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International  
Center for  
Policy and  
Conflict

Hazina Towers 9<sup>th</sup> Floor  
Utalii Lane, off University  
way  
P.o. Box 44564-00100

Phone: +254(020) 2219757  
2473042  
+254 714 838894  
Email: [admin@icpcafrica.org](mailto:admin@icpcafrica.org)  
[lpc.afric@gmail.com](mailto:lpc.afric@gmail.com)

**POSITION PAPER ON SECURITY SECTOR REFORMS FOR  
KENYA**

### **About International Center for Policy and Conflict**

The International Center for Policy and Conflict (ICPC) is a non-profit and non-partisan organisation founded in 2005 to create a platform to foster democratic, peaceful, secure and just societies in Africa and globally. The Great Lakes and Horn of Africa region which have experienced widespread political instability for decades is the ICPC's major focus. The Center is registered in Kenya under the Trustees (Perpetual Succession) Act Chapter 164.

### **Institutional Objective**

The International Center for Policy and Conflict proactively reflects and engages in public policy and legal dialogues, research and analysis as well as advocacy and capacity building on the broad realms of transitional justice, human security, conflict resolution and gender justice in order to prevent conflict recurrence; promote accountability and equality; and deepen culture of justice and respect for human rights and democracy. The Center is meant to establish, promote and build a sustainable human development; and democratic human rights adhering states.

## **BACKGROUND**

The security concept has changed from primarily “national security” to “human security” with a different approach to the subject of security. Human security is an emerging concept for understanding global vulnerabilities whose supporters challenge the traditional notion of national security by contending that the proper referent for security should be the individual rather than the state. Human security holds that a people-centred view of security is necessary for national, regional and global stability. Human security, which is people centred, protects individual human rights and responds to ordinary people’s needs. It also brings about more regional and global peace and political stability since it addresses in solid manner the most fundamental necessity for building human security, that is, guaranteeing “freedom from want” and “freedom from fear”.

In essence, human security embodies the personal and collective state of being safe from violence, injustice and human rights violations. In addition to being a critical benchmark on achieving sustainable peace building, human security is the cornerstone of the Right to protect principle. Citizens of a country need to be empowered to contribute by identifying and implementing solutions to insecurity, in order to overcome violence. The long term decline of the political and justice system preceded and even facilitated the on-set of the post election conflict in Kenya. The accumulated consequences in terms of backlog of cases, limited credibility of the system, blatant violations of even the most elementary laws, poor conditions in prisons etc all call for immediate and corrective action. Addressing these consequences is also crucial for the permanent restoration of state authority. Justice and security sector reform have therefore been among the priority areas in the immediate aftermath of the post election violence.

The Kenyan security sector lacks the capacity, both in terms of trained personnel and logistics to effectively contribute to the dispensation of justice, and perceptions abound that their decisions are either unfair, or marked by a lack of transparency and accountability. At the same time, the security sector is grappling with the task of providing the secure environment required for development while being alert to the possibility of reversals into instability. There is an urgent need to enhance coordination within the sector to meet post recovery challenges. Further capacity is required for the Kenyan Police in the area of crime detection, investigation and public order management.

According to Anderlin and Conaway, the security sector refers to organisations and entities that have the authority, capacity and/or orders to use force or the threat of force to protect the state and civilians. It also includes the civil structures responsible for managing such organisations. Security sectors evolve in response to changing needs and conditions. In some national contexts, this is an ongoing

process that may take place according to established timelines or practices, such as periodic national security reviews. In other situations change, sometimes radical change may be driven in response to a conflict or crisis that threatens the protection and security of people or exposes shortcomings in existing arrangements.

In many conflict-affected countries the security sector often exercises powers above the law. Instead of serving the population they are often used by the state as instruments of destruction to terrorise and oppress; creating a chaotic environment. In the reconstruction and transformation of any post war country, security sector reform (SSR) is essential. Therefore, security sector reform describes a process of assessment, review and implementation as well as monitoring and evaluation led by national authorities that has as its goal the enhancement of effective and accountable security for the State and its peoples without discrimination and with full respect for human rights and the rule of law.

### **WHAT IS SECURITY SECTOR REFORM?**

*Security sector reform (SSR)* refers to the transformation of the state security system which includes security sector policies, institutions, and security actors' roles, responsibilities and practices from the authoritarian system of the past, to a new system that is managed and operated in a way that is subject to civil authority and is more consistent with democratic norms, human rights law and the principles of good governance. An agenda for security sector reform further includes concerns such as accountability for crimes and human rights violations committed by security actors, and the need to professionalize the security sector. The basic objectives of SSR is to create democratic policies in the security sector and form a professional and accountable military, police force and intelligence agency under civilian control.

The components that make up the security sector are<sup>1</sup>:

- 1. Core security actors:** armed forces (including international and regional forces), police, gendarmeries, paramilitary forces, presidential guards, intelligence and security services, coast guards, border guards, customs authorities, and reserve and local security units.
- 2. Security management and oversight bodies:** parliament/legislature and its relevant legislative committees; government/the executive, including ministries of defence, internal affairs and foreign affairs; national security advisory bodies; customary and traditional

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<sup>1</sup> [http://www.osce.org/publications/odhr/2008/02/29669\\_1029\\_en.pdf](http://www.osce.org/publications/odhr/2008/02/29669_1029_en.pdf)

authorities; financial management bodies; and civil society actors, including the media, academia and non-governmental organisations.

3. **Justice and rule of law institutions:** justice ministries, prisons, criminal investigation and prosecution services, the judiciary (courts and tribunals), implementation justice services (bailiffs and ushers), other customary and traditional justice systems, human rights commissions and ombudspersons.
4. **Non-statutory security forces:** liberation armies, guerrilla armies, private body-guard units, private security companies, private military companies and political party militias.<sup>2</sup>
5. **Non-statutory civil society groups:** professional groups, the media, research organisations, advocacy organisations, religious organisations, non-governmental organisations and community groups

In Kenya, the security sector agencies comprise, the Kenya Security Intelligence Machinery (KSIM), the National Security Intelligence Service (NSIS), the military and the police. The security forces' approach to handling security issues is exclusively the responsibility of the KSIM. The KSIM is made up of "committees that are designed to keep security issues in front of those who make the decisions at the top level through to frequent interaction between delivery agencies on the ground at the provincial and district level."<sup>2</sup> KSIM committees are: the Cabinet Security Committee (CSC), the National Security Advisory Committee (NSAC), the Joint Security Intelligence Secretariat (JSIS), the Provincial Security and Intelligence Committee (PSIC) and the District Security and Intelligence Committee (DSIC). The question that most seek to answer is *how prepared were the security agencies?* According to the Report of the Commission of Inquiry into Post Election Violence (CIPEV):

*"...the commission heard evidence that the KSIM, especially the NSAC, had in its possession a wealth of knowledge and intelligence around the great potential for significant violence in and around the 2007 General Elections... Many Provincial Administration officers and police officers, however, stated to the Commission that they had not, for example, received special guidelines and directions on the PEV scenarios drawn up by the NSIS...The Commission received no evidence, for example, that there were any joint planning and/ or operational arrangements between agencies. Further, no evidence was provided regarding the use of desktop scenarios, simulated emergencies and full joint exercises to*

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<sup>2</sup> Report of the Commission of Inquiry into Post Election Violence (CIPEV), Chairman The Hon. Mr. Justice Philip N. Waki, J.A. Chapter 11.

*ensure that each organ is able to play its role when real emergencies such as the PEV occur... It would be expected that such arrangements would be in place and form part of the usual business of SSAs.<sup>13</sup>*

The reasons why security sector reform is necessary in Kenya vary. They include post-conflict rebuilding, transition from military or one-party rule to participatory forms of government, recent independence, a lack of transparency and accountability in public affairs, a disregard for the rule of law, problem in conflict mediation due to an often conflict-exacerbating role by actors in the security sector, difficulties in the management of scarce resources, as well as inadequate civilian capacity to manage and monitor the security forces. Often the reforms are limited and ignore the need for strengthening civil oversight and professionalizing civil society for this task. The emerging security sector reform paradigm instead is based on broad principles such as democratic control and accountability, public participation and transparency, good governance and public expenditure management.

Figure 1

**WHY SHOULD THE SECURITY SECTOR MATTER TO YOU?<sup>13</sup>**

<b>PROBLEM</b>	<b>CONSEQUENCES</b>
Government unable or unwilling to control the military and other security actors.	Coup d'etat; democratic, accountable government unable to take root; human rights abuses.
Government unable or unwilling to manage military expenditures and defence procurements effectively and efficiently.	Public money wasted on unnecessary and/or overpriced equipment; corruption; poor level and quality of security.
Government enacts repressive internal security measures for narrow political gain.	Excessive military expenditures; democracy under threat; human rights abuses.
Defence strategy based on unreal or inflated estimate of threats.	Excessive military expenditures; possible inability to deal with wider threats to security.

*Source: Security Sector Reform by Sanam Naraghi Anderlini and Camille Pampell Conaway*

After Kenya's post-election violence, the reform of the security sector is important for promoting peace and good governance in both the short and long term. Fundamentally, in the short term SSR is needed to ensure that<sup>4</sup>:

<sup>3</sup> Report of the Commission of Inquiry into Post Election Violence (CIPEV), Chairman The Hon. Mr. Justice Philip N. Waki, J.A. Chapter 11.

- forces do not regroup to destabilise or pose a threat to peace;
- bribery and corruption are eliminated; and
- the sector (including leadership structures) is fully transformed so as to gain credibility, legitimacy and trust in the public eye.

In the longer term, SSR is typically understood to have four dimensions<sup>5</sup>:

- 1. Political** which is primarily based on the principle of transforming the political dimension. This begins with overarching discussions about the role of the armed forces in society and how defence policy is made and implemented. This may include public and parliamentary debate as well as input from civil society. Democratic, civilian oversight of the security sector forces is the focus. The core task of reform in this area is good governance, including the capacity of the civil society (e.g. media, NGOs, researchers, the public at large) to facilitate debate on security priorities as well as civilian oversight of the security forces.
- 2. Institutional** refers to the physical and technical transformation of these structures so that they meet the international standards expected of a democratic country. This is often the most difficult component of SSR, as powerful military leaders or institutions are often unwilling to give up their control or agree to be under the leadership of a civilian government. Moreover, since they are often the most qualified personnel to address security issues, their influence remains strong even in reform processes. Institutional addresses the structure of the security sector and the institutional separation of the various forces and institutions. The different forces can only be efficient and be held accountable if the various institutional tasks are clearly defined. An institutional overlap between domestic public security and external defence increases the danger of intervention by the military in domestic affairs. The concept of a security sector should not become an excuse for militarized police forces or a major internal role for the armed forces.
- 3. Economic** relates to the finances and budgets of the security forces. This requires the legislature or governmental bodies to determine the tasks of the new security forces and the appropriate level of funding necessary to carry them out. This may require actually increasing

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<sup>4</sup> Security Sector Reform by Sanam Naraghi Anderlini and Camille Pampell Conaway

<sup>5</sup> Security Sector Reform by Sanam Naraghi Anderlini and Camille Pampell Conaway

the military budget in the short term—e.g. to pay for reintegration benefits for demobilised combatants, retraining soldiers, etc. Economic basically deals with the allocation of resources. The rational allocation of human, financial and material resources to the security sector is a precondition for its efficient functioning. An excessive security apparatus deprives other policies (e.g. sustainable development) from scarce resources and creates an inefficient security sector. At the same time, an under-funded security sector cannot ensure the security of the population. Reform here includes identifying needs and key objectives, determining what affordable, prioritizing resource-allocation is and ensuring the efficient and effective use of resources.

4. **Societal** is concerned with the role of civil society in monitoring the development of security policies and the actions of security services, and ensuring transparency and accountability on all issues. This includes public awareness activities and advocacy efforts by such groups as the independent media, religious organisations, student groups, professional associations, human rights advocacy groups and women's organisations. Societal involves the actual guarantee of the security of the citizens. The prime task of the security sector and its actors is to guarantee the internal and external security of the population. Security is not identical with security of the state provided by the military. Rather, it includes the security of the population from attacks of all types on their life, health or property.

## **SSR AND TRANSITIONAL JUSTICE IN KENYA**

According to the Organisation for Economic Cooperation and Development's (OECD) Development Assistance Committee (DAC), SSR should aim for: i) the establishment of effective governance, oversight and accountability in the security system; ii) improved delivery of security and justice needs; iii) development of local leadership and ownership of reform processes; and iv) sustainability of justice and security service delivery.<sup>6</sup> The European Commission states that: 'the objective (of SSR) is to contribute explicitly to strengthening of good governance, democracy, the rule of law, the protection of human rights and the efficient use of public resources'<sup>7</sup>.

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<sup>6</sup> Organisation for Economic Cooperation and Development (OECD) (2007). OECD DAC Handbook on Security System Reform: Supporting security and justice. Paris, France: OECD. p.21. Available at <http://www.oecd.org>.

<sup>7</sup> Commission of the European Communities (2006). Communication from the Commission to Council and the European Parliament: A concept for European Community Support for Security Sector Reform, COM(2006) 253 final. p.253.



The transitional justice process in Kenya embodies an attempt to build a sustainable peace after conflict, mass human rights violations; recognising and acknowledging the victims. It is not a special form of justice, but rather a set of approaches that seek to bring about justice usually in transitions from authoritarianism and/or violent conflict, to democracy and peace. A key element of transitional justice is making the victim the focus: guaranteeing that the victims of oppression are recognised; empowered by having their rights acknowledged and most importantly, having their dignity restored to them. Transitional justice approaches include prosecutorial accountability mechanisms, truth-seeking about past crimes, providing victims with reparations, legal and institutional changes, memorialisation and promoting reconciliation.

In Kenya the issue of impunity seeks to threaten the country's transitional justice process. According to CIPEV, impunity means "*exemption from punishment or loss... In the International law of human rights, it refers to the failure to bring perpetrators of human rights violation to justice and, as such, itself constitutes a denial of the victims' right to justice and redress.*" Kenya clearly suffers from a culture of impunity and corruption that is eating away at the political and legal systems of the country. It is evident that "there is of course a symbiotic relationship between the politicians and their supporters which continues to fuel impunity. Politicians rely on their supporters to enforce impunity while their supporters, who are the hand maidens of the violence, get protection from the political god fathers." In Kenya the weakness in the criminal justice system coupled with the flawed and depraved political governance affects the rule of law and as a result promotes impunity.

As stated by Laura Davis (2009), studies demonstrate that the desire to support impunity for the sake of short-term stability and reconciliation needs to be carefully weighed against the serious long-term effect that a culture of impunity has on respect for the rule of law, and the effective functioning of law enforcement agencies and institutions, and the government. Long-term stability and security cannot be achieved without a culture of accountability that flows through all public institutions. If Kenya is to be lifted from the abyss of injustice and immorality it is submerged in; corrective measures in the form of restructuring its security sector are imperative. Therefore, the elimination of impunity is a requisite for SSR to be effective. According to the Organisation of Economic Cooperation and Development (OECD), transitional justice strategies are proposed in security sector reform with the aim of renovating an abusive and inefficient social sector to one that is aware of, respects and upholds human rights.

Therefore, the OECD bases its Transitional Justice strategy<sup>8</sup> on three key principles which Kenya would benefit from if adopted:

- i. Integrity: the reform of a country's security apparatus should not be limited to the reconstruction of its capacities but instead should deal with the matter of its integrity so that abuses of the past are not repeated. At the same time, measures should be put into place to maintain a healthy distance between state security and the public administration, as well as reconciliation programmes between divided communities and reparation for the victims.
- ii. Legitimacy: the need to re-establish confidence in a country's security apparatus after a past rife with abuse. The previously mentioned steps should be accompanied by others of symbolic importance, such as public apologies, commemorations or change of the emblem associated with state oppression. In addition, representatives of different sectors of society who will be served by the forces of law and order should be integrated.
- iii. Empowerment: civil society should be made aware of its role as an essential component of the justice system, with rights and duties to give the public institutions real meaning. Measures such as information campaigns, surveys of citizens to find out their opinions regarding the needs of the security and justice system, or training of NGOs to monitor the system are all proposed.

### **A JUSTICE-SENSITIVE APPROACH TO SECURITY SYSTEM REFORM IN KENYA**

A justice-sensitive approach to SSR is an important component of any transitional justice approach, particularly in a context like that of Kenya, where state security agents have committed and continue to commit human rights violations on a massive scale. A justice-sensitive approach to SSR seeks to reform abusive public institutions in the security system by addressing the past record of the institution as such, but by also holding individual perpetrators to account, rather than ignoring past abuse. It aims to make the institutions accountable to the population and become protectors – rather than abusers – of all citizens' rights and defenders of – rather than a threat to – the safety of citizens (especially vulnerable populations) and the security of communities.

Reforming abusive institutions so that they are accountable to the population and trusted by it, transforms not only the institutions but also the people who become fully rights-bearing citizens, rather

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<sup>8</sup> Organisation for Economic Cooperation and Development (OECD) (2007). OECD DAC Handbook on Security System Reform: Supporting security and justice. Paris, France: OECD. p.21. Available at <http://www.oecd.org>.

than objects of state oppression. Reform of public institutions may also be a key enabling factor for other transitional justice measures; for example, spoilers within key public institutions may well be able to block efforts to establish the truth. To achieve these aims, a justice-sensitive approach to SSR focuses on three main areas of reform within a broader SSR programme: building the integrity of the security system; strengthening its legitimacy; and empowering citizens.

The integrity of a security system refers to its adherence to the rule of law in the provision of safety and security. This goes beyond building the capacities of the security agency. Crucial elements for building the integrity of an institution will be establishing multiple, overlapping mechanisms and processes for accountability, based on international best practices. Reforms within the institution will include developing professional standards and codes of conduct, accompanied by disciplinary measures to ensure adherence. The legitimacy of a security system refers to the level of civic trust it enjoys. A legacy of serious abuse fundamentally undermines the legitimacy of the security system. Building the integrity of the security system may not be sufficient in itself to overcome the fundamental crisis of trust that is characteristic of such a legacy.

Security institutions can only be successful if they are responsive to the security needs of the public and earn the confidence of the population by treating all citizens fairly, addressing their security concerns effectively. As well as building the integrity of the institution, efforts to promote the legitimacy of the security system may include verbal or symbolic measures such as memorials, apologies and changing insignia that reaffirm a commitment to overcoming the legacy of abuse, and an endorsement of democratic norms and values. The empowerment of citizens is an integral component of a justice-sensitive approach to SSR. Victims of state repression or conflict-related violence and other marginalized or vulnerable groups must become truly citizens with rights, responsibilities and needs that public institutions are called to serve. Efforts to assist subjects of state oppression and victims of violence to recognize themselves as rights-bearing citizens include, among others, empowerment measures such as public information campaigns, citizens' surveys to identify their security and justice needs, and training civil society organizations to monitor the security system.

## **VETTING AND IMPUNITY**

Vetting is part of a justice-sensitive approach to SSR, which, when combined with other SSR programmes designed to improve the accountability, functioning and oversight of public institutions, can contribute to both building the integrity and the legitimacy of the institution concerned. Vetting refers to "processes for assessing the integrity of individuals to determine their suitability for continued or

prospective public employment<sup>9</sup>. The exclusion of human rights abusers will increase the integrity of the institution by establishing that no one is above the law. But rather than seeing vetting as a one-off process, it should be understood to include developing internal disciplinary processes and external oversight mechanisms to help change the nature of the institution and therefore prevent recurrence of abuse.

Vetting is a measure that, if conducted properly, should contribute to building the integrity of the security institution, increasing public trust in it and empowering citizens. It should also increase effectiveness of the institution. For example, if women do not report incidents of rape because they fear being raped again by officers at the police station, rapes will go unreported and there can be no investigation, regardless of the technical capacities of the police to investigate the crime. The reputation of the police as human rights abusers therefore directly undermines their capacity to do their job. Thus, removing known abusers from the police, and establishing and adhering to clear disciplinary mechanisms for all officers, demonstrates that human rights abuse is contrary to the ethos of the institution, and that it is punishable and punished. This in turn should contribute to increasing public trust in the police, which is necessary for its proper functioning.

If successful and implemented alongside other reform measures, vetting may also interrupt organized irregular and criminal activity within abusive institutions. The lack of clear command and control of the army, for example, is believed to hide a complex web of illegal economic activities, particularly connected to natural resource extraction, often in collaboration with armed groups. As long as these informal, powerful and highly lucrative structures continue to exist, they will present a major obstacle to unity of command and control, and democratic oversight.

The interests of the networks are likely to conflict directly with the stated aim of the army – to neutralize armed groups – and of course deny the state substantial potential tax revenue. Significant power-bases of influential individuals are therefore likely to be affected by vetting. Vetting can therefore contribute to broader needs for justice. But the process must itself respect the rights of those vetted: the emphasis on the personal record of each individual is important. Even those guilty of the most heinous crimes have rights which must be respected by due process. The sanctions are not as severe as for criminal prosecution, as the maximum sanction in a vetting process is usually loss of employment. Although a

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<sup>9</sup> *Justice as Prevention: Vetting Public Employees in Transitional Societies*, ed. Alexander Mayer-Rieckh and Pablo de Greiff (New York: Social Science Research Council, 2007).

considerable sanction in Kenya, where there are few employment prospects, this is not as serious as a prison sentence.

There is no single model applicable in every case. Indeed, the process of designing a vetting programme needs to take into account a whole range of considerations, including taking decisions on the institutions and positions to be vetted (which must take into account questions of feasibility); the criteria for screening for misconduct; the sanctions for those who are positively vetted (i.e. those who fail to meet the necessary standards); the structure and procedures; the scope of the process; its timing and duration; its justification; and its coherence with other institutional reform and transitional justice measures. The role of information is crucial at each step of the reform process: information is needed on exactly who is – and is not – a member of the institution. This information, particularly in a context like Kenya, is hard to establish. However, an audit or snapshot assessment is not enough; an important part of a census and identification process is to close the boundaries of an institution so that no one can join or leave informally after the census is taken. Those within the institution are therefore formally and individually identified and identifiable by, for example, carrying official identity cards. And, by extension, those not formally identifiable as part of the institution, yet attempting to represent it, are breaking the law.

The information available will also form a vital part of the design and implementation of vetting processes; designing the process should take into account the information needed, a process to gather necessary information, and a reconciliation of the expectations, goals, persons targeted and resources available, all within an acceptable timetable, before implementing the process. Justice-sensitive approaches to SSR are not therefore stand-alone projects, but rather should be an integral part of SSR projects seeking to establish effective and accountable public institutions in a democracy. In the context of Kenya, where the security forces continue to be abusive, adopting a justice-sensitive approach may help address the concern that building the technical capacity of the security system may actually enable elements within them to continue to be abusive, only more efficiently.

## **GENDER AND SSR**

The security needs of women, girls and marginalized men and boys are often unlawfully neglected by security sector instruments. In Kenya, violence against women remains one of the largest threats to the human security of women as security sector institutions fall short in responding to, documenting and prosecuting these crimes. In Kenya, and particularly during the post election violence period, security sector institutions, policies and personnel were themselves the direct perpetrators of violent and sexual

crimes against women and girls. According to the Report of the Commission of Inquiry into Post Election Violence (CIPEV), the Commission heard tales of sexual violence against both men and women; including heart wrenching tales of rape, gang rape, sexual mutilation, loss of body parts, and hideous deaths.

*“Women and children’s labia and vaginas were cut using sharp objects and bottles were stuffed into them. Men and boys, in turn, had their penises cut off and were traumatically circumcised, in some cases using cut glass. Furthermore, entire families, including children often were forced to watch their, parents, brothers and sisters being sexually violated.”<sup>10</sup>*

The Commission established that perpetrators of the violence, and especially the sexual violence, were not just gang members, citizens and neighbours but a significant number were members of security forces.

*“Members of security forces also participated in gang rapes. In addition, they colluded with each other, including having some of their own standing guard outside victims’ houses while they raped and mutilated inside victims’ dwellings”<sup>11</sup>*

According to this, security sector reform with the gender perspective in mind is crucial to restore the public’s confidence and trust in security instruments as well as bringing to justice the perpetrators of the heinous crimes. Security sector reform from a gender perspective involves employing gendered projects at the structural, policy and personnel level, including reforms that are aimed at putting an immediate end to internal violence, human rights abuses and discrimination. In Kenya, the security needs of women, men, boys and girls are diverse and vary according to a variety of factors. Integrating gender in order to meet women and girls’ specific security needs include such initiatives as: integrating domestic violence prevention programmes into the disarmament, demobilization and reintegration (DDR) process and ensuring a just legal process for female survivors of sexual violence.

In Kenya, women are notably lacking in the active participation, as well as decision making capabilities in most security sector institutions. SSR needs to ensure that women can freely participate in every process; in essence the need is a participatory, transparent and accountable security sector that will

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<sup>10</sup> Report of the Commission of Inquiry into Post Election Violence (CIPEV), Chairman The Hon. Mr. Justice Philip N. Waki, J.A. Chapter 10, Page 349

<sup>11</sup> Report of the Commission of Inquiry into Post Election Violence (CIPEV), Chairman The Hon. Mr. Justice Philip N. Waki, J.A. Chapter 11, Page 350

adequately address the security needs of all. According to an article prepared by Kristin Valasek for UN- INSTRAW, an illustrative example of gendering SSR assessments is given below<sup>12</sup>:

### **1) What are the barriers?**

- a) Assessment materials, surveys, etc. that do not address the insecurities of women and girls and marginalized men and boys.
- b) Assessment teams without gender expertise.
- c) Insufficient number of female staff.
- d) Cultural and logistical barriers that prevent the voices of women, girls and marginalized men and boys from being heard and taken into account.

### **2) How do we integrate gender issues?**

#### **a) Including women, girls and marginalized men and boys**

- Specific consultations set up with women, girls and marginalized men and boys;
- Group meeting held at times and places that are convenient for women, girls and marginalized men and boys and sex-segregated if needed;
- Sex-disaggregated statistics mapping assessment process;
- Female and marginalized men included as part of the assessment team and translators.

#### **b) Incorporating gender perspectives**

- Assessment materials/studies/surveys gendered i.e. including questions regarding violence against women, discrimination against minority groups etc;
- Gendered assessment methodology;
- Assessment team includes people with gender expertise.

### **How to incorporate Gender Issues into SSR**

During SSR processes the integration of gender issues is a key concern. In order to effectively incorporate gender into SSR important, core measures must be taken<sup>13</sup>:

- Effectively prevent and respond to gender-based insecurities.
- Create non-discriminatory institutions, and institutional cultures, with low rates of internal sexual harassment and violence.

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<sup>12</sup> Gender and Security Sector Reform: An Analytical Framework by Kristin Valasek for UN- INSTRAW

<sup>13</sup> [http://www.peacewomen.org/resources/1325/Gender\\_ssr\\_dcaf07.pdf](http://www.peacewomen.org/resources/1325/Gender_ssr_dcaf07.pdf)

- Build representative institutions through the increased recruitment, retention and advancement of women and other under-represented groups.
- Ensure a participatory, transparent and accountable security sector through the oversight and involvement of civil society, including women's organisations.

Furthermore, civil society organisations, including women's organisations, play a key role in integrating gender into SSR processes and security sector institutions. Initiatives that they can take include<sup>14</sup>:

- Advocate for gender-sensitive security policies.
- Lobby for/Implement gender training.
- Provide SSR training to empower women.
- Awareness-raising on gender and SSR.
- Lobby for/Take action to increase the participation of women within SSR and security sector institutions.
- Support mechanisms to prevent and address discrimination and gender based violence.
- Research and document gender and security issues.

## **TRANSFORMING SECURITY INSTITUTIONS IN KENYA**

Designing and implementing SSR is a concerted effort that involves both domestic and international support. SSR often begins with the presentation of an official peace accord. In some cases the accords are very comprehensive; in others an extensive directive is issued and specifics are left for post-accord planning. The national government is the primary actor responsible for the implementation of SSR. An extensive amount of time and vast resources, as well as pressure from donors and civil society, are usually the key factors involved in making sure the reforms take hold. Additionally, support from the international community is also imperative.

As stated by Anderlini and Conaway, the steps involved in transforming security institutions are:

1. transforming the structure of the military and security bodies, including, where necessary, reduction in its size through disarming and demobilising forces and/or combining former guerrillas and the military to create a new national service;
2. instituting new recruitment and training policies to "professionalise" and "modernise" the new military and police forces (building their capacity, reorienting their focus and teaching new skills such as respect for human rights) as well as vetting;

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<sup>14</sup> [http://www.peacewomen.org/resources/1325/Gender\\_ssr\\_dcaf07.pdf](http://www.peacewomen.org/resources/1325/Gender_ssr_dcaf07.pdf)



3. training and supporting reformed judicial and penal systems (ensuring their independence and accountability to civil society); and

4. fostering a cultural transformation so that previously excluded sectors of society (e.g. ethnic or religious groups, women, etc.) are included in security forces and institutions are sensitive to their needs.

According to studies, international donors have recently begun to support SSR in developing and post conflict countries. The primary focus has been on the significance of civilian control and oversight as well as good governance (transparency, anti-corruption, lack of impunity and so forth) in the security sector. Their activities include<sup>15</sup>:

- providing technical advice to governments on issues of fiscal responsibility and oversight;
- offering training programmes for military and civilian leaders in accountability, transparency and human rights;
- strengthening civil institutions, such as the ministries of justice and defence;
- supporting and building civil society capacities to provide input into and monitor the security sector;
- providing professional training for the armed forces and police;
- assisting disarmament, demobilisation and reintegration programmes; and
- launching more in-depth bilateral partnership initiatives (e.g. the Australian Regional Assistance Mission to the Solomon Islands, which provides funding and technical assistance for SSR).

A conceptual framework developed by the United Nations Developmental Programme (UNDP) gives seven conceptual categories can be used to assess the opportunities as well as the potential for security sector reform. The proposed seven contextual categories are<sup>16</sup>:

- i. Political context
- ii. Psychosocial context
- iii. Normative context
- iv. Economic context
- v. Institutional context
- vi. Societal context
- vii. Geopolitical context

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<sup>15</sup> Security Sector Reform by Sanam Naraghi Anderlini and Camille Pampell Conaway

<sup>16</sup> Nicole Ball, "Enhancing security Sector Governance: A Conceptual Framework for UNDP," October 9, 2002, <http://www.undp.org/bcpr/ruleoflaw/index.htm>.

By applying each contextual framework to Kenya, it is possible to analyse and gauge the need, opportunities and potential for security sector reform. The analysis below has been adopted to fit Kenya's context.

**Table 1** Tailoring support to Country Context

<b>Contextual Category</b>	<b>Possible Approaches</b>
<p><b>Political Context</b></p> <p>1) The capacity of the civil authorities to exercise oversight and control over one or more of the security bodies is weak.</p> <p>2) Democratic accountability of security bodies to civil authorities is deteriorating.</p> <p>3) Power is centralised; attempts to increase participation are opposed; public officials exhibit disregard for rule of law.</p> <p>4) There is a tendency to resolve disputes through the use of force.</p> <p>5) Corruption and impunity prevail among public officials.</p> <p>6) The country as at a post conflict phase with potential for full blown civil unrest if issues remain unresolved.</p>	<ul style="list-style-type: none"> <li>• Assist legislature as a whole and relevant legislative committees to develop capacity to evaluate security sector policies and budgets.</li> <li>• Assist finance ministry, ministry of defence, office of national security adviser and other relevant executive branch bodies to improve capacity to formulate, implement and monitor security policy and budgets.</li> <li>• Help strengthen/create oversight bodies such as auditor general's office, police commission, human rights commission.</li> <li>• Support national dialogues on issues relating to security sector governance.</li> <li>• Encourage participatory national security assessments.</li> <li>• Provide professional training for security bodies consistent with norms and principles of democratic accountability, such as the role of the military in a democracy, democratic policing, human rights training.</li> <li>• Encourage national dialogues on security sector governance, leading to development of national strategies for strengthening security sector governance.</li> <li>• Support civil society in its efforts to, for example, train civilians in security affairs, defence economics, democratic policing; monitor security-related activities; offer constructive advice to policy makers.</li> <li>• Where feasible, support civil society in efforts to encourage dialogue within society and between civil society and government on rule of law, human rights protection, democratic governance.</li> <li>• Assist civil society to build capacity on security-related issues.</li> <li>• Work to develop an appreciation for democratic accountability of civil authorities to population.</li> <li>• Identify and support potential reformers in government, security bodies</li> <li>• Reduce access to weapons by all parties, for example through arms sale moratoria.</li> <li>• Strengthen democratic accountability of civil authorities to population.</li> <li>• Support the development of a capacity to defuse conflicts,</li> </ul>

	<p>thereby reducing the likelihood of a resort to violence.</p> <ul style="list-style-type: none"> <li>• Encourage parties to conflict to discuss security sector governance in the course of peace negotiations.</li> <li>• Support post-conflict demilitarisation efforts such as demobilization and reintegration of ex-combatants, disarming ex-combatants, irregular forces, population-at-large.</li> <li>• To the extent possible, train civilians in areas relevant to capacity to manage and oversee the security sector.</li> </ul>
<p><b>Psychosocial Context</b></p> <p>1) Civilians experience difficulty in interacting with members of the security sector.</p> <p>2) Unaccountable security bodies create a sense of insecurity, within the country as a whole, among certain communities and groups.</p>	<ul style="list-style-type: none"> <li>• Promote confidence-building measures, such as facilitating dialogue between civilians and security body personnel in a neutral setting and arranging for local stakeholders to observe constructive civilian-security body interactions among international and regional stakeholders.</li> <li>• Arrange for security body personnel to learn behaviour appropriate to democratic societies when interacting with civilians from other security bodies, either in the region or a trusted international partner.</li> <li>• Train civilians in security-related issues in order to increase their confidence on substantive issues when dealing with members of the security body.</li> <li>• Encourage greater accountability through, for example, requiring security body personnel to wear identification badges, requiring security body vehicles to be easily identified, supporting unofficial citizen monitoring activities where feasible.</li> <li>• Encourage human rights, gender sensitivity training.</li> <li>• Encourage dialogue between civilians and security body personnel in a politically safe space if conditions permit, i.e. reprisals against civilian participants seem unlikely.</li> <li>• Support the creation of police councils and other civilian bodies to monitor behaviour of the security bodies.</li> <li>• Identify underlying causes of unaccountability and devise strategy to address these.</li> </ul>
<p><b>Normative Context</b></p> <p>1) The legal basis for democratic accountability of security bodies to civil authorities is not well developed.</p> <p>2) The legal basis for democratic accountability of security bodies to population is not well developed.</p> <p>3) A rampant culture of corruption and impunity prevent legal principles from being practiced.</p>	<ul style="list-style-type: none"> <li>• Support revisions of legal framework consistent with democratic principles and norms such as civil supremacy, appropriateness of means in the use of force, rule of law.</li> <li>• Support regional efforts to codify democratic principles such as non-recognition to governments coming to power through coups d'états.</li> <li>• Support reviews of national legal framework for consistency with international law and democratic norms, especially protection of human rights and laws of war; support for revisions as needed.</li> </ul>
	<ul style="list-style-type: none"> <li>• Support incorporation of security sector into government-</li> </ul>

<p><b>Economic Context</b></p> <ol style="list-style-type: none"> <li>1) One or more of the security bodies has privileged access to state resources.</li> <li>2) The security bodies receive inadequate financial resources to fulfil their missions.</li> <li>3) Due to corruption and impunity financial resources are often misused.</li> </ol>	<p>wide fiscal accountability and transparency processes.</p> <ul style="list-style-type: none"> <li>• Support anti-corruption activities.</li> <li>• Assist civil society to develop the capacity to monitor security budgets.</li> <li>• Strengthen the capacity of legislators and economic managers to assess security budgets, carry out oversight functions.</li> <li>• Encourage participatory national security assessment which would have as a major objective, developing missions within a realistic resource framework.</li> </ul>
<p><b>Institutional Context</b></p> <p>Fundamental Institutions are poorly developed and do not function adequately:</p> <ol style="list-style-type: none"> <li>1) Criminal justice system</li> <li>2) Financial management system</li> <li>3) Parliament as a surveillance oversight mechanism</li> </ol>	<ul style="list-style-type: none"> <li>• Assist in development and implementation of criminal justice policy.</li> <li>• Support democratic policing, judicial strengthening, legal training.</li> <li>• Support efforts to demilitarise police, for example by separating them from armed forces and promoting democratic policing.</li> <li>• Support efforts to depoliticise the judiciary.</li> <li>• Support civil society's ability to monitor the activities of the criminal justice system and to provide training for members of the criminal justice system.</li> <li>• Support the development of regional policing capacity to address cross-border problems and to strengthen commitment to democratic principles and practices.</li> <li>• Assist national stakeholders to develop mechanisms to: <ol style="list-style-type: none"> <li>a) identify the needs and key objectives of the security sector as a whole and the specific missions that the different security bodies will be asked to undertake.</li> <li>b) determine what is affordable.</li> <li>c) allocate scarce resources according to priorities both within and between the different security sectors.</li> <li>d) ensure the efficient and effective use of resources.</li> </ol> </li> </ul>
<p><b>Societal Context</b></p> <ol style="list-style-type: none"> <li>1) It is deliberately made difficult for civil society to monitor the activities of the security sector and work to promote change.</li> <li>2) Civil society lacks substantive knowledge of security-related issues.</li> <li>3) Gender perspective is not considered by security sector bodies resulting in discrimination.</li> </ol>	<ul style="list-style-type: none"> <li>• Work with the members of the security sector to enhance public transparency.</li> <li>• Encourage regional confidence building measures aimed at enhancing transparency and accountability of the security bodies.</li> <li>• Provide training in democratic policing principles and practices and human rights protection for the security bodies.</li> <li>• Where feasible, seek ways of empowering civil society, for example, by encouraging changes in legislation that limit civil</li> </ul>

<p>4) Security sector institutions, policies and personnel are themselves often a direct threat to the security of women and girls.</p> <p>5) Cultures of violence and oppressive gender roles have resulted in high rates of sexual violence perpetrated by military and police officials.</p>	<p>society activities, inviting Civil Society Organisations (CSOs) and local security experts to participate in meetings, or soliciting civil society opinion.</p> <ul style="list-style-type: none"> <li>• Support efforts to develop indigenous training capacity.</li> <li>• Provide scholarships in security studies, defence management, law and other relevant subjects.</li> </ul>
<p><b>Geopolitical Context</b></p> <p>1) Trans-border crime is a major problem.</p> <p>2) Regional tensions create arms races and provide justification for greater resource allocation to security bodies.</p> <p>3) Neighbouring countries seek to destabilise government, for example, by arming dissident.</p>	<ul style="list-style-type: none"> <li>• Support the development of regional policing capacity.</li> <li>• Encourage development/strengthening of regional security mechanisms.</li> <li>• Encourage regional dialogues on security issues.</li> <li>• Encourage development/strengthening of regional security mechanisms.</li> <li>• Encourage regional dialogues on security issues.</li> <li>• Work to reduce access to arms.</li> </ul>

*Source: Adapted from Ball, N. Bouta, T and van de Goor, L, Enhancing Democratic Governance of the Security Sector. This assessment framework is intended to be used by governments of reforming countries, in collaboration with external partners.*

### **Contributions Civil Society Can Make to Security Sector Reform and Governance**

Civil society in Kenya has a fundamental role to play in security sector reform. According to the Berghof-Handbook Dialogue Series, the contributions the civil society can make are:

- Facilitating dialogue and debate on policy issues
- Educating politicians, policy makers and the public on special issues of concern
- Empowering groups and the public through training and awareness-raising on specific issues
- Sharing specialised information and knowledge of local needs and conditions with policy makers, parliamentarians and the media
- Improving the legitimacy of policy processes through broader inclusion of societal groups and perspectives
- Encouraging security policies that are respectful of and responsive to local communities
- Representing the interests of groups and communities in the policy
- Putting security reform issues on the political agenda
- Providing a pool of independent expertise, information and perspectives
- Undertaking policy-relevant research
- Providing specialised information and policy input
- Promoting transparency and accountability of security institutions
- Monitoring reform and policy implementation

- Maintaining sustained policy scrutiny
- Promoting responsive government
- Creating platforms which decisively affect the policies and legitimacy of executive level bodies in the pointers of the public good
- Facilitating democratic change by protecting the maintenance of minimum international human rights standard under democratic and undemocratic regimes
- Creating and mobilising a critical mass of systematic public opposition to undemocratic and unrepresentative local and national government

**Table 2** CSOs and their contributions to public oversight of the security sector

TYPE OF CSO	CONTRIBUTION(S) TO PUBLIC OVERSIGHT OF THE SECURITY SYSTEM
<b>Community based and neighbourhood organisations and groups</b>	<ul style="list-style-type: none"> <li>• Awareness- raising</li> <li>• Empowerment of marginalised groups</li> <li>• Interest representation</li> </ul>
<b>Development and “Peace” NGOs</b>	<ul style="list-style-type: none"> <li>• Awareness- raising</li> <li>• Empowerment of marginalised groups</li> <li>• Monitoring</li> <li>• Recommendations</li> </ul>
<b>Human rights groups and networks</b>	<ul style="list-style-type: none"> <li>• Awareness- raising</li> <li>• Criticism</li> <li>• Monitoring</li> <li>• Recommendations</li> </ul>
<b>Networks and support groups</b>	<ul style="list-style-type: none"> <li>• Awareness- raising</li> <li>• Empowerment of marginalised groups</li> </ul>
<b>Policy research institutes, think tanks and security studies institutes</b>	<ul style="list-style-type: none"> <li>• Analysis</li> <li>• Criticism</li> <li>• Dialogue &amp; debate</li> <li>• Recommendations</li> </ul>
<b>Professional associations and groups e.g. medical associations, journalist federations and academic societies</b>	<ul style="list-style-type: none"> <li>• Awareness- raising</li> <li>• Empowerment of marginalised groups</li> <li>• Interest representation</li> </ul>
<b>Student groups</b>	<ul style="list-style-type: none"> <li>• Awareness- raising</li> </ul>

	<ul style="list-style-type: none"> <li>• Interest representation</li> <li>• Monitoring</li> </ul>
<b>Trade unions</b>	<ul style="list-style-type: none"> <li>• Awareness- raising</li> <li>• Empowerment of marginalised groups</li> <li>• Interest representation</li> <li>• Monitoring</li> </ul>
<b>Women's organisations</b>	<ul style="list-style-type: none"> <li>• Awareness- raising</li> <li>• Empowerment of marginalised groups</li> <li>• Interest representation</li> <li>• Monitoring</li> </ul>
<b>Foundations</b>	<ul style="list-style-type: none"> <li>• Funding for security related research and support for CSOs</li> </ul>

*Source: Adapted from Ball, N. Bouta, T and van de Goor, L, Enhancing Democratic Governance of the Security Sector. This assessment framework is intended to be used by governments of reforming countries, in collaboration with external partners.*

In Kenya, appropriate objectives and activities need to be carefully selected and undertaken so as to ensure successful security sector reforms. Below are the objectives that should be set and the activities that should be embarked on:

### **Objectives**

The objectives are designed to give the SSR project a focus and to accurately identify the areas where reform will significantly improve the security sector:

- Ensure access to justice and promote rule of law;
- Promote better coordination of the justice and security sectors;
- Address the human rights legacies of the conflict;
- Building national capacity for conflict prevention and resolution.

## **Activities**

The activities are the various initiatives that should be commenced so as to achieve each objective.

*i. Reinforcing alternative dispute resolution mechanisms:*

A programme to train and equip the Chairpersons and support staff of traditional courts and other appropriate local officials in districts in providing easily accessible, socially conscious and gender-sensitive alternative dispute resolution and court-affiliated mediation at the local level, so as to relieve the caseload on an already weak judiciary, while at the same time pursuing vigorously a comprehensive reform and restructuring of the judiciary.

*ii. Reducing the backlog of cases*

A programme to recruit, train and deploy additional Magistrate judges in the districts with the highest backlog of cases.

*iii. Address overcrowding of prisons and support to Kenya Police:*

After the end of the conflict, prisons in the districts have been rehabilitated to meet elementary standards. However, the condition in the central prison, in the capital- Nairobi, continues to be a matter of serious concern, both in terms of the location of the prison facility and its over crowding. In addition, lack of trained prisons personnel remains one of the key challenges facing the corrections system. There is an urgent need to complement on going capacity building initiative for the Kenya Police.

*iv. Ensuring coordination of the justice and security sectors:*

A key challenge facing the justice sector in Nairobi relates to coordination among the various institutions involved in the delivery of justice and promotion of the rule of law. Coordination among the judiciary, prisons and police is particularly weak due to capacity constraints and limited training and logistics. This has seriously undermined the effective delivery of justice, contributing to the large backlog of cases and frequent adjournment of trials, especially in the districts. The Ministries of Justice and Internal Affairs also require support with additional qualified personnel, logistics and communications equipment to be able to perform effectively their overall coordination and oversight responsibilities. Data collected through an early warning system will be nationally compiled and assessed in order to discern larger patterns and identify major threats to Peace.

*v. Implementation of the Recommendations of the Truth and Reconciliation Commission:*

The Truth and Reconciliation Commission (TRC) in its final report should provide a number of recommendations for follow-up action by the Government. Such measures should be: the protection of



human rights and establishment of the rule of law; promoting good governance and tackling corruption; addressing the situation of youth, women and children; promotion of regional integration and cooperation; proper governance of natural resources; reparations to war victims and reconciliation; dissemination of the TRC report and establishment of a follow up committee. The implementation of these recommendations is essential to address the root causes of the conflict. While the Government, with the support of the international community, is taking steps in addressing these challenges, the full implementation of the recommendations of the TRC will require substantial resources and assistance from the international community. Such assistance would include resources to ensure that the National Human Rights Commission is fully functional.

## **RECOMMENDATIONS FOR SECURITY SECTOR REFORM IN KENYA**

According to the International Center for Policy and Conflict, the Commission of Inquiry into Post Election Violence and the article "Democratic reform of police"; various reform recommendations are suggested and given below:

### **1) Equity and Non-discrimination**

Dealing with the composition of the Kenyan police service is important in terms of a commitment to the principle of non-discrimination, on a symbolic level, and in ensuring the development of an ethos of professionalism.

Questions of equity and non-discrimination need to be addressed both in relation to the legacy of discrimination against racial/ethnic groups and gender discrimination. The legacy of discrimination needs to be addressed internally, in terms of employment and promotion practises and externally by means of ensuring that police services are provided in a manner which is equitable and non-discriminatory.

### **2) Personnel**

There are essentially two options in terms of personnel; either to retain personnel or to recruit new personnel. Relying on old personnel has the consequence that they are likely to resist change and continue to adhere to old norms and standards. If there is a long history of corruption, the retention of old personnel will carry the risk that corruption permeates all levels of the security sector.

Moreover, relying on new personnel has the consequence that at the point where the reform process is initiated the police service is constituted by inexperienced personnel. Therefore, a combination of the two approaches is needed. Preferably this should at least incorporate:

- (i) Reselection or vetting so that those strongly implicated in corruption and brutality, and those incapable of performing police duties, are excluded, and
- (ii) A systematic approach to new recruitment based on development of the training system.

### **3) Development of the training system**

The objective of developing a training system for the Kenya Police should be:

- (i) to develop a basic training system which has the capacity to provide good quality training to a modest number of carefully selected new recruits on an annual basis;
- (ii) to impact on the composition of the police service over roughly a decade rather than to change the composition of the police service overnight;
- (iii) the capacity of the training system also needs to be enhanced in order for it to provide in service training to existing members of the service regarding the performance of police duties.

### **4) Human Rights**

Rather than providing training in the theory of human rights the best way to improve the capacity of the police to do their work in terms of a human rights framework is to: support them in learning how basic policing is carried out in a manner consistent with human rights, and hold managers and supervisors accountable for ensuring that they are doing this.

Key components of the support which should be provided to them should include:

- (i) Training around the basic responsibilities of charge office and custodial personnel; patrol personnel; detectives; and public order police, in policing in a democratic system;
- (ii) Promoting learning and personal growth amongst police in interpersonal skills and communication along with the practical knowledge on community policing, good practise in working with witnesses, victim sensitivity, statement taking and the dynamics of interpersonal conflict;
- (iii) Support around the exercise of police authority and the use of force which promotes learning and improving practise in this regard (this includes addressing questions of police safety).

## **5) The disciplinary system**

One of the consequences of reform is often that changes need to be made to the disciplinary system to bring this in line with other reforms in the labour field. However these reforms have the potential to drag out over an extended period of time particularly if a series of changes are made to the disciplinary framework.

As a consequence one of the side-effects of reform may be a collapse in discipline (even in a context where the existing disciplinary system leaves a lot to be desired) manifested in a further proliferation of corruption.

The framework for the disciplinary system should be consolidated early on in the reform process in order to minimise this effect. Even if this is achieved however a lot of work will still need to be done to empower police managers and supervisors to implement discipline, and to hold them accountable for this.

## **6) Accountability and transparency**

Accountability in the Kenyan police force needs to address issues both of police performance; and police conduct and adherence to human rights standards. The following can be done:

- (i) Enhancing accountability includes: improving the capacity of government institutions to hold police accountable; improving the capacity of the police to collect and analyse information; establishing an oversight body to ensure that possible or alleged wrongdoing by police is investigated effectively; and supporting the development of research capacity and research access in relation to the activities of the police.
  
- (ii) Governmental structures may find it difficult to hold the police accountable. This is partly because of first, the difficulty and complexity in evaluating the performance of the police and the tendency to focus on recorded crime as a way of evaluating this; and second, the governmental culture in which officials and members of parliament are often unwilling to ask probing questions or be critical of government departments.

- (iii) In addition to these factors a major obstacle to this is the absence of internal accountability in police organisations. Police managers often do not know what police are doing and their ability to collect and analyse information about the police is often very poor.
- (iv) Politicians may also be reluctant to hold the police accountable in relation to human rights standards, as they may be afraid of losing public support. Police leaders therefore need to commit themselves to human rights standards irrespective of whether there is pressure from politicians for them to adhere to these standards or not.
- (v) However despite the difficulties of evaluating their performance it is imperative that the police be required to open themselves to scrutiny by other structures of government, including parliamentary structures and the courts.
- (vi) Key issues for scrutiny also need to include intelligence and undercover activities and employment and promotion practises.

## **7) The law and professional standards**

With regards to the law and professional standards the following should be taken into account:

- (i) Accountability to the law means that the police enforce the law equally in terms of a uniform set of standards rather than being directed by the whims of politicians, or ethnic or other biases. It also means that they can be held accountable if they violate the law.
- (ii) While the idea of accountability to the law is important in relation to the need for police to treat people equally, the law is something of blunt instrument. Several legal concepts such as the concept of 'reasonable suspicion' which are directly relevant to the work of the police are difficult to define and to hold the police accountable to. In addition the exercise of police discretion is necessary for effective policing and cannot be regulated by law.
- (iii) The standards set by the law are in some ways quite low. Professions such as the medical or teaching profession set their own standards on the basis of ideas of professional conduct. Developing a policing system based on pride and respect for what the police stand for, requires developing a set of professional standards which represent good practise on the part of the

police, and in terms of which the law merely represents the minimum standards which police must adhere to.

## **8) Oversight mechanisms**

While politicians may struggle to be effective in holding the police accountable, the creation of an oversight agency can considerably strengthen the reform process and give teeth to efforts to hold police accountable to new standards.

The primary job of the oversight agency is:

- (i) to promote improvements in internal systems of control;
- (ii) to ensure that steps are taken if the internal systems are not doing their work;
- (iii) to motivate police to ensure that this is done. This is not only for pragmatic reasons (particularly in a developing country it is unrealistic to expect that there will be massive resources available to finance civilian oversight) but primarily for reasons to do with effective management of the police (managers cannot manage an organisation effectively if the systems of internal control are taken out of their hands).

The oversight agency will however only be able to fulfil its role effectively if it has strong investigative, monitoring and audit powers and capacity as well as proper resourcing. Without adequate powers and capacity the oversight agency will be unable to properly scrutinise police or promote their accountability. The oversight agency should therefore have the legal authority to intervene and take over internal investigations. If it has this power this will serve to motivate police to improve internal systems.

Creation of strong oversight therefore needs to be accompanied by efforts to create/strengthen internal systems of control within the police service. While the oversight agency should invite members of the public to lodge complaints with it, it should simultaneously ensure that the police improve their own complaints reception facilities. In addition the police should develop a strong internal investigative division. It is imperative that high standards be applied in selecting the membership and leadership of this division. Its investigations must be subject to scrutiny by the oversight agency.

The oversight agency should have the authority to designate categories (e.g. shootings where people are killed or injured, deaths in custody, deaths as a result of police action, allegations of torture or other assaults) in terms of which prompt reporting by the police to the oversight agency is mandatory. Breach of mandatory reporting requirements should be a disciplinary offence.

The police agency must also report to the oversight agency on a regular basis regarding the work of the internal investigative and disciplinary systems. Issues to do with the location of the oversight agency should be dealt with in the process of constitutional and legislative reform. Provision should be made for the oversight agency to be autonomous relative to the police.

## **9) Corruption**

While there are a range of abuses associated with the police the most important abuses which need to be monitored and tackled are police corruption and brutality. Police corruption takes a wide variety of forms and is particularly difficult to monitor because it is often 'consensual'. Furthermore when extorting money from people, the police tend to focus on marginal people who have no influence in society. Statistics on reports of police corruption are meaningless as an indicator of levels of corruption. It is therefore necessary to use research and intelligence gathering techniques to expand understanding on the nature and occurrence of corruption. While improving internal and external systems of investigation and discipline are important to tackling corruption, these need to be complemented by other measures including:

- (i) proactive values management within the police; and
- (ii) promoting attitudes and practises amongst community members which support police integrity.

Proactive values management incorporates firstly, consistently sending a clear message to police about the standards of conduct which they must adhere to, and supporting adherence to these standards through management and supervisory conduct and practise.

## **10) Brutality and torture**

While brutality often goes hand in hand with corruption, police who are not corrupt and are dedicated to their work are often also brutal (i.e. consciously and deliberately use unlawful violence against suspects). This partly reflects the problem that doing police work in a committed and effective manner

within the framework set by human rights standards and law requires high levels of skill, and that many police are ill-equipped to work in this kind of way;

Brutality is often also associated with the belief that the only way to get the job done is through extra-legal means. The difficulty in the context of a police service emerging from an authoritarian past is that this type of belief may pervade not only the lower ranks of the police but also the management levels, as well as influential sections of government.

Therefore, there needs to be a strong emphasis on supporting police in developing skills and understanding which will enable police to break from the habit of relying on brutality and torture. This can be accomplished both through the training system and through an approach from supervisors and managers which encourages police to learn from examples of good practise.

Support to police in improving their ability to use witness evidence, which includes general improvements in practise in working with victims and witnesses, is important in enabling police to improve their practise in crime investigation and move away from the use of torture. Ensuring that the legislative framework provides very clear definition as to legitimate grounds for the use of lethal force for purposes of arrest is integral to addressing a legacy of police violence.

In addition police leaders, managers and supervisors should ensure that principles around the use of force are clearly communicated to police members. For this purpose there may also be benefit in developing an organisational statement of principles relating to the use of force by the police.

## **11) Responding to crime reports**

The Western model of rapid response is not achievable in a developing country context where there are major resource constraints. In addition rapid response does not achieve much in most cases reported to the police. A rapid response capacity can be useful in a very small proportion of cases. However in order for these cases to be identified the radio control room (if there is one) needs to be able to identify these cases.

However the police should aim for reliability in their response to crime. This should incorporate:

- (i) identifying categories of crime where the police will undertake to report to crime scenes;
- (ii) a radio room which responds to crime calls promptly and courteously;

- (iii) providing details to callers as to the time which it will take for the police to arrive at the scene;
- (iv) informing callers as to any steps which they should take prior to the arrival of the police.

## **CONCLUSION**

Security sector reform is a crucial process in the transition from the post election violence period to peace building. SSR seeks to mend the deficiencies of the current security system and put in place a system that upholds justice and peace as well as one that is free from corruption, impunity and other forms of inefficiency. SSR should consider the whole of the security system, including all ministries as well as the justice system. Furthermore, SSR should be in coherence with other transitional justice approaches, as well as foster an environment where all factions of the community can be involved in building the Kenya that they long to see. Encouraging participation from everyone, facilitating dialogue and debate, ensuring transparency, sharing knowledge and training as well as mechanisms put in place to monitor reform initiatives, will guarantee a successful SSR process.

At the forefront of security sector reform lies the stabilization of security and the achievement of comprehensive political and economic development. The overall objective of security sector reform is ensuring the discharge by the security institutions of their statutory functions; i.e. providing security and justice for the people efficiently and effectively. While reformed and restructured security sectors are crucial for post-conflict Peacebuilding, the ultimate objective should be the improvement of everyday lives of the people. Security sector reform entails search for sustainable political stability as a precondition for setting a country on the path to development. Security sector reform aims at achieving effective, accountable and sustainable security institutions committed to the rule of law, protection of human rights and democratic State as the cornerstone of sustainable peace and security.

Four lessons have been learned on security sector reforms: first, security is a crucial and immediate condition for Peacebuilding and long-term development. Secondly, security could not be restored and maintained in a vacuum as it is vital to address the needs and perspectives of the State and the communities within it. National ownership to security sector reform is crucial for it is an integral part in building sustainable peace. Thirdly, sustainable security goes beyond professional training and equipping individual police officers. Without effective and democratic security institutions, peace and political stability is short-lived. This calls for capable management, sustainable funding and effective oversight. Fourthly, building sustainable security after conflict requires engaging many stakeholders but all their efforts must be carefully coordinated.



Security sector reform is a national responsibility that should be defined and owned by national stakeholders, informed by the best international standards and practices, and supported by the international community. National government should be willing and able to play a key role in the coordination and facilitating dialogue of national stakeholders in three key areas: shared analysis of what must be done and to what extent; development of a clear strategic implementation plan; and establishment of a mechanism for management, monitoring and evaluation of implementation. When a country is in the grip of conflict, state institutions are the first to collapse, democracy eroded and the culture for human rights regress or disappear. All that lead to a general breakdown of trust of state institutions as citizens are left to conclude that democracy has been abandoned and human rights no longer matter. Security sector reform, therefore, is about building both the state institutions and the trust between the populations with the newly established democratic institutions.

Building a well-managed security sector not only requires police reforms but also the construction of impartial and accessible judicial and corrections sectors. To be sustainable, those reforms must be based on the foundations of transparency, equality, civilian protection, democratic norms and respect for human rights. However, critical elements of security sector reform, notably justice and corrections, are not consistently addressed as well as strengthening civilian control and accountability and gender-mainstreaming.

Security sector reform is a political and often sensitive issue. It concerns both the effectiveness of security forces and the accountability of power and democratic control. It has to be a part of a framework of checks and balances. Indeed, the sector deals with so many stakeholders including the police, defence, intelligence services, justice institutions, customs and border control, among others. If there is a fundamental lack of trust in the institutions that should be upholding the rule of law and respect for human rights, there would hardly be any progress in a post-conflict situation. In this regard, the Police Reform Task Force must strive to have a deep reflection on the reforms it intends to recommend.

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