

The First One Hundred Days:

**Civil Society Expectations
of the Third Inspector General of the National Police Service**



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ABBREVIATIONS & ACRONYMS

AP	- Administration Police
CCTV	- Close Circuit Television
CS	- Cabinet Secretary
DCI	- Directorate of Criminal Investigations
DPP	- Director of Public Prosecutions
HRW	- Human Rights Watch
IAU	- Internal Affairs Unit
IG	- Inspector General
IGP	- Inspector General of Police
IMLU	- Independent Medico Legal Unit
IPOA	- Independent Policing Oversight Authority
KNCHR	- Kenya National Commission on Human Rights
MUHURI	- Muslims for Human Rights
NCAJ	- National Council on Administration of Justice
NGO	- Non-Governmental Organization
NIS	- National Intelligence Service
NPS	- National Police Service
NPSC	- Nairobi Police Service Commission
OCPD	- Officer Commanding Police Division
OCS	- Officer Commanding Station
PRWG	- Police Reforms Working Group
PS	- Principal Secretary
RDU	- Rapid Deployment Unit
SGBV	- Sexual Gender based Violence
SJCs	- Social Justice Centres

EXECUTIVE SUMMARY

The Police Reforms Working Group, an alliance of civic organisations working nationally and locally on police accountability and criminal justice reforms, congratulate Hillary Mutyambai on his recent successful vetting by the National Assembly and Senate. The PRWG commit to working with his Office in the spirit of open and constructive partnership to deepen police reforms towards effective crime management, professionalism and compliance with national human rights and ethical standards.

Over the last nine years, several legal and institutional reforms have sought to transform the National Police Service into an accountable, professional and a human rights compliant institution in line with our constitutional aspiration. As the leadership of the National Police Service transitions from Joseph Boinnet to Hillary Mutyambai, it is an opportunity to take a moment to reflect on the progress made and the challenges being faced by the National Police Service.

This report focuses on six issues of public interest. They are crime prevention and response, human rights compliance, integrity and police corruption, independence of the Office of the Inspector General, management of police welfare, community policing and public partnerships.

Despite investment of billions of shillings into legal and institutional reforms, police accountability especially in the areas of bribery and extortion, public order management and human rights violations have largely remained unrealized. During the 2017 General Elections, the police repeatedly used excessive force to manage public dissatisfaction with the management of the electoral processes. The Police Reforms Working Group are also deeply concerned by the ongoing intimidation and criminalization of human rights defenders seeking justice. In recent contrast to statements by the Interior Cabinet Secretary, Director of Public Prosecutions and the Director of Criminal Investigations, the previous Inspector General often issued public denials and was non-committal on eliminating human rights abuses by his officers.

The opportunity of utilising the three new oversight agencies to increase professionalism was largely missed. Over the last four years, the Police Service has been regularly criticised by their lack of full cooperation with IPOA investigations and DPP prosecutions.

The former Inspector General should be commended for issuing the guidelines on Community Policing. The incoming Office of the Inspector General must now accelerate their operationalisation. A key resource now available to his or her office will be the Community Social Justice Centres and human rights organisations. These civic organisations have become significant resources on security issues, especially in low income areas that face unique security challenges.

The Inspector General of Police and the National Police Service have yet to exert their independence from the Executive as constitutionally required. Despite efforts to increase salaries, benefits and the welfare of police officers, police welfare remains a major concern and must be a focus of the incoming Inspector General and the Interior Ministry.

The Police Reforms Working Group offers this report to assist the incoming Inspector General and oversight agencies to further deepen the radical reforms needed. Greater leadership by the in-coming Inspector General on these issues will strength police effectiveness, professionalism and compliance with human

rights and fundamental freedoms. We extend our hand to the incoming Inspector General of Police, Mr. Hillary Mutyambai, to address the six public interest issues contained in this report. We also extend our hand to the relevant duty bearers such as the Ministry of Interior and Coordination of National Government, The Attorney General, Kenya Law Reforms Commission and the National Police Service Commission

Ten Wins for the First One Hundred Days

Over the next one hundred days, the incoming Inspector General should;

1. Commit to complete the **ongoing reorganisation of the new command and control reforms** as announced by the President in 2018.
2. Deploy a **zero-tolerance approach on unlawful police killings and enforced disappearances** and take actions to ensure that all officers who are currently implicated are interdicted, investigated and prosecuted; and, record of such action be made publicly available.
3. Deploy **zero-tolerance approach to corruption** and take specific actions to institute stringent and practical measures to stop the systemic extortion of Kenyans by police officers.
4. Immediately declare the commitment of the National Police Service to the constitution and police standing orders regarding **public order management** and the use of force and firearms and take action to ensure that officers who violate the law are interdicted, investigated and prosecuted; and, record of such action be made publicly available
5. Comm.
6. Prioritise **Community Policing Guidelines and personally attend community-based dialogues** that build and enhance community and police trust to ensure seamless transition of police officers living within the community.
7. **Establish an advisory contact group** between the police and human rights organisations including CSOs and Community Justice Centres in low income and far flung rural areas, to address the ongoing criminalisation of human rights, environmental and public land defenders and whistle-blowers. This will deepen openness and inclusion as guided by the Tshwane Principles on National Security and the Rights to Information;
8. Publicly visit IPOA and effect a **closer and more effective working relationship and cooperation with IPOA**. Closer cooperation would facilitate meaningful investigations and prosecution of police officers who break the law or fail to make the mandatory report to IPOA whenever any killing occurs in the line of duty.
9. Review and publicly declare a commitment to expedite **the implementation of IAU** investigations and recommendations for administrative action or criminal investigation.
10. Publicly release a report on actions taken in the first 100 days and thereafter issue **quarterly and annual periodic reports** on the state of crime and safety in Kenya.
11. Publicly commit to **enforce all court orders** without fear or favour including those issued against State Officers at county and national levels.

We commit to further encourage the National Assembly and Senate to offer oversight for the following policies and procedures for your Office to succeed. They include;

1. The Office of the Attorney General operationalising the National Coroners Service Act and the Prevention of Torture Act as passed by Parliament in 2017, two years ago.
2. The Attorney General, Law Reform Commission and Parliament reviewing the Penal Code to declassify and decriminalise certain petty offences and state regulations that clog the criminal justice system and create avenues for corruption.

3. The Ministry of Interior and Coordination of National Government accelerating the improvement of police housing, health insurance and remuneration to boost the morale of officers.
4. Ministry of Interior and Coordination of National Government and the Attorney General should ensure that Community Policing properly anchored in law; additionally, it should officially recognise and work with Community Social Justice Centres which have become information gold mines on security issues, especially in low income and far flung rural areas that face unique security challenges.
5. Ministry of Interior should ensure that the Inspector General of Police is an accounting officer of the budget allocation to the National Police Service.

INTRODUCTION

The National Police Service is a creation of the Kenyan Constitution (Article 243) and the National Police Service Act of 2011. The Constitution obligates all officers to display the highest standards of professionalism and discipline, prevent corruption, comply with constitutional human rights standards and promote relationships with the broader society.

Article 243 of the Constitution establishes the National Police Service headed by an independent Inspector General and two deputies heading the Kenya Police and Administration Police; a National Police Service employed by an independent National Police Service Commission (NPSC); and an Independent Policing Oversight Authority (IPOA) providing civilian oversight of the service and its actions. The Constitution and National Police Service Act obligates the Inspector General to independently administer, control and manage the National Police Service as a disciplined Service.

Joseph Boinnet's four-year non-renewable term ended on 11th March 2019. The outgoing Joseph Boinnet has been the second Inspector General of the National Police Service to serve under the Constitution of Kenya. Before he was appointed, he served as a Principal Intelligence Officer at the National Intelligence Service (NIS) from 1998. Prior to joining the NIS, he had served as a police officer since 1984.

His appointment departed from the appointment of his predecessor David Kimaiyo. Kimaiyo was appointed through an open and competitive process under the National Police Service Commission. This involved sending out a vacancy announcement, shortlisting, interviewing, grading and the recommending 3 names to the President for nomination. The President then forwarded his nominee to Parliament for vetting.

In December 2014, the Interior Ministry introduced the contentious Security Laws (Amendment) Act to National Assembly. One of the measures eliminated the role of the NPSC in the appointment of the IGP and empowered the President to unilaterally pick and forward his nominee to the National Assembly for vetting.

Allowing the President to handpick the IGP clawed back the spirit in the Constitution that the leadership of the Police Service would be independent of the Executive. It also went against the recommendations of the Justice Phillip Waki led Commission on Inquiry into Post Elections Violence (CIPEV) and National Task Force on Police Reforms chaired by Hon. Justice (Rtd) Philip Ransley. It also in the case of the current nominee coming from a non-public background hampers public participation in determining his suitability for the position.

This briefing assesses the performance of the Service under the leadership of the past Inspector General and makes recommendations to the incoming Inspector General and other duty bearers. It focuses on six issues of public interest. They include crime prevention and response, human rights compliance, integrity and police corruption, management of police welfare, community policing and partnerships with the public.

METHODOLOGY

This briefing examines the role and responsibilities of the Inspector General of Police as set out in the Constitution (Article 245) and National Police Service Act (Section 10) against reports by statutory, oversight and human rights state and non-state agencies. A detailed list of these sources and glossary of terms are available at the back of the report.

FINDINGS

CRIME PREVENTION AND RESPONSE

“We have employed multi-agency strategies and engaged with local communities that have helped us eliminate many terror plots and attempts to infiltrate our country.”

Outgoing Inspector General Joseph Boinett, 10 March 2019¹

Crime incidences and trends are affected by several social, economic, political and technological factors not only the effectiveness of the police service. However, the Police Service has an obligation to protect people and property without discrimination.

¹ <https://www.nation.co.ke/news/Boinnet-takes-stock-of-his-wins-and-losses-as-IG/1056-5017162-nlcuox/index.html> Sunday Nation 10 March 2019

Between 2014-2019, the overall number of criminal incidents including assault, grievous harm and murder have increased. The number of police officers involved in criminal cases has fluctuated but continues to increase.

Incidences of assault, grievous harm and murder ²					
2015	21,174	2016	22,295	2017	22,515

Incidences of police-officers involved in crime³					
2015	71	2016	57	2017	86

Source: Kenya National Bureau of Statistics

Public complaints have been persistently voiced during the *machizi ya jamaa* community dialogues organised by the NGO Police Reforms Working Group over 2017-2019. Testimonies of armed officers drunk on duty, arbitrary arrests, extortion, detention in unmarked vehicles, recycling of marijuana exhibits and home-made guns and sexual harassment at AP posts need addressing. Over the past year, there have been several incidences where the police have been publicly implicated in crimes such as murder, robbery, hiring out of firearms and extortion.

Examples of incidents of police indiscipline over 2018

January	Officer in charge of the police armoury in Kiambu arrested and charged with robbery for hiring out firearms to suspected criminals.
January	Two Administration Police officers in Mombasa charged with kidnapping and extorting bribes from a Kilindini Port Senior Security Operator ⁴
November	Kabete Police Station Investigating Officers fire at Ethics and Anti-Corruption Officers to release two other colleagues caught extorting from a foreign national. ⁵
December	Fourteen Administrative Police Officers in full combat gear storm Mandera Police Station to free Constable Richard Karanja who had been arrested for robbing a petrol station and killing a security guard in the process. ⁶

The incoming Inspector General of the Police must urgently address the rising incidences of indiscipline and lawlessness within the service.

Over the same period however, we have seen a marked decrease in terrorist attacks and more effective and greater coordination by the police and other security services to protect the right to life. The successful Dusit D2 emergency response and evacuation of more than seven hundred people in January 2019 was a stark contrast to the disastrous Westgate Mall (2013) and Garissa Universities (2015) responses.

² <https://www.nation.co.ke/news/Boinnet-takes-stock-of-his-wins-and-losses-as-IG/1056-5017162-nlcuox/index.html> Sunday Nation 10 March 2019

³ Statistical Abstract 2018

⁴ <https://www.nation.co.ke/news/Detective-arrested-for-hiring-guns-to-criminals/1056-4278904-3fjg96z/index.html> Daily Nation 25 January 2018

⁵ <https://www.the-star.co.ke/news/2018-11-30-eacc-wants-kabete-cops-held-for-obstructing-justice/> The Star Newspaper 30 November 2018

⁶ <https://www.standardmedia.co.ke/article/2001306203/aps-rescue-colleague-commando-style> Standard Digital 14 December 2018

Policing continues to be used to manage crime borne of poverty and inequality. 75 per cent of all pre-trial detainees in Kenya's 129 prisons and remand centres are below the age of 35 years, poor and without prospects of a regular income. Most have been charged with petty offences such as loitering, drunk and disorderly, commercial sex work and informal petty trading.

Currently, the bulk of the financial and human resource allocations to the National Police Service, Director for Public Prosecutions the Judiciary and the Prisons Department is concentrated on people that are not a serious threat to national security. The case backlog created on the other hand, diverts important resources from more complex and serious crimes.

COMPLIANCE WITH HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

"We have not institutionalized extrajudicial killings. We follow the law. Police can only shoot if their lives are also in danger." Outgoing Inspector General Joseph Boinett

The 2016/17 State of Human Rights Report by Amnesty International ranks Kenya at the top of the list of African countries in cases of extra-judicial executions and enforced disappearances. Despite the standards set in the Kenyan constitution and international human rights standards, police officers continue to use excessive use of force, unlawful detention and cruel, inhuman and degrading treatment and torture when arresting suspects, policing assemblies or managing crime.

Article 37 of Kenya's Constitution guarantees every person the right to assemble, demonstrate, picket, and present petitions to public authorities, peaceably and unarmed. The article further binds the State and this includes the police to respect, protect and promote this right. The Kenya National Commission for Human Rights have elaborated *A Checklist for the Police and the Public on Peaceful Assembly* for both organisers of demonstrations and those charged to ensure that there is no violence or criminal activity.

Despite this, the police have routinely failed to promote, respect and fulfil Article 37 of the Constitution on several occasions. During the 2017 General Elections, the police used excessive force to manage public dissatisfaction with the management of the electoral processes. This included the firing of live bullets and indiscriminate beating of demonstrators in areas perceived to be pro-opposition.

Amnesty International and Human Rights Watch report *"Kenya: Kill those criminals: Security forces violations in Kenya's August 2017 elections"* documents how police used excessive force against protesters, fired teargas and shot directly into the crowd as well as carried out violent and abusive house to house operations, beating and shooting residents. In Nairobi alone, at least 33 people were killed. According to data collected by Article 19 East Africa, there were 127 protests in 2018. 6 people were reported dead.

Protests over 2018⁷

Month	No.
January	11
February	10
March	8
April	11
May	14
June	17
July	9
August	11
September	11
October	10
November	9
December	6

Protests over 2018 by counties

County	No
West Pokot	5
Uasin Gishu County	7
Turkana County	4
Trans Nzoia County	1
Taita Taveta County	2
Nyeri County	1
Nyandarua County	1
Nyamira County	1
Narok County	1
Nandi County	1
Nakuru County	6
Nairobi County	29
Muranga County	1
Mombasa County	7
Migori County	7
Meru County	5
Machakos County	3
Lamu County	6
Laikipia County	2
Kisumu County	5
Kisii County	3
Kirinyaga County	1
Kiambu County	8
Kericho County	3
Kajiado County	6
Homa Bay County	4
Garissa County	1

⁷ 2018 Protest Monitoring Results by Article 19 Eastern Africa

Embu County	3
Elgeyo Marakwet County	1
Bungoma County	7
Bomet County	1

Enforced Disappearances

The Constitution (Article 29) states that every Person has the Right to Freedom and Security. The UN Declaration on the Protection of All persons From Enforced Disappearance also obligates all States not to arrest, detain or abduct people against the law. The refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty places such persons outside the protection of the law.

Human rights organisations have documented other cases of enforced disappearances. On World Day Against Enforced Disappearances, MUHURI claimed that 80 people had disappeared or died in the hands of police in Coast and North Eastern regions since 2015.⁸ Haki Africa has claimed that at least 46 cases of people have mysteriously disappeared as the war on terrorism and criminal gangs intensified in the coastal region of Kenya between January and July 2018.⁹

Torture and other inhuman punishment

In May 2017, President Kenyatta assented to Prevention of Torture Act after it was deliberated and passed into law by the National Assembly. For the first time, it defines torture and prescribes criminal sanctions. Two years on, the law is not yet operationalised by the Attorney General.¹⁰ The failure to commence the Act continues to leave a loophole for torture and other inhumane punishment.

In the wake of the April 2015 terrorist attack, the KNCHR documented several cases of torture by the security services. The report quotes one victim as saying, *"They kicked and caned me every day," he said. "I got used to it, and each time I heard someone coming in my direction, I got ready for more beatings. They used a cane to beat me in the back and forced a gun to my head. I was blindfolded throughout. Blood came out of my head."*

Other accounts included allegations of waterboarding, genital mutilation, electric shocks, exposure to extreme cold or heat, hanging from trees, mock executions, exposure to stinging ants, and denial of sleep and food.

In September 2017, the Administrative Police entered the university of Nairobi campus, academic buildings and dormitories to respond to a demonstration. In just six hours, the police beat,

⁸⁸ <https://the-star.co.ke/news/2018-08-30-at-least-80-people-missing-in-coast-muhuri-demands-answers/> The Star 30 August 2018

⁹ <https://www.nation.co.ke/news/Families-blame-police-and-KDF-as-46-people-reported-missing/1056-4681674-n01d79/index.html> Daily Nation 25 July 2018

¹⁰ <https://www.nation.co.ke/oped/opinion/-Prevention-of-Torture-Act-vital-step-right-direction/440808-3903642-82owe7/index.html> Daily Nation 25 April 2017

humiliated and violated the dignity of several students according to reports undertaken by the Women in Real Estate, Kenya National Commission of Human Rights and the Independent Policing Oversight Authority.¹¹

Sexual Gender Based Violence by Officers

The KNCHR report “Silhouettes of Brutality: An Account of Sexual Violence During and After the 2017 General Elections” is probably the sharpest indictment of the conduct of our officers. Over a period of four months, the Commission documented 201 cases in eleven counties. The counties include Nairobi, Kisumu, Vihiga, Kakamega, Migori, Siaya, Busia, Homa Bay, Bungoma with one case each in Machakos and Uasin Gishu.

The report details serious human rights violations against women, children and men between the ages of 7 and 70 years of age. The violations include rape, sodomy, defilement, gang-rape, assault or intimidation. Some these violations took place in the presence of minors. 54.6 per cent of the alleged perpetrators were security agents.

Despite receiving the report in advance, the National Police Service has to date not responded substantively to the report. The official National Police twitter handle swiftly dismissed the report and its findings in just four tweets. The tweets accused the Commission of “*sensational, preposterous and generalized allegations without actionable evidence*” and urged survivors to report to IPOA.

Extra-judicial executions and unlawful police killings

Article 26 (1) of the constitution states that every Person has the Right to Life. The State also has the obligation to promote and protect the right to life and prosecute alleged criminals or perpetrators. In July 2014, amendments to the National Police Service Act were introduced by the Executive were adopted by the National Assembly. The amendments permitted the use of “justifiable” force to protect “life and property.” This amendment has been used to justify and allow the use of lethal force for the protection of property contrary to the UN Basic Principles of the Use of Force and Firearms.

There are several differing estimates of excessive use of force, unlawful killings and extra-judicial executions.¹² According to Independent Medico-Legal Unit (IMLU), at least 153 people were killed arbitrarily or unlawfully deprived of life by police officers every year between 2013 and 2017. Given public mistrust in reporting to the police and fear of persecution this figure is likely to be grossly under-represented.

¹¹ <https://www.youtube.com/watch?v=aNQ-S9jyJ3g>

¹² This includes the excellent NationPlex Deadly Force website <https://www.nation.co.ke/newsplex/deadly-force-database/2718262-3402136-ms1o0nz/index.html> and www.missingvoices.co.ke



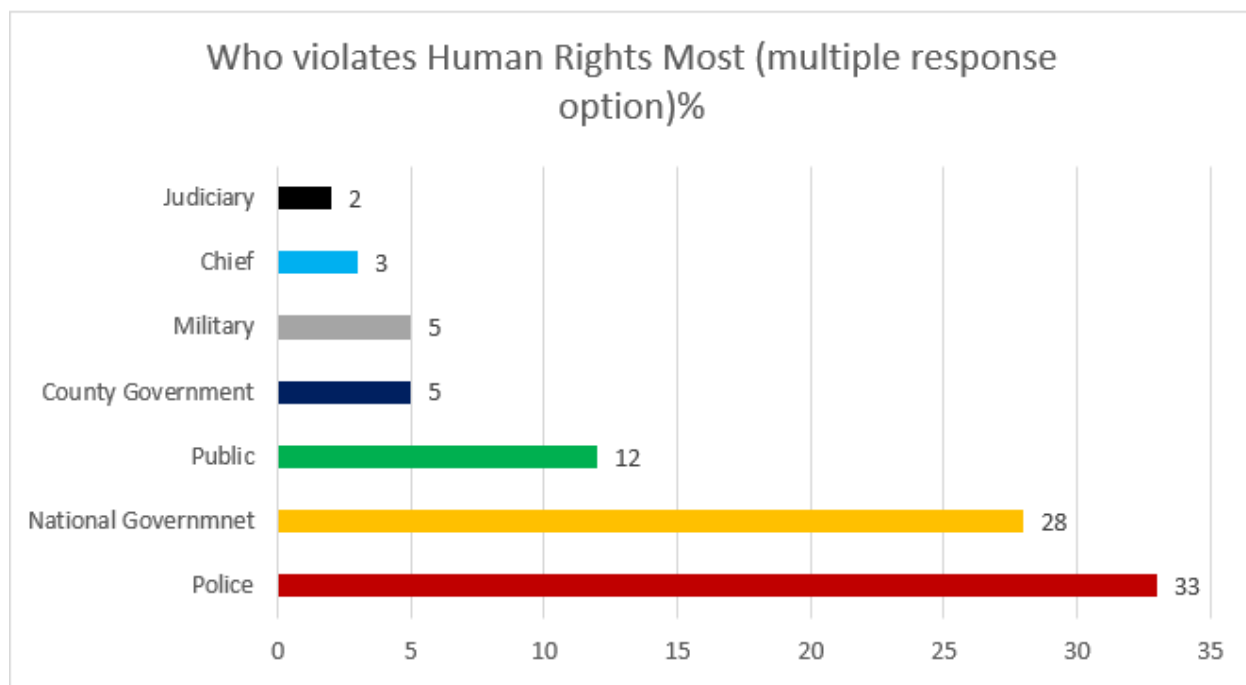
Examples of high-profile incidences of extra-judicial executions (2016-2017)

- July 2016 Human Rights Lawyer Willie Kimani, his client Josephat Mwenda and their taxi driver Joseph Muiruri are abducted and executed by Administrative Officers who are currently before court.
- February 2018 Meru University Student Leader, Evans Njoroge is shot dead by a police officer during a student protest. After IPOA investigations and recommendations to the Director of Public Prosecutions, the police officer was charged with murder. The case is ongoing.
- May 2018 22-year-old Kenya College of Accountants student Brian Chacha is shot dead by Chief Inspector Sebastian Amani after a brief altercation in Kisumu. The officer has since been charged with murder.
- November 2018 The Nigerian President demands a full investigation and autopsy from Kenya Government into the case of Bamiyo Ashade, a 28-year-old Nigerian who was allegedly brutalized to death by officers after he refused to give them a bribe while they were checking his valid immigration status.
- November 2018 The Social Justice Centres Working Group reports 24 deaths over 21 days in Dandora, Huruma, Kayole and Mathare neighborhoods of Nairobi.¹³
- November 2018 Evans Odhiambo, a 25-year-old mechanic was wounded by a stray police bullet in a crowd and sought medical attention in Mathare North Hospital. Police officers arrested him at the hospital and the next morning, he was found in the City Mortuary with six additional bullets in his body.
- December 2018 Leeds University Engineering Student, Carilton David Maina is shot several times by a Police Officer as he and his friends were coming from watching a football

¹³ <https://icj-kenya.org/news/latest-news/215-alarm-as-police-kill-24-people-in-21-days-in-nairobi>

match in Kibera. Three months later, the Police have not yet made any arrests. IPOA has publicly stated that it is in the process of investigating the matter.

Behind the headlines of these high-profile cases lies thousands of other allegations being investigated by the IPOA. As the first Board stepped down in 2018, they documented 9,878 complaints from the public and members of the police service. 5,085 have been marked for investigation.¹⁴



State of Human Rights in Kenya Amnesty International-Kenya Opinion Poll 2018

The Police Reforms Working Group are also deeply concerned by the ongoing intimidation and criminalization of human rights defenders seeking justice. The National Coalition of Human Rights Defenders of Kenya (NCHRDK) has documented the use of malicious prosecution on trumped up charges, disappearance and killing of human rights defenders whose matters are never investigated.

The path to reversing human rights violations and this negative public perception is simple. It includes swift investigation and prosecution of all officers that fail to follow the laid down legal procedures. Strict application of the September radical police reforms to strengthen command authority over officers and cooperation with IPOA and IAU would be the second critical step.

With the growing number of police convictions and the merging of the administrative and regular police, two of the steps are underway. A third step would be to continuously recognize publicly the efforts of Officers like Administrative Police Officer Joash Ombati who distinguish themselves by following the law in the conduct of his duty.

¹⁴ End Term Board Report – Independent Policing Oversight Authority (2012-2018)

INTEGRITY AND POLICE CORRUPTION

The National Police Service has regularly been singled out by the Ethics and Anti-Corruption Commission and Transparency International as the most corrupt department in the entire government over the period of the outgoing Inspector General.

17.2 per cent of respondents interviewed by the EACC thought the Chief's Office and Administration Police were responsible for most bribes. 16.4 per cent felt most vulnerable with the Kenya Police Service and in police stations.

These levels of mistrust compare against Ministry of Health/County Health Department (13.0 per cent), Registrar of Persons Offices (10.5 per cent), Ministry of Lands (6.1 per cent) and Huduma Centre (5.1 per cent).¹⁵

Corruption has another impact. It slows down our judicial system. The 2015 National Council for the Administrative Justice report shows that 75 per cent of the cases being adjudicated by our courts are cases of petty offences. 85 per cent of the offenders are processed without legal representation.

A large number of these petty offences are drunk and disorderly cases and consistently increase on Thursdays and peak on Fridays. By Saturday, 68.3 per cent of those arrested are released without any reason and with no further police action.

The recent testimonies shared at the Kayole March hearing provided the ODPP and DCI an insight into the experiences of policing by low-income neighbourhoods. Statements of armed officers drunk on duty, arbitrary arrests, extortion, detention in unmarked vehicles, recycling of marijuana exhibits and home-made guns and sexual harassment at AP posts were openly shared. Widows and mothers told traumatic stories of young men being shot after surrendering to the police or in cases of mistaken identity.

The over-criminalisation of petty offences saps our state resources and personnel. It leads to the arrest and pressure on citizens to 'cough up' money to avoid the prospect of spending the weekend in police cells. More broadly, this practice diverts precious resources from being used to fight serious crimes like murder, robbery with violence and sexual offences. Closer attention in future to practises of legal charges by the police, pre-trial detention and case management by the Judiciary is key to a more effective criminal justice system.

COMMUNITY POLICING INITIATIVE

We must all work together to protect and defend our country."

Outgoing Inspector General Joseph Boinett, 10 March 2019¹⁶

The Constitution (Article 244) requires that the National Police Service fosters and promotes relationships with the broader society. Moreover, The National Police Service Act (Section 10.k)

¹⁵ EACC Corruption Perception Report 2017

¹⁶ <https://www.nation.co.ke/news/Boinnet-takes-stock-of-his-wins-and-losses-as-IG/1056-5017162-nlcuox/index.html> Sunday Nation 10 March 2019

specifically mandates the IGP to issue guidelines on Community Policing and ensure cooperation between the Service and communities.

The National Police Service Handbook on Community Policing notes that effective policing requires facilitating voluntary community participation in maintaining law, order and justice.

Community policing fosters dialogue and relationship building between communities and the authorities, thereby enhancing trust and information sharing which in turn enhances the police's ability to detect, prevent and tackle crime and uphold law, order and justice. By design, it should drastically reduce all forms of abuse and brutality.

Deeper community policing strategies with youth organisations and a listening tour of community police dialogues may just be a powerful way of the incoming Inspector General starting their tour of service.

INDEPENDENCE OF THE INSPECTOR GENERAL

Both the Constitution (Article 245.2) and the National Police Service Act (Section 8) requires the IGP to exercise independent control and command over the National Police Service. The intention of this is to ensure that the National Police can hold all citizens and State Officers accountable to the rule of law.

During his tenure, IGP Boinnet failed to obey or neglected to enforce court orders against senior members of the Executive on at least four occasions. In October 2016, IGP Boinnet neglected or failed to enforce a warrant of arrest against Principal Secretary in the Ministry of Interior and Coordination of National Government who failed to honour court summons.

In May 2017, the High Court at Malindi issued warrants of arrest against the IGP for failing to comply with a court order restraining him from interfering with the operations of a Mombasa based public transportation company.¹⁷ In December 2017, IGP Boinnet was summoned to appear before court for neglecting or failing to arrest Principal Secretary for Defence, Saitoti Torome.¹⁸

In March 2018, IGP Joseph Boinnet, Interior CS Fred Matiang'i and Immigration PS Gordon Kihlangwa were found guilty of contempt for failing to appear before the courts and to honour orders relating to the deportation of government critic, Miguna Miguna.

These failures expose the Office of the Inspector General of Police to accusations that the Office does not respect the rule of law. It also sends a signal to all those that would wish to likewise disrespect the Kenyan courts. The lack of independence erodes the Office of the IGP in another way.

Despite constitutional and statutory requirements on the independence of the National Police Service and the Inspector General, the Ministry of Interior and Coordination of National Government has not transferred authority to incur expenses to the IGP.

¹⁷ <https://www.standardmedia.co.ke/article/2001240186/high-court-orders-ig-joseph-boinnet-s-arrest> Standard 18 May 2017

¹⁸ <https://www.standardmedia.co.ke/article/2001262798/court-summons-Boinnet-for-failing-to-arrest-defence-ps> Standard 11 December 2017

The IGP does not have control over the budget and expenses of the National Police Service. The office therefore relies on the Ministry to determine its budgets and expenditure. This hinders the IGP's ability to independently plan, prioritise, budget and reallocate resources based on the needs and realities on the ground.

Transferring the authority to incur expenditure will enable the IGP to independently and effectively discharge the office's constitutional mandate. This would enhance accountability and efficiency. The IGP can budget and implement based on the needs and priorities being faced by the reality on the ground.

In this regard, the 2018 reforms that have led to the Officers Commanding Stations (OCSs) being given the authority to incur expenses in their area of command are very welcome. OCSs are now in charge of and can be held accountable for the public resources and respond directly the needs.

POLICE REMUNERATION & WELFARE

The National Police Service Commission Strategic Plan (2013-2018) outlined the challenges of effective and professional policing with inadequate salaries, benefits and equipment. Sadly, this situation has not dramatically changed. The Commission's exit 2018 report details how police officers are still the lowest paid public servants, are demoralized and engage in bribery and extortion¹⁹.

It should be noted that there have been salary increments and other attempts to improve welfare. The latest of these took place in July 2018. Critics continue to point out that the improvements affect the highest paid officers at the expense of the lowest paid officers. In July 2018, salary adjustments led to the lowest paying officer receiving increases of only Ksh 529 bring their salaries to Ksh 19,290 while the highest paid officers received an increase of Ksh 2000.²⁰

The National Police Service Commission had outlined a housing policy which provided a mixed model approach in addressing challenges in housing police. The policy which was drawn up after a long consultative process allowed for various approaches in housing police including housing allowances, leasing, construction of police line houses for on-duty officers, subsidised mortgages et cetera.

However, the September 2018 Presidential directive appears not to have been well thought out and as a result has worsened the police housing crisis. The new policy provides officers with housing allowances calculated on the region they live. This policy replaces the old policy of providing police officers with free housing.

The new housing policy has been widely criticized by Officers who claim these allowances are not enough for decent living conditions and the new policy failed to factor in current shortage of residential units in some neighbourhoods.²¹

¹⁹ <file:///C:/Users/RUTHOL~1/AppData/Local/Temp/npsc%20inaugural%20commissioners%20exit%20report.pdf>

²⁰ <https://www.standardmedia.co.ke/article/2001295340/police-unhappy-with-meager-increment-of-their-salaries>

²¹ <https://www.nation.co.ke/news/Pain-for-police-officers-housing-crisis-/1056-4973796-13k45st/index.html>

An officer interviewed for this report noted; *“once subjected to tax, the so-called house allowance is not even enough to get me decent housing. I will have to live in a single room or bedsitter with my entire family,”* Unable to find affordable and safe units, a number of his colleagues have chosen to ignore the February 2019 deadline to vacate police housing. As the deadline passed, a number of police officers and their families found themselves cut off from essential services of electricity and water.

CONCLUSION

This briefing has been produced to assess the performance of the Service under the leadership of the past Inspector General and focus his successor, Hillary Mutyambai on six issues of public interest. They include crime prevention and response, human rights compliance, integrity and police corruption. management of police welfare, community policing and partnerships with the public. We will review his progress against them after the first one hundred days and at the end of his tenure in 2023.

We wish his Office and the National Police Service as whole, the boldness, integrity and professionalism to live up to the aspirations of our Constitution and the expectations of the public.

GLOSSARY OF TERMS

The **Directorate of Criminal Investigation** is established by the National Police Service Act (Section 28) under the command and control of the Inspector-General of National Police Service.

The **Director of Public Prosecutions** is an independent office established by the Constitution (Article 157) with the mandate of instituting and undertaking criminal proceedings against any person before any court. The DPP has the power to direct the IGP to investigate any information or allegation of criminal conduct.

An **Enforced Disappearance** has taken place when authorities apprehend person or persons and refuse to acknowledge this or conceal their fate or whereabouts, thus placing them outside the protection of the law.

An **extra-judicial execution** is a deliberate unlawful killing by an official or state agent carried out by order of a government or with its complicity or acquiescence or acting without orders. Extrajudicial executions are carried out by regular military or police forces, special units created to function without normal supervision or by civilian agents either working directly or with the complicity of government forces.

The **National Police Service** is established under the constitution (Article 243) and includes both the Kenya Police Service and Administration Police Service.

The **National Police Service Commission** is established under the constitution (Article 246) to perform a human resource role and to provide disciplinary control for the Service. It includes the Inspector General, the two Deputy Inspector Generals, two retired senior police officers, three persons of integrity and a person who is qualified to be appointed as a High Court judge.

The **Internal Affairs Unit** is established under the National Police Service Act (Section 87) as a unit within National Police to receive and investigate complaints against police.

The **Inspector General** is a constitutional position (article 245) and is the head of the National Police Service.

Nyumba Kumi means ten houses in Kiswahili and is the primary community policing strategy at the household level.

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