven officers and a coordinating officer. Additionally, responsibility for each Key Result Area is designated to a Police Commissioner in mainland Tanzania, and the Zanzibar Commissioner will be responsible for all areas in Zanzibar. Further, an oversight committee is to be formed to monitor and oversee the reforms. The Programme also highlights the need to link in with the wider public sector reforms, especially the Legal Sector Reform Programme.

It is unclear if the Reform Team and oversight committee have been established, but if not, it is recommended that these are prioritised and formed in the near future.

Improving Systems, Facilities and Equipment, Obtaining Resources

Much of Phase Two (2009/10 to 2014/15) of the TPF Reform Programme is concerned with obtaining more critical resources and infrastructure, including buildings, or improving current buildings, equipment and information technology.³³⁸

In terms of resources, the full five years of Phase Two of the Reform Programme is budgeted to cost approximately US\$182 million,³³⁹ which works out to approximately US\$36 million per year. The costs are comparatively higher than the other reform programmes, but the TPF Reform Programme notes that 67 per cent of the budget is intended to repair and replace infrastructure that has not been fixed in decades. The remaining percentage is the normal amount allocated to other public sector reform programmes. The plan envisages that the funding will be through the Legal Sector Reform Programme and the Public Service Reform Programme and by the Government of Tanzania.³⁴⁰

Way forward

It is unclear how much of the plan has been funded and whether the key result areas have been prioritised. There is provision under the Legal Sector Reform Programme for funding of initiatives to improve the police, with bilateral donors and the UN pledging to support initiatives to improve police

335 Ministry of Home Affairs, Tanzania Police Force, Draft, “Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15”, 4, May 2010, p. 25.

336 CHRI Interview with member of the Office of the Inspector General, November 2013; CHRI and APCOF model police procedures on Stop and Search; Arrest and Detention; Use of Force; Public Order Management.

337 Ibid., p. 62.

338 Ministry of Home Affairs, Tanzania Police Force, Draft, “Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15”, 4, May 2010.

339 Using XE.com exchange rates as of 24 January 2014.

340 Ministry of Home Affairs, Tanzania Police Force, Draft, “Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15”, 4, May 2010, p. 72.

adherence to human rights and rule of law, but not for extensive funding to implement priority sections of the TPF Reform Programme.³⁴¹ Without substantial donor funding, it is unlikely that the plan will be fully implemented.

However, the Reform Programme document is comprehensive, honest in identifying key problems (corruption, misconduct), created after extensive consultation and is owned by the police. With all this work already undertaken, it could be used to form the basis of a long-term programme to promote good governance in the policing and the security sector. However, before being fully funded, the TPF Reform Programme should be reviewed, considering the recommendations outlined in Section D and throughout this report, and prioritised with the new IG, civil society and relevant stakeholders.

3. Reform-Minded Police Leadership

The former Inspector General of Police, Said Mwema, recognised the need for police reform and led the development and implementation of the TPF Reform Programme which linked to the Legal Sector Reform Programme (see below). Mwema was highly respected both within the police force and in civil society for being open and willing to interact with the public and civil society groups regarding policing issues and reform.³⁴² In 2006, Mwema made his own and 26 regional police officers private phone numbers public, and required these officers to keep their phones on them 24 hours a day, in an effort to encourage the public to interact with the police. Later, Mwema encouraged the public to text message him on any policing issue.³⁴³ On 1 January 2014 it was announced that Mwema had retired and Ernest Mangu was sworn in as the new Inspector General of Police. Mangu has stated that his priority areas include: improving discipline within the force; strengthening community policing initiatives; and improving cooperation with all security stakeholders. Mangu also stated that he will launch a new Criminal Intelligence and Forensic Commission as part of the Directorate of Criminal Investigations.³⁴⁴

It is yet to be determined if this leadership will continue to be reform minded. It is hoped that IG Mangu will continue to work to reform the TPF and prioritise implementation of the TPF Reform Programme.

4. Improving performance management and gender ratios

Within the initial three-year period of Phase One of the Programme, police records were computerised, and some criteria and guidelines for recruitment and promotion of officers were developed, although as outlined in Section B under “Poor Performance Management”, it appears that the criteria is not followed, or that performance appraisals are not carried out as regularly as required. Under Phase Two of the TPF Reform Programme a new human-resource planning framework is to be instituted, improved standard criteria and guidelines for recruitment and a revised merit-based appraisal system which will form the basis to decide promotions, transfers and other performance-related decisions.³⁴⁵ To ensure

341 See Goal 7, “United Republic of Tanzania – European Community: Country Strategic Paper and National Indicative Programme for the period 2008-2013”, at: http://ec.europa.eu/development/icenter/repository/scanned_tz_csp10_en.pdf, 42-43

342 CHRI Interviews with Tanzania Police Force officers, Legal and Human Rights Centre, Commission for Human Rights and Good Governance and the Tanganyika Law Society, 2013.

343 Daniel Scher, “Restoring Police Service with a Community Vision: Tanzania 2006-2009”, Innovations for Successful Societies, Princeton University, at: http://www.princeton.edu/successfulsocieties/content/data/policy_note/PN_id123/Policy_Note_ID123.pdf 5.

344 Henry Mwangonde, “New police boss lays bare his plan of action”, *The Citizen* (Tanzania), 10 January 2014, at: <http://www.thecitizen.co.tz/News/New-police-boss-lays-bare-his-plan-of-action/-/1840392/2140540/-/item/1/-/11cswvz/-/index.html>.

345 Ministry of Home Affairs, Tanzania Police Force, Draft, “Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15”, 4, May 2010, p. 41.

that these new systems work, it is envisaged that a new digital system for managing human resources will also be implemented.³⁴⁶ For the leaders of the TPF, the programme aims to develop and institute a Leadership Competency Assessment Framework to help recognise and monitor leadership, as well as a Police Leadership College. These are excellent initiatives that will greatly improve performance management and the fostering of leadership in the TPF.

Additionally, the Reform Programme aims to increase the number of women in the TPF, and to implement the government guidelines on the management of HIV/AIDS in the public service. A Medium Term Training and Development Plan is to be developed and implemented to coordinate and improve training of staff and improve benefits and incentives for police officers.

Way forward

Performance management and discipline is linked to reform of the oversight mechanisms, and as set out earlier, any new Police Commission should be civilian-led and oversee and manage police human resource and performance management functions, including promotions, transfers and discipline. It is recommended that the above-mentioned new human resource planning framework and training development plan be managed by this new Police Commission.

5. Reform of Oversight Mechanisms

To address gaps in oversight, accountability and inability to reach rural populations, Phase Two of the TPF Reform Plans to:

- ④ Strengthen the capacity of police oversight and compliance institutions.
- ④ Facilitate review and enactment of laws and regulations.
- ④ Restructure and reorganise the Force.

In terms of oversight, the Programme plans to review the Police and Prison Service Commission to strengthen oversight of human resources functions. As a reformed police commission is envisaged in the Draft Constitution, it is likely that this review process will occur after the Constituent Assembly has agreed on a draft, and a Constitution has been put forward for a referendum. Recommendations on the framework of this Police Commission are set out earlier in this report. Civil society and relevant stakeholders must be included in discussions regarding this body. Establishing a Police Commission alone is not sufficient to address all the gaps in both internal and external oversight.

Way forward: Building on Reform Internal Oversight of Police

In addition to revising the Police Commission, the TPF, the Executive, civil society and other relevant stakeholders should discuss reform of the varied and complicated internal oversight processes. It is recommended that the Integrity Unit and the Complaints Unit be combined and one internal oversight police body be established in legislation, with sufficient resources to have adequate staff across mainland Tanzania and Zanzibar, to investigate complaints of police misconduct and to ensure professional standards in the TPF. Although it should still be possible to lodge complaints with local police stations, all complaints lodged with the police should be forwarded to this particular division to investigate, with a copy sent to the independent authority overseeing the police.

³⁴⁶Ibid, Human Resource Management Information System, p. 43.

This internal police unit should report directly to the IG or Deputy IG, and be resourced sufficiently to enable prompt and efficient investigations in response to complaints or at its own initiative. Such a body links to any new independent police commission, as the investigations and recommendations for discipline will be provided to this body for action.

Tanzania could look to Uganda and Kenya for guidance, who have both implemented country-wide internal oversight units – in Kenya, the Internal Affairs Unit and in Uganda, the Professional Standards Unit. In particular, as one of the first steps, the TPF should consider instituting a standard Complaint Form with a receipt for complainants, to enable complainants to have evidence of their complaint and details of the police officer who took to the complaint. Additionally, if a computerised case management system cannot be implemented as envisaged under the Reform Programme, consideration should be given to a complaints about police misconduct register at each desk of the internal oversight unit to document complaint and progress made. These initiatives have recently been instituted in Uganda.

Way forward: Building on Reform External Oversight of the TPF

Phase Two of the Reform Programme aims to restructure the Complaints Unit located at the Ministry of Home Affairs and improve its capacity.³⁴⁷ As these discussions relate to independent external oversight of the police, rather than being solely part of the TPF Reform Programme and led by the police, external actors and civil society should be involved and lead this review.

It is also recommended that a body independent of the Executive and the police should be established instead of, or in addition to, the Ministry of Home Affairs Unit. In order to restore confidence and integrity in the police, a body with strong powers that is independent from the government and the police must be established. Although currently CHRAGG has the power to investigate complaints against police officers, as noted in Section B, it has often been constrained in carrying out its functions and its Commissioners are appointed through a process which is arguably not independent enough. A new body with leaders appointed through an independent process, with sufficient powers and equipment and which is solely mandated to oversee the police, may need to be created, similar to the Independent Policing Oversight Authority in Kenya. Alternatively a highly specialised unit with strong powers could sit within a reformed, well resourced, independent Commission. In the 2011 United Nations Universal Periodic Review of Tanzania, the Government of Tanzania agreed to “establish an independent body for investigating complaints about the actions of law enforcement officials”.³⁴⁸ This comes after a similar recommendation by the United Nations Human Rights Committee in August 2009.³⁴⁹ The Government of Tanzania agreed to this, and the leadership of the Police are apparently open to it.³⁵⁰

An external oversight body, or specialised unit within an existing institution, must have sufficient powers to investigate complaints about police officers, and to make recommendations for prosecution. In his report, former United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, detailed the powers, resources, independence, transparency and community and political support that an effective external police oversight body should have – set out in the box below. Currently, the Ministry of Home Affairs Complaints Unit does not meet these standards, nor does CHRAGG.

347 Ministry of Home Affairs, Tanzania Police Force, “Tanzania Police Force Reform Programme: Medium Term Strategy 2010/11 – 2014/15”, Draft 4, May 2010, p. 27.

348 UPR Info, “Recommendations and Pledges: Tanzania”, June 2012, Recommendation 84.45, p. 4, at: http://www.upr-info.org/IMG/pdf/recommendations_to_tanzania_2012.pdf

349 International Covenant on Civil and Political Rights Human Rights Committee, CCPR/C/TZA/CO/4, “Concluding observations of the Human Rights Committee: United Republic of Tanzania”, 6 August 2009, para. 18.

350 CHRI Interview with Tanzania Police Force senior officer, September 2012.

RECOMMENDED ASPECTS OF A POLICE OVERSIGHT BODY³⁵¹

Powers

- ⊙ The mechanism should be authorised by legislation to receive complaints from any person.
- ⊙ Police should report all deaths in police custody or due to police action to the external agency, and there should be penalties for delays or non-reporting.
- ⊙ The agency should record and track complaints and abuses and keep comprehensive records.
- ⊙ The agency should be authorised to undertake investigations into complaints received.
- ⊙ The agency should have the power to compel police cooperation with its investigations, and should have full investigatory powers, similar to those of a police investigator.
- ⊙ The agency should have the power to refer cases for criminal prosecution to the public prosecutor and suggest disciplinary measures to the police department. A strong agency will be able to enforce proposed disciplinary measures.
- ⊙ The agency should be able to provide or refer witnesses to witness protection where necessary.
- ⊙ The agency should be able to propose general reform measures on policing to the police force and the government.

Resources

- ⊙ The mechanism should be adequately resourced and funded to allow it to carry out comprehensive investigations and hire skilled staff.

Independence

- ⊙ The mechanism should have full operational and hierarchical independence from the police, and be free from Executive or political influence.
- ⊙ Police members should generally be avoided in the external agency.
- ⊙ The agency should generally have different reporting lines than the police department.
- ⊙ The agency should be constitutionally entrenched, or created through legislation (not Executive Order).
- ⊙ The agency's members should be democratically appointed following consultation with or approval by the legislature, and have security of tenure.
- ⊙ Financial independence should be secured by having the agency's budget approved by the legislature, with statutory guarantees for the size and disbursement timing of the annual budget.

Transparency and Reporting

- ⊙ The agency should issue regular reports to the government and the public on its activities.
- ⊙ It should maintain a website with easily accessible information.
- ⊙ It should respond in a timely fashion to citizen complaints.
- ⊙ It should maintain detailed data on police abuses. Civilian oversight mechanisms are uniquely placed to conduct statistical or general reviews of patterns in police killings, including their causes, and should do so.
- ⊙ Its budget and expenses should be publicly reported.

351 Philip Alston United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions: Addendum, "Study on Police Oversight Mechanisms", A/HRC/14/24/Add.8, para 74, pp. 78-79.

Community and Political Support and Civil Society Involvement

- ⦿ The government should publicly support the work of the agency.
- ⦿ The government and the agency should conduct community outreach to explain the agency's role and the importance of police accountability.
- ⦿ The external mechanism should consult with and seek the support and involvement of civil society organisations in its work.

6. Wider Legal Sector Reform

The Legal Sector Reform Programme began in 1999 and is set to continue into 2014. It is implemented largely through the Ministry of Legal and Constitutional Affairs and is funded by a group of European countries, the World Bank and the United Nations.

The programme has achieved some significant results including:

- ⦿ The gradual replacement of police prosecutors with civilian state prosecutors, the enactment of the National Prosecution Services Act, and the establishment of eight District Public Prosecution Offices;
- ⦿ Increased number of courts, judges, magistrates and prosecutors;
- ⦿ Establishment of Case Flow Management Committees to make the criminal justice process more efficient;
- ⦿ Establishment of the Alternative Dispute Resolution System;
- ⦿ Increased number of law graduates, students enrolling in law and the establishment of a new law school;
- ⦿ Development of Standard Operating Procedures to deal with crimes of violence against children and training officers on crimes against children and women (also see the Section on Gender and Children's Desk);
- ⦿ Establishment of a secretariat for legal aid within the Ministry of Justice and Constitutional Affairs, and the development of training manuals for paralegals;
- ⦿ Reduction in overcrowding in prisons;
- ⦿ Translation and simplification of key laws.³⁵²

Additionally, the most recent 2009-2013 plan by the Law Reform Commission of Tanzania was developed in consultation with a range of stakeholders for the first time, a good step forward for participation in governance, and it agreed that facilitating better access to justice in Tanzania was top of the reform agenda.³⁵³ However, despite an increase in the number of judges and magistrates and the improvement of court infrastructure and employment conditions, there have been an increasing number of complaints against the judiciary. It has been suggested that the allocation of further resources to the justice sector, and the establishment of a mechanism to ensure the oversight and accountability of members of the judiciary.³⁵⁴

352 Government of Tanzania National Report to the UPR process; Government of Canada, Foreign Affairs, Trade and Development Canada, "Project Profile: Legal Sector Reform Program", at: <http://www.acdi-cida.gc.ca/cidaweb%5Ccipo.nsf/projEn/A033729001>.

353 "A strategy statement of the Law Reform Commission of Tanzania 2009-2013", October 2009, at: <http://www.lrc.go.tz/wp-content/uploads/2012/01/LRCTstrategic-plan.pdf>.

354 Commission for Human Rights and Good Governance, Submission to the United Nations Universal Periodic Review of Tanzania, 2011.

Tanzania should also review the operation of the Inquests Act and ensure the Coroner's Service is fully functioning and effective.

7. Gender and Children's Desks

As part of the reform process and the wider National Plan of Action on Violence Against Women, 417 Police Gender and Children's Desks were established in police stations across mainland Tanzania and Zanzibar. A three-year "Tanzania Police's Action Plan for Police Gender and Children's Desks 2013-2016" was launched in November 2013 to guide the implementation and management of the Desks, and improve the response to crimes of violence against women and children. The Plan identifies targets for the police, together with a baseline to monitor progress. To ensure greater coordination with other relevant services and agencies, a Police Partner Coordination Group on Gender-Based Violence and Child Abuse was established and includes development partners, non-government organisations and relevant government ministries, departments and agencies.³⁵⁵

The Desks, which are specialised police units, are operated by specially trained police officers. Police stations and posts with such Desks are meant to have a reception area, interview and counselling room, resting area and an office, in order to ensure privacy and a safe space for children and women who wish to report a crime. Despite these good intentions, reportedly many stations and posts do not have the facilities to implement these owing to inadequate space, furniture and basic office equipment. The Desks are predominately located in urban areas, leaving those in rural areas vulnerable. Extra measures, such as access to safe shelters are often not available, resulting in some officers offering victims accommodation in their homes as emergency measures.³⁵⁶

Over 1,000 officers have received the training, and these officers must remain stationed at the Desk for three years to gain experience, use the skills learnt in training and ensure some consistency.³⁵⁷ Specialist Standard Operating Procedures and guidelines were developed for the management of the Desk and cases, as well as training and training of trainers' packages.³⁵⁸ Public awareness on gender-based violence and violence against children has also been carried out, which has reportedly resulted in more people coming forward to report such crimes.³⁵⁹ Hopefully the training, guidelines and public education was conducted in a participatory manner with affected groups, service providers and police officers. This would ensure that, as well as responding to practical issues, the measures would address some of the cultural beliefs that underpin violence against women and children in a way that is respectful and will be effective in the relevant communities.

355 UNICEF Media Release, "Launch of The Gender and Children's Desk and 3-Year Action Plan Demonstrate Police Commitment to Strengthen Its Response to Gender-Based Violence and Violence Against Children", 26 November 2013, at: <http://www.unicef.org/esaro/5440_tanzania_gender.html>.

356 Open Society Foundations Crime and Violence Prevention Initiative (OSF CVPI) & Open Society Initiative for Eastern Africa (OSIEA), "Tackling the Dangerous Drift: An Assessment of Crime and Violence in Tanzania & Recommendations for Violence Prevention and Reduction", June 2013, p. 89.

357 Kizito Makoye, "Tanzania police set up special desks for gender violence cases", Thomson Reuters Foundation, 28 November 2013, at: <<http://www.trust.org/item/20131128131537-fitsc/>>.

358 Open Society Foundations Crime and Violence Prevention Initiative (OSF CVPI) & Open Society Initiative for Eastern Africa (OSIEA), "Tackling the Dangerous Drift: An Assessment of Crime and Violence in Tanzania & Recommendations for Violence Prevention and Reduction", June 2013, p. 89.

359 Kizito Makoye, "Tanzania police set up special desks for gender violence cases", Thomson Reuters Foundation, 28 November 2013, at: <<http://www.trust.org/item/20131128131537-fitsc/>>.

One-Stop Centres for Children

In Zanzibar, one-stop centres were established to provide an array of services to children who are victims of violence. This includes policing, legal, medical and counselling services. The centres are praised by those that have used them, and receive in excess of 100 cases a month.³⁶⁰ The initiative was replicated in mainland Tanzania, in Arusha and Moshi.³⁶¹

8. National Human Rights Action Plan

CHRAGG spearheaded the development of the National Human Rights Action Plan, 2013-2017 with the Ministry of Legal and Constitutional Affairs. The Plan was developed after consultations with the public and civil society and launched on 10 December 2013. According to the Deputy Minister of Constitutional and Legal Affairs, Angellah Kairuki, the Plan will help to apply a human rights-based approach in national development strategies and improve accountability to human rights standards.³⁶² This plan should be used in relation to the forming of policies and laws related to the TPF.

9. Civil society working together

Recently some members of civil society have come together to form a coalition to advocate for policing and criminal justice reform. the Haki na Usalama Forum.³⁶³ Civil society should continue to work together on this issue, which has sometimes been overlooked, and advocate for a human rights compliant approach to policing and criminal justice in Tanzania. Civil society in Tanzania could look to some of the coalitions formed in Kenya for guidance.

D. BUILDING ON THE CLIMATE OF CHANGE: RECOMMENDATIONS

FOR ALL STAKEHOLDERS

1. Seize the Opportunity to Cement Reforms in the New Constitution

The opportunity currently exists in Tanzania to cement some key police reforms to improve police performance and adherence to the rule of law and human rights through the strongest law of the land, the Constitution. Those in Tanzania participating in the Constituent Assembly should consider some of the provisions of other constitutions, such as the Constitution of Kenya, and advocate for policing and provisions that will address the concerns of citizens and protect their rights. Kenyan provisions that

360 Open Society Foundations Crime and Violence Prevention Initiative (OSF CVPI) & Open Society Initiative for Eastern Africa (OSIEA), "Tackling the Dangerous Drift: An Assessment of Crime and Violence in Tanzania & Recommendations for Violence Prevention and Reduction", June 2013, p. 88.

361 Marc Nkwame, "Tanzania: Arusha to Get 'One Stop Centre' for Abused Children", *Tanzania Daily News* (Dar es Salaam), 28 May 2012, at: <<http://allafrica.com/stories/201205281070.html>>

362 Prosper Makene, "Government concerned with human right issues", IPP Media (Tanzania), 16 December 2013, at: <http://www.ippmedia.com/frontend/?l=62711>.

363 Haki na Usalama Forum: members include Tanganyika Law Society, LHRC, National Organisation for Legal Assistance, Lawyers Environmental Action Team and CHRI.

may be of interest to include those that: emphasise the operational independence of the leadership of the police and prohibit unnecessary interference; set out clear powers of the IG and also appointment and removal processes; establish a police commission (as already exists in the current draft) to ensure impartial oversight of human resources and disciplinary matters; and consider the creation of a specialist external oversight mechanism.

FOR THE GOVERNMENT, TPF AND CIVIL SOCIETY

2. Ensure Independence of the Police; Establish a Strong and Effective Police Commission

The independence of the police should be guaranteed in several ways: constitutional and legislative guarantees that the Executive will only provide directions in relation to policy; security of tenure of the police leadership, as well as independent and transparent appointment and removal processes; and that police officers are recruited, removed, transferred and promoted impartially.

A well-functioning civilian led Police Commission is vital in ensuring two of the above three aims: that the leadership of the police is appointed and removed in accordance with a transparent and independent process; and that the recruitment, transfer, promotion and discipline of the TPF personnel occurs impartially, in accordance with performance measuring mechanisms. Additionally this body can be tasked to improve and oversee training, leadership development and professional standards in the TPF.

This Police Commission must not comprise only the police leadership and Executive officers, as is currently the case. It could be modelled on the make-up of the Kenyan National Police Service Commission, as an example, and include independent civilians and the leadership of the TPF.

3. Create an Independent Policing Oversight Body

At the United Nations Universal Periodic Review of Tanzania in 2011, the Government of Tanzania agreed to “establish an independent body for investigating complaints about the actions of law enforcement officials”³⁶⁴ and it is something that the leadership of the Police may be open to.³⁶⁵ External oversight must be coupled with improved internal oversight, as outlined in Recommendation 13 below. For an external body to fully oversee the police, it must have the powers, resources, independence, transparency and community and political support outlined earlier in this chapter in Box labelled “Recommended aspects of a police oversight body”. Currently the Ministry of Home Affairs and CHRAGG do not sufficiently meet these requirements. Civil society in Tanzania recommends that a new, independent body be established.³⁶⁶ As well as investigating serious police misconduct, such a body could investigate systemic policing problems and make recommendations for long-term reform.

4. Review, Amend and Implement the TPF Reform Programme

The TPF Reform Programme has several positive aspects, particularly that it was initiated and created by the police leadership, ensuring ownership and improving the likelihood of buy-in throughout the force.

364 UPR Info, ‘Recommendations and Pledges: Tanzania’, June 2012, Recommendation 84.45, p4 < http://www.upr-info.org/IMG/pdf/recommendations_to_tanzania_2012.pdf>

365 CHRI Interview with Tanzania Police Force senior officer, September 2012.

366 CHRI Interview with Harold Sungusia of LHRC, November 2013.

However, the Reform Programme should be reviewed with the new IG and key members of civil society, including policing experts, and amended as necessary. For example, combining and strengthening the Integrity and Complaints Units is not specified in the Plan, but it could be an important way to strengthen TPF internal oversight mechanisms. Additionally, improving the Complaints Unit at the Ministry of Home Affairs may not be the best way to improve independent police oversight, and other options such as establishing a separate police oversight body, should also be considered. As the police themselves may not want external oversight, this initiative may need to be outside the TPF Reform Programme, or considered in consultation with a wider group of experts and members of the Executive.

Once reviewed and amended as necessary, the group of experts, civil society, government officers and the police should prioritise key initiatives and programmes in the Plan, with sufficient detail to enable effective implementation and monitoring. After prioritisation, the group should meet with members of the Treasury Department of the government and any international donors in order to secure funding – at least for the initial priority areas of the Plan. Once the priority reform projects begin to be implemented, further funding for the future areas of focus should be secured.

5. Reform Police Legislation Generally

Reform of the Police Service Act and Police Regulations is required and logically follows on from the adoption of any new Constitution. This legislative and regulatory reform should be undertaken with consultation with civil society and affected groups and be informed by the National Human Rights Action Plan.

New legislation can assist in addressing several problems outlined in the Challenges section through:

- ⊙ Enshrining a new, thorough, impartial and transparent process for the appointment and removal of the police leadership;
- ⊙ Establishing one internal police complaints body that receives and investigates complaints about police misconduct and ensures high standards throughout the TPF (and new legislation for an external oversight body, also, as set out earlier);
- ⊙ Ensuring that the police leadership acts on the recommendations of these oversight bodies;
- ⊙ Providing that the police cooperates with oversight bodies, and making the failure to do an offence;
- ⊙ Prohibiting and criminalising torture and cruel, inhuman and degrading treatment by police officers;
- ⊙ Prohibiting discrimination;
- ⊙ Strengthening the regulation of the use of firearms;
- ⊙ Improving the provisions relating to use of force and arrest and detention procedures;
- ⊙ Ensuring that provisions relating to policing public assemblies are regulatory, and not prohibitive and unconstitutional.

6. Reform of Police General Orders

After the Constitution and laws are amended, the Police General Orders need to be reviewed and amended. These Orders revised in 2006 can be used as a base document, which can be reviewed in consideration of any new laws, units and processes established, and then amended. Such a review should form part of the revised TPF Reform Programme and include civil society.

7. Draft Regulations to Guide People’s Militia and Community Policing

Policies and regulations regarding community policing and the local policing groups (*SunguSungu* and *Wasalama*) need to be developed to ensure clarity regarding community policing in Tanzania, how it will operate, whether local policing groups should continue, and if so, how they will be coordinated and overseen. Community policing does provide a key way to assist in crime reducing and improving safety in a way that works with and meets the need of local communities. Such policies and regulations should be drafted after broad consultations with affected stakeholders, and in consideration of effective community policies strategies from neighbouring countries.

FOR THE GOVERNMENT

8. Provide Sufficient Funding to the Police

The TPF Reform Programme and other initiatives linked to the police reform process must be properly funded to ensure full and effective implementation. In Kenya, despite strong legislation and new bodies, implementation has suffered owing to lack of funding. It is recommended that the government provides sufficient funding to address at least the initial priority areas of the TPF Reform Programme. Apart from improving police oversight, this Reform Programme highlights the need for improved police infrastructure, including: police stations, posts and accommodation; separate cells for children; ensuring women and children’s desks facilities; providing more equipment and resources, particularly vehicles and fuel; improving information technology across Tanzania. Others have also highlighted that employment conditions of police officers need to be reviewed, including salaries, injury compensation and parental leave.

9. Enact Prevention of Torture Legislation and Ratify UNCAT

In the 2011 review of Tanzania under the Universal Periodic Review, the government agreed to ratify the UNCAT³⁶⁷ and incorporate its provisions into domestic law.³⁶⁸ To date (January 2014), this ratification has not occurred. It is recommended that the Government of Tanzania ratifies UNCAT and its Optional Protocols, and drafts legislation to incorporate the provisions of the Convention into national law.

FOR THE TPF

10. Combine the Internal Police Complaints Unit with the Integrity Unit, and Strengthen It

There appears to be overlap between the TPF Complaints Unit and the TPF Integrity Unit. To reduce duplication of activities and confusion in the public, and to make efficient use of resources, these two units should be combined and strengthened. The single internal oversight body should receive and investigate complaints of police misconduct from the public and other police officers, initiate investigations into police misconduct at its own initiative and be established in legislation.

367 UPR Info, “Recommendations and Pledges: Tanzania”, June 2012, pp. 7-8 , at < http://www.upr-info.org/IMG/pdf/recommendations_to_tanzania_2012.pdf>.

368 Ibid, recommendations for Poland and Australia.

This Unit should have a presence in every region in mainland Tanzania and Zanzibar, and all complaints made to regional and local police stations about misconduct must be sent to the closest regional office of this Unit. This will ensure that one Unit investigates all complaints, and has a complete record of complaints against police conduct. If an independent police oversight body is set up, then a record of all these complaints should also be provided to them, so that it can monitor the progress of this Unit.

Tanzania should also look to the recent practice of Kenya and Uganda in internal oversight units and consider adopting, as suggested in the TPF Reform Programme, a digital case management system to monitor all complaints and progress made. If this is not possible a complaints about the police register could be placed in internal oversight unit desks to enable documentation and monitoring of complaints. Additionally, consideration should be given to establishing a standard complaint about police misconduct form that includes a receipt with relevant information for complainants. These last two initiatives are being set-up in Uganda.

FOR THE TPF AND CIVIL SOCIETY

11. Institute Campaigns to Increase Public Awareness and Trust in the Police

Linked with the above recommendation seven, Community Policing Programmes should be reviewed and improved upon and new programmes should be considered for implementation. For example, in Kenya, civil society is organising events to bring the local community to the police station to allow the community to understand the workings of the station and meet the officers that work in their community.³⁶⁹ Other organisations have assisted the public in participating in particular policing relevant activities, such as the police vetting.³⁷⁰

Civil society should continue to work with the police to increase awareness in the community of the role of the police, their rights when interacting with the police, and how to complain about police misconduct.

The TPF should also institute programme and dedicate officers to liaise with particular vulnerable groups, including the LGBTI community, sex workers and people who use drugs. In Kenya again, a programme was instituted by an NGO in Kisumu to bring the police and sex workers together in a forum setting, where each can ask questions of the other. Reportedly, there is increased trust between this section of the community and the increased interactions with particular police officers, have led to increased community assistance in criminal matters as well as increased likelihood to ask for assistance for themselves.³⁷¹

12. Evaluate and Improve Reform Initiatives Regularly

Once the TPF Reform Programme is reviewed and amended, it should continue to be reviewed at regular intervals. The Programme already identifies this as part of the process, and we reinforce that recommendation. The review should be held with civil society, policing experts, government officers, members of the Police Commission and the TPF.

369 The Usalama Reforms Forum, Kenya

370 Independent Medico-Legal Unit, Kenya

371 CHRI Interview with Tom Odhiambo of Keeping Alive Societies' Hope, August 2012, at: <http://www.kash.or.ke/programs/>

FOR CIVIL SOCIETY

13. Continue to work together to advocate for improved policing and criminal justice systems

Civil society has come together to advocate for improved policing and criminal justice. Advocacy coalitions and forums often strengthen the voice of civil society and it is recommended that civil society continue to work together to advocate for policing and criminal justice reform into the future.



UGANDA

A. HISTORY OF GOVERNANCE AND POLICING

Looking Back: From Colonial Times to Recent History

The British controlled Uganda from 1888, until Uganda gained independence in 1962. During this period, a colonial-style police force was established to protect the interests of the British and suppress opposition movements.³⁷²

The first, post-independence government was led by Apollo Milton Obote. As Obote consolidated his power through the years, he militarised his regime, increasingly relying on the military to enforce his will. This led to the marginalisation and subservience of the Police Force, as police duties were assigned to the military and little investment was made to resource and train the police. Junior officers who were favoured by the regime reported directly to the presidency, ignoring established chains of command. Obote also established a secret police force, the General Service Unit (GSU), to act as an intelligence agency. The GSU targeted potential political dissidents and had powers to interfere in the work of other police departments.³⁷³

In 1971, Idi Amin staged a military coup and installed himself as President of Uganda. Amin placed his favoured persons in key positions in the army, and nepotism became standard practice. Amin was predominantly reliant on the army to maintain his power, but also used a few key police agencies including the Military Police, the Public Safety Unit and the State Research Bureau.³⁷⁴

Following the disastrous results of Amin's rule, Obote was restored to power in 1980 with the assistance of the Tanzanian army. Obote's new government made some attempts to reform the police force, including replacing senior police officers. However, the lack of training and command skills of newly installed graduates meant that the reforms had little effect. Illegal detentions and extrajudicial killings by the police and the army continued. It is estimated that as many as 500,000 people died between 1981 and 1985.³⁷⁵ In July 1985, a military coup installed a new government that lasted for 6 months led by Tito Okello Lutwa before this government was overthrown by Yoweri Museveni of the National Resistance Army. Yoweri Museveni came to power and inherited a corrupt, undermanned, ill equipped and underpaid police force.

During colonial times, the role of the police was to defend colonial interests often in disregard of the human rights of the local population. The post-independence governments of Uganda maintained the same authoritarian machinery, virtually intact. During the civil war, the police was relegated to the periphery and subsequent governments often relied on the army to enforce their authoritarianism rather than the police. This was the state of affairs inherited in 1986, by the National Resistance Movement (NRM) government led by current President Yoweri Museveni.

The NRM government made some progress towards professionalising the general security sector including the Police Force. This included several transformation initiatives geared towards embedding a paradigm shift from regime policing to democratic policing. The move towards democratic policing resulted in the community policing curriculum which appreciably improved the civilian-police relations in the community. Other changes aimed at reforming the police force include: the introduction of the Police Research and Planning Department in 1992; a separate Police Inspectorate in 1997; a Community

372 Commonweath Human Rights Initiative, "The Police, The People, The Politics: Police Accountability in Uganda", 2006, p. 2.

373 Ibid., pp. 3-4.

374 Ibid., p. 4.

375 Central Intelligence Agency, "The World Factbook: Uganda" 2006, at: <https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html>

Affairs Department in 1998; a Human Rights Desk and a Complaints Desk in the Legal Department in 1999. In 2007, a Professional Standards Unit, now rolled out to regional levels was established to improve professionalism in the police force, while the Anti-Corruption Department was established in 2009.³⁷⁶ Some of these initiatives are discussed in greater detail in the next section.

The Sebutinde Commission Report, discussed further below, in 2000 noted:

When the National Resistance Movement Government took over power in 1986, it found a demoralised, corrupt and inefficient Police Force of about 10,000. The Force was consequently trimmed to about 3,000 (which it noted was more than a 60 per cent reduction), but that the subsequent massive recruitment carried out by the Government in 1986 to beef up the Force, did not add to the quality of the Force. This was largely due to the fact that the recruitment exercise and the crash-training activities undertaken by Government were not matched by corresponding improvement in welfare, remuneration and logistics in the Force. Sadly, this status quo has been maintained over the years and the scourge of corruption has taken its toll.”³⁷⁷

While there were several efforts to reform the Police Force, gaps still remain that need bridging in order to realise democratic policing.

Policing in a Multi-Party Democracy

On assuming power, the NRM faced multiple challenges including restoring security, reconstructing the state bureaucracy, restoring a functioning economy and integrating deeply divided ethnic and regional constituencies under a single polity and banning multi-party politics.³⁷⁸ In a national referendum in 2005, Uganda became a multi-party state. The Constitution was amended to establish a state “based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance”.³⁷⁹ The Constitution also set professional standards for policing, stating that the Ugandan Police Force shall be “nationalistic, patriotic, professional, disciplined, competent and productive; its members shall be citizens of Uganda of good character”.³⁸⁰ It goes on to state that all five security organisations, including the police, must “observe and respect human rights and freedoms in the performance of their functions”.³⁸¹

Despite the changes in 2005 and these provisions in the Constitution, the police have continued to grapple with policing a multi-party democratic state, especially during elections. HURINET-U reported in 2011 that the general elections in Uganda are usually characterised by heavy deployment of gun-wielding security personnel including police, prisons, military and intelligence. Using armed security agencies during elections may intimidate the public and affect voter turnout. HURINET-U recommended the reduction of the number of armed security in future elections to avoid voter intimidation.³⁸² After the 2011 elections, the police have been at the forefront of disbanding opposition protests and have been accused of using excessive force and committing human rights violations.³⁸³ This will be discussed in detail in the following section.

376 Information provided by the Human Rights Network, Uganda.

377 Judicial Commission of Inquiry into Corruption in the Uganda Police Force, ‘Report of the Judicial Commission of Inquiry into Corruption in the Uganda Police Force’, 2000, Chapter 4 (4.2.3), p. 238.

378 USAID-Uganda, “Democracy and Governance Assessment: Republic of Uganda”, 2006.

379 Objective II (i) of the National objectives and directive principles of State Policy, Constitution of the Republic of Uganda, 1995.

380 Article 211(3), Constitution of the Republic of Uganda, 1995.

381 Article 221, Constitution of the Republic of Uganda, 1995.

382 HURINET-U(2011), “Election Observation Report for Presidential, Parliamentary and Local Council Elections in Uganda: Special focus on the Conduct of Security Agencies in The Electoral Commission”, p. 63.

383 Ibid.

Sebutinde Commission and Recent Reform Processes

In May 1999, a Judicial Commission of Inquiry into Corruption in the Uganda Police Force (the Sebutinde Commission) was established by the government. Chaired by Justice Sebutinde, the Commission found that there was widespread corruption, gross mismanagement of cases, including extorting money to drop cases or ensure that they were investigated, that promotions and transfers were often based on the ability for junior officers to funnel corrupt money to senior officers, collusion with criminals and large-scale impunity for human rights violations.³⁸⁴ The Sebutinde Commission stated that the cause of corruption was a lack of discipline, committed leadership, effective accountability mechanisms and transparency.³⁸⁵ Unfortunately many these recommendations that were critical in transforming the UPF into a democratic police service, were not implemented by the government. Several of these examples are highlighted throughout the report.

In 2007 a wide-ranging review of the police force was conducted, which was a great step forward in reforming the Uganda Police Force. The process, which was largely consultative in nature, generated a wide range of views and suggestions from various sections of the public and included interviews with over 30,000 Ugandans. To date, the review report and recommendations have not been made public, stifling the ability to improve policing in Uganda. Many of the challenges set out in this report can be addressed through implementation of the review recommendations.

Section B highlights current challenges facing policing, and Section C discusses recent improvements which address many of the challenges, obstacles in the implementation of these reform initiatives and the way forward. Section D combines recommendations made in Sections B and C in the one spot.

B. CURRENT CHALLENGES FACING THE POLICE

1. Lack of Independence and Poor Performance Management

Although the Constitution was amended to move from a single-party state to a multi-party one in 2005, recent years have been characterised by quashing the opposition parties, political repression and attacks on media who cover political issues. This oppression is often carried out by the police, who are expected to be impartial but clearly appear to have a political bias.

One of the reasons for this is that the leaders of the Uganda Police Force (UPF), the Inspector General of Police (IGP) and the Deputy Inspector General, are appointed by the President with the approval of Parliament. Both can also be removed by the President directly, without any parliamentary approval or oversight.³⁸⁶ Vesting such powers in the President, whose NRM party has always controlled Parliament, implies that the top leaders of the police are “friendly” towards the regime in the first place and must remain so, to ensure they are not removed from their positions. Additionally, there is no set criteria for the position of IGP, despite the Sebutinde Commission recommending that criteria including integrity, merit, proven discipline, leadership, administrative skills and experience in police work be established in legislation. The Sebutinde Commission also recommended that the term of office of the IGP be fixed, and that it should be reviewed on the basis of performance.³⁸⁷ All of these recommendations were ignored.

384 Judicial Commission of Inquiry into Corruption in the Uganda Police Force, ‘Report of the Judicial Commission of Inquiry into Corruption in the Uganda Police Force’, 2000, pp. 26-447.

385 Ibid., pp. 10-11, 265.

386 Article 213 Constitution of the Republic of Uganda, 1995.

387 Judicial Commission of Inquiry into Corruption in the Uganda Police Force, ‘Report of the Judicial Commission of Inquiry into Corruption in the Uganda Police Force’, 2000.

Furthermore, though the IGP is required to act in accordance with Ugandan laws, can also be directed by the President in matters of policy.³⁸⁸ Although this constitutional provision implies that the President cannot give a direction in any other matter, it is not expressly stated, allowing room for the President to give direction to the IGP on other issues, or interpret many matters as “policy”. It is not compulsory for such policy directions to be given in writing, which would secure the ability to check exactly what directions the President gives the IGP.

The Police Authority does advise the President on the appointment of the Inspector General (IGP) and Deputy IGP,³⁸⁹ however this body is constituted only of political and police personnel, including: the Minister responsible for internal affairs (Chairperson); the Attorney-General; the IGP; the Deputy IG; a senior police officer responsible for administration at the police headquarters; and three other people appointed by the President.³⁹⁰ The Police Authority also recommends the appointment and transfer of senior police officers,³⁹¹ has disciplinary authority over senior police and hears appeals from junior officers on disciplinary matters.³⁹² It is a matter of concern that the Authority also has the power to “empower the force to perform the services of a military force.”³⁹³ As the Police Authority only consists of members that are in their position due to Presidential appointment, are in the same political party of the President, or are directly appointed to the Authority by the President, the body is highly politicised and is unable to provide impartial oversight and discipline.

The Police Council, constituted solely of members of the senior leadership of the UPF³⁹⁴ exercises disciplinary control and determines recruitment, appointments and promotions for junior officers.³⁹⁵ These two bodies ensure that management, promotions, transfers and discipline of the police rests in the senior leadership of the police and the Executive, which could lead to hierarchical misuse. In fact, the Sebutinde Commission found that transfers and other personnel decisions were made arbitrarily, which reduced the effectiveness and professionalism of the police, was often detrimental to serving police officers and allowed senior officers to have inappropriate influence over junior officers.³⁹⁶ CHRI interviews and discussions undertaken over a period of years confirms this practice.³⁹⁷ It recommended that these processes be subsumed into an independent and impartial body, a Police Service Commission, but once again, this recommendation was not implemented.

The Police Service Commission, as recommended by the Sebutinde Commission comprised of five experienced members of the public, a retired police officer and the IGP, and would be mandated to: give advice on the appointment of senior officers; recruit, appoint and promote junior officers; determine and review service and conditions; and hear and determine appeals against the decisions of the Police Council.³⁹⁸ This is similar to the body recently set up in Kenya, which was also recommended after a national enquiry into the police. In Kenya, the process for selecting the independent civilian members

388 Article 213(4), Constitution of the Republic of Uganda, 1995.

389 S9(1)(b), Police Act Cap 303.

390 S8, Police Act Cap 303.

391 Above the rank of Assistant Superintendent of Police.

392 Hears appeals of the Police Council, S9(1)(g) Police Act Cap 303

393 S9(1)(g), Police Act Cap 303.

394 The IGP (Chairperson); Deputy IGP; Director of the Criminal Investigation Department; Director of the Special Branch; Commandant of the Mobile Police Patrol Unit; Regional Police Commanders; Officers at the Headquarters of the Force, S10(2), Police Act Cap 303.

395 S11, Police Act Cap 303,

396 Judicial Commission of Inquiry into Corruption in the Uganda Police Force, ‘Report of the Judicial Commission of Inquiry into Corruption in the Uganda Police Force’, 2000, 265.

397 CHRI Interviews with civil society and police sources 2011-2013.

398 Ibid., N 265, pp. 240-242.

and the retired police members of the Police Commission is thorough to ensure impartiality, integrity and capability.³⁹⁹

Way forward

In order to preserve impartiality and professionalism in oversight, discipline and human resources in the UPF, the Police Authority should be abolished and replaced with a Police Service Commission as recommended by the Sebutinde Commission. As in Kenya, the body could also oversee training and professional standards in the UPF. Such a quasi-independent body will ensure that the performance management of officers is improved, and that decisions regarding appointments, promotions, transfers and discipline are checked to improve the impartiality of these procedures. Such a Commission could also ensure that the police leaders are appointed in an independent and impartial manner. The Police Act should also be amended so that the police leaders are appointed and removed in accordance to a thorough process, including advertisement and short-listing by the Police Commission. Additionally, term limits for the IGP should be considered.

The Police Act could also be amended in a manner similar to Kenya's to specify that no person may give a direction to the IGP in relation to any matter, save for: the Minister of Internal Affairs in relation to policy; the Director of Public Prosecutions in relation to a criminal investigation; the Police Commission in relation to human resource, disciplinary and professional standards matters; and any independent police oversight body that is established in relation to their recommendations post-inquiry.

SPOTLIGHT ON:

Public Order Management: Or Opposition Suppression?

In the past few years the police response to public demonstrations has caused strong concern of violations of the constitutional rights to freedom of assembly as well as police misuse of the powers to arrest, detain and use force. Notable demonstrations include the Mabiira Forest Anti-Give Away protests in 2007, the protests on 11 September 2009 following the Government's refusal to allow the Kabaka visit Kayunga, and the 2011 Walk-to-Work demonstrations.

The Walk-to-Work protests, organised by the political opposition, were largely peaceful, yet the police fired live rounds of ammunition into the crowds, resulting in the death of nine people.⁴⁰⁰ There have since been no independent investigations into the actions of the police. Although the government stated that investigations deaths would be carried out, to date, only one charge has been laid in connection with the highly publicised death of a two-year-old – an example of police use of force that was near impossible to justify.⁴⁰¹ In 2009, the police also used excessive force to stop perceived political protests, which resulted in approximately 40 deaths that have not yet been investigated.⁴⁰² Restraint continues during opposition public meetings to date.

399 A selection panel, consisting of one person from each of the following bodies: The Office of the President, The Office of the Prime Minister, The Judicial Service Commission, The Independent Ethics and Anti-Corruption Commission, The Kenya National Commission on Human Rights, The National Gender and Equality Commission and The Association of Professional Societies of East Africa, shortlists three people for the position of Chairperson and eight people for the position of members of the Commission. Following the nomination by the President and vetting by the National Assembly, the President appoints the approved candidates through a notice in the Kenya Gazette.

400 Human Rights Watch, "Uganda: Investigate April 2011 Killings During Protest", 29 April 2012.

401 Human Rights Watch, "Uganda: No Justice for April 2011 Killings", 26 April 2013, at: <http://www.hrw.org/news/2013/04/25/uganda-no-justice-april-2011-killings>.

402 Human Rights Watch, "Launch Independent Inquiry into Killings", 8 May 2011, at: <http://www.hrw.org/news/2011/05/08/uganda-launch-independent-inquiry-killings>.

In August 2013, the controversial Public Order Management Bill, 2011 was passed into law. This requires Ugandans to obtain police permission before holding a public meeting. Although the new Act has improved from former drafts of the legislation, it is still extremely repressive. Among other things, the Act allows the police discretion to refuse public meetings if the location is deemed inappropriate, and provides that organisers and participants who do not meet the requirements of the law can be sent to jail for up to two years.⁴⁰³

SPOTLIGHT ON:

The Police Service Actions During the “Impeachment” of the Lord Mayor of Kampala

In a clear example of political bias, on 25 November 2013 the police stopped the legal team of Erias Lukwago, the Lord Mayor of Kampala and a vocal member of the opposition party in Uganda, from entering the Kampala City Council Authority (KCCA). The lawyers were trying to enter the KCCA to issue a High Court Order of an injunction to stop a KCCA meeting led by ruling NRM party councillors for the purpose of impeaching the Lord Mayor. The lawyers had no weapons and were not acting in any way that would be a threat to the public or the peace, and were committing no offence. Rather, they were trying to deliver a legal document. However, the KCCA gates were padlocked and “protected” by heavily armed police officers.⁴⁰⁴ These officers forcibly stopped the lawyers from entering, although, according to media reports, no reason for this was provided.⁴⁰⁵ One lawyer, Abdallah Kiwanuka, was forcefully arrested by the police, who ripped his shirt and forced him into a police van.⁴⁰⁶ It was later reported that the lawyer was in hospital.

The police were clearly acting to stop any interruption to a Council meeting – despite the fact that the interruption would have been legal. It appeared that there was no legal or safety reason for the police to be deployed to such a venue, and, as the High Court had ordered that the meeting should not to go ahead, it appears there is no justification for the police operation in Ugandan law.

Opposition leaders Frequently Under House Arrest

It is not just the demonstrations that are restricted, the people who organise and attend them are restricted. In July 2013, the former opposition leader, Kizza Besigye, was placed under “preventive arrest” on charges of suspicion of intending to stage an illegal protest and incite violence.⁴⁰⁷ This follows incidences of Besigye being arrested 34 times in the past five years.⁴⁰⁸ There is continued police presence

403 The Public Order Management Act, 2013.

404 Charles Mwanguhya Mpagi, “What next for Erias Lukwago, lord mayor position in Kampala city?”, *The Daily Monitor* (Kampala), 26 November 2013, p. 5.

405 “Police Blocks Lukwago’s Lawyers from Serving KCCA”, *Uganda Radio Network*, 25 November 2013, at: <<http://ugandaradionetwork.com/a/story.php?s=58409>>

406 Al-Mahdi Ssenkabirwa, Anthony Wesaka, “Drama at City Hall as Lukwago is kicked out”, *The Daily Monitor* (Kampala), 26 November 2013, p. 5.

407 “Uganda Police Arrest Opposition Figure To Prevent Rallies”, Channels Television, 22 July 2013, at: <<http://www.channelstv.com/home/2013/07/22/uganda-police-arrest-opposition-figure-to-prevent-rallies/>>.

408 David Tash Lumu & Yudaya Nangonz, “Uganda: Besigye Held, in Court 34 Times in 5 Years” *The Observer* (Kampala), 28 July 2013.

at Besigye's house, despite a court order stating that this is illegal.⁴⁰⁹ This raises the difficult question of who enforces the law – the orders of the court – if the police do not.

Police and the Media: Policing Politically Sensitive Stories

In May 2013, there was a clampdown on the media as heavily armed police officers raided the Monitor Publications Limited and Red Pepper Newspaper offices in Kampala. The police also blocked broadcasts of two radio stations housed by Monitor Publications. Armed policemen then disabled equipment and suspended the operations of the media houses for 10 days. The siege was in response to a report in *The Daily Monitor* regarding an alleged plan by Museveni for his son to succeed him as President.⁴¹⁰ Human rights activists that were monitoring the 10-day siege were harassed and given unreasonable orders to report to particular police stations once a week, even after the media houses reopened.⁴¹¹

In 2009, four radio stations were forced off air without any judicial process.⁴¹² During public protests, particular journalists and photographers claimed that were targeted by police. The police have also shut down local country media and radio stations that interviewed people deemed to be politically sensitive.⁴¹³ Incidences of violence against journalists have mostly not been investigated or prosecuted.⁴¹⁴

2. Continued Human Rights Violations

This point 2 and 3 highlights the continued human rights violation and endemic corruption in the UPF, which need to be addressed through implementing strong internal and external oversight mechanisms.

Use of Torture and Cruel and Inhumane Treatment or Punishment

To date, security forces and non-state actors continue to enjoy impunity for acts of torture. In 2013, the Uganda Human Rights Commission (UHRC) reported that 35 per cent of all complaints – the largest number – were in relation to torture, cruel, inhuman or degrading treatment or punishment by the UPF. This has been the top complaint to the UHRC since 2005.⁴¹⁵ From January to September 2012, the African Centre for Treatment and Rehabilitation of Torture Victims registered 170 allegations of torture by the police: 23 by the Special Investigations Unit, 361 by unspecified security personnel, 24 by prison officials and one by the military police.⁴¹⁶ The United Nations Office of the High Commission for Human Rights in Uganda reported that out of the 909 complaints of human rights violations reported to them between January 2012 and September 2013, the highest number (287) were against the UPF.⁴¹⁷

409 “Lukwago, Besigye Arrested in Kampala”, *New Vision*, 9 January 2014, which quoted heavy deployment of police at Besigye's home, at: <http://www.newvision.co.ug/news/651266-lukwago-besigye-arrested-in-kampala.html>; CHRI Interview with Human Rights Network for Uganda, November 2013, at: <http://www.nbs.ug/details.php?option=acat&a=2080#.Uy89AFIenMw>.

410 Frederic Musisi & Ismail Musa Ladu, “Monitor Publications Under Police Siege”, *Daily Monitor* (Uganda), 20 May 2013, at: < <http://www.monitor.co.ug/News/National/Monitor-Publications-under-Police-Siege/-/688334/1857798/-/jaknkmz/-/index.html>>.

411 CHRI Interview with John Foley and Stella Murungi of Eastern Horn of Africa Human Rights Defenders Project, November 2013.

412 Human Rights Watch, “Uganda: Stop Harassing the Media”, 20 May 2013, at: <http://www.hrw.org/news/2013/05/20/uganda-stop-harassing-media>.

413 CHRI Interview with civil society member, November 2013.

414 Human Rights Watch, “A Media Minefield”, 2 May 2010, at: http://www.hrw.org/node/90062/section/6#_ftn91.

415 Uganda Human Rights Commission 15th Annual Report, 2013, p. 4.

416 The United States State Department, “Uganda 2012 Human Rights Report”, p. 3, at: <<http://www.state.gov/documents/organisation/204390.pdf>>.

417 John Agaba, “Police, UPDF ‘top violators’ of human rights”, *New Vision* (Uganda), 20 February 2014, at: <<http://www.newvision.co.ug/news/652776-police-updf-top-violators-of-human-rights.html>>.

Civil society members also noted that human rights defenders frequently suffer from police harassment, including being charged unlawfully or being beaten.⁴¹⁸

Illegal Arrest and Detention

The UHRC's 2013 Report states that complaints of detentions beyond 48 hours were the second highest number received (27 per cent of overall complaints).⁴¹⁹ This is confirmed by interviews with civil society actors. People are taken into detention illegally in the first instance, and then held beyond the lawful hours during which they may be detained. The UHRC identified numerous instances of long and arbitrary detentions. For example, at Masaka police station, suspects had been detained for 45 days.⁴²⁰ There are several reasons for unlawful detention of suspects; it is not merely improper policing. There are resourcing issues which make it challenging for police to get suspects to the courts within 48 hours, including staff shortages, court delays and lack of transport to take suspects to and from court. Police often do not provide access to telephones for detainees to communicate with their families or persons who can help them, even where detainees are aware of their rights to ask for a telephone. The situation is apparently worse in rural areas where people have less knowledge and money.

The circumstances and conditions under which the police detain people need to be improved. In 2012 the UHRC inspected 181 police stations and 520 police posts.⁴²¹ They found some systemic problems across the places of detention including: children being detained with adults; infants being detained with incarcerated mothers; limited access to HIV/AIDS treatment; persons being illegally detained for failure to pay civil debts; congested detention facilities; inmates surviving on less than 2-3 meals a day; and places of detention characterized by poor hygiene, lighting and ventilation.⁴²²

Shoot-To-Kill and Extrajudicial Killings

In September 2013 the *Daily Monitor* reported that a UPF spokesperson had stated that the UPF had responded to crime by reintroducing a policy to “put people found with guns out of action”, rather than arresting them and bringing them before a court.⁴²³ The squad tasked to do this was the Flying Squad, a unit tasked to deal with violent crime, comprising members of various former violent crime prevention units.⁴²⁴ Shooting to kill people suspected of carrying arms, with no threat to self-defence of an officer or threat to life of another person is a violation of the Constitution and international law. Even in situations where there is a threat, police should shoot to disarm the person, not to kill. Police shooting to kill people whom they suspect could be dangerous is a violation of the presumption of innocence, the right to life and the right to a fair trial.

3. Corruption in the Uganda Police Force

The Constitution states that all lawful measures can be taken to expose, combat and eradicate corruption and abuse or misuse of power by police officers.⁴²⁵ Corruption is a long-standing and systemic problem of the police; it is part of police culture. In Transparency International's 2012 Report, Uganda was ranked

418 CHRI Interview with Peter Magelah of Advocates Coalition For Development and Environment, November 2013.

419 Uganda Human Rights Commission 15th Annual Report, 2013.

420 *Ibid.*, p. 32.

421 *Ibid.*, p. 22.

422 *Ibid.*, Chapter 2.

423 Dear Jeanne, “Police in shoot-to-kill move against robbers”, *Daily Monitor*, 3 September 2013.

424 Human Rights Watch, “Dispatches: Shoot-to-Kill, all Over Again, in Uganda”, 4 September 2013.

425 Article 26(3), Constitution of Uganda.

the 130th most corrupt out of 174 countries. Within Uganda, the police were perceived to be the most corrupt institution, with 88 per cent of respondents stating that the police was corrupt or extremely corrupt.⁴²⁶

The high prevalence of corruption within the UPF is confirmed by domestic institutions, too. The Inspectorate of Government is an independent institution, mandated to eliminate corruption, abuse of authority and public office.⁴²⁷ The Inspectorate of Government regularly reports on various forms of corruption, and the police feature highly in their work. In their report to Parliament from June 2012, complaints against the police were the fourth highest and related mainly to complaints of mismanagement, bribery, delay of service delivery, victimisation, oppression, conflict of interest and general misconduct.

Partially in response to Transparency International's findings, in July 2013 the Inspector General introduced two teams, one lead by the Deputy Inspector-General and the other headed by a Special Investigations Unit (SIU) Commander to investigate bribery. However, comments by the Inspector-General raise concerns about the genuine commitment to reforming the police, and their understanding of the issues. For instance, the SIU's mandate includes powers to "begin a manhunt for bribe givers, as well as bribe takers",⁴²⁸ which implies a focus on civilian behaviour rather than reforming police culture. Further, the Inspector General rejected the degree of corruption asserted by Transparency International. He said that he had previously offered to work with Transparency International and to collaborate in building the capacity of the Uganda Police to fight corruption, but that TI ignored this option.⁴²⁹

This report notes that the Transparency Corruption Index is based on people's perceptions of corruption and over 1,000 people were polled.

4. Lack of Sufficient Oversight and Accountability

The current internal and external oversight and accountability systems to ensure that police who commit some of the above mentioned misconduct, such as corruption and torture are investigated, are ineffective. Some of the mechanisms discussed below are also discussed in Section C as they are recent reform initiatives. Recommendations for improving oversight are included in Sections C and D.

a. Internal Complaints and Accountability Mechanisms

The primary internal complaints and accountability unit within the UPF is the Professional Standards Unit (PSU), established in July 2007. The PSU handles complaints of police misconduct from members of the public. Complaints can be made on a range of issues, including bribery, corruption, oppression, intimidation, excessive use of force, neglect and breach of the UPF Disciplinary Code of Conduct as set out in the Uganda Police Act. The Disciplinary Code of Conduct sets out offences against discipline and the procedure for the Disciplinary Court.⁴³⁰ The PSU can investigate complaints received, or initiate investigations at their own initiative. Once an investigation is complete, the PSU sends its findings and recommendations to the IGP or supervising officer and disciplinary proceedings may be initiated.

426 Transparency International, "Global Corruption Barometer: Uganda", 2013, at: <<http://www.transparency.org/gcb2013/country/?country=uganda>>.

427 "Mandate of the Inspectorate of Government", Official website <http://www.igg.go.ug/about/mandate/>.

428 Bagala, Andrew "IGP Kayihura creates new teams to probe corruption in police", *Daily Monitor*, 16 July 2013.

429 Emmanuel Omona, "IGP refutes Transparency International Report on Corruption", *Uganda Picks*, 17 July 2013, at: <http://www.ugandapicks.com/2013/07/igp-refutes-transparency-international-report-on-corruption-27085.html>.

430 Schedule to Police Act, 1994.

As in Tanzania, the rank of the officer decides the ultimate disciplinary authority. The disciplinary authority for officers of the rank of Assistant Commissioner of Police or above rests in the Police Authority.⁴³¹ Usually disciplinary matters are heard through Police Disciplinary Courts and disciplinary actions are directly implemented, save for dismissal, which can only be recommended to the Police Authority (for senior officers).⁴³² Dismissal of a police officer of the rank of Assistant Commissioner of Police or above the rank of Assistant Superintendent of Police must be approved by the President.⁴³³

The Police Council has disciplinary authority over all other officers, and carries out discipline through the Disciplinary Courts. The Police Council comprises senior police officers as set out earlier in this chapter.⁴³⁴ Police Disciplinary Courts have the power to hear, determine and impose punishment under the Police Service Act, except for dismissal. There are a broad range of sanctions that can be imposed including: reprimands, demotions, fines, confinement to barracks or residence.⁴³⁵ If the court believes dismissal is the appropriate measure it must recommend it to the Police Authority for senior officers or the Police Council for junior officers.⁴³⁶ The courts can be established at the level of a police unit⁴³⁷ and comprises: a Chairperson of or above the rank of Assistant Commissioner of Police; two officers senior to the officer appearing before the court; and a prosecutor, who may be a member of the Criminal Investigation Department.⁴³⁸ Disciplinary courts can also be established at the regional level – called Regional Police Courts – and are mandated to hear disciplinary cases for the first time or appeals from the disciplinary court at the unit level.⁴³⁹ A Regional Police Court includes: a Chairperson of or above the rank of Assistant Commissioner of Police; two to four officers of or above the rank of Corporal and an independent prosecutor.⁴⁴⁰

A police officer can appeal a disciplinary court decision to the Regional Police Court (as set out above) or the Police Council Appeals Court. The Police Council Appeal Court includes: a Chairperson of or above the rank of Assistant Commissioner of Police; two senior police officers; a UPF political officer; a UPF legal officer; and two other members appointed by the Chair of the Police Council (the IGP).⁴⁴¹

The Police Act does not mention referral of police disciplinary matters to the Department of Public Prosecution for criminal charges and prosecution, neither barring such action nor stating it as a course of action. In practice, cases are only referred with the approval of the Head of the Legal and Human Rights Directorate.⁴⁴² This is concerning, as the internal police procedures can deal with many matters that would ordinarily be viewed as a criminal offence. For example, the Police Disciplinary Courts can decide on a matter relating to corruption or “use of unnecessary violence”,⁴⁴³ and impose a punishment which could possibly be too lenient, such as a reprimand or fine, or more serious such as imprisonment in police custody or communal labour.⁴⁴⁴ Serious matters, such as use of unnecessary violence that results in death or serious injury, should be considered by competent bodies that are independent of the police, such as the courts and independent external oversight bodies, to ensure impartiality.

431 S46, Police Act, 1994.

432 S47, Police Act, 1994.

433 S47, Police Act, Cap 303.

434 S10(2), Police Act, Cap 303.

435 Clause 28, Schedule to Uganda Police Act.

436 S47, Police Act, Cap 303.

437 S49, Police Act, Cap 303.

438 S53(1), Police Act, Cap 303.

439 S52(1), Police Act, Cap 303.

440 S52(2), Police Act, Cap 303.

441 S51(1), Police Act, Cap 303.

442 CHRI Interview with HURINET-U, November 2013.

443 Clause 24 of Code of Conduct, Schedule to Police Act, Cap 303.

444 See range of penalties for disciplinary offences, Clause 28 of Code of Conduct, Schedule to Police Act, Cap 303.

The Professional Standards Unit (PSU) included a Human Rights and Complaints Desk as part of its structure, however recently the Uganda Police Force merged human rights issues with the Legal Directorate, creating the new Legal and Human Rights Directorate. A PSU officer and a Human Rights Officer are posted in every policing region in Uganda. A new complaints form – Form 105 – and complaints registry were established for the PSU, as detailed further in the next section. These improvements provide complainants with a paper receipt, and the ability to return to the station where the complaint was lodged to monitor progress in the complaint register.⁴⁴⁵

b. External Oversight

External oversight of the UPF is carried out by the following official bodies:

- ⊙ the Uganda Human Rights Commission;
- ⊙ the Inspectorate General of Government (who specialises in corruption);
- ⊙ Parliament;
- ⊙ the Judiciary, including the Director of Public Prosecutions.

Although classified as external, the Heads of the Uganda Human Rights Commission, Inspectorate General of Government and other important institutions such as the Director of Public Prosecutions are all appointed by the President, with the approval of Parliament. Civil society and the media also play an important role in overseeing the police, through investigations, reports and media pieces.

The **Uganda Human Rights Commission** is established under the Constitution⁴⁴⁶ and is mandated to promote awareness and adherence to human rights, inspect places of detention, investigate complaints of human rights violations and make recommendations. The President appoints the Chairman and Commissioners with the approval of Parliament⁴⁴⁷ and there is no selection process detailed in the law. This allows room for bias in appointments.

The Commission handles the bulk of complaints against the police, and is critical in holding the police accountable for their actions through its annual reports to Parliament. After receiving a complaint, the Complaints Directorate of the UHRC analyses it and determines whether it should be investigated or referred to another institution. The UHRC has cited several challenges in carrying out investigations including, among other matters: lack of witness protection often making victims or witnesses reluctant to testify or make statements; insufficient medical records; insufficient human and financial resources; lack of toll-free complaint telephone numbers for the UHRC; fewer Commissioners over the past two years.⁴⁴⁸

If the complaint cannot be resolved through advice, conciliation or mediation, the UHRC holds a formal hearing on the issue through the UHRC Tribunal. As the hearings relate to violation of human rights, and are classified as civil matters, the Tribunal makes a decision on the balance of probabilities. The UHRC Tribunal can order “the release of a detained or restricted person, payment of compensation; or any other legal remedy or redress”.⁴⁴⁹ However, although the UHRC frequently orders civil restitution through compensation, it is often not paid, or paid at a slow rate.⁴⁵⁰ To help remedy the situation the UHRC has frequently called for the establishment of a Victim’s Compensation Fund, which has not been implemented to date.⁴⁵¹

445 Uganda Police Force website; CHRI Interview with HURINET-U, November 2013.

446 Article 51(1), Constitution of Uganda.

447 S3, Uganda Human Rights Commission Act, Cap 24.

448 Uganda Human Rights Commission, 15th Annual Report, 2013, p. 19.

449 Article 53(2), Constitution of Uganda.

450 Uganda Human Rights Commission, 15th Annual Report, 2013, pp. 196-197.

451 Ibid., p. 199.

The **Inspectorate-General of Government (IGG)** takes complaints about corruption. After an investigation into a matter, the IGG can pursue a case in the Anti-Corruption Court. This office was respected as a relatively strong body that operated with integrity; however it has suffered several setbacks. No person has served as IGG for a full eight-year term and the head of the Anti-Corruption Division of the High Court, Justice Paul Kahaibale Mugamba, noted that this “lack of continuity and consistency” in the leadership of the IGG affected the competence of its prosecutors.⁴⁵² Additionally, the legality of the establishment of the Anti-Corruption Court was under question in 2013 and although the Constitutional Court found that it was legal,⁴⁵³ it stopped operating during the period that the case was pending. In relation to police corruption, in practice most complaints are made to the internal PSU.

As outlined in the Kenya and Tanzania sections, **Parliament** oversees the police through the passage of legislation, asking questions, monitoring the Executive and checking the police budget. In September 2013, a new human rights checklist was launched.⁴⁵⁴ Speaker of the House, Rebecca Kadaga, MP, confirmed that the checklist is a “mandatory tool of reference” that must be used when drafting or reviewing legislation. The purpose is to ensure that legislation is compliant with human rights provisions in the Constitution as well as regional and international laws that Uganda has ratified.⁴⁵⁵ The checklist follows on from the creation of the Human Rights Parliamentary Committee, which is mandated to ensure a human rights-based approach to developing legislation. The new Committee developed the checklist in collaboration with the Ministry of Justice and Constitutional Affairs, United Nations Office of the High Commissioner for Human Rights, the British High Commission in Kampala, the UHRC, HURINET-U and the Foundation for Human Rights Initiative.⁴⁵⁶

However, as recent history shows, Parliament could well ignore its own tool. In December 2013, it passed the extremely controversial and repressive Anti-Homosexuality Bill and Anti Pornography Bill, apparently without testing them against the Checklist for Human Rights Compliance.⁴⁵⁷

Apart from lodging a complaint about police misconduct at the UHRC, a person can do so at the local **Magistrate’s Court**. Reportedly, this forum is rarely used, and some members of civil society believe that pursuing criminal cases is deliberately discouraged.⁴⁵⁸ According to them, the courts in Uganda were reasonably proactive and independent at one time; however this has changed during the past four years. The President appointed the acting Chief Justice, Steven Kavuma, in June 2013 without the recommendation of the Judicial Service Commission. The Constitution states that the President must appoint the Chief Justice “while acting on the advice of the Judicial Service Commission” and with the approval of Parliament.⁴⁵⁹ Kavuma is also the acting Deputy Chief Justice, which the Uganda Law Society asserts is illegal as it contravenes Article 133(2) of the Constitution. Before being appointed a judge, Kavuma was a Minister and member of the NRM party, which has raised many questions as to his impartiality. Kavuma insists he is “loyal to the law”, not the NRM.⁴⁶⁰ Apart from concern about the independence of the courts, sometimes the police refuse to follow court orders, especially in relation to politically sensitive matters.

452 Human Rights Watch and the Lowenstein Clinic Interview with Justice Paul Kahaibale Mugamba, Head of the Anti-Corruption Division of the High Court, Kampala, 24 May 2013.

453 Anne Mugisa and Hillary Nsambu, “Anti-Corruption Court stays”, *New Vision* (Uganda), 21 December 2013

454 See: <http://www.parliament.go.ug/new/index.php/about-parliament/parliamentary-news/262-speaker-launches-human-rights-checklist-for-parliamentarians>.

455 Peter G. Mwesige, “Human Rights Checklist is as Big as they Come”, 11 September 2013.

456 Ibid.

457 Amnesty International, “Uganda: Anti-Homosexuality Bill must be scrapped”, Press Release, Online p. 20, December 2013, at: <<http://www.amnesty.org/en/news/uganda-anti-homosexuality-bill-must-be-scrapped-2013-12-20>>.

458 CHRI Interviews with Peter Magelah of Advocates Coalition for Environment and Development, November 2013.

459 Article 142, Constitution of Uganda.

460 “I’m loyal to the law, not NRM – Justice Kavuma”, *The Observer* (Uganda), 26 December 2013, at: <http://www.observer.ug/index.php?option=com_content&view=article&id=29300&catid=53&Itemid=67>.

Civil society organisations have followed the reform process in Kenya with interest, with some stating that the vetting process of the judiciary and the police is innovative and something that Uganda could learn from and replicate.⁴⁶¹

5. Militarisation of the Uganda Police Force

The UPF is heavily militarised, as is the government. In May 2013, a new Internal Affairs Minister was appointed whilst still serving as an army officer, an indication of the militarisation of the government. The IGP continues to defend militarisation of the police and has vowed to continue using military tactics.⁴⁶² The reason he gave is quoted below:

What do you do to people who use military tactics? It is not only the police that are militarised but the whole country. I have no option but to do what I have to do best and I have no regrets for that. The situation we are in is militarised and I will not apologise for that.⁴⁶³

The militarisation of the UPF is evident in the: so-called “joint operations” carried out between the police and the military; the tactics used; and the “Madoa Doa”, blue camouflage uniform akin to the print in the Uganda People’s Defence Forces (UPDF) uniform. The joint operations are largely justified under Article 212 of the Constitution, which provides for the police to cooperate with other security agencies. This is used to blur lines of accountability and responsibility between the police and the military, especially in situations of public unrest.⁴⁶⁴

The public order management “sector” also involves many security officers outside the UPF, both uniformed and plain-clothed, wielding high-calibre weapons with no known lines of command and control. These unknown security men, who often work alongside the police, are allegedly not part of the police or the government, shielding them from any responsibility or accountability.⁴⁶⁵ It is alleged that some of these may be operatives who were part of the former UPF Rapid Response Unit (RRU), a notorious police unit that primarily dealt with violent crime.⁴⁶⁶ The RRU was disbanded due to overwhelming allegations of human rights violations. The ongoing presence of the stick-wielding armed groups (commonly known as Kiboko Squad) demonstrates a continued negligent delegation of security and constitutional powers.

The Sebutinde Commission also recognised that the military and other security agencies often undertake the work of the police. It recommended that the UPDF and other security agencies restrict themselves to the functions and procedures ascribed to them in the law.⁴⁶⁷

As recommended by the Sebutinde Commission and police review process, the UPDF should only undertake operations and functions as they are mandated under the law. Guidelines should also be

461 CHRI Interview with Peter Magelah of Advocates Coalition for Environment and Development, November 2013.

462 “I will not Stop Militarising the Police-Kayihura”, Monitor Publications, 9 March 2013, at: <http://www.monitor.co.ug/News/National/I-will-not-stop-militarising-police---Kayihura/-/688334/2237182/-/xqmbuo/-/index.html>; “Kayihura Defends Police Militarisation”, New Vision, 10 March 2014, at: <http://www.newvision.co.ug/news/653360-kayihura-defends-police-militarisation.html>.

463 “Kayihura Defends Police Militarisation”, New Vision, 10 March 2014, at: <http://www.newvision.co.ug/news/653360-kayihura-defends-police-militarisation.html>.

464 HURINET-U, Militarisation, Privatisation of Violence and the Gun Culture in the Uganda Police Force, *The Police Watch Magazine*, 2013, Issue No. 3.

465 Ibid.

466 Ibid.

467 Judicial Commission of Inquiry into Corruption in the Uganda Police Force, ‘Report of the Judicial Commission of Inquiry into Corruption in the Uganda Police Force’, 2000, Chapter 8 (8.2.1.8).

developed to set out clearly the differences between those matters that are for the police and those for the military. This is discussed further in section D.

6. Lack of Resources

The UPF comprises 41, 072 police officers and 396 civilian staff.⁴⁶⁸ Apart from a shortage of police officers, the UPF suffers from inadequate police stations and units, police accommodation, equipment including digital and forensic equipment and vehicles. Such a lack of resources means that, policing, which is already a complex and challenging role even under the best of conditions, is made more difficult in Uganda. Additionally, police officers complain about the low salary they receive.

While the police budget may be less than required, civil society has also raised questions about its use and allocations. The *Observer* reported that 180 billion Ugandan shillings were spent by the police in 2011 on “public order”, which was reportedly more than half the total police budget of 309 billion shillings.⁴⁶⁹ Such large-scale spending on public order limits the amount of money that could be spent on improving other policing areas such as police wages, accommodation, infrastructure and equipment. A former staff member of the UHRC stated that, in certain areas, police posts were extremely dilapidated and were so sparsely furnished that there was just one bench inside. Some officers shared uniforms, had not been paid for several months and were living with multiples families in one small accommodation facility.⁴⁷⁰

The UPF must be fully resourced to undertake necessary repairs to current police facilities and purchase basic equipment and digital technology. Additionally, police officers’ salaries should be reviewed and if possible increased (this is ideally the job for a Police Commission, which as noted above, should be established in Uganda). The UPF should also ensure that budget funds are prioritised to improve police efficiency and responsiveness. In particular, care should be taken to ensure that large amounts of funding is not disproportionately spent on public order policing, which, as outlined earlier, is often illegally targeted at repressing opposition political parties, rather than upholding constitutional rights and ensuring public safety.

7. Limited Accessibility to the Community and Civil Society

Members of civil society have reported that UPF officers are often unavailable, as they require written permission from the Office of the Inspector General (for instance the Assistant Inspector General or Commandant, Kampala Metropolitan), before the police will speak to them during a police station visit.⁴⁷¹ Despite this, many organisations are apparently trying to start a dialogue with the police, either through the regional police headquarters or with individual police officers. One human rights defender reported that whenever he holds a forum with a politically sensitive speaker, he invites the police to speak so that they have a chance to express their opinions. Members of the police have also reportedly stated that their rights need more attention and advocacy.⁴⁷²

The police should develop a citizen engagement framework, where an open and accessible relationship between the police, civil society and the public is encouraged. Additionally, although community policing initiatives have been initiated in Uganda, and a framework exists, there is still limited awareness in

468 Uganda Police Force website at: <http://www.upf.go.ug/faq.html>.

469 “Police spends shs 500m daily”, *The Observer*, 25 January 2012, at: http://www.observer.ug/index.php?option=com_content&view=article&id=16832&catid=78&Itemid=116.

470 CHRI Interview with civil society member (name withheld), November 2013.

471 CHRI Interview with HURINET-U, November 2013.

472 CHRI Interviews with civil society member (name withheld), November 2013.

the community of this concept and what it means. In some cases, community policing is interpreted as a form of vigilantism, in some cases political policing.⁴⁷³ There is a significant need to work on the framework of community policing and entrench it within the regions in Uganda.

8. Mob Justice

Mob justice, or vigilantism, owing to lack of understanding and trust in the criminal justice system is a problem in Uganda. Sometimes community members do not understand that a person released on bond is still the subject of a police investigation, and will carry out their own form of justice.⁴⁷⁴

To reduce incidents of mob violence, the public needs to be educated about the role and functions of the police and the wider criminal justice system, and to develop trust in the system. Developing trust between the police and the community requires that the police follows the law impartially, is responsive to the needs of the community and accountable and transparent in their actions – it requires “democratic policing” (see the Introduction).

9. Policing and Elections

In the lead up to the 2011 elections, many Local Administration Police Officers and Special Police Constables were recruited without receiving full training. In some cases, they received only a few months of training and in other cases, none, while the UPF requires officers to receive a nine-month training programme. Despite the lack of training, after the 2011 elections these officers were integrated into the wider police force. HURINET-U is concerned that these inadequately trained officers are often the initial contact that the public have with the police, as they are positioned at local police posts. These officers often do not know or understand the law, police regulations and common police procedures such as writing a statement. Owing to this lack of knowledge and training, these officers regularly violate human rights.⁴⁷⁵

There is concern that, once again, the UPF may hire a large number of untrained Special Police Constables and Local Administration Police officers before the 2016 election. In early 2014, the media reported that the UPF will recruit at least 3,500 officers before the elections – 3,000 Probation Police Constables and 500 cadets.⁴⁷⁶ In addition to concerns about the training of these officers, and their competence as police officers, anonymous police officers complained that the recruitment process is likely to be biased in preference to people favouring the NRM party. The UPF denied this, claiming that they follow the standards for police officers as set out in the Constitution: that the Uganda Police Force shall be nationalistic, patriotic, professional, disciplined and its members drawn from different parts of the country.⁴⁷⁷

10. Policing Post-Conflict Regions in Uganda

Some regions in Uganda, in particular northern Uganda and Karamoja, have unique policing difficulties owing to a prolonged history of civil unrest and lack of functioning state institutions. The officers in

473 CHRI Interview with civil society member (name withheld), November 2013.

474 CHRI Interviews with civil society member (name withheld), November 2013.

475 HURINET-U, “Election Observation Report for Presidential, Parliamentary and Local Council Elections in Uganda: Special Focus on the Conduct of Security Agencies in the Electoral Process”, May 2011.

476 “Police to recruit 3,500 ahead of 2016”, *The Observer*, 5 January 2014, at: <http://www.observer.ug/index.php?option=com_content&task=view&id=29468&Itemid=114>.

477 Ibid.

these regions have not received substantive training on policing in post-conflict situations and are thus unaware of best practices in policing survivors of trauma. The policing of these post-conflict communities has also been hampered by the low number of police officers in the region which has greatly affected the authority and reach of the force. Unfortunately, as a result of having fewer regular officers, these regions have more poorly trained special police constables. In order to improve the situation, more regular UPF officers should be deployed to these regions. Furthermore, the UPF personnel in these areas should be trained in: policing with sensitivity to trauma in post-conflict communities; restraint in the use of force and firearms; encouraging reconciliatory approaches to solve land-related disputes; and gender sensitive policing.⁴⁷⁸

C. POLICE FORCE ON THE MOVE: STEPS TOWARDS PROGRESS

Since CHRI's report in 2006, there has been a range of positive changes to the police force. These changes are commendable and a clear move towards democratic policing. However, despite this progress, policing in Uganda is still marred by several challenges as outlined in Section B. This section sets out the steps towards change that have occurred since 2006, details gaps in these improvements and suggests a way forward.

1. Police Review Process: A Step in the Right Direction

A wide-ranging review of the police force was conducted in 2007. According to HURINET-U, this is a milestone in the struggle to reform the UPF. The process, which was largely consultative in nature, generated a wide range of views and suggestions from various sections of the public. The review was funded by key international partners, and included interviewing over 30,000 Ugandans.

The key recommendations emerging from the review process include:⁴⁷⁹

- ⊙ Changing the name of the force to a service to signal a commitment to a community and service oriented policing philosophy;
- ⊙ Implementation of robust internal and external accountability mechanisms to ensure the integrity and efficiency of investigations and accountability for misconduct;
- ⊙ An overhaul of the human resources mechanisms to ensure competency-based recruitment and promotion frameworks, and fair disciplinary processes that are linked to internal oversight mechanisms;
- ⊙ Implementation of a case management system;
- ⊙ Undertake training needs analysis for every Directorate and Region;
- ⊙ Increase resources and equipment;
- ⊙ Increase funding for community policing, which has been successful in Uganda;
- ⊙ Development of policies to guide military assistance in policing functions;
- ⊙ Review of policies to ensure compliance with human rights and develop a human rights advisory committee including members from the UHRC and other external bodies.

These key recommendations address many of the challenges set out in Section B, and if implemented,

478 HURINET-U, "Policing Post-Conflict Acholi Sub-Region; Success, Challenges and Opportunities", 2012.

479 Information provided by HURINET-U whose members were part of the Steering Committee; we note the final report is not public.

have the potential to transform the UPF into a democratic police service for the people of Uganda.

However, despite the completion of the review process in 2011, the management of the UPF is yet to launch the findings and recommendations. HURINET-U, who was part of the steering committee of the review, believes that the process is a huge step forward and the recommendations, if implemented, have the potential to transform the UPF. Many positive initiatives like the establishment of the Human Rights and Legal Directorate in 2013 and the Women's Affairs Department in 2014⁴⁸⁰ were taken in the aftermath of the police review process.

In response to questions by the opposition, the IGP has publicly stated that the police review process is not being stalled, but rather a draft report is ready that needs to be discussed further with key government ministries before being released. After the input of these ministries, the draft report will be discussed and approved by Police Management before it is launched.⁴⁸¹ Although it is recognised that compiling findings of such an extensive process takes time, it is two years since the finalisation of police review process. This long period indicates that perhaps there is not an ongoing strong commitment to police reform, discussing the outcomes and implementing change in response to the findings. It is hoped that this is not the case, and the process of finalising the review occurs in the near future, to enable the fruits of the review process to be reaped.

Way forward

The findings of the review, even if in draft form, should be launched in the near future, as it offers great potential to address critical challenges facing the police that have already been identified. In particular, recommendations to improve internal and external oversight, to revise and improve community policing, to delineate clearly when and how the military and military tactics can be used to engage in policing matters via policy and guidelines, and to improve performance management processes are necessary and should be implemented.

2. Professional Standards Unit (PSU): Improving Internal Oversight, but Still Room for Reform

As outlined above, the PSU is an internal UPF unit established in 2007, to investigate and deal with complaints of police misconduct.⁴⁸² On the completion of an investigation, the PSU sends its findings and recommendations to the Inspector General or the appropriate officer in charge (currently to the legal and human rights directorate) who decide on a course of action, which may include initiating disciplinary proceedings.⁴⁸³ In an effort to ensure public confidence and trust, the PSU guaranteed that they would deal with all complaints in a confidential and sincere manner.⁴⁸⁴ To improve accessibility, the PSU established a toll free, 24-hour phone service as well as regional offices in Jinja, Mbale, Gulu, Arua, Hoima, Fort Portal, Mbarara, Kabale, Masaka and Kampala Metropolitan. The PSU receives over 2,000 complaints each year.⁴⁸⁵

Despite the establishment of the PSU, abuse of the law and lack of respect for established standards continue within the UPF. Some members of civil society, who initially advocated for the PSU, have

480 "IGP Kayihura moves senior Police Officers", *New Vision* (Uganda), 12 March 2014.

481 "Misinformation About the Uganda Police Review", Uganda Police Force press release, 9 April 2014, <<http://www.upf.go.ug/index.php/25-press-release/69-misinformation-about-the-uganda-police-review>>

482 Uganda Police Force, Complaints Information, 8 January 2013, at: <<http://www.upf.go.ug/Complaints-Information.html>>

483 Ibid.

484 Ibid.

485 Ibid.

recently expressed alarm at this form of internal investigation and discipline. As an example, a civil society member cited that a recent complaint of three police officers seriously assaulting someone was dealt with by the PSU rather than investigated as a criminal offence. Although the PSU can refer cases to the Department of Public Prosecutions (DPP), there is concern that most complaints about police misconduct, even serious cases, are dealt with by the PSU as disciplinary offences and are not forwarded to the DPP.⁴⁸⁶ Other members of civil society have similar concerns, especially now that the Prevention and Prohibition of Torture Act places personal liabilities on the police officer, rather than the former joint liability with the UPF. Additionally, there is concern that there is no transparency in the investigations and outcomes of the PSU, and hence it is not known what discipline or other action has been taken.⁴⁸⁷

Recommendations to improve the PSU and internal oversight of the UPF are included in the Recommendations under point 3 below.

3. Police Complaints Form and the Register

In 2013 a police complaint form to report police misconduct was adopted by the police and gazetted. This enables the public to fill in details of a complaint about a police officer in a standard form (Form 105), which includes a tear-off receipt that the complainant can retain.⁴⁸⁸ The receipt includes the complaint form number, the name of the Police Officer, the location of the Professional Standards Unit, the name of the complainant and the toll-free phone numbers of the PSU. This ensures that the complainant has proof of that a complaint was lodged and knows which PSU to contact for easier follow up of the complaint.

There is also a complaints register, developed by the research and planning directorate ready to be placed at every Professional Standards Unit and police station, to ensure the recording and monitoring of all complaints. The register operates in a similar way to a police station diary,⁴⁸⁹ noting the particulars of the complaint, the date lodged and any progress, along with a copy of Complaint Form 105.⁴⁹⁰ This register will enable monitoring of all complaints lodged.

HURINET-U lobbied and assisted in drafting the complaints form and the register. This is a positive development, demonstrating police collaboration with civil society. HURINET-U is assisting in the printing of the form and register, to be distributed to PSUs in early 2014.⁴⁹¹ Before the preparation of the form and register, the police did not have a systematic method of record keeping for complaints.

Way forward

Hopefully the new Complaint Form 105 and register will improve the ability of individual complainants and NGOs assisting them to monitor the progress of complaints. While these are improvements, a thorough case management system should be considered to ensure effective and efficient investigation. This was recommended by the police review process, and a similar system is earmarked for implementation by the Internal Affairs Unit in Kenya. The PSU should be formally set up in legislation, with clear powers, separation from the wider UPF and clear lines of reporting and accountability. Additionally, regular public reports should be sent to Parliament describing the number and type of complaints, whether

486 CHRI Interview with civil society member, November 2013.

487 CHRI Interview with civil society member, November 2013.

488 Complaint Form 105; CHRI Interview with HURINET-U, November 2013.

489 A police station diary records complaints of crimes lodged at the police station.

490 CHRI interview with HURINET-U, November 2013.

491 Ibid.

investigation followed, what the outcome was and the time frames. This will ensure greater transparency and accountability in the internal complaints process, and will identify common problem areas within the police, which can then be addressed.

Some interviewees stated that the PSU is not widely publicised and hence many communities are not aware of this relatively new unit. The PSU, in conjunction with civil society organisations, should undertake campaigns to reach out to the rural areas of Uganda and explain the PSU, Legal and Human Rights Desk and the functioning of the police and criminal justice system in general (which is also not widely understood). It is also unclear if the PSU has regulations or standing orders that they follow to ensure appropriate investigations, confidentiality and sensitivity towards complainants.

The internal mechanisms need to be coupled with strong external oversight as well.

4. Establishment of the Human Rights and Legal Directorate

The Legal and Human Rights Directorate was established in 2013 to address human rights concerns in the UPF. Human Rights Officers are placed in various policing regions throughout Uganda to specifically handle human rights issues and act as the point persons on human rights issues. Establishing a directorate to specifically handle issues of human rights is a great step forward, and there is hope that the Legal and Human Rights Directorate will help reduce the number of human rights violations by the police. Civil society members and human rights defenders have reported that some officers have been very helpful and have provided assistance, whilst others have not.⁴⁹²

Way forward

It is unclear if the police officers stationed under the Legal and Human Rights Directorate are sufficiently trained on human rights and democratic policing. Satisfactory training must be provided to PSU and Legal and Human Rights officers, to ensure effective and human rights compliant response to members of the public that request assistance.

5. Improvements in External Oversight, but More Progress is Required

Recently the UHRC implemented a Client Charter, which requires its staff to deal with complaints of human rights violations within set time frames. The Charter states that staff must register or refer allegations of human rights violations within 45 minutes, commence investigations into complaints within 14 days and provide quarterly updates on the progress of cases to complainants. Requests for information from complainants must be responded to within 28 days.⁴⁹³

However, as outlined above in relation to the PSU, there is some concern that cases of human rights violations that also constitute crimes, are only ever dealt with by the UHRC as a civil matter or by the internal PSU as a disciplinary matter, but they are not investigated and prosecuted as criminal offences. A civil society member was concerned that although torture is now a criminal act in Uganda, to her knowledge, there has not been any criminal charges for torture or mistreatment under the Act as yet.⁴⁹⁴

492 CHRI Interview with civil society member, November 2013.

493 David Lumu 'UHRC boss sets tough guidelines for staff', *New Vision* (Uganda), 13 February 2014 < <http://www.newvision.co.ug/news/652542-uhrc-boss-sets-tough-guidelines-for-staff.html> >

494 CHRI Interview with civil society member, November 2013

There may be several reasons for this:

- ⊙ Those subject to police violence feel more comfortable and secure in making a complaint to the UHRC, rather than to a police body (either for discipline or criminal investigation);
- ⊙ The processes used by the UHRC are more victim-oriented and informal, to ensure that those using the system do not feel alienated, confused or frightened;
- ⊙ Obtaining a civil remedy such as compensation is quicker and easier than conducting a criminal case through the criminal justice system;
- ⊙ The courts of law are perceived to be corrupt and biased, as are the police and the Director of Public Prosecutions, which are all involved in criminal cases.

Way forward

As a partial solution to this problem, some have suggested that the UHRC be given powers to prosecute on behalf of the Director of Public Prosecutions (DPP) in relation to torture, and that a widespread public awareness campaign on the new anti-torture law be undertaken.⁴⁹⁵ Currently, private prosecutions are permitted, so theoretically the UHRC could prosecute. However as it is a quasi-government body, it currently refers criminal investigations and prosecutions to the DPP, another government body. Also the UHRC would need more resources and access to forensic expertise, and therefore would require significant investment. The UHRC could be significantly strengthened to fully investigate allegations of serious criminal conduct and refer them for prosecution, or prosecute the matter itself.

Alternatively, as the UHRC already has a very large mandate, and owing to the consistently high number of complaints of torture and other serious criminal conduct by the police, it is recommended that a new independent oversight body be established to solely oversee the police, as has been established in Kenya. This body should have the powers, resources, independence, transparency, reporting structure and community and political support outlined earlier in the Tanzania chapter in the box labelled “Recommended aspects of a police oversight body”. Strengthening external oversight of the UPF will allow the government to meet its promise under the Universal Periodic Review mechanism to ensure that impartial, independent investigations are undertaken into complaints of human rights violations and misconduct by the police, and that those responsible for misconduct are punished.⁴⁹⁶

To enhance the effectiveness of the UHRC and protection for those complaining of human rights violations, the Parliament of Uganda should pass the Witness Protection Bill. The UHRC also calls for modern technology for the UPF, and increased training, to reduce the number of police officers resorting to torture. The UPF should consider instituting audio and/or visual recording of all questioning and interrogations.

6. Passage of Anti-Torture Law and Enactment of Guidelines

As previously outlined, in a positive step, Uganda passed the Prevention and Prohibition of Torture Act, 2012. This law prohibits, criminalises and holds individuals, including police, responsible for acts of torture.⁴⁹⁷ The definition of torture includes non-state actors (such as militia groups) and makes evidence obtained through torture inadmissible in Court.⁴⁹⁸ Additionally, there is a duty to report torture

495 CHRI Interview with civil society member, November 2013

496 UPR Info, “Recommendations and Pledges: Uganda”, June 2012, pp. 4-6, at: < http://www.upr-info.org/IMG/pdf/recommendations_to_uganda_2012.pdf>.

497 S4, Prohibition and Prevention of Torture Act, 2012.

498 S14, Prohibition and Prevention of Torture Act, 2012.

or reasonable suspicion of torture, and superior officers can be held liable for the acts of junior officers under his/her authority under certain circumstances.⁴⁹⁹

After the enactment of the Act, and in accordance with one of the activities under the road map, the UPF developed a set of guidelines to help reduce torture and improve the response to torture within the UPF. The Guidelines were developed by a special taskforce headed by the Deputy Inspector General of Police in consultation with the Coalition against Torture, the African Centre for Treatment and Rehabilitation of Torture Victims (ACTV) and the UHRC.⁵⁰⁰ This is a great step forward, demonstrating that the UPF wishes to tackle the prevalence of torture seriously and is open to working with civil society.

Way forward

However, there are sections of the Guidelines that could be improved upon, such as the general process to be followed when a police officer is suspected of committing torture or there is a complaint against an officer. Under this section, the Guidelines state that the Unit Commander must immediately notify the PSU and Inspector General of Police, and then decide whether to investigate the complaint or refer it to the PSU.⁵⁰¹ Ideally, all complaints of such a serious nature, should be investigated by an external body and referred for prosecution and/or civil compensation. Additionally, the Guidelines should provide information on how to handle such complaints by the police, including time frames for reporting and how to conserve the scene to preserve evidence.

While this important legislation now exists, there is a need to ensure that it is respected and implemented. The government should give serious consideration to the road map developed by the UHRC, the African Centre for Treatment and Rehabilitation of Torture Victims and the Association for the Prevention of Torture. This road map includes recommendations on concrete measures and actions to be undertaken by different stakeholders and institutions to implement the Act.⁵⁰² The activities are coordinated by the UHRC, and funding for some activities under the road map has been secured.⁵⁰³

7. Quality of Police Recruits

Apart from the Special Police Constables and Local Administration Police, several police officers are highly educated, with some having doctorates or masters in fields such as human rights. Many have received comprehensive training as well. According to civil society actors, it is not the education, training or skills of the police that cause most policing problems; it is the orders they receive and the knowledge that acting in a way that does not support the ruling party may result in disciplinary action, a negative transfer or another form of indirect punishment. Civil society suspects that often the police do not respond to political matters and so compromise their integrity by acting unlawfully.⁵⁰⁴

499 SS20, 10, Prohibition and Prevention of Torture Act, 2012.

500 Uganda Police Force, “Guidelines for Prevention and Management of Torture in the Uganda Police Force” 2013, p. i.

501 Ibid, p. 32.

502 See road map at: <http://www.apt.ch/content/files/region/africa/Roadmap%20for%20the%20effective%20implementation%20of%20the%20Anti-torture%20Act.pdf>.

503 CHRI Interview with Uganda Human Rights Commission, February 2014.

504 CHRI Interview with members of civil society, November 2013.

8. The Third Justice Law and Order Sectors Strategic Investment Plan (SIP III 2012/13 - 2016/17)

The Justice Law and Order Sectors (JLOS) bring together justice sector organisations to coordinate a sector-wide approach to improve the sector. The organisations coordinate on planning, budgeting, implementation and monitoring of projects. JLOS comprises the relevant ministries; the Judiciary; the UPF; the Uganda Prison Service; the Directorate of Public Prosecutions ; the UHRC; the Judicial Service Commission; the Uganda Law Reform Commission; the Law Development Centre; the Uganda Law Society; the Tax Appeals Tribunal; Centre for Arbitration and Dispute Resolution; and The Uganda Registration Services Bureau.⁵⁰⁵

The third JLOS Strategic Plan includes important policy shifts including addressing growing public concerns about accountability of public officers and human rights observance. The Plan aims for a 70 per cent satisfaction rate with JLOS services, which includes the UPF, by 2016/2017.⁵⁰⁶ This is a welcome shift, and it is recommended that projects are implemented to improve police external accountability mechanisms, such as establishing an independent police oversight body, under the JLOS Plan.

JLOS also notes that human rights bodies have expressed concern at the handling of public assemblies by the UPF. In response to these concerns, the JLOS Plan states that it will review the use of force by the UPF and assist the Force in moving towards a rights-based approach that serves the people of Uganda. The Plan does not describe what this assistance will be, but it does state that the UPF will ensure that its officers are trained in human rights and will report on measures taken to reduce violence during management of public assemblies.⁵⁰⁷

The JLOS Plan also aims to ensure the enactment of laws to improve the police and criminal justice system, including amendments to the Police Act, passages of Access to Justice, Witness Protection and Bail legislation, drafting of Witness Protection Guidelines and a review of the Probation Act.⁵⁰⁸ Education and raising awareness of laws will also be a priority to improve access to justice for relevant groups, as well as the institution of legal aid services across Uganda.⁵⁰⁹ Improvement of JLOS institution infrastructure is also a priority, which will result in essential improvements to police buildings, accommodation and equipment.

The JLOS Plan and sector provides a critical opportunity for civil society organisations to improve policing and criminal justice mechanisms. Approaching change in policing from a broader approach may ensure greater influence, by including other key members of the Justice, Law and Order section in conversations with the UPF.

9. Increased Trainings and Awareness Raising

The UHRC has noted the following positive reform development in the police: increased human rights awareness trainings, maintaining updated registers, skills training for inmates, reduced number of inmates on remand, new and rehabilitated buildings. The use of buckets for toilets was being phased

505 “Our History: Justice Law and Order Sector”, at: < <http://www.jlos.go.ug/index.php/2012-09-25-13-11-16/our-history>>.

506 The Justice Law and Order Sector, ‘The Third JLOS Strategic Investment Plan (SIP III) 2012/13-2016/17’, xiii

507 Ibid., p. 29.

508 Ibid., p. 72.

509 Ibid., pp. 9, 23.

out, respect for freedom of worship, revitalisation of human rights committees and construction of female wings and juvenile cells.⁵¹⁰

The 2013 UHRC report stated that there was a reduction of 24.3 per cent in the complaints registered against the UPF from 457 in 2011 to 346 in 2012.⁵¹¹

D. BUILDING ON CURRENT REFORM: RECOMMENDATIONS

FOR ALL STAKEHOLDERS: THE GOVERNMENT, PARLIAMENT, UGANDA POLICE FORCE AND CIVIL SOCIETY

1. Improve the UPF's Independence

There is a clear need to improve the police's independence. It will increase public trust in the police, as a public service that upholds the rule of law and protects the rights of citizens impartially and without undue regard to the views of the ruling party. The police will also be free of political pressure and be able to carry out its functions and mandate. To improve the independence of the UPF, it is recommended that:

- ③ A Police Commission is established to oversee appointments, promotions, transfers and discipline of UPF officers, as instituted in Kenya and being developed in Tanzania (the details of this Police Commission is set out in the next recommendation). This Police Commission can work with the leadership of the police to determine criteria for recruitment, deployment, promotion and transfer and oversee these processes.
- ③ The Police Act is amended so that the UPF leaders are appointed and removed in accordance with a thorough process, including advertisement and short listing by the Police Commission. From this short list the President can choose a candidate to nominate to the Parliament, who will approve or disapprove the person subject to review and vetting.
- ③ The Police Act is amended to set term limits for the position of Inspector General.
- ③ The Police Act is amended to specify that no person may give a direction to the Inspector General in relation to any matter, save for the Minister of Internal Affairs in relation to policy; the Director of Public Prosecutions in relation to a criminal investigation; the Police Commission in relation to human resource, disciplinary and professional standards; and any independent police oversight body that is established in relation to their recommendations post-inquiry.
- ③ An external oversight body is established to improve accountability and oversight of the UPF, as set out further in Recommendation 3 below.

2. Establish a Police Commission

The Uganda Police Force and the government should abolish the Police Authority and Police Council and instead establish a Police Commission to oversee the recruitment, appointments, transfers,

⁵¹⁰ Uganda Human Rights Commission 15th Annual Report, 2013, p. 23.

⁵¹¹ Ibid., p. 7.

promotions and internal discipline of the UPF. This was one of the critical recommendations of the Sebutinde Commission. Such commissions are already in place, or are being established, in Kenya and Tanzania. A Police Commission can significantly improve the performance of the UPF by providing transparent and merit-based procedures on the basis of objective criteria for human resources issues. Additionally, the Police Commission can oversee the disciplinary procedures of the Disciplinary Courts and provide training and professional standards for the UPF.

To ensure proper oversight, it is vital that such a Commission comprise non-policing people of integrity and experience, as well as the UPF leadership. The Sebutinde Commission recommended that the Police Commission be comprised of:

- ⦿ The Inspector General
- ⦿ A retired police officer
- ⦿ Five experienced people of integrity.

3. Improve External Oversight of the UPF

The current external oversight of the UPF is not sufficient to ensure that police officers are accountable for their actions. The powers of the UHRC police oversight unit must be strengthened or a separate independent body should be established, to ensure that the police are held to account. As the UHRC already has a large mandate, it is recommended that a new body be established. Such a body should meet the requirements of powers, resources, independence, transparency and reporting and community and political support outlined earlier by the United Nations Special Rapporteur in the box labelled “Recommended aspects of a police oversight body” in the Tanzania chapter.

A strong external oversight body would be complementary to the internal police oversight provide by the PSU. The bodies could work together similar to the internal and external police oversight bodies in Kenya – the Kenya Police Service Internal Affairs Unit and the external Independent Policing Oversight Authority. The external oversight body in Uganda could investigate deaths and serious injuries (torture, rape, etc.) while the PSU could investigate less serious misconduct. The PSU would ensure that the external body has a copy of every complaint lodged, so that it can monitor the type and number of complaints, as well as its investigations. The external body can then make strong recommendations for prosecution, compensation or other suitable action; or if appropriate initiate a private prosecution.

Police officers that commit a serious criminal offence such as torture should not only be disciplined according to the UPF Code of Conduct, or through civil remedies of compensation, they should be subject to prosecution. To ensure that this occurs, serious misconduct must be independently investigated to guarantee against bias, and, where the investigation shows likelihood that the misconduct did occur, prosecution should be pursued.

4. Increase Resources: Resources to Enhance Police Facilities, Equipment and Wages

The UPF must be fully resourced to undertake necessary repairs to current police facilities, as well as purchase basic equipment and digital technology. In particular, to reduce and monitor incidences of torture and cruel treatment, consideration should be given to the possibility of instituting audio and/or visual recording of questioning and interrogation as is common practice in other countries. Additionally, internal police oversight mechanisms must be fully funded to ensure adequate staff, investigators, independence (separate buildings), forensic equipment and case management systems.

Additionally, police officers' salaries should be reviewed and increased (ideally the job of a new Police Commission). The budget of the UPF should be transparent and those within the leadership of the UPF should ensure funds are prioritised on the basis of improving police professionalism, efficiency and responsiveness.

5. Pass Witness Protection legislation

A law to protect witnesses must be enacted in Uganda to protect those providing evidence of human rights violations from reprisals.

6. Develop, with civil society, policies relating to police and military engagement

As recommended by the Sebutinde Commission and police review process, the UPDF should only undertake operations and functions as they are mandated under the law. Guidelines should also be developed to set out clearly the differences between those matters that are for the police and those for the military. These policies and guidelines should be in strict accordance with the national constitution, national laws and international laws and standards. Additionally, other security agencies must ensure that they work within their legislative mandates and do not illegally undertake policing work.

FOR THE UGANDA POLICE FORCE

7. Publish Police Review Process Report and Police Reform Plan

As noted earlier, the UPF undertook a comprehensive and commendable process to review the UPF in 2007. Although this review was finalised, it has not been published. The IGP and the government must follow the example of their neighbour, Tanzania, and make such a critical document for the security and safety of Ugandans publicly available. This will enable partners to work with the UPF to address key areas for reform that the review identifies, and will ensure that ownership of the process rests with the UPF. In particular, recommendations to improve internal and external oversight and improve performance management processes should be implemented.

8. Improve Internal Oversight mechanisms

Along with the Complaint Form 105, the complaint register should be instituted as soon as possible in all PSU offices across Uganda. These two initiatives are great improvements to the internal complaints mechanisms within the UPF and should be applauded. The UPF should also consider the institution of a case management system for internal complaints, to ensure greater efficiency and responsiveness to complaints. For example, such a system will ensure certain tasks in the investigation are carried out within set time frames and remind officers to update the complainant and other relevant people at regular intervals as to the matter progresses. This means that people who need to travel long distances to reach the PSU desk, need not return to the station regularly for updates, but will be updated via the telephone where possible.

The internal oversight mechanisms of the UPF should be clearly established in legislation to ensure independence within the force, and clarity in relation to their mandate and powers. The UPF should work

with the government and civil society to include strong provisions on internal oversight in the police law. The PSU should provide regular public reports to Parliament, giving details on the number and types of complaints, the progress of investigations and the final results (disciplinary action taken, if any). This will highlight the main complaints against police officers, the length of investigations, problems with investigations, such as lack of forensic equipment, and the general outcomes, enabling reform of the UPF at a systemic level to thus minimise misconduct in the future.

9. Create a Policing Culture to Uphold Rights, Rather Than Enforcing the Law

Currently the UPF is often used to stop legal demonstrations, assemblies and the movement of leaders of the opposition party. This is not the police's role. Its role is to uphold the law, ensure public order and security and protect the rights and freedoms of the citizens of Uganda. The IGP must reinforce this message within the UPF and ensure that the UPF is trained and led by example, to uphold the rights and freedoms provided in the Constitution, and all subsequent laws. With such a move the Ugandan government would implement a UPR recommendation that it has agreed to: to ensure security officers respect freedoms of expression and assembly.⁵¹²

10. Ensure the Training of New Police Officers and Former Special Police Constables Recruited

All police officers recruited before the 2016 elections, including the 5,000 officers recruited in April 2013, must fulfil the standards set out in the Police Act and complete all nine months of training before being deployed. All Special Police Constables hired before the 2011 elections who have not undergone full training, must do so before continuing in their roles as police officers. This will improve their ability to respond to everyday policing situations appropriately.

11. Improve Training of All Police Officers

The UPF should ensure that all police officers undertake regular refresher training courses including on human rights, community policing and use of force, particularly those deployed to rural areas.

12. Institute Specialised Training on Policing Post-Conflict Communities

Police officers must be adequately trained in post-conflict policing to meet the special needs and be sensitive to trauma of post-conflict communities. In addition to being sensitive to trauma, police must exercise restraint in the use of force and firearms, encourage reconciliatory approaches to solving land related disputes and be gender sensitive. Regular police officers should be deployed to these regions, for whom clear, specialised post-conflict standard operating procedures and code of conduct should be developed.⁵¹³

512 UPR Info, "Recommendations and Pledges: Uganda", June 2012, p. 6, at: < http://www.upr-info.org/IMG/pdf/recommendations_to_uganda_2012.pdf>.

513 HURINET-U, "Policing Post-Conflict Acholi Sub-Region; Success, Challenges and Opportunities", 2012, p. 9.

13. Improve Relations and Understanding Between the Police and the Community

The wider community lacks understanding of the police system and the criminal justice system, and this causes vigilantism, low rates of crime reporting and lack of cooperation between the police and the community. To address this issue, the community policing framework that is already in place should be reviewed and built on to increase communication and cooperation between the public and the police. Public education on the role of the police and the criminal justice system should be rolled out, so that people understand concepts such as bond and bail, and therefore understand why a person is still in the community despite a criminal allegation lodged against them.

The Inspector General of Police should encourage police officers to engage in public meetings and forums as much as possible. Currently, civil society has experienced difficulty in securing police presence in public meetings and in talking to police officers at the station level.

FOR THE UGANDA HUMAN RIGHTS COMMISSION AND CIVIL SOCIETY

14. Continue to monitor and oversee police actions, lobby for change and work with police for better guidelines and regulations

In addition to monitoring and overseeing the actions of the police, and the executive and parliament in relation to policing issues, the UHRC and civil society must continue to lobby for the publishing of the outcomes of the police review process and for the implementation of key reforms recommended by the Sebutinde Commission, such as the establishment of a Police Commission.

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. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Strategic Initiatives:

CHRI monitors member states' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the UN, and the African Commission for Human and Peoples' Rights. Ongoing strategic initiatives include: Advocating for and monitoring the Commonwealth's reform; Reviewing Commonwealth countries' human rights promises at the UN Human Rights Council and engaging with its Universal Periodic Review; Advocating for the protection of human rights defenders and civil society space; and Monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening. CHRI is also involved in monitoring the work of IBSA - India, Brazil, and South Africa Dialogue Forum, through a human rights lens. CHRI catalyses civil society to engage with government on foreign policy issues with the aim of democratising this niche policy making area.

Access 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.

Access to Justice:

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

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractice. A major area is focused on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock on effect on the administration of justice overall.



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