



International Center for Policy and Conflict

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**Policy Brief: Shifting Policing and Law Enforcement  
System in Kenya**



**International Center *for*  
Policy and Conflict**

## About International Center for Policy and Conflict, ICPC

International Center for Policy and Conflict (ICPC) is a non-profit, Independent, human rights public policy research, advocacy and education institute. It was established in Kenya in 2001 but got official recognition as a trust in 2005 under the Trustee (Perpetual Succession) Act Chapter 164. ICPC espouse a free society with dignity, equality and justice for all. Our mission is to create, promote and engage policy platforms that build democratic human rights societies and human development.

Our three over-arching strategic goals:

1. Larger Human Rights and Freedoms
2. Democratic development
3. Human Security

The organization strategic Programme Directions are:

- Partnership in Sustainable Development
- Governance, Peace and Security
- Gender and Sexuality Rights
- Knowledge Management through Technology
- A secure, accountable, visible and resourced institute

The Center comprises of the five (5) members of the board, Management Committee and a full-time programmatic and administrative paid staffs. In addition, it utilizes a network of Associates and Consulting Experts and works in concert with other local, regional, and international organizations. It also offers internship and fellowships. The Board members are responsible for the strategic policy direction of the Center. The management committee guarantees a sound internal management structure and policies that contribute to the optimal functioning of the organization. The Executive Director is the head of the secretariat, responsible for its management and implementation of policy directions, coordination of programmes and ensuring accountability in utilization of its resources.

## Preface

Policing and law enforcement system reforms in Kenya are critical for strengthening rule of law and advancing developmental priorities. Reforms stem from clear and overwhelming evidence that a fair, responsible, ethical and efficient criminal justice system is an important factor in the promotion of economic and social development and of human security. It also stems from the fact that law and order crisis has continued to deepen over time in Kenya. Law enforcement modernization is one of the greatest challenges confronting Kenya, a challenge that can and must be met. There are no short cuts.

Among the serious constraints undermining the policing and law enforcement system of Kenya are: incompetence, inefficiency, arbitrariness, inadequate or no response to citizens' concerns, institutionalized abuse of power, whimsical (mis)management of police by the executive authority of the state, accountability deficit, and widespread unprofessionalism, high-handedness and corruption.

Policing by consent is virtually non-existent. Citizens lend little or no co-operation to police as they perceive them as a corrupt, insensitive and highly politicized, operating mainly for the interests of the politically and economically powerful in the society.

Reforming law enforcement and policing is integral part of wide reforms in broader security governance provided in the Constitution of Kenya 2010. The police and law enforcement reforms provided for in the Constitution are set to achieve three objectives namely; **a)** To enforce functional autonomy of security and law enforcement agencies for operational effectiveness and professionalism; **b)** To strengthen civilian oversight accountability over security agencies; and **c)** To address the working and living conditions of the security personnel and their dependents.

The thrust of these reforms is to organize a law enforcement system, which is politically neutral, non-authoritarian, accountable and responsive to the community, professionally efficient, and last but not least, which is an instrument of rule of law. Consequently, the reforms aim at structural, operational and funding changes, inter alia, at depoliticizing police, improving law enforcement professionalism through a merit-oriented system of recruitment and career progression, and making policing more accountable to citizens.

The continuous interference with the authority and functions of law enforcement by political executive has had a crippling effect on the ill-conceived police organization. If properly implemented, radical reforms stipulated in the Constitution of Kenya 2010 can bring about a fundamental transformation in the quality of policing and make police a people-friendly public service, particularly for the poor and disadvantaged.

Unlike the colonial police philosophy, the modern police role is not that of an occupying force. The present police system, which has been allowed to deteriorate by successive governments and has been abused for political patronage, has not yet completely broken down due to the dedication, integrity, initiative and professionalism of a small number of individual officers in the police.

What people urgently require is a fundamental change in the way they are policed. The police organization designed for colonial purposes has broken down. Poor law enforcement over time has become a serious threat to the emerging democratic order, its economy and the safety, well-being and integrity of its citizens. Although the country has spent tens of billions yearly on police, military, national intelligence and other security agencies, Kenyans are still suffering from a creeping sense of insecurity.

The solution lay in radically changing the way the policing and law enforcement agencies are institutionally structured and operate, in developing a culture of professional policing, trained and

equipped to uphold the rule of law, in shifting from more-than-century-old oppressive policing practices to community oriented policing, and in reinventing the police, which has miserably failed to win much-needed partnership with citizens and communities.

It is time for police to enter into a customer service contract with Kenyans, for a more effective, efficient, responsive, accountable policing. It is time to implement ideas that work and get rid of those that do not.

What steps are needed?

1. An essential first step in the process of policing reforms, the political leadership of the country conceive as a matter of fundamental policy that an effective, viable, independent and publicly accountable law enforcement is crucial to the development of stable democratic government, legal order and rule of law.
2. Police reforms should be focused on building a relationship of trust between the people and the police. In order to establish mutual trust between the police and the general public, we need to create police institutional structures that ensure political neutrality and democratic control of the police, and proper sharing of responsibilities between the national and county governments.
3. Responsibility of maintenance of law and order and that of crime prevention would need to be separated.
4. The police hierarchy will have to be made responsible not merely for the organization and the internal administration of the force, but also for other matters connected with maintenance of law and order.
5. Insulate police from extraneous interference by the politicians in power, strengthen National Police Service Commission and establish National Police Service Fund for financial independence.
6. The role, duties and responsibilities of police have to be re-defined in a manner in which service function gets precedence and the prevention and detection of crime is seen to have a social purpose to enable the police to act proactively for ushering in a culture of rule of law.
7. The reform strategy should also seek to establish an effective judicial and prosecution service in each County with effective County Policing Service to improve the quality of both investigation and prosecution, in addition to introducing a system of checks and balances. This measure will also be a major step forward towards establishing a standard criminal justice system.
8. The process of reforming requires that the political and police leadership realize that the police have to respond to the expectations of Kenyans if they are to be effective. There has been a tendency to hide behind the complexity of policing as a means of excusing poor management and leadership. The police organization of tomorrow will therefore have to evolve a shared vision and understanding of a common mission, which will increasingly be focused on meeting the community expectations.

International Center for Policy and Conflict is sharing a roadmap to assist in realizing 21st Century policing and law enforcement in Kenya in accordance with Constitution of Kenya 2010.

**Ndung'u Wainaina**



**Executive Director, International Center for Policy and Conflict**

1. International Center for Policy and Conflict notes there are major emerging global shifts in security and law enforcement systems informed by new paradigms of sophistication of crime. Further, there is significant global governance, security and economic changes happening organized around equality, inclusivity, sustainability, rights and accountability.
2. Kenya has remained largely with security and law enforcement systems inherited from colonial philosophy. This is incompatible with modern world security challenges. This calls for creation of devolved and shared system of security and law enforcement service in order to effectively take early action to prevent and reduce crime at local level, enhance capabilities and resilience of security agencies and achieve value for money without losing agility when fighting crime.
3. This is in full recognition that the nature of crime has changed drastically, patterns of crime vary across the country with different counties facing different security challenges, and signals move towards integration between police and other public services providers.
4. 'One size fits all' policing and law enforcement model approach controlled from Nairobi is colonial, archaic and does not allow room to respond to different security challenges and meet local needs.
5. Just as in colonial times, the police remain a symbol of political power and an instrument of oppression rather than an independent institution of governance with a distinct professional capacity and capabilities to address modern security challenges. A clear illustration of this is the widespread use of police officers for the protection and escorting of political notables and for largely ceremonial guard duties.
6. Throughout history, there have been challenging and defining moments and this is such a time for Kenya. It is time to radically reshape, reimage and rebuild national police service for 21<sup>st</sup> century policing and security.
7. The Constitution of Kenya 2010 provided far-reaching security governance sector reform agenda, which is a prerequisite to achieving three main objectives. **First**, to enforce functional autonomy of security and law agencies for operational effectiveness and professionalism. **Second**, to strengthen civilian oversight accountability over security agencies. **Finally**, to address the working and living conditions of the security personnel and their dependants.
8. Kenya is not under-policed. It is badly policed. The security and law enforcement agencies are trapped in regime policing of the colonial times. This practice has been carried over by the subsequent post-independence governments, including the current Government. Modern law enforcement is not dependent on the political government of the day. It is about the people and their security and safety, and protecting the country.
9. The national government has to end the centralized top down bureaucracy and adopt to changing global security dynamics. It has to introduce security and policing policies that increase the powers of local institutions, enhance local accountability and transparency, reduce barriers that prevent people from doing things for themselves, and reduce bureaucratic and regulatory burdens that slow progress.
10. Policing and criminal justice are the only mainstream public services, which are not devolved to the counties. That status quo is becoming increasingly hard to justify. Policing should now be devolved. Policing is the only emergency service that is not devolved.

11. In creating effective county policing and law enforcement service mechanism, national government will have enhanced the principle that power should be decentralized to the county institutions and that security services must be responsive to the local people they serve and held to account by citizens and their local democratically elected government and representatives. This does not in any way remove constitutionally assigned obligations.
12. The weakness of Kenya's police is the result of its institutional history and the governance mechanisms within which it operates. Consequently, while important, increasing capacity will make very little difference to its overall effectiveness and delivery. The ability of the police to penetrate Kenyan society is limited both horizontally as well as vertically by design rather than by lack of capacity.
13. Security Organs have been compromised to secure personal and political interest rather than secure the people and the country. The appointment process of the leadership of security institutions is manipulated to award individuals who value politico-ethnic loyalty over professionalism, merit, competence, competitiveness and accountability to the people and to the Constitution.
14. Apart from lacking a coherent national security strategy, Kenya has no solid integrated crime prevention and law enforcement policy. This has precipitated serious weaknesses in setting national security policy priorities, developing solid implementation plans, and installing credible accountability systems. This raises the fundamental question: **How does Parliament approve security and defence budgets without such crucial corresponding policy documents and implementation plans respectively? How does it conduct effective oversight over the security organs?**
15. The problem is further exacerbated by the lack of cogent strategy of integration, coherence and coordination of security structures. This has resulted to several problems. **First**, dysfunctional and ineffective joint security and intelligence assessments by security institutions both civilian and operational. **Second**, limited or non-existent accountability mechanisms in resources allocation and utilization. **Third**, deficits in performance monitoring and effective oversight mechanisms. **Fourth**, inappropriate emergency preparedness and response coordination. **Finally**, disjointed and compartmentalized law enforcement units operating in silos without clear policy and operational needs.
16. The country does not need a constitutional amendment to create a devolved community-oriented policing service and well as establish a national crime service agency. There exists constitutional avenues under Articles 1, 6, 10, 174 183, 187 and 189 of the Constitution to devolve certain aspects of policing and law enforcement.
17. The Constitution of Kenya 2010 has created a legal avenue to address and design policing and law enforcement system that has three components: **first**, separating general law and order maintenance from crime detection, prevention and investigations. **Second**, creating a credible, impartial and effective national crime and counter crime intelligence agency. **Finally**, devolving certain aspects of policing and law enforcement functions to the county governments to tackle local context policing challenges.
18. Localized policing and law enforcement is the bedrock of successful policing. To serve and protect communities effectively, any policing framework should be supported by the flow of information and intelligence with corresponding effective tasking and coordinating arrangements

to make the connection between communities, cross-police units, national and the international spheres more efficient and smooth.

19. The county policing and law enforcement police service will be responsible for public safety and security within the County. It would deal with crime prevention, local law enforcement, maintenance of order and any other crime not under the national crime service agency jurisdiction. This ensures the county police service is able to effectively address crime informed by local dynamics and conditions with high degree of accountability while living with national crime service agency.
20. The operational command and control of County Police Service would be the responsibility of the County Police Officer appointed competitively and on merit by National Police Service Commission. The Officer would be accountable to the office of Inspector-General, National Police Service Commission and County Policing Authority.
21. Devolving certain policing services ensures local frontline services are accessible to communities throughout focusing on problem solving and getting communities involved in supporting local crime investigations. Further, frontline services are provided collaboratively with other local public services involved in the community, working to a common set of outcomes as part of partnership arrangements. These arrangements should include the ability to share and prioritize time, money and people to achieve effective local outcomes.
22. Making policing services more local and open gives more freedom and professional discretion to those who deliver them and provides better value for taxpayers' money. It focuses on effective policing, pursue integration and re-shape the police workforce.
23. At the national level, the country should establish a professional credible, impartial and effective well-resourced national crime service agency with special operational centres with the capabilities and capacity to conducting highly professional crime assignments and tackle inter-county, national and international crimes.
24. The national crime and law enforcement agency would be the crime investigation hub producing and maintaining comprehensive national crime threat information for serious, organized and complex crimes, which all other domestic and international security agencies will tap and benefit from.
25. This would not only improve crime investigation and improve coordination and operational effectiveness; it would also enforce clear accountability avenues in tackling organized and transnational crimes such as money laundering, terrorism, poaching, economic and financial malpractices, drug and human trafficking and such other crimes of national and international in nature.
26. Specialist capabilities of the national crime service agency and areas of operational and criminal justice support would be consolidated into cross police functions strategically located and operating to national standards. This would minimize the number of locations required to support an effective police service; allow capabilities common to different policing activities to be deployed flexibly; and preserve access to capabilities for all police units without losing the ability to deploy rapidly on the basis of threat, risk and harm. Different arrangements for cross police working will be appropriate depending on the nature of the participating police units. Administrative and logistical support functions are provided through greater economies of scale

that reflect local circumstances, recognizing the opportunities to build synergy through local public services provider partners and other security organs.

27. Robust accountability for the maintenance of an efficient and effective local police service would be the responsibility of local police leaders and relevant county government departments. This means it would be necessary to create arrangements that span local services and cross police/national functions, which allow local leaders to assure themselves that the totality of the police service provided to the public in their areas is efficient and effective.
28. The National Police Service Commission should be professionally reconstituted and fully resourced to enable it effectively perform its constitutional policy mandate of human resource management and oversight. Further, to completely secure the structural, operational and funding independence of the Police Service, there should be an established National Police Service Fund charged directly from consolidated fund and managed by the Commission.
29. The Commission in consultation with the Office of the Inspector General would be responsible for preparation of the national police budget informed by prioritized professional needs, programmes and projects of the Service. The Commission would ensure the County Police Service is fully funded to meet its obligations.
30. There is necessity to establish a modern, effective integrated and well coordinated border control and customs management service agency which brings together several security agencies and civilian departments with ability to collect, analyze and share data and intelligence from multiple sources and enhance inter border security cooperation through multilateral mechanism.
31. A new strategy of strengthening and retooling the civilian security institutions to enable them to thoroughly scrutinize, monitor and oversee the work of police and law enforcement agencies is paramount now, more than ever. The security organs have remained opaque boxes with opaque decision-making processes, controlled by networks of officers who have, for years, resisted meaningful reforms, financial transparency, and civilian oversight and accountability mechanisms. There is need for proper results benchmarking and oversight paradigm shift if the operational side of the security and law enforcement systems is to deliver the desired outcomes.
32. The need for law enforcement and policing to respond to changing security requirements and to cost less will require the country to ensure that all it does is focused on the right outcomes. The country needs to manage demand and ensure security strategies are effective and evidence-based. Finally, the country needs to ensure the way in which it enforces law and policing is driven by the need to maintain democratic legitimacy threshold and accountability to the people.



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