

Local Policing Accountability in Kenya

Challenges and Opportunities for Action

Centre for Human Rights and Policy Studies (CHRIPS) & African Policing Civilian
Oversight Forum (APCOF)

2014

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Acronyms and abbreviations

| | |
|---------------------------|--|
| CSOs | Civil Society Organisations |
| IPOA | Independent Policing Oversight Authority |
| NPSC | National Police Service Commission |
| Ransley Task Force Report | Report of The National Task Force on Police Reforms 2009 |
| NPSC Act | National Police Service Commission Act |
| NPS Act | National Police Service Act |

Executive Summary

The work on police reforms in Kenya has a fairly long history without adequate change in the structure and attitude of the police service to match. Among the more difficult aspects of reform is transformation of attitudes within the Police Service to ingrain the values of democratic policing, and in particular, accountability to civilians in the exercise of police power. The commentaries on policing in Kenya have noted that the Service has a history of poor relations with civilians and does not enjoy high levels of confidence from the public. Credible policing in a developing democracy calls for accountable policing, where the exercise of police power is restrained, deliberate and cognisant of citizen rights. While the commentaries and other writings have focused on the state of policing particularly in relation to major towns, this study delves into accountability structures and needs at the local community level, where the scrutiny of oversight institutions, civil society organizations and the media is not as intense as in the capital city and other large cities.

The study focuses on police and civilian interactions in Eastleigh, Kirinyaga, Kisii and Mtwapa regions of Kenya. It identifies that the key hindrances to local policing accountability are a deep seated lack of confidence in the police which means citizens do not report crimes and do not monitor progress on crimes. The low expectations means that the accountability levels expected from the police are also low. Similarly the widespread perception that police service is availed only when money is given leaves communities unable to monitor the police. Other barriers include the view that the police are unwilling to fight crime; police attitudes to accountability and civilian involvement in security are dismissive; the justice system from police officers to court officers and prison officers is disjunctive; and the poorly equipped police officers are unable to ensure accountability in how they work. The study found that 67% of the respondents do not know about IPOA and NPSC and even less were aware of their role in relation to policing accountability. The need for greater public awareness on what policing accountability entails and the institutions that are set up by law to lead in accountability is clear from the study.

The entry points and strategies to strengthen local policing accountability proposed in this study are, strengthening community policing to build partnership between police and communities. This calls for genuine inclusion and appreciation of civilian views in shaping security and not merely using civilians as a conduit for information on fighting crime. Developing programs to reform police attitudes even as reform of institutions, structures and laws goes on is also an important measure. Improving public knowledge of the existing accountability structures and how they can use them would be necessary in

activating greater public use of the forums. The reforms in the judiciary, police and prisons need to be synchronised to ensure the three systems are complimentary rather than disjointed in their functions. Beyond ammunition and equipment, it is important to provide basic tools such as notebooks, communication tools and similar materials to ensure lack of basic materials does not impede accountable policing. It is remiss to expect accountable policing from officers if the meaning and expectations have not been explained in a way that clarifies what is expected of the officers. IPOA should also examine the existing local efforts at accountability and work with these to strengthen local efforts to hold the police accountable. In the same vein, the place of increasing knowledge of the public on accountability and accountability structures cannot be gainsaid. If civilians do not know they can report and have action taken then the accountability mechanisms are incomplete.

The move towards democratic policing is compelling and necessary. Policing accountability may be an uncomfortable concept for an institution that has ordinarily worked with little accountability to civilians. Nonetheless, it is imperative if Kenya is to establish a modern day, world class National Police Service.

Introduction

Three years since promulgation of the Constitution, the police reforms process has been slower than expected even though there have been significant strides in the legal, policy and institutional reforms. The establishment of the Independent Policing Oversight Authority (IPOA), the Commission on Administration of Justice, the National Committee on the Administration of Justice, the National Police Service Commission (NPSC), the Kenyan National Commission of Human Rights (KNCHR), and the National Gender and Equality Commission (NGEC) among other institutions, is evidence of a significant forward leap in strengthening the institutional structures for policing oversight and accountability.

However, away from the capital city and major towns, it seems that local communities remain largely unaware of the policing reform process, of the oversight institutions, the authority of civilians over security agencies that the Constitution asserts and how civilians can hold the police accountable

As per the law, the IPOA and the NPSC are the key organs for oversight of police administration and operations. However, other institutions such as the Commission on Administration of Justice, (CAJ) and the Kenya National Commission on Human Rights, do have an oversight mandate on matters touching on the police. IPOA has the legal mandate to investigate all forms of police misconduct including deaths in custody and serious injuries as a result of police action. It has the authority to investigate complaints against the police, monitor police operations and take over investigations into particular incidents if they are inordinately delayed. On its part, the NPSC is legally mandated to undertake the vetting of serving police officers, to oversee recruitments, appointments, transfers, promotions and approve the training of the police, as well as to review of disciplinary action taken against officers. These institutional, administrative, legal and policy innovations are expected to translate into better policing at the local levels and better relations between the police and the public.

Rationale and Overview of the study

Since the report of the National Task Force on Police Reforms (commonly known as the Ransley Taskforce, named after its chairperson) and the 2010 Constitution, Kenya has made its most significant changes in policy, legislation and institutional structures

towards reforming the Police Service. However, many of the anticipated reform measures are well behind schedule and in many cases it is evident that the expected transformation is yet to take place. In particular, there are serious concerns over whether the reform measures have travelled beyond the capital city to local levels where they are desperately needed.¹

This study is an assessment of police accountability at local levels in Kenya with particular reference and emphasis on the level of public awareness of police accountability mechanisms and process as well as the capacities that exist at local levels for promoting and strengthening police accountability. The study explores local experience on policing accountability in Kenya and highlights the gaps and the opportunities for intervention by various actors to strengthen accountability of the police among the local communities that they serve. Specifically, the study was guided by three objectives: (i) To establish an understanding of the issues hindering or enhancing policing and accountability at local levels in four communities in Kenya (ii). To assess the capacities and infrastructure available in the communities, and (iii) To identify entry points, approaches, strategies and capacity interventions that would strengthen police accountability at local levels.

The study was undertaken in four areas of the country: Eastleigh in Nairobi County; in Kirinyaga County; Kisii town in Kisii County and Mtwapa in Kilifi County.

Kisii town, the site of the research in Kisii County (in the southwest region of Kenya in what was formerly Nyanza Province) is a fast growing town with an increasingly cosmopolitan character as its business and academic expansion trigger more immigration into the town. Kisii Town has one main police station while some of the adjacent smaller regions have police posts. Kirinyaga County (in central Kenya within the Mt Kenya region) is located in the north of the largely agricultural County. Mtwapa is a transit town between Malindi and Mombasa town in the coastal region of Kenya and hosts a population of over 60,000.² The town is increasingly metropolitan, attracting migrants from other communities and parts of the country. Eastleigh is one of the larger settlements of Nairobi's Eastlands area. The population is estimated at 100,000, with both Kenyan and refugees and immigrant populations from Somalia, Ethiopia, Eritrea and other parts. Given the large Somali population, Eastleigh is sometimes called '*Mogadishu Ndogo*' (Little Mogadishu). It has a bustling and thriving business life covering a broad range of goods and services. Eastleigh has in recent years become notorious for terror incidents, grenade explosions and other extreme forms of violence.

¹ See also, Patricia K Mbote and Migai Akech, *Kenya: Justice Sector and the Rule of Law*, Nairobi: Open Society Foundations (2009);

² *Kenya County Fact Sheets 2013*

Eastleigh, Kirinyaga, Kisii and Mtwapa experience significant insecurity including frequent incidents of carjackings, armed robberies, house break-ins, sexual violence, killings and extortions. Gangs, vigilante groups, community-led security organisations and neighbourhood watches feature prominently in shaping the security or insecurity experienced in Eastleigh, Kisii and Kirinyaga although less so in Mtwapa. In April 2009, Kirinyaga was in the national spotlight when local vigilante groups organized against the *Mungiki* sect and criminal group which had allegedly terrorised residents through violent robberies, household break-ins and extortion of fees from owners of businesses, punctuated by gruesome killings that left residents terrified and anxious for their safety.³ In Eastleigh, the growing presence of violent, extortive gangs has become a major source of insecurity for residents. Between October 2011 and 2014 there have been more than sixty-one terror attacks in Kenya⁴ with at least nine of these attacks in Eastleigh including a grenade explosion in 2012 near a mosque in which the area Member of Parliament was injured.⁵

In Kisii, the *Sungu Sungu* has over the years gained notoriety as a vigilante group with a ruthless brand of justice meted out against suspected criminals and any accomplices as well as their families, with little opportunity for defence or exoneration.⁶ While ruthless, they are credited with bringing an end to the violent crime that had afflicted the residents of Kisii. On its part, Mtwapa has for long grappled with an extensive problem of illicit drug trafficking and trade that has also given rise to other crimes.

Methodology

As a qualitative study, the research study was conducted through field visits in four areas: Eastleigh in Nairobi County, Mwea and Ndia in Kirinyaga County, Kisii Town in Kisii County and Mtwapa town in Kilifi County in April and May 2013. The sites were identified based on initial work that was underway on crime prevention in those sites by USALAMA Forum in partnership with the Open Society Institute. Respondents interviewed in this study were women, men, *boda boda* operators,⁷ civil society organisation actors, religious leaders, police officers, local administration officials and community policing officials. These categories represent a diverse cross section of the

³ See, Ruteere, Mutuma, *Dilemmas of Crime, Human Rights and the Politics of Mungiki Violence in Kenya*, Nairobi: Kenya Human Rights Institute, 2009; and LandInfo, *Mungiki – Abuser or Abused?*, Oslo: LandInfo (29 January 2010)

⁴ Patrick Mutahi, “Kenya’s Security Attacks Worsen After Mpeketoni Attacks,” published in IDS Povertics 25 June 2014. Available at <http://vulnerabilityandpoverty.blogspot.com/2014/06/kenyas-security-crisis-worsens-after.html>

⁵ 2011 – 2014 terrorist attacks in Kenya, Wikipedia http://en.wikipedia.org/wiki/2011–14_terrorist_attacks_in_Kenya

⁶ George Kegoro, *The Rise of Militia Groups in Political Violence: A Case Study of Chinkororo with Special Reference to the Post Election Violence in Kenya*. MA Dissertation: University of Nairobi, Institute of Diplomacy and International Studies (November 2009): 48 - 55

⁷ *Boda boda* refers to the public transport business in Kenya in which operators on motorcycles or bicycles provide transportation to individuals at a fee. In this study we restrict the use to motorcycle operators.

communities in the study areas and individuals with diverse and even divergent experiences in their interactions with the police. The vast majority of *boda boda* operators across the country are young men and as evidence in various places in the world has shown, young men are more likely to have confrontations with police officers on a daily basis than young women, older women and older men.⁸

Data collection was through focus group discussions (FGDs) and key informant interviews (KI interviews) in both Swahili and English. The respondents were chosen through purposive sampling combined with snowball sampling. Purposive sampling was used to identify the respondents in each of the categories targeted, namely, women, men, Thereafter snowball sampling was used to reach the members of each focus group discussion.

The KI interviews targeted senior police officers in the four sites, religious leaders and local administration leaders including assistant chiefs, chiefs and clan elders. In total, 135 respondents participated in the study. Of these, 93 were male (68.9%) and 42 were female (31.1%). Table 1 shows the distribution by gender.

Table 1: Distribution of respondents by gender

| | Female | Male | No. of respondents |
|--------------|---------------|-------------|---------------------------|
| Eastleigh | 5 | 23 | 28 |
| Kirinyaga | 15 | 33 | 48 |
| Kisii | 13 | 21 | 34 |
| Mtwapa | 9 | 16 | 25 |
| Total | 42 | 93 | 135 |

Consent to participate in the FGDs was given orally after sharing the purpose of the study and the voluntary nature of participation and confidentiality of information shared. Given the nature of information sought and the conditions in the different locations, many respondents were keen on anonymity. For example, in Kisii, many respondents were keen not to be known to have spoken on issues that link the Community Policing group to the dreaded *Sungu Sungu* vigilante group. In Eastleigh, many respondents did not want their names to appear in the study for fear of reprisal from police officers or any other officials as well as emerging gangs. Many police officers and local administration officials were also comfortable speaking on the guarantee that they would not be directly identified in the report. The report therefore uses a coding system to identify the category of respondents where reference is made to the respondents.

⁸ The Kenya Economic Surveys of 2004 to 2012 indicates that Kenya’s prison population which ranges between 70,000 and 90,000 is approximately 89% male and 10% female. UN Habitat

Overview of Police Accountability in Kenya

Democratic policing goes beyond mere law enforcement and requires the police to be accountable for their actions as an institution and as individuals.⁹ Because policing is intrusive by nature and the police are vested with extensive, discretionary powers, it calls for restraint and accountability when they exercise this power.¹⁰

In Kenya, as elsewhere in Africa, the process of reforming the security sector has been ridden with numerous challenges. Nevertheless as Nigerian scholar on policing Etannibi Alemika suggests, police reforms in Africa are as inevitable as they are imperative.¹¹

Over the years, the Kenyan police have been the subject of sharp criticism for excessive use of force, impunity and a general disregard for democratic ideals and citizen rights.¹² The Ransley Report noted that previous police reforms in Kenya have been largely superficial and little more than an exercise in public relations.¹³ Ruteere and Pommerolle¹⁴ astutely observe that the marked political reforms that led to political pluralism since 1992 were not matched by ‘radical reorganisation of the police force’ and the political transition did not yield far-reaching police reforms. Overall, the process of police reforms towards increased police accountability in Kenya has been slow in translating policy into action

The Ransley Task Force report highlights corruption, impunity, lack of accountability, arrogance and hostility as among the most significant and most enduring challenges affecting delivery of police service to civilians in Kenya and souring the relationship between police officers and civilians. The Commission of Inquiry into the Post-Election Violence in 2008 found the police to be the most significant hindrance to the police reforms noting that “the Kenya police have been slow to accept that police reform is

⁹ See Gary T Marx, “Police and Democracy,” in eds. Menachem Amir and Stanley Einstein *Policing, Security and Democracy: Theory and Practice*, vol. 2, Office of International Criminal Justice, 2001; Samuel Walker, “Police Accountability: Current Issues and Research Needs,” *National Institute of Justice Police Planning Research Workshop*, Washington, DC (November 28-29, 2006). Available at <https://www.ncjrs.gov/pdffiles1/nij/grants/218583.pdf>; Frank Harris, “Holding Police Accountability Theory to Account,” in *Policing* 6(3) (12 March 2012): 240–249;

¹⁰ Gary T Marx, “Police and Democracy,” 2001; Etannibi E. O, Alemika, ‘Policing oversight in Africa. Prospects, opportunities and challenges’ in *Workshop Report on Policing Oversight: Advances, Challenges and Prospects* (23-24 March) Johannesburg: ISS, 2011: 4 available at <http://www.issafrika.org/uploads/PolicingOversightMarch2011.pdf>

¹¹ Etannibi Alemika 2011: 4

¹² See Ruteere and Pommerolle 2003; CHRI and KHRC 2006; KNCHR 2008; Ruteere 2008; Saferworld 2008; Hills 2009; Ogada 2010; Furuzawa 2011; Ruteere 2012; Kivoi and Mbae 2013

¹³ *Report of the National Task Force on Police Reforms* 2009: 27

¹⁴ Mutuma Ruteere and Marie-Emmanuelle Pommerolle, “Democratizing Security or Decentralizing Repression? The Ambiguities of Community Policing in Kenya,” *African Affairs* 102 (2003): 587-604

necessary and are reluctant to accept that the public and others outside the police have a role to play in shaping police policy and reforms.”¹⁵

Kenya’s contemporary police are a product of its history. The colonial policing tradition fashioned the police into a tool for oppression and repression of civilian resistance. The police served the colonial government’s ends with the rights of the colonial subjects secondary to this objective. This structure led to cementation of a culture of general hostility to, mistrust of, disdain for and disregard of civilians. This culture sees civilians as a hindrance to the goals of policing with little need for their consultation. In other words, security is what the police deliver and civilians receive. Ultimately, a culture of impunity and unaccountability has become a definitive feature of the Kenya police.¹⁶ Police shootings on busy streets and the inadvertent shooting of civilians, shooting of suspected criminals even when they have surrendered, repeated unofficial policies of shoot to kill, creation of death squads within the police service, use of excessive force against protestors have all become emblematic of the Kenyan police conduct over the years.

The transition from a KANU government after 32 years in power to the NARC Government in 2003 created an opportunity for key reforms. The police had been central in enabling and sustaining the repressive control of successive regimes of the KANU government. The potential to transform the previously lukewarm reform efforts into a robust reform agenda was acknowledged and became a key priority of the NARC Government.¹⁷ Early on, a number of new laws, amendments of existing laws and guiding policies were identified as key in strengthening the infrastructure for reform as well as creating a structure for police accountability. The Police Reform Task Force was created in 2003 to identify areas the required reform and propose ways of instituting reforms.¹⁸ Hills observes that the unprecedented opportunity for police reform was

¹⁵ Commission of Inquiry into the Post-Election Violence, *Report of the Commission of Inquiry into the Post Election Violence*, Nairobi: Government Printers, (November 2008): 430

¹⁶ In its strategic plan 2003 – 2007, the Kenya Police Force acknowledged that a culture of impunity was pervasive in the service and presented among the biggest challenges to accountability. See, Kenya Police Service, *The Kenya Police Service Strategic Plan 2003 – 2007*, Draft 2, 2003:15 available at http://www.humanrightsinitiative.org/programs/aj/police/ea/articles/draft_strategic_plan_2003-07.pdf Accessed on 2 April 2013

¹⁷ Mbote and Akech, *Kenya: Justice Sector and the Rule of Law*, 2011

¹⁸ The transition to the NARC Government in 2002 marks the start of a series of measures towards police reform. These include establishment of the police Taskforce in 2003; the community policing measures; appointment of an army brigadier to the position of Commissioner of Police; the first-ever police force five-year strategic plan; and other initiatives pursued with experts. With the spectacular failure of policing in the 2007 and 2008 post-election violence, Kenya witnessed more radical measures aimed at reforming the police and unequivocally introducing oversight and accountability. The Constitution of Kenya 2010 in Chapter 14 legally transforms the institution from a ‘force’ to a ‘service’ and introduces new oversight measures in the appointment of the police top hierarchy as well as in their operations. See also M Ogada 2010,

quickly squandered as competing political interests and in-fighting for power made it impossible to push forward any meaningful reforms in the security sector.¹⁹

The problem of impunity and lack of accountability in policing became even more evident during the post election violence of 2007-2008. The report of the independent inquiry into the violence, the Waki Report, concluded that the police were implicated in fuelling the political distrust through their partisan actions before the elections and in widespread killings once the violence began. As the report notes, deaths as a result of police action accounted for 405 of the 1,133 reported deaths, constituting 36% of the deaths and making police shootings the single greatest cause of the deaths during the period.²⁰ The urgency of the task of police reforms for greater accountability became clear after the elections leading to the setting up of the National Task Force on Police Reforms (Ransley Task Force) which made important and comprehensive recommendations on the transformation of the police into a modern, democratic service. The adoption of the 2010 Constitution set the pace for establishing a legal framework for police accountability.

Democratic policing has been established as a central tenet of policing and security under the 2010 Constitution. The Kenyan Constitution requires that policing must be conducted with respect for rule of law, democracy, fundamental freedoms and human rights²¹ and all national security organs remain subordinate to civilian authority. The values of professionalism, discipline, prevention of corruption, accountability, and respect for human rights and promotion of good relations with the public are elevated as key attributes required of the police under the new dispensation ushered in by the Constitution.

To give effect to the civilian oversight of the police, the Independent Policing Oversight Authority (IPOA) was established through the Independent Policing Oversight Authority Act (No.35 of 2011). The functions of IPOA include the responsibility to ‘hold the police accountable to the public in the performance of their functions’²² including promoting transparency and accountability of the Service. While based in the capital city, IPOA is required by law to devolve its services to the counties. Thus IPOA becomes the first civilian oversight body in Kenya with legislated authority to seek accountability for specific police conduct and to promote a culture of accountability in the service.

In addition to the establishment of a legislative framework for policing accountability, it is also important to note that administrative structures and procedures are important in

¹⁹ Alice Hills, “Policing in Kenya: A Selective Service” in eds. Mercedes S. Hinton and Tim Newton. *Policing Developing Democracies*, Abingdon: Routledge, 2009

²⁰ Report of the Commission of Inquiry into the Post-Election Violence, 2008: 346

²¹ Article 238(2) of the Constitution

²² Section 5(a) of the IPOA Act

strengthening accountability. Transforming police culture and attitudes is the harder task as it requires both individual and collective change in what the police understand as the function of policing and the role they play vis-à-vis civilians.²³

However, it is not only police attitudes that have impeded far-reaching reforms towards incorporating greater accountability. Societal attitudes on the police use of force have also been ambivalent. The public largely tends to support hard measures taken by the police including extrajudicial killings and arbitrary arrests of persons where it is perceived to be in response to escalating or egregious crimes. There is little patience and perhaps confidence in the capacity of the Judiciary to efficiently match the demand for justice in times of worrying crime, such as violent robbery, gang killings and terror attacks which contributes to public support for strong police action whether it upholds the rule of law or not. As Kenyan researcher, Mikewa Ogada observes, police resistance to incorporating democratic policing and reforms is perhaps a product of country's unresolved uncertainty on what democracy in Kenya should deliver.²⁴ Overall, various researchers and analysts of police behaviour agree that that policing is unlikely to change until societal attitudes that strengthen police misconduct also change. In a system where violent crime and rampant insecurity are rife and confidence in the system's capacity to stem the crime, responding with violence, that is often excessive, receives popular support and entrenches a culture of unaccountability.²⁵

The pace of police reforms in Kenya has also been impeded by inadequate resource allocation and a failure to prioritise key facilities and measures that would help to enhance police service and accountability. These include setting up of modern forensic labs, modern crime detection and investigation equipment. All of these contribute to the unprofessional investigation and prosecution of cases, corruption among individual officers and the police temptation to use extrajudicial measures to deal with suspects.

Policing Accountability at Local Levels in Kenya

Public policing is typically a strong feature of urban policing and reforms are often motivated and driven by incidents in urban areas.²⁶ Away from the glare of media, NGO and public scrutiny that is more prominent in large cities, policing in rural towns often escapes scrutiny and is open to significant abuse. Not surprisingly therefore, the Kenya

²³ See Ruteere and Pommerolle 2003: 89, Report of the National Task Force on Police Reform 2009, and PricewaterhouseCoopers, Kenya Police Culture and Attitude Change: Pilot Training Programme, 2007

²⁵ See also Rose de Jong, "Kenya's Extrajudicial Enforcers" in *Think Africa Press* (11 March 2011) available at <http://thinkafricapress.com/article/kenyas-extrajudicial-enforcers> accessed on 20 December 2013.

²⁶ Migai Akech "Public Law Values and the Politics of Injustice" 2005. See also crime statistics and surveillance reports by Security Research and Information Centre and Kenya Police Annual Reports; Alice Hills *Policing in Kenya: A Selective Service* 2009

Commission of Inquiry into the Post-Election Violence established after the 2007-2008 post-elections violence, found that in many rural areas affected by violence and crime during the post-election violence, the police failed and even refused to record statements from complainants.²⁷

Violent crime that was a feature largely associated with large cities and towns has steadily increased in the rural areas of Kenya. From newspaper accounts, it is evident that armed crime, violent robberies and carjackings have over the years also become a common problem in smaller towns outside of Nairobi and Mombasa. This is true of all the study sites.

The study examines the challenges and possibilities for accountable policing in local communities in Kenya with a specific focus on Eastleigh, Kirinyaga, Kisii and Mtwapa. The predominantly urban experiences shaping the discourse on police reform, the inadequate focus on policing and security in small towns and rural areas, have made police reforms and accountability measures less evident in local communities. This study therefore contributes to the discussion on police accountability in Kenya through an assessment of existing structures of accountability at these local level and police and civilian relations. As Kenya develops its new devolved governance system, it is important that agencies and structures that provide oversight and accountability also devolve to the local levels. This study hopes to contribute to the better understanding of these local levels, the likely challenges that accountability institutions might face and the possible measures and interventions they can undertake to strengthen accountability across the country.

Local Perceptions of Accountability

Form the study, it emerged that citizens consider police misconduct a rampant problem, and deeply ingrained in the culture of policing in Kenya. They see the policing system as tolerant of police abuse of power and more focused on protecting officers facing complaints rather than dealing with the abuse of office and the complaints. No responsibility for accountability is seen to be placed on the police and as such the accountability of an officer depends on his or her individual character and the character of the OCS manning the local station.

Police abuse of power and misconduct frequently occurs in the form of refusal to record complainants' statements,²⁸ extorting money and demanding or taking bribes, interfering in criminal cases to influence the outcome, police beatings and physical assaults.

²⁷ Report of the Commission of Inquiry into the Post-Election Violence, 2008.

²⁸ R21 during FGD in Eastleigh in July 2013.

Community members have experienced police abuse of power, failure to take action and misconduct with a sense that little or no redress is available. Even where a complaint is pursued, the process is not clear and is tedious, the responsible authorities and channels of complaint are not known and many complainants find the process frustrating and give up. From the study, the frequent complaints of police abuse are related to incidents of police officers pursuing personal vendettas and grudges against civilians – in his narrative, R23 spoke of an individual beating to death after a bar-room altercation with a police officer.²⁹ Other incidents include: the beating and later shooting and dumping of the body of a civilian who had stabbed and killed a police officer in an altercation;³⁰ an officer thought to be stealing whenever he is on patrol duty and hiring out his guns to criminal gangs when he is off duty;³¹ and a police officer manhandling a *boda boda* operator, causing him serious injury with no accountability for the injury.³²

Respondents in the study in all four sites were of the view that there is little to restrain police officers from pursuing personal vendettas against members of the community. The failure in accountability in the view of residents is buttressed by the absence of a system of redress when police abuse their authority and power. As such, most civilians consider police abuse a problem to be survived.³³

Challenges of Policing Accountability

Lack of confidence in police and the police system

The study established that citizen confidence in the police is low. Residents in the four sites view the police as largely unavailable to serve the public or to curb crime. Community perceptions of the police frequently describe the Service as unwilling and unavailable; in collusion with wealthy criminals; disinterested; apathetic to the increasing lawlessness and crime; partial in handling cases; and responsive only where money is availed.³⁴ The police are seen as unanswerable to anyone in the community.

With low confidence in police capacity and willingness to respond to reports of crimes, communities resort to their own means of redressing crime. These methods include the emerging community watch groups and associations, which respond to crime incidents while providing security through patrols. Vigilante groups have also emerged

²⁹ R23 during focus group discussion in Eastleigh in July 2013.

³⁰ R24 during focus group discussion in Eastleigh in July 2013.

³¹ R32 during the focus group discussion in Kirinyaga in June 2013.

³² R115 during a focus group discussion in Mtwapa in July 2013

³³ Comments by respondents during focus group discussions in Kisii, Kirinyaga and Eastleigh between May and July 2013

³⁴ Views from participants in every focus group carried out in this study in all four sites.

particularly to redress crime that has occurred and to deter recurrence of the crime. This absence of the police also allows for the emergence of criminal gangs that terrorise and extort communities. In Eastleigh, the absence of effective policing within the community has allowed the growth of criminal gangs such as *Sitaki Kujua*, *Super Power*, among others, that oscillate between providing critical neighbourhood services (garbage collection) and terrorising residents and extorting money. In Kisii, the *Sungu Sungu* are considered a community security group and a vigilante group which emerged to curb runaway crime in Kisii that residents felt the police were unwilling to address.³⁵ It remains the subject of debate whether *Sungu Sungu* simply rebranded into the current community policing group that works in partnership with the police or the community policing group is a different outfit. Community members cooperate more with *Sungu Sungu* to deal with incidents of crime rather than report to the police.

Perception of police service as motivated by money

The vast majority of civilians in the study consider police service as available and fairly prompt only when they pay. Over 80% of the respondents in the study complain that whenever they report a crime, police officers require them to provide money to cover fuel or taxi expenses if they want service. Otherwise the police may fail completely to go to the scene of the complaint. Residents are resigned in the belief that policing is not in the service of ordinary civilians and as such civilians have low expectations from the police.

Police officers interviewed in the study insist that there is often inadequate resource allocation to police stations to enable officers effectively carry out their work. Fuel disbursement is low, equipment such as notebooks, pens, office stationery and other basic equipment are often unavailable to officers, and airtime for their phones is not usually provided yet landlines no longer work. Without these facilities, it often falls to individual officers to use their private resources to respond to crime incidents. This is not only unsustainable but also creates room for corruption and poor services.

In Eastleigh, the religious leaders interviewed indicate that community members do not report to the police because it is seen as a futile venture. While the challenge of police demand that the public pays for their expenses in common in all the sites, in Eastleigh it is dire and the public now associate the presence of police with an automatic demand for money. R17, a woman in the Eastleigh FGD commented:

³⁵ Interview with R107 and R108 in Kisii in May 2013. See also, George Kegoro, "The Rise of Militia Groups in Political Violence: A Case Study of Chinkororo with Special Reference to the Post Election Violence in Kenya. MA Dissertation: University of Nairobi, Institute of Diplomacy and International Studies (November 2009): 48 - 55

“The police want money for *chai*³⁶ and for taxi. Nothing will happen without you giving them *chai*. They don’t use their vehicles; you have to get a taxi. If you don’t have money there is no point of reporting. But those who have money – even the refugees – can have you arrested. Money works.”

The money according to some respondents is necessary not only to get the police to respond to a situation but to ensure the case is pursued. Communities in the four sites are of the view that if a suspect pays the police, the police will use their office to scuttle the case against the suspect. This ‘cost’ of obtaining police service becomes a key factor in determining whether civilians pursue legitimate issues with the police or even hold the police accountable for execution of their tasks. In this regard, R115 in Mtwapa comments:

“When someone is offended and they consider their resources, they are unable to push the case all the way and get justice. They know that when they appear before the police, in that same case where they [were] wronged, the accused person can become the complainant and [they] become the accused person.”

Residents in Kirinyaga have established neighbourhood watches to deal with crime in their neighbourhoods rather than go to the police. When faced with major crimes, they report to the police in order to have the complaint on record but do not wait for the police to make a follow-up. R67 explains:

“We don’t go to the police when the insecurity arises because we know the root of the problem. We solve it ourselves. We feel as a community it is our role to resolve it. We know the people. We warn them then if they persist we take them to the police. It is like community policing but we don’t really work with the police directly.”

However, communities are aware that the police have a responsibility and accountability to the community. Although civilians feel it is left to them to resolve many of their day-to-day crime and disorder challenges, they are aware that it does not excuse the police from their responsibility as the institution mandated to maintain law and order and serve the communities. The challenge is in the means to hold the police accountable at community level.

Perceptions of police as unwilling to address crime

Community residents perceive the police as unwilling to put effort and resources in addressing the day-to-day crimes in community. In all the sites, most respondents are of

³⁶ *Chai* is a swahili word meaning tea, but is understood in everyday parlance as a bribe solicited by or paid to government officers or persons in authority for a service required.

the view that the insufficiency of police responses is a matter of unwillingness rather than inability to respond. In Mwea constituency, Kirinyaga County, residents are convinced that police collude with criminals for financial benefit and as such are lukewarm at best in dealing with residents' criminal complaints. Police are seen as more keen to explore a situation that presents potential for financial benefit rather than resolving the matter to the benefit of the public. For instance, they are quick to mount a crackdown on *chang'aa*³⁷ dens as they are guaranteed a bribe from the *chang'aa* brewers. Given this perception that police do not respond to issues unless the complainant has money, respondents do not therefore typically report to the police unless they feel the matter is likely to end up in court.

Moreover, there is weak partnership between civilians and police officers in fighting crime. Civilians feel they are at risk when they act as informants and volunteer information to the police as the police do not keep the information confidential. Residents in Mtwapa are weighed down by the drug problem but they consider it a greater risk to provide information to the police than to live with the illicit drug trade.³⁸ A number of residents who have come forward to give information to the police have later found themselves threatened by the same drug traders against whom they made police reports. About 88% of the respondents in Mtwapa believe that the police are in collusion with drug peddlers and cannot therefore be relied on to keep information confidential or to act on the dealers.

In Eastleigh, residents feel that the police and the government as a whole has allowed Eastleigh to descend into a state of lawlessness. The area has been left to the mercy of rival gangs that are fighting for dominance in the area. In the past twenty-four months there had been several grenade attacks within Eastleigh and its environs including a grenade explosion at a public forum in which the area Member of Parliament was injured. The respondents are of the view that the police are more interested in extorting money from mainly Somali residents than any form of law enforcement. Similarly, respondents in Kisii see the police as inconsistent in their response to crime. In their view, the police will respond promptly when it involves *chang'aa* crackdowns but take domestic violence too casually and rarely make follow-ups after reports are lodged.

³⁷ *Chang'aa* is a potent but popular alcoholic drink which until 2010 was illegal but widely available across the country. Its alcohol content is thought to range anywhere between 60% and 90%. It was illegally brewed in clandestine home breweries found in many city slums as well as in towns and rural areas and retailing for approximately 20 shillings (\$0.2) a glass. Although the base ingredient is maize, the combination of ingredients will vary from brewer to brewer. The brew has been in the media several times for causing deaths of consumers after brewers laced it with harmful additives such as industrial methanol, jet fuel among others to give it a 'kick.' The legalisation of *chang'aa* was an attempt to control its potency and contents as well as the standards of hygiene that went into its preparation. However, the brewing of *chang'aa* has continued uninterrupted and continues to serve mainly a low-income population across the country. Police raids on *chang'aa* dens are intended to curb unlicensed brewing of the drink.

³⁸ Interview with R120 in Mtwapa, a community leader and member of community policing group in July 2013.

The police are also seen as inconsistent in how they undertake law enforcement. There are no significant repercussions for officers failing or refusing to respond to criminal complaints. Generally civilians do not see a way to hold officers accountable for failing to carry out investigations and on crime. As such, police refusal or failure to pursue criminal complaints are seen as flaws of the system that cannot be corrected or are difficult to correct.

Police Attitudes

The Police Service is seen as generally hostile to and disdainful of civilian involvement in provision of security. The Commission of Inquiry into Post Election Violence noted that this is a major challenge in policing – the police consider security provision a preserve of the armed services and civilians lack the capacity to make meaningful contributions to the strategies and outcomes of security.³⁹ These attitudes affect police accountability to community members for their daily policing work. Accountability is largely seen as a matter of internal hierarchy and discipline.

Residents find the police condescending, disrespectful and dismissive of the communities they serve. These attitudes are among the biggest barriers to cooperation with the police. They have also bred resentment and hostility towards the police as well as distrust particularly as civilians feel that the police do not in any event effectively carry out the work of curbing crime and providing security.

Where community policing has been pursued by the police it has largely been used as a tool for the police to gather information from civilians and to give selective information on what they police consider important. Community policing forums have not involved reciprocal information sharing in which the police are open to feedback to civilians within the community.⁴⁰

The police retain a measure of indifference on the state of the relationship with the communities they serve. The view of “them-versus-us” persists in the daily conduct of law enforcement activities. When asked about the complaints against the police, the officers were of the view that since formal complaints are few and far between, it is indicative of civilian satisfaction with the police service. Officers seem both oblivious of and indifferent to the depth of dissatisfaction within communities on the performance of the police.

At the national level, the police reform agenda is strongly oriented to reform of structures and policies. However there has not been significant investment in the reform of police

³⁹ *Report of the Commission of Inquiry into the Post Election Violence* (November 2008): 430

⁴⁰ Focus group discussion with residents in Mwea, Kirinyaga County in July 2013. See also Ruteere and Pommerolle 2003

officers' attitudes and consequent behaviour. Officers in the study echo the widely held view that the push for democratic policing is in fact inhibiting effective policing by requiring the police to be accountable for all their actions.

Poor local knowledge of existing accountability structures

Over 67% of the respondents (90 respondents) in the study do not know about IPOA, the Commission on Administration of Justice (the Ombudsman) or NPSC. Of the 33% that have heard of the institutions, 70% are police officers, community policing volunteers working with the police and officers of CSOs who work on issues of security in the community. Majority of those who know about these oversight bodies are in Nairobi. However, in total, less than 10% of the respondents knew the role and functions of the institutions and how civilians may interact with them.

Residents in Eastleigh consider civil society organisations as the primary mechanism for lodging complaints against police abuse or misconduct. They turn to civil society groups where they are unable to get service from the police on complaints lodged or criminal matters in court and where they are victims of police brutality. Similarly, in Mtwapa residents turn to civil society organisations to engage with the police in situations of police misconduct. Religious leaders and some of the community policing volunteers play a role in helping the residents to intervene with the police. R131, a religious leader in Mtwapa recalled the situation of a young woman who was forced into marriage with a prominent and wealthy man despite her objection and her mother's refusal. He made persistent advances including abducting the girl. Despite repeated visits and requests for police help, the police declined to step in, conceivably because the man was a prominent man in the community. In distress, the young woman and her mother went to a religious leader. Together, they went to the police station and the religious leader threatened to go to the media and expose the police collusion with a wealthy businessman. It was then that the police summoned the businessman to the police station and warned him of legal consequences if he did not leave the woman alone.

However, most respondents in the study sites do not pursue cases of police abuse. Those who do may approach local government officials, such as the chiefs, assistant chiefs and the district commissioners, as well as the clan elders. A group of farmers in Kisii stated that they report incidents of abuse of junior police officers to the OCS or to the OCPD depending on the gravity of the case. If they are not satisfied, they seek out the District Officer but it is often hard to reach him. Their view is that the police officials and the government officials protect each other. A respondent in Kirinyaga pointed out that having worked in Nairobi and later retired to Kirinyaga, the absence of human rights advocacy groups in an area means there is little to provide a check on police conduct and

challenging and seeking redress for police abuse of power is difficult if not futile⁴¹. The view among most residents in local communities is that the police are the final authority and if other local administration offices cannot succeed informally in addressing police misconduct, there is no other recourse. People simply learn to tolerate and live with police misconduct.

Dysfunctional justice system

Although the police are part and parcel of the greater justice system, the exercise of oversight from the Courts to curb police misconduct particularly in criminal processes seems to be largely absent. As such, police officers frequently use the threat of throwing a person into the criminal justice process to extort money and other information. The court process is seen as complex, little understood with protracted legal proceedings⁴² that only serve to create significant personal inconvenience,⁴³ prohibitive legal and court fees and with little likelihood of receiving justice without a lawyer even where charges are trumped up.⁴⁴ Young *boda boda* operators in Kirinyaga would rather pay the bribes and other monies extorted by the police rather than face criminal charges in court whether the charges levelled against them are real or trumped up. They see the court justice process as a greater inconvenience with no guarantee of justice than dealing with the police and paying any sums demanded.

Police perceptions of accountability

Police officers are of the view that inadequate provision of basic equipment for police work affects not only morale but also the ability of the police to provide efficient service. One officer in the study explains that basic equipment is rarely available and when it was availed, it was never in good time. Writing material, stationery, notebooks, airtime for communication, vehicles and means of travelling are among the items that are poorly supplied and affect basic police functions such as recording statements, responding to crime reports, providing abstracts and conducting investigations. A police officer in Kirinyaga observed:

“Previously we had landlines. We could call other officers and people from the landlines. But when the mobile phones came, they killed the landlines. Now we use our own mobile phones yet we are not given [airtime]. From the same small salary we are paid, it is the same money we will use for airtime. Personally, I use

⁴¹ R72 during focus group discussion in Kirinyaga in July 2013.

⁴² Focus group discussion in Kisii with young men in May 2013.

⁴³ Focus group discussion in Kiangai, Kirinyaga in July 2013

⁴⁴ Focus group discussions with young men in Kisii in May 2013 and with boda boda operators in Kirinyaga in July 2013.

about 200 shillings⁴⁵ everyday for official communications. It comes from my money. We have been asked to sacrifice a lot.”

In Mtwapa, an officer pointed out the challenge with transport logistics:

“We have one car at present. It is an old junk serving a very large area and it consumes a lot of fuel. We get 10 litres of fuel every week for all the policing work and we can only fuel at particular stations. So sometimes we have to drive a distance of an hour and consume nearly 4 litres of fuel in order to get 10 litres. This is poor management. The same 10 litres we were getting many years ago is the same 10 litres we are still getting. Are police expected we use their own resources? Is that sustainable?”

The challenge of police welfare has been an ongoing problem that is well known to the public as well. Community members are of the view that when police officers are living in squalid conditions, with poor incomes and welfare options, they are more likely to be abrasive, arrogant, hostile and bullying in how they deal with civilians.

Local capacities and infrastructure for accountability

From the study, it emerged that civil society organisations including NGOs, faith-based groups, and community-based organisations are key in the efforts to hold police officers accountable at local levels. These efforts include following up on stalled cases, querying officers’ conduct in particular instances, watching brief in cases that go to court, and intervening with senior officers on specific cases. These organisations are also important players in carrying out interventions for specific individuals who may approach the organisations to make a complaint about police conduct. Few organisations are involved in active monitoring of the police and focusing on accountability. Most of the organisations in the study are involved in case-specific interventions. The study also indicates that most interventions arise after occurrence of an incident. Some of the main interventions when dealing with the police include:

- Seeking the direct intervention of the OCS or OCPD in an incident
- Developing reports that review police conduct which are shared with the organisations’ head offices mainly based in Nairobi for higher level advocacy;
- Training community members on their rights and on advocacy;
- Documenting abuses
- Running penal reforms and judicial participation projects in the community

⁴⁵ Approximately \$2.4

- Working with paralegals to help individual cases
- Making referrals to more established police monitoring organisations such as the Independent Medico-Legal Unit (IMLU)
- Monitoring specific police actions, such as gunshot wounding or killing by the police

Using the media to draw attention to and generate public outrage on specific cases and thereby pressuring the police to take corrective actions is often used as a last resort measure. For the most part, accountability at the local level is a hit-and-miss affair that depends on the individual senior officers present, the relative success of organisations in intervening with the police. A major gap exists in scaling up oversight of the police and demand for accountability at the local level to institutions and offices to which the police are answerable who can then give credence and weight to community efforts to hold the police accountable.

Gaps in the local infrastructure and capacities of actors

The infrastructure of accountability at the local level lacks coherence as it is presently defined by individual initiatives of civil society organisations pursuing police accountability and redress on specific cases. These efforts are not backed by a clear system from the state oversight institutions to scale up the cases and hold police officers formally accountable for their conduct.

From the study, 67 per cent of the respondents in the study had heard of IPOA or NPSC , and less than 10 per cent were familiar with the roles and functions of the institutions and how civilians may interact with them. Apart from the police officers and some of the officers in civil society organisations, the respondents in the study are not familiar with the police Internal Affairs Unit.

On the flipside, because civil society organisations are already familiar with various mechanisms and processes of holding the police accountable while also working with police to improve standards of policing, it presents a strong basis on which to build a strong infrastructure for local policing accountability. This however requires leadership from IPOA as the legally mandated organisation for police accountability as well as the new institutions such as NPSC and the Internal Affairs Unit.

Local communities – both individuals and organisations – need to know and understand the accountability structures introduced by the Constitution and other legislation, how the processes work, and how their individual efforts can contribute to raising levels of accountability in the day-to-day police operations.

Police officers also need to be made aware of the meaning, scope of and need for accountability in their daily operations. Both preventive as well as corrective measures need to be understood by the officers.

State oversight institutions can use the media as well as establish partnerships with local groups to increase awareness on police accountability at local levels. This partnership will also greatly benefit these institutions, as it will increase their local reach as per expected of them under the law.

Strengthening Local Policing Accountability

Building partnership between police and communities

Although efforts of community policing have existed in the past, they have been misinterpreted as tools for the police to gather information without involving citizens in security decisions and outcomes or providing any form of accountability. The devolved system of government introduced by the Constitution requires greater citizen involvement in county governance, development initiatives as well as security. The National Police Service has a corresponding responsibility to balance the national security priorities and local priorities. The new structures make it imperative for greater cooperation and partnership between police in a locality and the community members.

The ongoing national review of community policing by the NPS and the work of the National Task Force on Community Policing are an opportunity to chart a clear course of community participation in their own security as well as partnership with the police. In addition, the Community Policing Authorities established as part of the devolved government structures, now offer an opportunity for the public and the police to work together more closely to address security priorities in each county and to also strengthen police accountability. The Community Policing Authorities are new and will require capacity strengthening from oversight institutions such as IPOA.

Reforming police attitudes

As long as police officers consider civilians as incapable of contributing to security, the responsibility to be accountable to citizens will continue to face resistance. The police reform agenda has seen significant changes in the legal framework, policy documents, top-level structures of the police and the institutions that provide oversight of police work. However, the intense focus on structural, legal and institutional changes needs to be matched by a robust plan to improve police attitudes to civilians. Oversight institutions

should prioritize influencing of attitude change as part of their oversight strengthening programmes.

Improving public knowledge of accountability structures

IPOA, NPSC and the Internal Affairs Unit of the police service play a critical role in improving police performance and accountability for their conduct. However, these structures are largely unknown to the public. It is important for these institutions, led by IPOA, to organise forums, media (TV and radio) awareness programs and other means of sharing information with the public at all levels on the new infrastructure for police accountability. In particular, how and when civilians may access the accountability structures is important information to disseminate to civilians at all levels.

Connecting judicial reforms and police reforms

Establishment of court users' committees, constructing new courts in places that did not have courts and enhancing the independence of the judiciary are among the measures the Judiciary has taken towards reforming the service and building greater public confidence in the justice system. It is important to robustly review criminal cases and hold police officers to a high standard in a bid to deter use of the court as a threat to extort money from civilians. Judicial reforms should look into police conduct before and during criminal cases. The Judiciary would need to be proactive in taking such measures and enquiring into procedural and substantive elements before an accused person is brought to court. The Constitution already sets the standard that no person should be held in custody for an offence of which the maximum sentence is imprisonment of six months. Further, unless there is a good reason for denying a person bail, everyone should be able to exercise the right to release from custody.

Equipping police officers to meet requirements of accountability

Tooling and equipping police with adequate materials, particularly less lethal weapons is important in ensuring greater professionalism and reducing possibilities of violations by police officers. Ongoing efforts to improve police welfare, re-tooling and re-skilling of police officers should be tied in with the promotion of a democratic, accountable police service. Budgetary allocation and procurement should be a focus of advocacy to ensure the procurement of less lethal weapons and the necessary tools for the police service.

Conclusion

The study demonstrates that communities are already engaged in seeking greater accountability for police conduct locally through various initiatives. The study indicates that civil society organisations monitor police conduct on specific challenges (such as police shootings), develop analytical reports on police conduct within the community, conduct community education on rights, seek to establish working relations with the OCS and senior police officers in order to open up channels for interventions and redress of specific issues, among others. This presents a rich base from which to build up community capacities to monitor, document and work with oversight institutions such as IPOA, to hold police accountable. It provides a means of understanding the challenges specific to communities and working with both the police and community members to gradually raise the attitudes towards and levels of accountability.

Accountability is largely seen by the police service as an additional burden that curtails speed, responsiveness and effectiveness in policing and providing security. However, legitimacy of the service requires the police service to respond to the demands of a democratising nation. As such what accountability means for day-to-day policing for individual officers should be strengthened and disseminated so that it is applied in police stations and police posts all over the country. The ongoing review of Service Standing Orders is an important opportunity for strengthening this understanding.

For oversight institutions such as IPOA, it is important that they invest in strengthening police accountability in their operations at the local level. As a start, it is urgent that they promote greater public awareness of the existence of these institutions, their s mandate in relation to civilian oversight of police and processes through which the public can access them.

Glossary

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| Utumishi kwa wote | ‘Service to all’ – Kenya Police Service motto |
| Baraza(s) | Baraza is a meeting. They are community forums in which issues of importance to the community are addressed. |
| <i>Boda boda</i> operators | Boda bodas refers to the public transport business in which operators on motorcycles or bicycles provide transport to individuals at a fee. |
| Local administration | Civil servants appointed to serve in an administrative capacity as Chiefs, Assistant Chiefs, District Officers, etc in a particular area (usually a Location or Sub-location of a constituency). |
| Community leaders | Clan Elders, Village Elders and Religious Elders who are unofficial leaders with significant influence in community |
| OCS | Officer Commanding Police Station. The officer in charge of a police station in a particular locality |
| OCPD | Officer Commanding Police Division. A senior officer overseeing a number of police stations and posts in a police division. |

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