

**POLICE
REFORM IN
KENYA: “A
DROP IN THE
OCEAN”**

**AMNESTY
INTERNATIONAL**



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ACRONYMS

CIPEV – Commission of Inquiry into the Post-Election Violence

DIG – Deputy Inspector General

DPP – Director of Public Prosecutions

GSU – General Service Unit

ICCPR – International Covenant on Civil and Political Rights

IGP – Inspector General of Police

IMLU – Independent Medico-Legal Unit

IPOA – Independent Policing Oversight Authority

KDF – Kenya Defence Force

KNHRC – Kenya National Human Rights Commission

KPR – Kenya Police Reserve

MRC – Mombasa Republican Council

NPS - National Police Service

NPSC - National Police Service Commission

OCPD – Officer Commanding Police Division

OCS – Officer Commanding a (police) Station

1. INTRODUCTION

“Have we truly learnt from the mistakes of the past? If we are not careful we could be sleepwalking into possible disaster.” Participants in an Amnesty International focus group discussion, Nairobi, 13 December 2012.

Kenya is in the midst of an ambitious reform programme, including wholesale reform of its police force, and as the country approaches the March 2013 general elections, the sense of urgency around the implementation of police reform is palpable.

Laws passed in 2011 contain an ambitious framework for police reform, which, if fully implemented would overhaul the structure of the police force to address shortcomings which permit and perpetuate impunity for police abuses, establish an independent police oversight authority for the first time and new standards of conduct for the police.

However, while some measures have been undertaken, many of the most important reforms have yet to be carried forward raising concerns of a lack of political will to implement the reform agenda. The Acts guiding the police reform have not been put into practice in time for the general elections. As a result, the very same policing structures blamed by many for serious human rights violations during the 2007-2008 post-election violence remain in place for the 2013 elections.

The lack of progress in implementing the reform agenda increases the risk of human rights abuses and limits the preparedness of the police to handle such abuses in a fair and effective manner. The police were incapable of preventing, containing and managing the 2007-2008 post-election violence and some police actively engaged in human rights violations.

In this report, Amnesty International urges the Government of Kenya to fully commit to the police reform process. By taking immediate steps ahead of the March 2013 elections, and by prioritizing the implementation of reform immediately after the elections, the Government of Kenya can finally end the impunity which the police have enjoyed for far too long. It must not miss this opportunity.

BACKGROUND

Following the 2007 elections, Kenya teetered on the brink of economic, political and social collapse as widespread violence broke out after the announcement of election results. Election-related violence was not new - previous election cycles had been marred by violence - but the extent and scale of the violence caught many by surprise.

Some election-related attacks had already occurred prior to the 2007 general election on 27 December, but the Electoral Board's announcement of Mwai Kibaki as the winner on 30 December sparked protests and riots throughout the country, as many contested the results. These protests and riots quickly became inter-ethnic. Approximately 1,300 people were killed and over 600,000 displaced, in addition to massive destruction of property.

The government responded to increasing violence and insecurity with excessive police force, killing and injuring protestors and raping and sexually assaulting women and girls, particularly in opposition areas.

Unrest continued through January 2008, but reduced and finally ended after mediation in February 2008 by the Panel of Eminent African Personalities, under the Chairmanship of former UN Secretary-General, Kofi Annan, which resulted in a National Peace Accord.¹ The National Peace Accord prioritized police reforms as a means of return to the rule of law.

The Commission of Inquiry into the Post-Election Violence (CIPEV, or the Waki Commission, after its Chair), documented widespread allegations of attacks, including killings and rapes, committed by the police, and allegations of deliberate negligence where the police failed to respond to situations of violence.

The Waki Commission went on to make a number of recommendations calling for wide-ranging reform of the police, and the creation of an effective system of police accountability, as well as for the investigation and prosecution of police officers involved in criminal offences during the post election violence.² There has been little movement towards bringing the police to account, either collectively or individually, for human rights violations during that period.³ In 2012, a multi-agency taskforce was constituted by the Director of Public Prosecution to review cases from the post-election violence; however, no prosecutions have been initiated in respect of any case, including those involving police.

Following the National Peace Accord and the Waki Commission, the government set up a National Task Force on Police Reforms in May 2009. Headed by a former judge, Philip Ransley, the Task Force was mandated to make proposals for police reform in the country. Following its report in October 2009, the President established the Police Reform Implementation Committee to fast-track and coordinate the implementation of over 200 recommendations from the Task Force and in line with the new Constitution which also provided for a reformed police service. The Committee's term expired mid-2012.

Though the 2007-2008 violence served as a final catalyst to spur police reform into life, allegations of serious abuse at the hands of the police were repeatedly raised for years before the violence, and regularly documented by Amnesty International and other organizations.

The government itself has acknowledged the problem. In a report submitted to the UN

Human Rights Committee ahead of a July 2012 review of its human rights record, the government acknowledged that unlawful killings by the police continued to be a "major challenge". It went on to state that it "has been unequivocal in condemning this [unlawful killings by the police] whenever it happens as one of the most serious human rights violations. Any allegation of unlawful killing is investigated by the authorities and perpetrators are tried and convicted by a competent court if found to have used unreasonable force."⁴

Yet actions by the Kenyan authorities in relation to violations by the police, including unlawful killings, use of torture, sexual violence and excessive use of force, have not lived up to this statement, and few steps have ever been taken to bring police officers and other security personnel who carry out human rights violations to justice.

2. METHODOLOGY

This report is primarily based on over 30 interviews conducted by a policing expert working for Amnesty International in December 2012 in Kenya. Civil society actors with expertise of police reform were interviewed individually.

The policing expert led a focus group discussion and one-to-one interviews with individuals from Kibera, Mathare and Korogocho informal settlements in Nairobi about their experiences of policing since the reforms. Supplementary information on recent human rights violations by the police and policing preparedness for the elections was drawn from individual interviews conducted during an Amnesty International mission to Nairobi, Mombasa, Kisumu and Eldoret, also in December 2012.

Amnesty International met with officials from the Ministry of State for Provincial Administration and Internal Affairs, the Kenya Police and Administrative Police, the Police Reforms Implementation Commission, as well as commissioners from the National Police Service Commission and board members from the Independent Policing Oversight Authority.

The report also reviews Kenya's national legislation and human rights obligations and commitments under international law.

Amnesty International would like to thank all those who shared their expertise and experiences in the hope that Kenya's policing reforms on paper will be put into practice.

3. WHAT THE REFORM PACKAGE PROMISED

NEW POLICE LEGISLATION

The National Police Service Act passed in August 2011 merges the Kenya Police and the Administration Police into one hierarchy and establishes the role of Inspector General of Police with authority over both policing branches. Article 41 of the National Police Service Act also places limits on the force which police are able to exercise, stipulating that an officer may use "force and firearms, if and to such extent only as is necessary." Publication of the Act was delayed for almost a year, raising serious concerns regarding political commitment

to police reform.

The National Police Service Commission Act establishes a civilian board to oversee recruitment and appointments of police officers, review standards and qualifications, and receive complaints from the public and refer them to the Independent Policing Oversight Authority (IPOA) and other government entities for remedy. Commissioners were appointed in October 2012 after several delays which raised concerns about whether sufficient political will existed to implement the reform package.

The Independent Policing Oversight Authority Act, which establishes an oversight authority mandated to deal with complaints against the police, will conduct disciplinary and criminal investigations and make recommendations for disciplinary action or criminal sanctions. The members of the Authority were approved by Parliament and sworn into office in June 2012.

In August 2010, the majority of Kenyans voted to adopt a new Constitution, demonstrating a strong desire to end impunity and to hold officials to account for their actions. The constitution provides for a devolved political system with powers previously held by the president distributed among several institutions and bodies, and has a strong focus on human rights and the rule of law.

The Constitution significantly enhances police accountability. It places the police under a single hierarchy led by an Inspector General of Police (IGP) with authority over Kenya's two police services, the Administrative Police and the Kenya Police Service. The two services, in turn, each have a Deputy Inspector General (DIG) reporting to the IGP.⁵ The Constitution gives the IGP security of tenure for four years, and clearly states the only grounds on which the IGP may be removed. In a significant departure from past practice, the Constitution gives the IGP operational independence, outlawing political interference with police investigations, law enforcement against particular person(s) and hiring, promotion and disciplinary sanctions. The Cabinet-Secretary⁶ for Provincial Administration and Internal Affairs can only give directions to the police on policy issues and these must be in writing.⁷

The National Police Service Commission (NPSC) is an independent commission established by the Constitution. It is mandated to curtail political interference with police personnel management practices and is responsible for recruitment, promotions, transfers and disciplinary sanctions of police.⁸

The Constitution requires the police to be professional, to prevent corruption, to promote transparency and accountability and apply these principles in practice.⁹ It also has a progressive chapter on human rights, laying down the human rights standards that the police and other security agencies need to protect and respect, in addition to Kenya's obligations under international human rights law and standards. It states that national security¹⁰ shall be promoted and guaranteed with "utmost respect for the rule of law, democracy, human rights and fundamental freedoms."¹¹ The new Constitution seeks to make the police more effective and more accountable, promises the establishment of independent oversight institutions, and creates a strong, unified command. To bring Kenyan laws into line with the new Constitution, a raft of legislation had to be adopted. With regards to the police, three key laws were passed.

The National Police Service Act (2011) regulates the administration, functions and powers of the IGP and the DIGs, the Kenya Police Service, the Administration Police Service and the Directorate of Criminal Investigations. It gives the police a robust mandate, strengthens

internal accountability, and attempts to curtail interference in police operations. It:

- Clearly outlines the Kenya Police Service and the Administration Police Service's functions;
- Establishes the Directorate of Criminal Investigations with independent funding, with the intention of enhancing the management and quality of its investigations;
- Clearly describes the powers of police officers in order to reduce arbitrary police actions;
- Requires all serving police officers to be vetted for integrity and competence to determine their suitability to continue in the service, in order for those suspected of human rights violations to be prevented from holding positions where they could repeat such violations;
- Places limits on the use of force and firearms, arrest and detention by providing clear instructions for its use, and outlines management responsibilities when using these police powers;
- Diversifies means of accountability by establishing clear command structures and responsibilities; an Internal Affairs Unit to receive and investigate complaints about police misconduct, independent of the two services and directly reporting to the IGP; and civilian oversight at county level through the County Policing Authorities.

The National Police Service Commission Act (2011), establishes an independent commission overseeing appointments, promotions and transfers of police officers, to address corruption in recruitment and career management, and also disciplinary matters. Some of its important features include:

- Independent recruitment and appointment, promotions and transfers of members of the National Police Service;
- Oversight over the disciplinary process and removal of members of the National Police Service;
- Vetting of all current members of the National Police Service by the Commission¹²;
- Oversight of police training to enhance the capacity of police officers to deliver high-quality policing with respect for human rights.

The Independent Policing Oversight Act (2011), stipulates the objectives, functions, and powers of the Independent Policing Oversight Authority (IPOA), a significant step towards promoting police accountability and enhancing access to justice by:

- Creating an independent civilian oversight body over the National Police Service to independently investigate allegations of police misconduct and human rights violations;
- Investigating any death or serious injury suspected to have been caused by a member of the police to prevent excessive use of force and extrajudicial executions;

- Inspecting police premises;
- Investigating and monitoring policing operations;
- Promoting police accountability to the public;
- Providing independent oversight of complaints handled by the police.

KENYA'S INTERNATIONAL AND REGIONAL LEGAL OBLIGATIONS

As law enforcement agents, the police have the statutory right to use force, including deadly force in certain circumstances, but these legitimate powers of policing can result in human rights violations if not strictly controlled and international law and standards place clear limits on police powers, including on the use of force. States must respect, protect and fulfil the right to life, liberty and security of the person and the absolute prohibition on torture and other cruel, inhuman or degrading treatment or punishment under the International Covenant on Civil and Political Rights (ICCPR) and African Charter on Human and Peoples' Rights (ACHPR), to both of which Kenya is a state party. The absolute prohibition of torture and cruel, inhuman and degrading treatment is also included in the UN Convention against Torture to which Kenya is also a party.¹³

While police are permitted, and in some circumstances required, to use force in the course of their duties, international standards, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials set out the limits and safeguards that must be observed in the use of force. These standards require the police to use non-violent means before resorting to the use of force. Force must be used only as a last resort, and only then in proportion to the seriousness of the situation. The police must also account for use of force afterwards, and police responsible for human rights violations, including unlawful killings or arbitrary or abusive use of force, must be held criminally accountable. These standards also apply to the policing of demonstrations that authorities consider illegal or violent.¹⁴

Kenya is obliged not only to refrain from violating human rights, but also to take positive measures to protect human rights from abuse by non-state actors. As the UN Human Rights Committee, the body charged with interpreting the rights protected in the ICCPR, has noted, human rights must be "protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights [...] There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."¹⁵

The ICCPR guarantees the right to a remedy for those whose human rights are violated.¹⁶ States are required to hold those responsible for human rights violations to account, and individual victims have the right to an effective remedy and reparation. This must not only be theoretically available in law, but must function effectively in practice. States must also take measures to prevent a recurrence of violations, which can require changes to the state party's law or practices.

The African Commission on Human and Peoples' Rights has also "urge[d] State Parties to the African Charter to establish independent civilian policing oversight mechanism[s] where they do not exist which shall include civilian participation" in a resolution on police reform, accountability and civilian oversight.¹⁷

Kenya's police reform programme and newly established institutions have succeeded in bringing national legislation further into line with Kenya's international and regional obligations. If these laws are put into practice, they will result in more effective policing that is non-discriminatory and firmly grounded in law with checks on the use of police power and mechanisms to investigate police abuses and to hold those responsible to account.

4. PROGRESS MADE TOWARDS IMPLEMENTATION OF THE REFORM PACKAGE

Though the Constitution's 5th Schedule allows two years for the enactment of new laws governing the National Police Service, the government decided to prioritize these laws and to have them in place by 27 August 2011; within one year of the promulgation of the Constitution.

The creation of the legislative framework for police reforms, followed by the establishment of the three core institutions - IPOA, NPSC and the IGP - are important milestones towards a reformed police service. By establishing these offices, responsibility for security has moved from the Presidency and is now spread across several institutions affording the police more autonomy from the executive and other sources of potential political interference.

Numerous delays in establishing these institutions, however, point to limited political commitment to police reform which may hamper their effectiveness in the long-run. Though Parliament passed all three Acts within the one year deadline, with the President assenting to them soon after¹⁸, the Executive failed to ensure their implementation by the dates given in the respective Acts.

The NPS Act was due to come into effect on 30 August 2011. However, it was not published until July 2012. No explanation was provided for the lengthy delay. The IGP was not recruited until after the NPSC was established, though the NPS Act would have allowed the IGP's recruitment beforehand under a transitional arrangement. All three institutions are now operational, but they lack proper secretariats¹⁹ limiting their capacity to carry out their respective mandates.

	NPS Act	NPSC Act	IPOA Act
Adopted by Parliament	25 August 2011	25 August 2011	25 August 2011
Commencement date	30 August 2011	4 October 2011	18 November 2011
	IGP	NPSC	IPOA
Appointed and sworn in	24 December 2012	9 October 2012	4 June 2012

Implementation of the new legislation remains a major concern. In part, this stems from a lack of knowledge within the police, as not all officers have been made aware of the new laws and their implications. Instead of urging the last Police Commissioner and Police Commandant working under the old legal framework to implement the new legislation²⁰, the police, oversight bodies and many civil society groups waited until the appointment of an IGP in late December 2012.²¹ As a result, many aspects of the new legal framework, including new restrictions which limit the use of force and firearms, regulate arrest and detention, and enhance internal accountability and reporting obligations to IPOA, are yet to be applied in practice.

As the first oversight body that was established, IPOA has effectively focused on getting the other police reform institutions in place, particularly the NPSC and IGP, as well as its own institutional needs, including housing, staff, budget and regulations.²² Though it takes time to build an institution, frustration is beginning to mount over the slow pace of IPOA's implementation of its mandate. IPOA has received many complaints and has started some investigations, but their findings have not been made public and to date, no officer has been held to account.²³ As one human rights activist explained:

"Why should the IPOA be running around recruiting an IGP when we are yet to see any one brought to justice over violations? Kenyans will not be too forgiving of them."²⁴

The Tana Delta crisis and the Baragoi massacre, discussed in more detail in Chapter 6, were a missed opportunity for IPOA, as the public expected them to investigate these incidents and hold those responsible to account. Though IPOA did announce investigations, they stopped them because of parallel investigations by other parts of the government. In the case of Tana, the judicial commission of inquiry necessitated their withdrawal from investigating the matter.²⁵ As IPOA has not yet published its first performance report, which was due in December 2012, it has been difficult for civil society and the public alike to hold them accountable for their first six months of activities.

While it is too early to assess the effectiveness of the NPSC, it did start the long delayed recruitment of an IGP and DIGs, just six days after being sworn in.²⁶ In accordance with the

respective Acts, the interviews for the IGP, DIGs (and also for IPOA Board members and NPSC Commissioners) were all held in public and those for the IGP were even broadcast live on national television.

The public interviews, held in November 2012, of applicants for the post of Inspector General and the two deputies herald a new level of government transparency. In accordance with the Constitutional requirement for public participation, the public were invited to provide feedback on the integrity and capabilities of the applicants²⁷ and their input was widely debated in the media. As one activist recounted to Amnesty International:

"Who would have thought that a day would come when police interviews would be conducted in the open giving people an opportunity to observe and raise issues on applicants' past deeds? [...] We in the civil society Police Reforms Working Group²⁸ had done background checks on the applicants and we were given an opportunity to table it."²⁹

The three days taken by the NPSC to scrutinize and incorporate public feedback into their decision on the candidates was, however, inadequate. As the same human rights activist noted:

"However I was disappointed with the timeframe allocated for the entire exercise [...] In my view, the issues raised by the public were so fundamental that the NPSC didn't verify them beyond reasonable doubt for integrity and administrative capacity of the applicants."³⁰

In addition to the recruitment of the IGP and DIGs, the NPSC re-opened police recruitment, which had been on hold pending the establishment of the NPSC and was further limiting the capacity of an already overstressed police force. The NPSC has committed to hiring an additional 7,000 recruits.

There are other developments that may serve to accelerate police reforms. The opening of space for public discussion on policing and police accountability has created a momentum for reforms and people have become bolder in calling for public inquests, making numerous calls for accountable policing in the media.

Calls for reform have also come from within the police. Junior officers are now less willing to accept poor working conditions. In early November 2012, some police officers threatened industrial action to demand improved pay and terms of service.³¹ The Deputy Police Spokesperson, Charles Owino, publicly stated that the strike was illegal, and an Administrative Police Constable was charged in court with inciting officers to strike.³² One expert on police reforms told Amnesty International that this was indicative of a bolder police more willing to embrace reforms and push for their own rights at the same time:

"The mood within the Police Service is bubbling. My general impression is that the junior officers are now bolder and willing to embrace reforms. The younger officers have even taken to social media to express issues on policing – which I think is good and shows a higher level of consciousness."³³

5. BARRIERS TO IMPLEMENTATION OF THE REFORM PACKAGE

“We have only managed to set up the foundations of reforms [...] Real change will take generations to harvest [...],” government official, Nairobi, 20 December 2012.

Any reform effort must be interpreted within the broader context of the governance challenges faced in implementing reform and transforming Kenya. The Kenyan context has been characterized for many years by impunity in various forms, across all levels of governance. Endemic corruption, embezzlement of state resources, non-compliance with the law and with specific court orders, including by the very state institutions that are supposed to uphold the rule of law, as well as illegitimate political interference are all too common in Kenyan history, and not easily rooted out. Many of the people interviewed expressed the view that a failure to position the policing debate within the context of state renewal may have contributed to limited progress in the sector.

Kenya has made some important changes to legislation, but these have not been put into practice, and a number of specific barriers have hindered their implementation.

5.1. CONTEXTUAL BARRIERS

“Fundamentally [the] police is a mirror of the Kenyan society, a reflection of who we are as a society,” independent consultant on police reforms, Nairobi, 5 December 2012.

LACK OF COMPLIANCE WITH THE LAW

Kenya has struggled for many years with endemic impunity at various levels of governance, particularly the repeated use of the police as a tool of oppression.³⁴ Undue delays by the executive and legislature in enacting constitutionally-required legislation have posed a barrier to efforts to create new structures to address the legacy and mistrust created by longstanding impunity. An activist interviewed for this report argued, “The Executive still has powers to violate the Constitution [...] why is no one being held to account for the delays in publishing

the policing Acts? We have battled long and hard to get the NPSC gazetted and now are still fighting to get an IGP in before the election [in the meantime the IGP has been appointed]. Should we still be fighting for what the Constitution has already given us? We cannot say we have slayed impunity when we go about blatantly disregarding the Constitution without any sanctions."³⁵

A key example is the willingness of the government to adhere to what has come to be known as the 'gender rule' in Kenya. Notwithstanding Constitutional safeguards on gender balance and the express statement in the National Police Service Act that at least one of the three positions of Inspector General and the two Deputy Inspectors General be drawn from "the opposite gender,"³⁶ the President and the Prime Minister considered appointing three male officers to hold these offices.

In an attempt to validate the legality of this action, Parliament attempted to pass an amendment to the National Police Service Act deleting the provision promoting gender balance, but under pressure from the public, civil society and the Independent Policing Oversight Authority, they did not succeed and will now have to comply with the gender rule. On 25 January 2013, the President announced the appointment of Grace Kaindi as Deputy Inspector General of Police and Samuel Arachi as Deputy Inspector General of Administration Police.³⁷ However, their appointment was challenged by the Prime Minister, who reportedly claimed that it was "unconstitutional."³⁸

In the case of the recruitment of the new NPSC Commissioners, the willingness of the executive to comply with the law was called into question when the office of the President and Prime Minister initially wrangled over the proposed names to the Commission.³⁹ The inordinate delays to name and gazette the NPSC commissioners following this wrangling stalled the process for almost a year and raised serious concerns about respect for the rule of law within the executive branch of government.⁴⁰

CORRUPTION

In 2008, the United Nations Committee against Torture observed that corruption in the police force in Kenya was hindering efforts to deal with violations of human rights and arbitrary arrest by the police. In its concluding remarks, the Committee stated: "The Committee urges the State Party to address the problem of arbitrary police actions including unlawful and arbitrary arrests and widespread police corruption particularly in slums and poor urban neighborhoods, through clear messages of zero tolerance to corruption from superior officers, the imposition of appropriate penalties and adequate training. Arbitrary police action must be promptly and impartially investigated and those found responsible punished."⁴¹

Despite this recommendation, the government's efforts to deal with corruption seem to have stalled. The police are seen as the most corrupt institution in Kenya.⁴² Consequently, there is great need for reforms to focus on restoration of integrity within the police force. Corruption in the police is perceived as an enterprise so entrenched and well protected that the current government has appeared unable to address it effectively. This perception is compounded by the belief that the ruling class controls the police and this control contributes to their failure to address corruption.⁴³

OTHER CONTEXTUAL BARRIERS

Though the public is becoming more vocal in their demand for fair and effective policing, people do not seem to know what good policing is making it harder to voice their aspirations, as the focus for many human rights organizations has been on what should not be in place. The history of violence against activists working on issues of police reform has also left its mark, including the killing of two human rights defenders in 2009.⁴⁴

Police reform has taken on a rather legalist approach. Too great a focus on laws and legislation, though important, has left little room for emphasis on social change or policy development. The challenge with this approach is that it is rather narrow and leaves little room for locating reforms within the challenges of the real lived experience of policing in Kenya.

5.2. STRUCTURAL BARRIERS WITHIN THE POLICE

DUAL MANDATES

Prior to August 2010, the police force functioned as two institutions created by legislation, the Police Act and the Administration Police Act.⁴⁵ This provided opportunity for the executive arm of government to exercise political control over the police force which operated as a department under the Office of the President. While the general mandates of the regular and administration police officers are identical, they differ in their core purpose – the Kenya Police was primarily designed for crime prevention and detection, while their Administration counterparts mainly focused on securing government officials and assets. The Administration police are generally seen as closer to the public because they are based in areas where the Kenya Police is not, particularly in rural and arid areas, meaning they are often seen as more accessible to local populations in these areas. Moreover in terms of corruption, they are perceived as less corrupt than the Kenya Police.⁴⁶ Due to the nature of their deployment in very difficult terrain and locations where the living conditions were considered too harsh for female officers, they did not recruit women until 2009, making the one third gender rule difficult to attain.

FAILURE TO ADAPT TO THE NEW CONSTITUTIONAL DISPENSATION

Despite the fact that they have been working within a new Constitutional dispensation since August 2010, the police have continued to serve under senior officers in charge under the previous dispensation. That is, senior officers who were previously under the direct political control of the executive and in the same environment responsible for causing and sustaining the culture of impunity. Coupled with the fact that the new oversight bodies, though created, are not yet fully operational, in many ways it is business as usual for the police. Indeed, the police are still responsible for human rights violations, as shown in a national survey on torture in 2011 by the Independent Medico-Legal Unit (IMLU). IMLU's report on the prevalence of torture in Kenya found that 54% of the cases of torture they documented had been caused by the members of the Kenya Police Service and 7% by the Administration Police Service.⁴⁷

LACK OF VETTING

As a result of delays in publishing the NPS Act and establishing the National Police Service Commission, the vetting of all police officers⁴⁸ required by the Act is yet to take place. This is

a major obstacle to the implementation of reform and to improving the public image of the police. It is extremely concerning that Kenya has entered into the next general election cycle with the same officers accused of perpetrating violations in the 2007-08 elections in place. One activist said: "Those [of the police] that you can work with are very few and those that are relatively clean are still dirtied by association [...]." ⁴⁹

Though there is agreement that it would be impossible to vet the entire National Police Service before the election, the majority of those interviewed proposed some minimum level of vetting, especially for the top three layers of command. The NPSC, however, have decided not to undertake any vetting before the elections (see also chapter 8).

5.3. ONGOING POLICE IMPUNITY

Impunity for human rights violations committed by the police has been sustained by the lack of punishment faced by officers for acts in violation of the law. Very little has been done in terms of disciplinary measures or criminal prosecution of officers for human rights violations ⁵⁰ – on the contrary, Kenya has seen many acts of cover up and political manipulation in protection of perpetrators and police by the executive. ⁵¹

As one person interviewed by Amnesty International explained:

"This is a country where the weak have no protector, while the perpetrators cover each other; the police get away with anything, even murder. I was arbitrarily arrested and suffered one year in remand. I was severely beaten and taunted by officers with threats of being shot. As if that was not enough the arresting officers said if I could give 'something small' I could be released, yet I had done nothing wrong – my mistake was being a poor self-employed youth in Kibera. Who will pay for my lost year and lost life during the year spent in suffering in the hell hole that is our prisons? The officers went off happy while I have been scarred for life yet nobody cares about that." ⁵²

Allegations of human rights violations at the hands of the police have been made all too often. In 2009, the UN Special Rapporteur on Extra Judicial, Arbitrary and Summary Executions accused the police of having death squads that killed people arbitrarily and brutally. The military and police were alleged to be responsible for acts of torture and unlawful killings in Mount Elgon. The government and police were also found to have failed to institute serious investigations. ⁵³

In 2005 and 2012, the UN Human Rights Committee raised concerns over allegations of human rights violations, including torture and extra-judicial killings by the police, raising concern in 2005 at widespread "de facto impunity", and in 2012 at the "slow pace" of investigations and prosecutions for allegations of torture and extrajudicial killings by the police. ⁵⁴

Arguably, the lowest ebb in recent times was the 2007-2008 post-election violence and the human rights violations by omission or commission of the police forces. Post-mortem examinations conducted in mortuaries in Nairobi, Nyanza, Rift Valley and Western provinces found that 43% of sampled cases died of gunshot injuries (from police fire) while the rest succumbed to injuries from crude weapons (of civilian perpetrators). While in Rift Valley killings were overwhelmingly perpetrated by civilians, in Nyanza most people killed were

victims of police shooting.⁵⁵

The failure to prosecute police officers responsible for human rights violations remains a serious challenge for accountability in Kenya.

The Prosecutor of the International Criminal Court had sought charges against Mohammed Hussein Ali, the Police Commissioner during post-election violence, for human rights violations committed by the police at that time. The Pre-Trial Chamber declined to confirm charges in January 2012.

There remains an obligation on Kenya to finish investigations and, where credible evidence exists, to commence prosecutions at a national level against all police officers alleged to be responsible for human rights violations. Continued government inertia and silence over the matter is seen by the victims as endorsing impunity for the police, and has led to serious concerns over the state's commitment to hold perpetrators of human rights violations to account, including those who were acting on behalf of the state.

5.4. LACK OF RESOURCES

Police in Kenya operate with very limited resources.⁵⁶ This has led to weak operational preparedness, and a lack of equipment and logistical capacity. For example, the police do not have a forensic laboratory. Vehicle patrols are constrained by a lack of availability of vehicles and funds for fuel.

Police salaries are low and police officers complain about bad housing and poor working conditions.⁵⁷ Police find themselves dealing with dangerous, sometimes life-threatening, situations without adequate insurance to provide for their families when things do go wrong. A respondent working with the Police Reforms Implementation Committee argued:

"One of our main challenges is motivating the officers. While it is important to focus on the soft side of reforms, such as culture and attitude change, we must not forget that the condition of service for the officers is the biggest impediment. Our headache right now is how to boost their morale through better terms of service including housing."⁵⁸

5.5. PUBLIC CONFIDENCE IN THE POLICE

"Reform is a two way process, the citizens look at us with hate and despise, we on the other hand react with force and treat them imprudently."⁵⁹

Police in Kenya suffer from low levels of public confidence.⁶⁰ Research has found that the public associate the police with corruption and impunity. As a result the public is largely unwilling to cooperate with the police and share information.

In an effort to address the challenges posed by the poor relationship between the police and the public, the police service has piloted community-based policing and established a community policing forum in one station (and is planning to expand to various other locations). However, the concept of community policing has at times been misunderstood and misapplied by members of the public. Community policing is sometimes mistaken for

vigilantism which has, in some cases, led to lynching of suspects and extortion of members of the public by vigilante groups.⁶¹

6. HUMAN RIGHTS IMPLICATIONS OF THE FAILURE TO REFORM THE POLICE

The delays which have hindered the implementation of the new police legislation have meant the establishment of the accompanying accountability mechanisms has, in turn, been considerably delayed, as have the new instructions to the police on the use of force, arrest and detention; internal accountability; and transparency and reporting obligations, including of deaths and serious injuries, to the Independent Policing Oversight Authority.

In other words, the police have not yet changed their behaviour, the organizational ethos is still left unaddressed, and the corruption and human rights violations that occurred in the past are still not effectively being addressed by the new institutions.

6.1. ABUSE OF POLICE POWERS

Amnesty International continues to receive many reports of people being abused, beaten, and arbitrarily arrested.

There are numerous reports that the police are targeting members of particular communities. One of the most visible instances of this has been the increasingly discriminatory policing and harassment of people of Somali origin across the country, amidst rising xenophobia in the country.

In November and December 2012, hundreds of ethnic Somali people were arbitrarily or discriminatorily detained, particularly in the Eastleigh area of Nairobi, following grenade or other bomb attacks. Over the course of three days in December, up to 300 people are reported to have been arrested, including Somali refugees and asylum-seekers as well as Kenyan Somalis.⁶² Eye-witnesses told Amnesty International that arrests mostly took place at night, as security officials, including the police and the General Service Unit (GSU), a paramilitary made up of members of the Kenya Police and Kenya Defence Forces, went door to door and stopped people in the street, asking for their identification papers, and arresting people whose papers were missing or those they did not find satisfactory.⁶³

Most were subsequently released without charge. However, many of those detained alleged that security forces had ill-treated them during arrest or detention and had attempted - or succeeded - to extort money from them. The wave of arrests and lack of charges gives rise to serious concerns that the response of the authorities was rooted in discrimination against people of Somali ethnicity.

A Somali man - a journalist - who was stopped by the GSU described how they treated him:

"It was on Monday 10 December 2012 between 9 and 10pm. I was coming from Eastleigh where I was doing a story about the harassment. I was going back to my home in town, on a bodaboda [a motorcycle taxi].

A big truck of GSU came and stopped us. They told me to get off the bodaboda and asked me for ID. As I pulled them out, my press card fell to the ground and they saw it."

The police accused him of taking photographs, but he denied even having a camera. Then the police started to beat him: "I was surrounded by 20-30 of them. They grabbed me by the neck and threw me to the ground and started beating me with their guns.

I tried to ask them why and tried to explain that I was a journalist. But they kept beating me. Then they took my wallet, which had 200 US dollars in it and business cards. After 15 minutes after the beating, I couldn't even breathe, I couldn't stand. Then they asked again, I said "no", and they let me go."⁶⁴

The failure to implement the reforms is also shown by regular reports of police killings of suspected 'robbers' at the time of arrest, rather than bringing them to justice.⁶⁵ Insofar as Amnesty International could establish, such incidents are rarely reported or investigated, despite the obligation on the police to report them to the Independent Policing Oversight Authority (IPOA) and the obligation on the Authority to investigate such killings and any failure by the police to report them.⁶⁶

6.2. 'TANA': FAILURE TO PROTECT

'Violence in the Tana Delta has led to the deaths of over 200 people and displacement of 112,000 others since August 2012.⁶⁷ Despite the subsequent deployment of over 2,000 police officers in the Tana Delta⁶⁸ and the creation of a Judicial Commission of Inquiry, the security forces have been unable to stem or prevent repeated attacks and counterattacks, as recently as January 2013, raising serious concerns about the security forces' response to the situation and their ability to protect the human rights of people in Tana.

Violence beginning in August and September 2012 was the culmination of smaller scale violence between the Pokomo and Orma communities, which had resulting in deaths, casualties and lost livestock on the part of both communities. Initial attacks in August and September left over 100 people dead, including nine police officers. Attacks have continued to take place since the initial outbreak, as recently as January 2013.⁶⁹

Residents in the Tana Delta reportedly claimed that they repeatedly attempted to raise their concerns about the escalating situation with the police and security forces before August 2012, but they were not taken seriously.⁷⁰ Many local residents do not believe enough was done to deal with reports of smaller scale violence. They believe that the police either entirely failed to respond to the attacks or, where they did arrest individuals, simply went on to release them without any investigations. In other instances, residents of Tana River have accused the police of simply watching violence unfold. During one incident in December 2012, police are reported to have watched as ten suspected raiders were burned alive in Kipao village.⁷¹

There have been reports of political involvement in the organization of the violence in the Tana Delta ahead of elections in March 2013, with allegations that the violence is connected to local power struggles ahead of the election.⁷²

6.3. RESPONSE TO SECESSIONIST GROUPS

The Mombasa Republican Council (MRC) is a secessionist group claiming that the Coast should be independent from the rest of Kenya. It is the most recent group to emerge in the Coastal Region calling for accountability and justice for what it characterizes as a set of historical injustices, particularly in relation to access to resources, including land and employment. The MRC was among 22 groups banned by the government in 2008. It was unbanned in July 2012 by the High Court in Mombasa after the court stated that it found no evidence that the MRC was engaged in criminal activities.⁷³ However, ever since the lifting of the ban there appears to have been a concerted government crackdown on the leadership of the MRC, with most of them facing various charges, including charges of belonging to an illegal group and incitement.

On 15 October 2012, 38 people were arrested during a raid on a home in Kwale, including the President of the MRC, his wife, and children. Two bodyguards were killed during the operation.

The police claimed there was a firefight which led to the deaths of the two bodyguards. They reportedly described to media that the bodyguards had barricaded the road which led to the President's home and had attempted to detonate a petrol bomb.⁷⁴ This has been disputed by human rights organisations and eye-witnesses who reported that the police arrived around 5am and surrounded the place. They said that everyone was ordered to lie down, and many of them were beaten. The President of the MRC, Omar Mwamnuadzi, told Amnesty International that he was taken into a car where he was beaten on his head and body.⁷⁵ Media coverage of the raid included images of Omar Mwamnuadzi and show clear injuries to his face.⁷⁶

All of those arrested have been charged with various offences. These include possession of firearms, incitement, witchcraft and belonging to an illegal gang. These cases remain pending. Most of the MRC leadership, including Omar Mwamnuadzi, are out on bond, but some MRC members remain in detention in Shemo la Tewa prison near Kilifi.

Police have regularly alleged in the media that individuals they have arrested, or in some cases killed, belong to the MRC.⁷⁷ In December 2012, the police also reportedly linked the MRC to the violence in Tana River,⁷⁸ though they have not arrested or charged any MRC member in connection with the violence.

6.4. 'BARAGOI': FAILING INTERNAL AND EXTERNAL ACCOUNTABILITY

Baragoi is an arid area, inhabited by the Samburu and Turkana ethnic communities. There is frequent cattle rustling amongst the two communities, which over the years is reported to have grown increasingly violent, with better-armed youth gangs causing ever more casualties.⁷⁹

In early October 2012, incidents of raiding between the communities escalated and the decision was taken to mount a police operation into the Suguta valley. On 10 November 2012, the police operation was attacked and approximately 42 officers were killed and

several others wounded.⁸⁰

A human rights activist who travelled to the area following the attack was told that many of the officers involved in the operation were newly recruited and that there had been no clear commander of the operation, nor provision of adequate equipment. He reported to Amnesty International allegations that many of the officers had died from wounds as they had tried to escape. Many of these allegations have subsequently been reported by the media.⁸¹

'Baragoi', as it has become known, led to a major outcry by the Kenyan public. Yet, to date, no one has been held to account despite the announcement of various inquiries and investigations.⁸² Both the IPOA and the NPSC separately announced they would investigate the case, but IPOA withdrew from investigating the matter due to a multiplicity of investigations by other bodies. At the time of writing, the NPSC's investigation has not yet been concluded.⁸³ A Joint Parliamentary Committee (made up of members of the Administration and National Security, Defense and Foreign Relations and Justice and Legal Affairs) toured the region following the killings, and recommended that the government expedite a number of police reforms:⁸⁴

- Fast track police reforms, including the appointments of the Inspector General in addition to senior officials of other security organs;
- Fund the National Police Service Commission and the Independent Police Oversight Authority to ensure they optimally perform their mandate;
- Establish a specialized hospital for the police, similar to that of KDF;
- Introduce risk allowance and establish a compensation fund for all police officers in the National Police Service who are injured or die in the line of duty;
- Improve the terms and conditions of service for police officers - to the same level as other security organs.

Additionally, the Committee called on the government to establish a commission of inquiry to investigate the killing of security officers in Baragoi and urged them to arrest and charge those responsible. The government has not yet commented on the recommendations of the Committee.

Within the police, it seems no disciplinary action has been taken against any of the commanding officers involved. Outstanding questions regarding decisions made by senior officers, including the reasons behind the deployment of a number of young and inexperienced police officers, the failure of the police to collect the bodies, or to expedite the identification of those officers who had been killed, are yet to be answered.⁸⁵

Since the incident, there have been further reports of outbreaks of violence between the Samburu and Turkana communities in the area, amid allegations that the violence is connected to the elections.⁸⁶

7. PRIORITIZATION OF POLICE REFORM AND PREPAREDNESS AHEAD OF THE ELECTIONS

“Can the hand that protects be the same hand that kills? I cannot quite understand how the police, who should be protecting our rights, are the very ones that impede the realization of those rights [...]”, female respondent at Amnesty International focus group discussion, Nairobi, 13 December 2012.

Ongoing human rights violations, the demonstrable lack of accountability, and the repeated failure to protect Kenyans, show the police reforms have remained largely theoretical. This has contributed to a strong feeling that the police in Kenya have so far failed to change, leading to increased pessimism about the prospects that the 2013 elections will be free of violence and human rights abuses.⁸⁷

The police and other state agencies continue to reassure the public that they will handle the elections well and they are clearly aware that they must deliver a safe and secure election. Yet, they have not made public what measures they have taken, or will be taking, to prevent human rights abuses. Though there are reports the police have identified so-called hotspots, it is unclear what they are doing to ensure these hotspots will not 'erupt'.⁸⁸

The reality is that the elections will take place with the pre-reform policing apparatus, despite new leadership and a new Police Act. Because of the failure to properly support the police reform process - including the failure of the former Police Commissioner and Police Commandant to make necessary preparations and alterations within the police service in response to the Constitutional and legislative changes which have already occurred - many fear rank-and-file police officers may not fully comply with all provisions of the new policing structures.

This has raised concerns for many; for business leaders, the human rights community and even the Kenya Defence Forces (KDF), which announced they would step in if they consider it necessary for the country's stability.⁸⁹ This was confirmed in an Amnesty International interview with the Police Spokesman, Eric Kiraithe, who explained that the military are on standby, though they "will only be deployed in the event of a total breakdown."⁹⁰

Under Article 241 (3) (c) of the new Constitution, the deployment of the Defence Forces "to restore peace in any part of Kenya affected by unrest or instability" can only take place with the approval of the National Assembly. In any event, if the KDF is deployed, it should only be when absolutely necessary and for the shortest time possible. The military must respect all human rights standards as they apply to the police, including regarding the use of force by law enforcement officials, accountability for human rights violations and due process rights with regards to arrest and detention.

However, there are a number of actions which can be taken by the police to reduce the risk of human rights abuses in connection with the elections. There are three priority actions which can be taken:

1. Improve competence to effectively prevent violence, human rights abuses and general criminality and protect Kenyans;
2. Pre-empt and prevent officers from committing human rights violations or failing to protect victims;
3. Enhance the capacity of security officers.

7.1. PROVIDING SECURITY

Policing the elections encompasses much more than the actual day(s) of voting. Ensuring capacity on the election day(s) is important for elections free from human rights abuses and violence, but not enough.

The risk of violence and unrest around elections spans the weeks and months of campaigning, political nominations and the making and breaking of coalitions ahead of the general elections, as well as the weeks and months following the elections.

In the run up to the 2013 elections, frequent reports about the police failing to prevent violence, for example in Tana, have contributed to a growing sense of insecurity and heightened concerns about the response of the police to potential or actual violence or human rights abuses during the forthcoming elections.

7.2. REFRAIN FROM ENGAGING IN VIOLENCE

In the post election violence in 2007-2008, there were police officers who attempted to protect members of the public. However, there were also members of the police who actively engaged in violence, especially against those that were associated with the 'other' presidential candidate, as is documented for example in the many deaths by police bullets.⁹¹ As the NPSC will not start vetting the police prior to the elections⁹², and few have been held to account⁹³, it is likely those officers that participated in the violence are still within the force. This time round, the authorities should send a clear message that police must remain

neutral and cannot take sides. They are to maintain order and prevent human rights abuses regardless of the area and its political affiliation.

7.3. ENHANCE CAPACITY OF SECURITY OFFICERS.

One of the first things the NPSC did when they came to office was to open up new recruitment of 7,000 officers to enhance the capacity of the police. Though Amnesty International appreciates the swiftness with which the Commission took action, outstanding questions remain about how these new recruits will be deployed during the elections. To effectively police the elections with the ratio of approximately one police officer to 1,900 people,⁹⁴ the deployment of other law enforcement officials to carry out policing functions during the election period has been proposed. Those named include members of the Kenya Wildlife Service (who are mostly armed), the Kenya Forest Service and the National Youth Service, which will all be placed under the overall command of the IGP.⁹⁵

The NPS and NPSC must ensure:

- That the new recruits and law enforcement officials from other agencies are adequately trained and certified for carrying out the functions for which they will be deployed;
- That KDF officers, when and where they are deployed, are trained in civilian law enforcement, including human rights obligations;
- That there are clear guidelines on the deployment of the added forces while defining the command structures and reporting lines, meaning:
 - That all are placed under a clear line of command allowing everyone to know who they report to and to ensure commanders know who falls under their command;
 - That the duration and location of the deployment is clear and in line with Section 106 of the NPS Act;
 - That the additional officers are not provided with powers to use force, to arrest and detain, which they did not have before, and use these powers only in accordance with the 6th and 5th Schedule of the NPS Act respectively.

8. PRIORITIZATION OF LONGER-TERM POLICE REFORM IMMEDIATELY AFTER THE ELECTIONS

Fundamental reforms must continue after the inauguration of a new government and this section outlines an agenda for prioritizing post-election reforms.

Police are yet to make the ideological shift necessary to transform from a force to a service. To do so, they will need to rethink the approach to policing and develop a more service oriented policing, with better investigative capacity and internalize their human rights obligations. A shift is needed, so that the police move from reactive to proactive policing, aimed at preventing crime and disorder, rather than responding to it when it occurs. To date, the will, direction and energy to do so, has been absent but the new IGP needs to move and to do so quickly. What is urgently needed is clear guidance on what is expected.

The IGP should prioritize revising all Standing Orders in line with new legislation. This was meant to happen within one year of the NPS Act on 30 August 2011, but has not yet taken place. Revised Standing Orders will form the basis for guidelines and instructions to the police, and will be the core for the new training curriculum.

The National Police Service Commission should prioritize a vetting system to ensure that pending investigation, members of the police about whom there is evidence of serious human rights violations do not remain, or are not placed in, positions where they could repeat such violations. For any vetting to take place, it is imperative that detailed plans are developed to address police officers who fail their vetting. This should include pursuing criminal prosecutions where there are credible allegations of human rights violations.

Given the Kenyan police's track record of excessive use of force in policing demonstrations, and unlawful killings during arrests of criminal suspects, training on the use of force should also be prioritized. Currently, many police officers think that human rights law prohibits all use of force, creating a general perception that human rights are a hindrance to effective policing.⁹⁶ The police must be trained on the limitations of use of force, namely that it must only be used as a last resort, in proportion to the situation, and must be accounted for afterwards, and that lethal force must only be used when strictly unavoidable to protect life. They should also be trained in negotiation and mediation with communities to help deescalate situations. Such training should demonstrate to the police that, far from hampering policing, the human rights framework can help them to be more effective.

The new police oversight mechanisms are important in shaping the accountability discourse in addition to being a key check against police excesses. Similarly, the development of a new Police Training Curriculum will aid with the inculcation of policing values that uphold human rights.

If Kenya hopes to benefit from the reforms, then the resources, treatment and working conditions of police also need to be examined.

How the government deals with the Baragoi massacre will be a test case for police accountability. The apparent refusal by the then Police Commissioner Mathew Iteere to take responsibility for the death of the officers was an indication of how far the police are in terms of understanding and embracing accountability.⁹⁷ In addition to accountability, it is imperative that the government fully discloses the results of their investigations as a sign of good faith towards reforms.

Some police reforms have been easier to implement than others. Resources including more vehicles, adequate and appropriate equipment, improved housing and ICT have been less

politically sensitive and therefore easier to meet, barring resource constraints.

"We have done a lot in terms of enacting the laws and accompanying institutions for change. The real catch is in implementing the envisaged change and getting the requisite kits to deliver. Even so we do realize that this is a drop in the ocean since kits do not perform the job – people do. Changing the mindset of our officers is the bigger challenge. My worry is that though we have taken the new recruits through a new curriculum, they are going to work under the same crop of senior officers – whose attitude and culture is not yet changed."⁹⁸

More difficult reform, changing attitudes of both the police and the public and enforcing the law in a human rights-sensitive way, is a longer term process. This will require significant investment in a reorientation program for the older officers to understand the new order of policing and the move towards a human rights led policing:

"Besides improved terms of service, we will need to reorient the serving officers into the new curriculum and system of policing. We must show them that it is not business as usual. Real change can only come when we replace the traditional way of policing with new practices. Change will not only come from the recruits who have gone through training under the new Constitution, but through effort to change the old guards too."⁹⁹

The Kenyan government must take prompt action to seize the current momentum in order to create long-term reform. Reform cannot work in the abstract and needs to be located within the broader effort at state renewal. Further there is a need to interpret these police reforms in the context of the broader criminal justice system.

9. CONCLUSION

There is much work to be done to implement reforms in the police, both before and immediately after the elections. With elections weeks away, the sense of urgency behind this work is palpable. Too many Kenyans have yet to see the impact promised by the reform package, including improvements to their basic safety and security. Steps taken must be acknowledged, but others are needed to implement reform and enact real and meaningful change in the manner in which Kenya is policed.

In the weeks before the elections, the police service and the newly created oversight institutions must demonstrate commitment to elections free from violence and human rights abuses, as well as its ability to deliver this for the country.

Beyond the elections, there must be a clear, renewed commitment from the police and the new government to implementing the wide-ranging reforms promised by the Constitution and new police acts. The impunity enjoyed for so long by the police must be effectively and swiftly dismantled and a new era of accountability ushered in.

10. RECOMMENDATIONS

BEFORE THE ELECTIONS

To the Government of Kenya

- Ensure the National Police Service Commission and the Independent Policing Oversight Authority is given sufficient resources to hire independent staff for their secretariats enabling them to conduct effective and independent investigations.

To the Inspector General of Police and National Police Service

- Publish a joint statement with the National Police Service Commission that they will not allow any form of 'political policing' and that biased policing will result in disciplinary sanctions and, where appropriate, criminal investigations.
- Develop and publish a clear strategy on election security with commitments to the public on how they intend to police the elections and prevent human rights abuses.
- Map hotspots and have action plans for how to deal with specific types of incidents.
- Ensure copies of new laws are available at all police stations and that police officers are trained on their contents.
- Ensure that force is only used as a last resort when non-violent measures are ineffective and only then in line with the 6th Schedule of the NPS Act and international human rights law and standards.
- Ensure intentional lethal use of firearms is only used when strictly unavoidable in order to protect human life in line with the 6th Schedule of the NPS Act and international human rights law and standards.

To the National Police Service Commission

- Publish a code of conduct for the police to adhere to during the elections.
- Make a joint statement with the IGP that they will not allow any form of 'political policing' and that biased policing will result in disciplinary sanctions and, where appropriate, criminal investigations.
- Ensure all new recruits and law enforcement officials, including those from outside the police service, are adequately trained on legislation and human rights in the context of elections, including limitations on the use of force, as well as negotiation and mediation with communities to help them de-escalate situations.
- Ensure fair and speedy disciplinary processes where police violate the Code of Conduct or any other policing norm.

To the Director of Public Prosecutions

- Make an unequivocal public statement that any human rights violations committed during the elections months, including by state agencies, will be promptly investigated and those thought to be responsible prosecuted.

To the Independent Policing Oversight Authority (IPOA)

- Ensure that every death or serious injury of a person, who at the time of his death or injury was in police custody or under the control of the police, or whose death or injury was in any way the result of police action or inaction, is adequately and impartially investigated by IPOA. Officers suspected of being responsible should be suspended pending investigation, those who used legitimate legal force should be cleared, and those against whom credible admissible evidence exists of human rights violations such as torture or other ill-treatment, arbitrary or abusive use of force, or extra-judicial executions should be dismissed and brought to trial in accordance with international standards and without recourse to the death penalty.
- Design and make public how they will monitor how the police handle the elections and provide security.
- Implement this monitoring plan and where necessary investigate cases of misconduct.

To the Kenyan Defence Force (KDF)

- Only deploy in a policing role when absolutely necessary, for a limited and specified duration, under a clear command, and with respect for international human rights law, especially regarding the use of force and accountability for human rights violations.

To the International Community

- Promote the recommendations in this report during bilateral dialogues and in multilateral forums with the Government of Kenya.
- Ensure any elections monitors deployed have a human rights component.

IMMEDIATELY AFTER THE ELECTIONS

To the Government of Kenya

- Finance reforms and provide realistic budgetary allocations for the National Police Service.
- Provide police officers with salaries, housing and insurance that ensure an adequate standard of living.
- Situate the police reforms within a broader reform of the criminal justice system and reform and accountability of other security agencies.

To the Inspector General of Police and the National Police Service

- Publish a clear vision for the police to transform from a force to a service with a proactive approach and ensure that the actions and decisions of the police are in line with this vision.
- Revise standing orders in accordance with new legislation, in particular on the use of force and arrest and detention, in line with the 5th and 6th Schedule of the National Police Service Act and international human rights law and standards.
- Develop expertise and procure equipment to facilitate professional investigations into unnecessary or otherwise unlawful use of firearms, including for securing and examining potential crime scenes, ballistics and other forensic tests, and autopsies and medical examinations.

To the National Police Service Commission

- Publish a clear vision for how recruitment, promotions and transfers, as well as disciplinary measures, will support and sustain police reforms and enhance accountability to the public.
- Establish a vetting system to ensure that pending investigation, members of the police about whom there is evidence of serious human rights violations, do not remain or are not placed in, positions where they could repeat such violations.
- Ensure police supervisors and commanders receive adequate training, so that they fully understand principles of internal accountability.
- Ensure all serving police officers who pass vetting are trained on the new legal framework.
- Guarantee that the new police training curriculum accords with the new legislation and accompanying secondary legislation.

To the Independent Police Oversight Authority (IPOA)

- Publish timely performance reviews.
- Ensure that every death or serious injury of a person who at the time of his death or injury, was in police custody or under the control of the police, or whose death or injury was in any way the result of police action or inaction, is adequately and impartially investigated by IPOA. Officers suspected of being responsible should be suspended pending investigation, those who used legitimate legal force should be cleared, and those against whom credible admissible evidence exists of human rights violations such as torture or other ill-treatment, arbitrary or abusive use of force, or extra-judicial executions should be dismissed and brought to trial in accordance with international standards and without recourse to the death penalty.

To the Director of Public Prosecutions

- Investigate and where there is sufficient evidence prosecute police officers suspected of human rights violations, including extrajudicial executions, and bring them

to trial in accordance with international standards.

To the International Community

- Promote the recommendations in this report during bilateral dialogues and in multilateral forums with the Government of Kenya.
- Ensure that transfers of equipment, knowledge and training to all Kenyan security forces, including the police, do not contribute to human rights violations.

11. ENDNOTES

¹ The visit of President John Kufuor, the then Chair of the African Union, to Kenya from 8 to 10 January 2008, resulted in the creation of a Panel of Eminent African Personalities, composed of former UN Secretary-General, Kofi Annan (Chair), former President of Tanzania, Benjamin Mkapa and former South African First Lady, Graça Machel, to assist Kenyans in finding a peaceful solution to the violent crisis that followed the contested elections of December 2007. Under the auspices of the Panel, President Kibaki's Party of National Unity (PNU) and Raila Odinga's Orange Democratic Movement (ODM) started negotiations on 29 January 2008 through the Kenya National Dialogue and Reconciliation Committee (the KNDR or "National Dialogue").

² Commission of Inquiry into the Post-Election Violence (CIPEV), *Report of the Commission of Inquiry into the Post-Election Violence*, October 2008, p. 417.

³ Human Rights Watch, "Turning Pebbles" *Evading Accountability for Post-Election Violence in Kenya*, 2011, <http://www.hrw.org/reports/2011/12/09/turning-pebbles-0> (accessed 27 January 2013).

⁴ Kenya's third periodic report to the UN Human Rights Committee, CCPR/C/KEN/3, paragraph 136

⁵ The Constitution of Kenya, 2010, Article 245.

⁶ Under the new Constitution the person in charge of a Ministry is referred to as the 'Cabinet-Secretary' to underline his or her independence from politics. Under the old dispensation, Ministers were Members of Parliament.

⁷ Constitution, 2010, Article 245.

⁸ Constitution, 2010, Article 246.

⁹ Constitution, 2010, Article 244.

¹⁰ The 2010 Constitution defines 'national security' as including the protection of Kenya's 'people, their rights and freedoms', Article 238(1).

¹¹ Constitution, 2010, Article 238(2)(b).

¹² However, this is provided for in the NPS Act, Section 7(2).

¹³ International Covenant on Civil and Political Rights (ICCPR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture); and the African (Banjul) Charter on Human and Peoples' Rights (ACHPR). ICCPR, adopted 16 December 1966, G.A. Res. 2200A (XXI), 21 U.N. GAR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1996), 999 U.N.T.S. 171, entered into force 23 March 1976, acceded to by Kenya on 23 March 1976; Convention against Torture, adopted 10 December 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force 26 June 1987, acceded to by Kenya on 23 March 1997; and ACHPR, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986, ratified by Kenya on 23 January 1992.

¹⁴ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

¹⁵ Human Rights Committee, General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, adopted 29 March 2004, paragraph 8.

¹⁶ ICCPR, Article 2(3)

¹⁷ African Commission on Human and Peoples Rights at its 40th Ordinary Session held in Banjul, The Gambia, 15 - 29 November 2006.

¹⁸ The dates of assent were 27 August 2011 (NPS Act), 30 September 2011 (NPSC Act) and 11 November 2011 (IPOA Act).

¹⁹ They are still working with seconded staff coming from Ministries. Amnesty International interviews with Macharia Njeru, IPOA Chair, 21 January 2013, Nairobi, Kenya, and Commissioner Mohammed Murshid, NPSC, 21 January 2013, Nairobi, Kenya.

²⁰ Kofi Annan, monitoring compliance with the Peace Accord, made a public statement that "police were resisting reforms". *The Daily Nation*, "Police resisting reforms, says Annan", 20 March 2012 <http://www.nation.co.ke/News/Police+resisting+reforms+says+Annan+/-/1056/1370390/-/item/1/-/o6171y/-/index.html> (accessed 27 January 2013).

²¹ This opinion was expressed in Amnesty International interviews with representatives from civil society, IPOA, the NPSC, as well as the police.

²² Amnesty International interview with Macharia Njeru, IPOA Chair, 21 January 2013, Nairobi, Kenya.

²³ Amnesty International interview with Macharia Njeru, IPOA Chair, 21 January 2013, Nairobi, Kenya.

²⁴ Amnesty International interview with a human rights activist from IMLU, 3 December 2012, Nairobi, Kenya.

²⁵ Amnesty International interview with Macharia Njeru, IPOA Chair, 21 January 2013, Nairobi,

Kenya.

²⁶ The recruitment announcement was published on 15 October 2012.

²⁷ As announced by Johnstone Kavuludi, Chair of the NPSC, during a press conference: "The process shall be fair and in fact we will invite members of the public to submit information on the candidates who apply so that they can be vetted appropriately". Capital FM News, "Wanted: Inspector General of Kenya police", 15 October 2012, <http://www.capitalfm.co.ke/news/2012/10/wanted-inspector-general-of-kenya-police/> (accessed 22 January 2013).

²⁸ This is a working group comprising of about seven organizations working on human rights and security sector reforms.

²⁹ Amnesty International interview with a human rights activist working with Legal Resources Foundation, 30 November 2011, Nairobi, Kenya.

³⁰ Amnesty International interview with a human rights activist working with Legal Resources Foundation, 30 November 2011, Nairobi, Kenya.

³¹ *The Star*, "Police reject 8.5 per cent salary raise", 3 November 2012, <http://www.the-star.co.ke/news/article-94019/police-reject-85-cent-salary-raise> (accessed 21 January, 2013).

³² *The Star*, "Kenya: Striking Police Officers Will Be Fired – Deputy Police Spokesperson", 7 November 2012, <http://allafrica.com/stories/201211080154.html> (accessed 20 January 2013); Bernard Momanyi, "Kenya Constable Sacked, to Be Charged for Inciting Strike", Capital FM, 8 November 2012, <http://www.capitalfm.co.ke/news/2012/11/constable-sacked-to-be-charged-for-inciting-strike/> (accessed 20 January 2013).

³³ Amnesty International interview with an independent consultant working on policing issues in Kenya, 3 December 2012, Nairobi, Kenya.

³⁴ Vincent Kodongo, "An analysis and critique of the impact of police reforms on human rights in Kenya," unpublished paper, 2012.

³⁵ Amnesty International interview with a human rights activist in Nairobi activist working with the Kenya Human Rights Commission, 3 December 2012, Nairobi, Kenya. The IGP has since been appointed.

³⁶ National Police Service Act, Section 14(b).

³⁷ *Daily Nation*, Kibaki appoints Kimaiyo deputies, 25 January 2013, <http://www.nation.co.ke/News/Kibaki-appoints-Kimaiyo-deputies/-/1056/1675302/-/a5na2/-/index.html> (accessed 27 January 2013).

³⁸ *Daily Nation*, Raila rejects Kibaki police appointments, 26 January 2013, www.nation.co.ke/News/politics/Raila-rejects-Kibaki-police-appointments/-/1064/1675768/-/wq839iz/-/index.html (accessed 27 January 2013).

³⁹ Vincent Kodongo, "An analysis and critique of the impact of police reforms on human rights in Kenya," unpublished paper, 2012.

⁴⁰ See for example, *The Star*, "Parliament to hold crisis meeting over police jobs", 27 August 2012, <http://www.the-star.co.ke/news/article-4670/parliament-hold-crisis-meeting-over-police-jobs> (accessed 27 January 2013).

⁴¹ UN Committee against Torture, Concluding Observations on Kenya, November 2008, paragraph 12. This was part of the Committee's concluding observations on the state report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁴² Transparency International (TI) – Kenya, *East Africa Bribery Index*, 2012, p.3.

⁴³ Amnesty International interview with Mohammed Murshid, NPSC Commissioner, 21 January 2013, Nairobi, Kenya.

⁴⁴ Amnesty International, "Kenya: Amnesty International calls for immediate investigation into execution-style killings of human rights activist", 6 March 2009, <http://www.amnesty.org/en/for-media/press-releases/kenya-amnesty-international-calls-immediate-investigation-execution-styl>

⁴⁵ Formerly Chapter 84 and 85 respectively, Laws of Kenya.

⁴⁶ This supported by the TI corruption index that ranked the Kenya Police as most corrupt.

⁴⁷ Independent Medico-legal Unit, *Upscaling Torture Prevention and Response in Kenya: National Torture Prevalence Survey Report*, 2011, p.35.

⁴⁸ National Police Service Act, Section 7(2) and 7(3).

⁴⁹ Amnesty International interview with a human rights activist working with IMLU, 3 December 2012, Nairobi, Kenya.

⁵⁰ To date the police have not disclosed this information. Under the new legislation however (IPOA Act, Sections 30 and 38), this information will have to made public.

⁵¹ Oscar Foundation for Legal Aid in Kenya, *Shielding Impunity*, 2006, http://apcof.org.za/File_uploads/File/Shieldingimpunity.pdf (accessed 27 January 2013).

⁵² Amnesty International interview with a small scale trader from Kibera, 13 December 2012, Nairobi, Kenya.

⁵³ Philip Alston, Special Rapporteur on Extrajudicial, Summary of Arbitrary Executions, Statement at the 64th Session of the General Assembly, Third Committee, Item 71 (b), 2012, p.4.

⁵⁴ UN Human Rights Committee (HRC), UN Human Rights Committee: Concluding Observations: Kenya, 29 April 2005, CCPR/CO/83/KEN, paragraph 16; UN Human Rights Committee, Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, CCPR/C/KEN/CO/3, paragraph 11.

- ⁵⁵ Independent Medico-Legal Unit, "Medico-Legal Intervention on the Post-Election Violence", p.17.
- ⁵⁶ Usalama Reforms Forum, *Communities and their police stations. A study report of 21 police stations in Kenya, 2012.*
- ⁵⁷ Usalama Reforms Forum, *Communities and their police stations. A study report of 21 police stations in Kenya, 2012.*
- ⁵⁸ Amnesty International interview with a government official from the Ministry of State for Provincial Administration and Internal Security, 20 December 2012, Nairobi, Kenya.
- ⁵⁹ Amnesty International interview with an Administration Police Officer, 11 December 2012, Nairobi, Kenya.
- ⁶⁰ South Consulting, *Kenya's 2013 General Election; A Review of the Environment and Electoral Preparedness. Review Report*, October 2012, www.dialoguekenya.org (accessed 27 January 2013).
- ⁶¹ Amnesty International interview with consultant working on peace-building and security reform, 3 January 2013, Nairobi, Kenya.
- ⁶² BBC News, Kenya Grenade Attack: Somalis attacked in Nairobi, 19 November 2012 <http://www.bbc.co.uk/news/world-africa-20393013> (accessed 27 January 2013); *Daily Nation*, Police nab 300 after Eastleigh blast, 9 December 2012, <http://www.nation.co.ke/News/Police-nab-300-after-Eastleigh-blast/-/1056/1639752/-/5xka0n/-/index.html> (accessed 27 January 2013).
- ⁶³ Amnesty International phone interviews, November and December 2012.
- ⁶⁴ Amnesty International phone interview with journalist, 12 December 2012.
- ⁶⁵ See, for example, *The Star*, "Police execute suspect in Nairobi estate", 21 January 2013, <http://www.the-star.co.ke/news/article-103618/police-execute-suspect-nairobi-estate> (accessed 27 January 2013).
- ⁶⁶ IPOA has received numerous complaints mainly from the public, but there is no evidence of referrals of cases from the police. However, they are all pending the recruitment of the investigators, who are expected to come in within the coming month. IPOA does have an investigator/expert from the UNODC who is already working on the investigations manual. Amnesty International interview with Macharia Njeru, IPOA Chair, 21 January 2013, Nairobi, Kenya and Tom Kagwe, board member of IPOA, 21 January 2013, Nairobi, Kenya.
- ⁶⁷ Kenya Red Cross, "Ten More Lives Lost in Tana Delta as fighting erupts again", 10 January 2013, <http://reliefweb.int/report/kenya/ten-more-lives-lost-tana-delta-fights-erupt-again> (accessed 27 January 2013).
- ⁶⁸ *The Standard*, "2000 officers deployed to quell clashes", 13 September 2012, <http://www.standardmedia.co.ke/?articleID=2000066026&pageNo=1> (accessed 21 January 2013).
- ⁶⁹ Human Rights Watch, Kenya: Investigate All Politicians in Tana River Violence, 13 September

2012, <http://www.hrw.org/news/2012/09/13/kenya-investigate-all-politicians-tana-river-violence>, (accessed 27 January 2013); Kenya Red Cross, "Ten More Lives Lost in Tana Delta as fighting erupts again", 10 January 2013, <http://reliefweb.int/report/kenya/ten-more-lives-lost-tana-delta-fights-erupt-again> (accessed 27 January 2013).

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⁷¹ *The Daily Nation*, "Massacre in Kipao Village took us by surprise, say leaders and police", 23 December 2012, <http://www.nation.co.ke/Counties/Massacre-took-us-by-surprise-leaders/-/1107872/1650834/-/15qfhpvz/-/index.html> (accessed 27 January 2013).

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⁷³ BBC, "Mombasa secessionist group unbanned by Kenyan court", 26 July 2012, <http://www.bbc.co.uk/news/world-africa-18996621> (accessed 27 January 2013).

⁷⁴ *The Standard*, Two killed, MRC leader arrested in dawn gunfight, 15 October 2012, <http://www.nation.co.ke/News/MRC-leader-arrested-following-gunfight/-/1056/1533332/-/6m87yz/-/index.html> (accessed 27 January 2013).

⁷⁵ Amnesty International phone interview with Omar Mwamnuadzi, President of the MRC, 22 January 2013.

⁷⁶ Voice of America, Secessionist Leader Arrest Raises Tensions in Kenya, 15 October 2012, <http://www.voanews.com/content/secessionist-leader-arrest-raises-kenya-tensions/1526742.html>. (accessed 27 January 2013).

⁷⁷ *The Daily Nation*, "3 killed, 4 arrested in foiled attack in Mombasa", 10 December 2012, <http://www.nation.co.ke/News/3-killed-4-arrested-in-foiled-attack-in-Mombasa/-/1056/1640442/-/5i6bp6z/-/index.html> (accessed 27 January 2013).

⁷⁸ *The Star*, "DC finds MRC link to the Tana River clash", 7 December 2012, <http://www.the-star.co.ke/news/article-98660/dc-finds-mrc-link-tana-river-clash> (accessed 27 January 2013).

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⁸⁰ Amnesty International interviews with a paralegal based in Baragoi, 3 December 2012, Nairobi,

Kenya and by phone, 5 December 2012.

⁸¹ *The Daily Nation*, Report blames poor planning for police massacre in Baragoi, 17 January 2013, <http://www.nation.co.ke/News/Report-blames-poor-planning-for-police-massacre-in-Baragoi-/1056/1667478/-/3lcpmaz/-/index.html> (accessed 27 January 2013).

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⁸³ Amnesty International interviews with Macharia Njeru, IPOA Chair, 21 January 2013, Nairobi, Kenya and Mohammed Murshid, NPSC Commissioner, 21 January 2013, Nairobi, Kenya.

⁸⁴ Republic of Kenya, Kenya National Assembly, *Report of the Joint Committee investigating the matter of the adverse security situation, loss of property, loss of lives of security personnel and civilians in Garissa and Eastleigh Towns, and the Baragoi Environs*, 10th parliament – fourth session, December 2012.

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⁹⁰ Amnesty International interview with Eric Kiraithe, Police Spokesman, 22 January 2013, Nairobi, Kenya.

⁹¹ Commission of Inquiry into the Post-Election Violence (CIPEV), *Report of the Commission of Inquiry into the Post-Election Violence*, October 2008.

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⁹⁴ The Kenya National Dialogue and Reconciliation Monitoring Project, Agenda Item 4 *Reforms Long-standing issues and solutions, Progress Review Report*, March 2012. paragraph 35, p.15, <http://www.dialoguekenya.org/index.php/reports/monitoring-reports.html>, (accessed 27 January 2013).

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⁹⁶ There were many reports of the police being careful to make use of force as they did not want to 'end up in The Hague'. See for example *The Standard*, "Mistrust after Police fail in Tana", 16 September 2012, http://standardgroup.co.ke/?articleID=2000066228&story_title=Kenya-Mistrust-after-Police-fail-in-Tana (accessed 22 January 2013).

⁹⁷ *The Standard*, "Iteere blames commanders for Samburu raid", 13 November 2012, http://www.standardmedia.co.ke/index.php/business/videos/ktn/?articleID=2000070568&story_title=Iteere-blames-commanders (accessed 27 January 2013).

⁹⁸ Amnesty International interview with a government officer at the Ministry of State for Provincial Administration and Internal Security, 20 December 2012, Nairobi, Kenya.

⁹⁹ Amnesty International interview with a government officer at the Ministry of State for Provincial Administration and Internal Security, 20 December 2012, Nairobi, Kenya.

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