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Linkages and Reform Issues

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ABBREVIATIONS AND ACCRONYMS

CSO	Civil Society Organization
GJLOS	Governance, Justice, Law and Order Sector
KNCHR	Kenya National Commission on Human Rights
KPF	Kenya Police Force
MTS	Medium-Term Strategy
NGO	Nongovernmental Organization
STPP	Short-Term Priorities Program

Vice President	: Obiageli Katryn Ezekwesili
Country Director	: Johannes Zutt
Sector Director	: Sudhir Shetty
Sector Manager	: Anand Rajaram
Task Team Leader	: Sahr Kpundeh

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EXECUTIVE SUMMARY

The objective of this study is to contribute to the ongoing dialogue on police reform in Kenya, where poor police services are eroding the state's capacity to protect people and property, thereby limiting the country's efforts in relation to economic development and poverty reduction. Five years after launching a series of programs and pilot projects to improve police performance, the government of Kenya concluded that the reform program achieved only limited success: the country is continuing to experience high levels of crime and inter-ethnic violence and other insecurity concerns.

Since 2003, reforms have focused on addressing the chronic lack of public confidence in the police and the persistence of corruption at all levels of the police force. Many of the reforms have been aimed at enhancing operational efficiency and expanding institutional capacity, especially by rehabilitating premises and purchasing vehicles. Despite these efforts, the force continues to be seriously weakened by structural dysfunction and extremely limited capacity, which are at the center of the most serious governance problems facing Kenya, namely, large-scale corruption, high levels of crime, and inter-ethnic violence. This study supplements the Kenyan experience by drawing on police reform research and experiences from Latin America and elsewhere in Sub-Saharan Africa.

The premise underlying the study is that the state's ability to maintain law and order and ensure personal security are fundamental pre-requisites for any effort to improve governance and enhance economic performance. An effective and accountable police force is an integral building block of a governance framework that supports economic development and reduces poverty. The government's Economic Recovery Strategy for Wealth and Employment Creation and the recent Kenya Investment Climate Report both justify this focus.

The weakening of the police function has had a dual economic impact: it has fed criminal violence in many parts of the country and, more perniciously, now sustains a culture of impunity that supports a growing and lucrative underground economy. The emerging consensus is that further police reform is necessary and urgent because reforms to date have not achieved the desired outcomes. This study argues that much remains to be done in those areas of police reform that have so far been neglected, namely, transforming the police force through institutional change and enhancing transparency, civilian oversight, and public accountability.

The entire security sector has structural frailties that need to be addressed, but this study is not intended as a comprehensive review of the country's security sector. Many issues crucial to the security sector will be taken up with the context of constitutional reform, but in the event that constitutional reform does not take place soon, police reform will be imperative.

The report identifies the following main challenges that face the police:

- a structurally weak institution with serious capacity challenges;

- a weak legal and institutional framework that makes the police prone to political abuse and interference;
- a lack of public confidence coupled with persistent corruption;
- the presence of wide regional variations in police services and the degree of protection for citizens as a result of asymmetrical coverage;
- the lack of capacity, skills, and trained personnel, leading to ineffectual coverage.

The report includes a discussion on the underlying political economy and how vested interests shape the role of the police. First, the acceptance of violence as a way of attaining political office undermines politicians' commitment to creating an effective, politically neutral security apparatus. This acceptance may explain the relatively low priority accorded to police and security sector reform over the years.

Second, in discussing the link between politics and insecurity, reformers must also recognize the effects of the culture of impunity and political violence on insecurity at the grassroots level. Those who can afford to do so frequently make use of private security services; however, the poor cannot afford such services and are therefore most likely to be affected by the lack of security.

Third, estimates suggest that Kenya has as many as 200,000 to 250,000 private security guards, which if correct means that they outnumber the police four to one. Who owns the private security firms, how they relate to and collaborate with the police, and their attitudes toward police reform are important questions in relation to police reform.

Kenya has made two major efforts to reform the police force over the last decade. The first was part of the failed constitutional reform when the November 2005 referendum failed to pass. The second, also in 2005, was when the government initiated security sector reforms under the Governance, Justice, Law and Order Sector Reform Program; however, these reforms were undermined by the persistent lack of public confidence in the police force, the continued police corruption, and the force's poor performance in the post election condition of civil unrest. These failures give rise to two questions: first, whether the political and social conditions for broad police reforms existed when these reform were initiated; and second, whether Kenya can learn lessons from countries that have implemented police reforms as part of their overall democratic reforms.

The previous reform attempts neglected four areas critical to police efficiency and accountability, namely, sensitivity to the systems within which police goals and operations are determined and executed; recognition, regulation, and coordination of public and private policing services; gender issues within the police force; and data collection, research, and planning. Where this context is neglected, police reforms tend to be short-lived or to fail. Moreover, police reforms that ignore other justice sector reforms, such as the legal environment, the judiciary, and prisons, are likely to be counterproductive.

The conditions for police reform currently exist in Kenya and police reform is now both a political necessity and an economic imperative. The eruption of violence in the aftermath of the recent elections has provoked both management and accountability questions with regard to the army and the police.

The central insight of the report is that even though police reforms have been ongoing for a few years, these have not addressed the core issues of accountability and oversight or been articulated and coherently laid out in the country's constitution and laws, both of which are needed for success as indicated by the comparative review section of this report. In addition, many past reforms have lacked a strong legal and institutional anchor and the necessary cultural and philosophical shift within the police force.

Future reforms should include organizational restructuring and transformation to optimize the use of physical, human, and financial assets in ways that further the mission and objectives of the police force. Structural reforms and capacity-building efforts are also required to improve overall performance.

I. INTRODUCTION

1.1 In 2002, promising to form a government that was committed to good governance and the rule of law, Mwai Kibaki campaigned on an anticorruption platform and was elected president in a landslide victory. This was the first transfer of power through elections since independence. It was also the beginning of a dramatic revival of the economy. After nearly two decades of negligible or negative economic growth, Kenya's economy grew more each year after the election, reaching a high of 6.9 percent growth in 2007. Some of this growth may have been an outcome of improved governance, for instance, sweeping licensing reforms and better compliance in certain areas such as tax administration. Moreover, the initial reforms—the removal of corrupt judges, the passage of a new procurement law, and the strengthening of the Controller and Auditor General's Office—resulted in a surge in national and international optimism about the direction the country had taken and expectations that improved governance would lead to a more secure and prosperous country. As studies show (see, for example, Kaufmann, Kraay, and Mastruzzi 2006), in the absence of good governance ordinary people cannot live freely, donor aid is wasted, and investors take their money elsewhere. However, the early governance reforms of 2002 and 2003 soon floundered, undermined by new allegations of corruption and the resurfacing of old ones. In early 2006, the administration's reformist credentials were badly eroded following the revelation of a number of high-profile corruption scandals that implicated senior members of his government.

1.2 In December 2007, Kenyans held general presidential and parliamentary elections that several political parties contested vigorously. The aftermath of these elections differed significantly from that of the elections held five years earlier. Mismanagement of the elections, especially the tallying of votes and the announcement of the results of the presidential election, coupled with inflammatory tribal rhetoric before the elections, led to a charged atmosphere pregnant with distrust and suspicion. The announcement of the results of the presidential election and the subsequent hasty swearing in of President Kibaki to a second term led to breakouts of violence across the country. In January and February 2008, approximately 1,500 people were killed and more than 300,000 were displaced from their homes. This violence was compounded by wanton destruction of property, both personal and commercial. Even though the security situation has improved as a result of the power-sharing agreement signed at the end of February 2008 between President Kibaki and opposition leader Raila Odinga, sporadic violence has continued, reportedly perpetrated by the outlawed Mungiki sect.¹

1.3 The election crisis resulted in cuts in certain development expenditures as the government reallocated budgetary resources to address the effects of the violence. The disruptions to free flows of goods, labor, and money affected all sectors of the economy.

¹ This sect, which emerged in the 1980s and was once known for tobacco sniffing, dreadlocks, and praying while facing Mount Kenya, has now turned to neat haircuts, business suits, and crime. Media reports say the sect has evolved into an organized underworld gang that engages in extortion, fraud, robbery, kidnapping, and murder. The sect controls slum areas, especially Mathare in Nairobi. Here they provide illegal water and electricity connections to slum residents, who have to pay a levy to access communal toilets and for night-time security. For more information see <http://news.bbc.co.uk/2/hi/africa/6685393.stm>.

The tourism, horticulture, and transport sectors were the most affected, resulting in billions of shillings of lost revenue. While the situation is slowly returning to near normal in most places, many of the problems will take time to resolve because of the damage to physical assets, the internal displacement of more than 300,000 people (about 1 percent of the population), the loss of confidence among investors and tourists, and the damage to social capital (World Bank 2008).

1.4 Both the Country Assistance Strategy Progress Report for the Republic of Kenya for the Period of FY04-08 (World Bank 2007a) and the government's 2003–7 Economic Recovery Strategy for Wealth and Employment Creation (henceforth referred to as the Economic Recovery Strategy) (emphasize improving governance as a key pillar for growth and poverty reduction. Central to creating an enabling environment is the entrenchment of an independent judiciary, the rule of law, and the effective provision of security. The government's Kenya Vision 2030 (National Economic and Social Council of Kenya 2007) echoes both the Country Assistance Strategy Progress Report and the Economic Recovery Strategy by underscoring the centrality of improved governance—rule of law, accountability, and promulgation and implementation of laws—to sustaining economic growth.

1.5 The post-election crisis has brought home the lesson that the nation's existence depends on the state's ability to maintain law and order. The reform imperative from this message is that if law and order is weak and prone to collapse and personal security is fragile, efforts to improve governance will be partial at best and fruitless at worst. An accountable and effective police force is required to secure law and order and assure investors and citizens of security. Some of the World Bank's analytic work appears to support this causal link. One study (World Bank 2000) notes that poor police performance has significant impacts on larger developmental goals. The police help feed the escalating crime, violence, and insecurity that have emerged as major impediments to economic investment and growth, political stability, and poverty reduction whether by their failure to contain criminal acts or by being actively involved in them. High levels of crime contribute to the insecurity of property rights and lead private investors to minimize their exposure to risks or to exit the economy if they are in a position to do so, and it is the poor who are most likely to be victims, because where private investment is discouraged, its potential to generate new sources of employment lessens.

1.6 In Kenya, crime, disorder, and corruption continue to present serious constraints to doing business (table 1). Some 54 percent of firms reported corruption and 58 percent of firms reported crime as a major or severe constraint to doing business. Forty-six cross-country comparisons show that losses and costs due to crime, security, and corruption in Kenya are high. Estimated losses on these counts total 10.4 percent of sales in Kenya compared with 1.8 percent in South Africa, 2.9 percent in Senegal, and 3.6 percent in India. Managers participating in government procurement report that informal payments can be as high as 12 percent of the contract value.

**Table 1: Direct Costs of Weak Security and Bribes to Formal Firms,
Selected Countries and Years**
(percentage of sales)

Item	China, 2002	India, 2006	Kenya, 2007	Senegal, 2003	South Africa, 2003	Tanzania, 2006	Uganda, 2006
Production lost due to crime	0.3	0.2	3.9	1.0	0.6	1.1	1.0
Payments for security	0.8	1.3	2.9	1.5	0.9	2.3	1.4
Bribes	1.9	2.1	3.6	0.4	0.3	3.4	3.7
Subtotal	3.0	3.6	10.4	2.9	1.8	6.8	6.1
Production lost in transit	1.2	0.8	2.6	—	0.8	1.6	1.2
Production lost due to power outages	2.0	7.8	7.1	5.1	0.9	10.7	10.2
Total costs	6.2	12.2	20.1	—	3.5	19.1	17.5

Source: World Bank 2008b. Note: — = not available.

A. The Security-Development Nexus

1.7 The primary responsibility of a police force is to prevent and reduce crime and to maintain social order by enforcing laws aimed at ensuring security and social stability. When insecurity is rife, sociopolitical and economic development cannot be sustained, therefore an effective, efficient, and accountable police force is required for development, but few studies have examined the role of the police in relation to development. The literature has tended to consider the security-development nexus within the context of civil war or intrastate or interstate conflicts (Stewart 2004), but insecurity arising from crime, police corruption and brutality, and abuse of police powers for political and economic advantage also has significant impacts on development. According to Stewart, security/insecurity affects well-being, and consequently development achievements, and has an impact on elements of development and economic growth, while at the same time, development affects security.

1.8 As a recent report observes (OECD 2007), insecurity constitutes a barrier to political, economic, and social development (see also Hurwitz and Peake 2004). Furthermore, the report argues that “security and development are linked. Insecurity, crime and violent conflicts are among the biggest obstacles to the achievement of the Millennium Development Goals; they also destroy development” (OECD 2007, p. 5). Security is important to the well-being of the poor, thus providing them with physical security is a vital part of reducing poverty (OECD 2007). Taking a broader view of the security-development nexus, the report notes that “security is fundamental to people’s livelihoods, to reduce poverty, and to achieving the Millennium Development Goals. It [is] related to personal and state safety, access to social services and political processes. It is a core government responsibility necessary for economic and social development and vital for the protection of human rights” (OECD 2007, p. 13).

1.9 The OECD report underscores the impact of insecurity arising from dysfunctional police, judicial, and penal systems on development and well-being, especially on the vulnerable groups in society. Rather than being an asset for development, an ineffective, inefficient, corrupt, unprofessional, poorly trained, badly equipped, and under-remunerated police force constitutes a threat to the security of citizens and the development of sociopolitical and economic systems. By contrast as the International Crisis Group (2002, p. 10) reports, a capable and accountable police force “can play a vital role in providing the security environment necessary for peaceful political and economic development.”

1.10 A lack of security because of dysfunctional police systems can have several adverse effects, including the following:

- lower productivity, because high crime rates may lead to shorter working hours, for example, in many African cities, businesses that might under normal circumstance stay open until late evening close at sunset for fear of robbery or other forms of victimization;
- reduced foreign investment, because crime and insecurity constitute risks that may affect profitability;
- diminished quality of social life and interaction, because, for example, fear of crime may prevent people from using certain public spaces such as parks or attending community and religious meetings;
- loss of property because of crime that might otherwise have been invested or used to generate resources for investment.

1.11 Furthermore, trust in the government and political stability can be weakened by high levels of unemployment and poverty, which are often accelerated by low levels of productivity and investment.

B. Economics, Politics, and Police Reform

1.12 The effects of lack of security and breakdown of law and order have unambiguous economic costs for Kenya, though these have not been fully calculated. The most obvious and immediate costs relate to the disruption of economic activity spawned by the postelection violence in January 2008. The disruptions to tourism, horticulture, and transport have already been noted. Less obvious are the long-term effects, especially in the wider East African region, where the governments of countries such as Rwanda are already beginning to think about alternative transport corridors to obviate the risks associated with dependence on the rail link through Kenya. The impact of such reorientation on Kenya’s ability to profit from transit cargo is difficult to assess. On the domestic front, the disruptions during early 2008 will have significant effects on food prices. In 2007, Kenya had a poor grain harvest, possibly aggravated by the fertilizer crisis that occurred earlier in 2007. However, these difficulties will have been compounded by large areas of the Rift Valley being left fallow because of the evictions and violence in early 2008. Just how much of the currently rising maize prices are due to the resulting scarcity is hard to tell, but food production has clearly been affected.

1.13 Proper calculation of the costs of security in Kenya is needed. Table 1 covers only direct costs of insecurity on production, but the impact of insecurity on households and

household incomes is much more pervasive. Given the large investments in private security, what proportion of household income are Kenyans spending on security? How does this amount compare with household spending on education and health? The poor are the most dependent on public goods such as security. What has been the effect on them of the collapse of policing in poor areas and slums? How much are the poor spending on paying vigilantes and criminal gangs to provide them with “security”? Of special salience here is the ability of criminal gangs such as the Mungiki to commandeer matatus (minibuses that are the main, or frequently the only, means of transportation for ordinary people in Kenya) and disrupt commuter traffic in Nairobi almost at will. This too has a disproportionate impact on those who depend on public transport for their productive activities.

1.14 Violence and chicanery are woven into the structure of Kenyan politics, and this has been the case since colonial times. In the early days of post colonialism, those in power deployed the police to deal with their opponents, but the advent of multiparty politics delegitimized the open use of state machinery to fight opponents. Political violence then took a more dangerous turn: politicians started to use state machinery more covertly, resorted to using informal gangs to deal with their opponents, or attempted to alter the outcomes of elections by threatening voters who supported their opponents. Given Kenya’s ethnic politics, this soon turned into a perilous game of ethnic baiting: in the country’s multi-ethnic constituencies, the majority required communities they deemed to be non-native to toe the indigenous political line or leave. Beginning in 1992 and intensifying in 1997, politicians openly mobilized their ethnic communities against those they deemed outsiders. In 1992, non-Kamatusa communities—especially Kikuyus, Kisiis, and Luos—were the targets of political militia believed to be in the pay of politicians associated with the then ruling party, the Kenya African National Union.² Multiple investigations by both the government and human rights groups subsequently proved that this had indeed been the case.

1.15 Over time, politicians’ increased dependency on militia has undermined formal law and order institutions such as the police, the provincial administration, and the National Security Intelligence Service. Indeed, the police are usually expected to toe the partisan line. In all cases of violence before and after elections, credible accounts have the police standing by as private militia attacked and evicted Kenyans from their homes and property.

1.16 Politicians’ growing acceptance that political violence is a legitimate means for attaining and retaining political office has weakened their overall commitment to security reform in general and police reform specifically. Two possible consequences of this neglect are chronic underinvestment in police reform and a lack of police reform champions within the political establishment. From a security perspective, this neglect has hit the poor, typically the most reliant on public services, the hardest. In the slums of Nairobi and other urban centers, the poor have had to depend on mafia-style gangs for security on extortionate terms. The periodic Mungiki terror swoops across the slums or their grounding of public transport when their “security fees” are not paid are only the

² Kamatusa refers to the cross-ethnic alliance of the Kalenjin, the Maasai, the Samburu, and the Turkana that former President Daniel arap Moi cobbled together in 1992 to cement the solidarity of indigenous Rift Valley ethnic groups against the Kikuyus and other tribes who were, at that time, supporting the opposition.

more dramatic examples of the stranglehold criminals have on grassroots security. In 2005 and 2006, the government launched a dramatic and controversial operation against the Mungiki, and the nexus between politics and criminal gangs appeared about to be ruptured. Unfortunately, when the postelection violence broke out, some politicians and business people paid the Mungiki to provide “security” to the Kikuyus being attacked in the Rift Valley. This kind of action underlines the strength of the bond between politics and insecurity and bodes ill for robust police reform.

1.17 Among the middle class, the promotion of insecurity by politicians and the resulting frailties of the police function have spawned a vast private security industry estimated to employ more than 200,000 private guards. When the costs of complementary security appurtenances and services—window and door grilles, razor wire and electric fences, insurance premiums against theft, and car alarms—are figured in, the direct costs of insecurity for the middle class are substantial.

C. Prior and Ongoing World Bank Support for Police and Criminal Justice Reforms

1.18 The World Bank is already involved in supporting criminal justice programs, although only on a limited basis around the world. The extent of the Bank’s involvement in this sector is difficult to quantify with precision, as criminal justice activities have been embedded as components of larger projects and are not uniformly designed as such. Nevertheless, the Bank has been involved in justice reform projects that have included criminal justice and policing concerns, mainly in the areas of traffic management, port security, environmental management, public finance, health, and social welfare (as part of disaster relief projects and as part of overall public sector reform).

1.19 The Bank has also financed the provision of technical advisory services and equipment for targeted interventions against HIV/AIDS and tuberculosis in prisons, the refurbishment of temporary placement facilities for juveniles in police stations, and the development of data collection systems for prisons. In addition, the Bank has played a limited role as fiscal agent for police-related expenditures. Most recently, the Bank has financed assessments of law enforcement institutions (police, prosecutors, and courts) in dealing with money laundering and the financing of terrorism, and is currently acting as administrator of the Afghanistan Reconstruction Trust Funds, allocated for supporting police-related expenditures.

1.20 Given the Bank’s Articles of Agreement, which prohibit the Bank from interfering in the political affairs of any member state, a discussion note by the Bank’s Legal Department (World Bank 2006) lists the sorts of criminal justice activities that are unlikely to pose serious issues in light of the relevant legal considerations. These include the following:

- justice reform activities that constitute an extension of civil justice activities that clearly fall within the ambit of permissible Bank activities, such as case management of general jurisdiction courts, access to justice (for example, legal aid), court administration, automation and computerization of court systems, and data collection with respect to general jurisdiction courts;

- public health or similar activities that target the general population and also include the prison population and/or police, such as HIV/AIDS programs that include the incarcerated;
- research and analyses of crime or criminal justice issues to contribute to the knowledge base for reducing crime and violence, for instance, mapping levels of crime and studying the causes and effects of criminal activity;
- activities targeting the needs of poor and vulnerable people affected by crime or caught up in the criminal justice system, such as health campaigns, vocational skills training, victim support and counseling, gender violence reduction, offender rehabilitation, training and technical assistance for public defenders, juvenile justice programs, and crime prevention (other than policing);
- infrastructure activities such as constructing or rehabilitating court buildings to improve working conditions and the functionality of criminal justice institutions.

1.21 The legal note further clarifies that such activities need to be analyzed to ascertain the likelihood of an economic impact and need to be designed in ways that would prevent political interference. At the same time, they should not normally require any special scrutiny in terms of the legal considerations analyzed in the discussion note, bearing in mind that activities may be legally permissible in one context and impermissible in another.

1.22 This report is consistent with the foregoing guidance. It is also consistent with research and analyses of criminal justice issues that contribute to knowledge for reducing crime and violence. It also addresses the economic impact of police reform on broader governance issues. In addition, it links key challenges of police reform to typical and broader public sector reform challenges, such as wage bill control, rightsizing, capacity development, public financial management, performance improvement, and insufficient budgeting and mismatch of inputs.

1.23 The emerging consensus in Kenya is that police reform is necessary and urgent. The police themselves acknowledge this and various human rights groups urge it. It also featured prominently in the 2007 election manifesto of one of the major political parties. While a variety of reform measures are ongoing under the Governance, Justice, Law and Order Sector (GJLOS) Reform Program, several challenges face both the police and Kenya's development partners as they consider embarking on the next phase of reform. The police force has been unable to play its role as a catalyst of development because of the numerous problems discussed earlier. This assessment seeks to address how the organization can recast itself into one that ensures the safety and security of all citizens following the postelection crisis and other issues by collecting the best analytical thinking on police reform and identifying how the core elements of police accountability can be strengthened to improve governance in Kenya. The study will link these larger accountability questions to the more operational policing reforms that are included in the Police Strategic Plan.

D. Organization of this Report

1.24 This report has been prepared in response to requests by government officials for a comprehensive police reform program that could ameliorate the public's persistent

negativity about the police force and ensure that the force can play a meaningful role in improving governance and security so that the country can achieve the economic growth targets and development goals laid out in the Kenya Vision 2030. The final report will form the basis of a high-level consultation among Bank representatives, senior police and other government officials, and police reform experts to develop an appropriate action plan.

II. INSTITUTIONAL STRUCTURE OF THE POLICE FORCE

2.1 The contemporary Kenyan police system has evolved largely as a result of a variety of influences that the British had on the whole of East Africa during the colonial period. Authority over the police force was ceded to the Kenyan government after the nation became an independent state in 1963. By the mid-1980s, Kenya's police force had grown to 19,000 and included female officers.

A. The Constitutional Framework

2.2 Under the colonial regime, the KPF was operationally divided into two services, the regular police and the Administration Police which reflected the dual logic behind colonial policing in Kenya. The regular police evolved to service settlers' needs and the demands of civil order, while the Administration Police emerged as a law and order tool for the African population and was mandated to handle issues of customary law.

2.3 In institutional terms, the police paid a heavy price for their proximity to the colonial politics, and by independence in 1963 they were widely reviled and distrusted. At independence, the constitution introduced two radical changes. First, it ended the force's dual nature. With the end of institutionalized racism, the logic that propped up the two separate services disappeared and the police force was established as a single entity divided into regional contingents and specialized branches. Second, it wrested the police from partisan political control by establishing a professional, politically neutral police service along with the independent inspector general, the Police Service Commission, and the National Security Council (table 4). The specifics of the police structure at independence are important because they closely resemble many of the proposals made by the Commission of Inquiry into Post-Election Violence and those made by the Constitution of Kenya Review Commission on the constitutional aspects of police reform.

2.4 These historical factors have spawned a police service characterized by low levels of external accountability, a culture of "blind loyalty to powers outside the service," and a "defensive approach to issues" (Kenya Police Force 2003, p. 15) leading to widespread public distrust of the police and the concurrent rise of militias and vigilantes. These factors are compounded by low levels of recruitment of police cadres; low levels of funding and other resources; training deficiencies; poor service conditions, including gang violence against the police; and unreliable police transport, especially in rural areas and marginal districts, where police response times can be painfully slow. Overall numbers are small: the police to population ratio is about one police officer for every 1,150 people, a number that is 2.5 times lower than the United Nations recommended ratio of one police officer for every 450 people.

Table 4: Relevant Provisions of the 1963 Constitution

Section of the 1963 Constitution	Effect of the provision	Key features
147	Establishing the police force	The force consisted of separate contingents for each of the seven regions and a Nairobi contingent plus specialized branches. Regional contingents were financed by regional funds while the Nairobi contingent was funded by the central legislature. Although they were under the general command of the inspector general, regional contingents were accountable to regional governments and to regional commissioners, but their salaries and conditions of service were set by the central legislature.
148 and 149	Establishing and determining the functions of the National Security Council	The council consisted of the governors, deputy governors, ministers, and chairs of the law and order committees of each regional assembly. The inspector general and the representative of the Nairobi area were entitled to sit in on council meetings. The council was responsible for maintaining law and order. It was also responsible for the administration and size of the police force generally and for the total number of officers –ranked higher than superintendent that would serve on each regional contingent.
150	Establishing the Police Service Commission	The Police Service Commission consisted of two ex-officio members, namely, the chair of the Public Service Commission and a judge of the Court of Appeal or Supreme Court appointed by the chief justice, and three members appointed by the two ex-officio members in consultation with the inspector general. Those ineligible for appointment included (a) sitting members of any legislative assembly, (b) people who had run in any election for a legislative position, (c) officials of any political party, and (d) public officers.
151	Determining the functions of the Police Service Commission	Mandated to review all matters relating to salaries, conditions of service, qualifications, and standards and to advise the president and minister on these issues.
152	Appointing and removing the inspector general	The president appointed the inspector general based on advice from the Police Service Commission. The inspector general could only be removed from office because of inability or misbehavior and on the recommendation of a tribunal consisting of a chair appointed by the president and two persons appointed by the chief justice who served as or were qualified to serve as judges.
153	Appointing other members of the police force	The power to appoint and remove police officers above the rank of assistant superintendent was vested in the Police Service Commission. These powers could be delegated to the inspector general or regional commissioners. The power to appoint officers below this rank was vested in the inspector general, but regional commissioners had to agree with the appointments. When the inspector general or regional commissioner disciplined an officer, the officer had the right to appeal to the Police Service Commission.
155	Determining the functions of regional commissioners of police	Regional commissioners had operational command of all police units deployed in the field, but had to do so in accordance with policies as set by the law and order committees of the regional assemblies. They could also ask the inspector general for instructions, but the latter had to consult with the committees before providing any instructions.

Section of the 1963 Constitution	Effect of the provision	Key features
156	Determining the functions of the inspector general	The inspector general had general command of the police force and direct command of the Nairobi contingent and was answerable to the minister for the specialized branches. The inspector general was responsible for carrying out periodic inspections of the regional contingents and reporting the findings to the regional assemblies. The regional assemblies could ask the inspector general to send specialized units or the Nairobi contingent to supplement regional contingents. Such deployments could take place without the consent of regional assemblies if national security was at stake, but only with the consent of the National Security Council.

Source: Constitution of the Republic of Kenya, 1963.

2.5 The changes introduced by the constitution adopted following independence did not last. First, implementation of the devolved police structure depended upon the establishment of regional governments, which never happened. Second, the provisions governing regional governments and those setting up regional police contingents were deleted from the constitution within three years of its adoption. Almost immediately, the police force returned to the jurisdiction of the Office of the President, under which it was centrally managed. The revival of the provincial administration in place of regional assemblies restored the justification for an administration police force. As a result, the police service was once again divided into the regular police, originally created under the Police Act of 1961, and the administration police, created under the Administration Police Act of 1958.

2.6 Unfortunately, and despite the best efforts of committed reformers within the KPF, police reform remains a serious challenge and the force has been at the center of the most serious problems facing Kenya: corruption, high levels of crime, interethnic violence, and other growing security issues. For the fourth year running, the 2007 Kenya Bribery Index, released by the Kenya chapter of Transparency International, ranked the KPF as the most corrupt government department in the country.

2.7 As under colonial rule, the removal of the mechanisms and institutions that were intended to secure the independence of the police force set the stage for political deployment of the police. The Administration Police evolved to be a tool of locally powerful chiefs and sub chiefs, while the General Service Unit, a specialized unit within the regular police, was often used to violently quell unrest and pacify protesters.

2.8 No real changes to the police were proposed or widely debated until 1990, when the party in power, the Kenya African National Union, set up a review committee to solicit views from Kenyans on pressing reform issues. Even though the committee's initial mandate was limited to reviewing the party's own internal procedures, it was later expanded to include other constitutional and legal matters. While the party changed many of its internal electoral procedures following these consultations, only three sets of constitutional changes were implemented, all of which were significant. These were the restoration of the independence of constitutional offices in December 1990, the repeal of

one-party law in November 1991, and the changes relating to the procedures for electing the president and members of parliament and to the composition and powers of the Electoral Commission.

2.9 Changes affecting the police did not take place until 1997 under reforms instituted by the Inter-Parties Parliamentary Group (for a detailed description and analysis see Centre for Governance and Development 1997). Some minor changes were made to the Administration Police Act. The Police Act was changed to declare the political neutrality of the police force and to mandate that police treat all political parties equally: henceforth police officers would be guilty of a felony if they discriminated against anyone based on their political affiliation. Furthermore, provisions of the Public Order Act that required political parties to seek a license before holding a rally were repealed. Instead, parties were now required to notify the police that they were planning a rally at a specified venue. The legislative intent was to enable the police to provide security and deal with any public order matters that might arise.

2.10 None of these measures worked as effectively as the legislature had anticipated. For example, the police treated notification requirements for holding rallies as licensing underscoring the fundamental changes that would be necessary to reorient the police to the demands of a fledgling democracy. While the service resisted reforms, some individuals within the police force recognized the need for fundamental reforms. For example, when the constitutional reform process began under the Constitution of Kenya Review Commission in 2000, the police force presented a detailed memorandum arguing for a politically autonomous service. This echoed many of the suggestions made by the public and was the basis for the detailed provisions in the draft constitution summarized in table 5. Otherwise, the proposals in the draft constitution largely duplicated the provisions of the independence constitution.

Table 5: Relevant Provisions as Proposed under the 2005 Draft Constitution

Section of 2005 draft constitution	Effect of the provision	Key features
263	Establishing the Kenya Police Service	<ul style="list-style-type: none"> • The Kenya Police Service is to be established as a national police service, but to be divided and organized in a manner that takes the devolution of power proposed by the constitution into account. • Parliament is required to enact legislation to give effect to the provision.
264	Determining the functions of the Kenya Police Service	<p>The police force is required to</p> <ul style="list-style-type: none"> • act professionally, with integrity and discipline, and in a nonpartisan manner (it should not further or harm the interests of any political party); • respect human rights and the rule of law, be transparent and accountable, and eliminate corruption; • maintain law and order, prevent and detect crime, provide security to the public, protect life and property, protect rights and freedoms, and support victims of crime and disorder.
265	Establishing the inspector general of	<ul style="list-style-type: none"> • The president is to appoint the inspector general to one five-year term. • The inspector general would have command of the Kenya Police

	police	Service and perform other functions specified by legislation. <ul style="list-style-type: none"> • The president can remove the inspector general from office or he or she may resign.
266	Establishing the Police Service Commission	<ul style="list-style-type: none"> • The commission is to consist of eight members: (a) a person qualified to be a judge, (b) two retired senior police officers, (c) three people who have served the public with distinction, (d) the inspector general of police, and (e) the commandant of the administration police. The president would appoint a chair from this group. • The functions of the commission are to include the power to (a) recruit people to the police service, (b) set the standards and qualifications needed to serve as a police officer, (c) determine salaries and allowances, (d) exercise disciplinary control over the service, and (e) perform any other functions specified by law.
267	Establishing the Administration Police service	This is to be established as a separate service from the Kenya Police Service, but would also fall under the Police Service Commission, which would be organized to take the devolution into account.
268	Determining the functions of the Administration Police	The functions and operational principles are to overlap with those of the police service.
269	Appointing and removing the commandant of the Administration Police	<ul style="list-style-type: none"> • The commandant, who would have command of the Administration Police, is to be appointed by the president with the approval of Parliament. • The president can remove the commandant from office or he or she may resign.

Source: Draft Constitution of the Republic of Kenya, 2005.

Note: A majority of voters (58 percent) voted down the proposed new constitution in a referendum held on November 21, 2005.

2.11 Unlike the independence constitution, the draft constitution did not merge the two police services. Instead, it established them as two separate services with overlapping law and order mandates, but under one service commission. In addition, perhaps more innovatively, the draft constitution specified the protection of human rights as the function of both services. It also provided for parliamentary confirmation of the commandant of the administration police, but, strangely, not the inspector general of the Kenya Police Service.³

2.12 A referendum held in 2005 rejected the draft constitution, which meant that the reform program envisaged by and for the police would not be implemented. In legal terms, this also meant that any reforms that were contingent upon the adoption of the new constitution had to be redrafted and enacted without constitutional protection.

³ This was different from the independence constitution, which required the president to seek the advice of the Police Service Commission when appointing the inspector general of the police service. The autonomy of the inspector general was weaker under the draft constitution than under the independence constitution.

B. Current Legal and Institutional Structure of the Police Force

2.13 The constitution, the Police Act, the Administration Police Act, the Force Standing Orders, and directives and regulations issued from time to time set out the current legal framework for the police. The Police Act elaborates the functions and powers of the police force. As set out in Section 14 of the act, the functions of the police are to (a) maintain law and order, (b) keep the peace, (c) protect life and property, (d) prevent and detect crime, (e) apprehend offenders, and (f) enforce all laws and regulations as charged. The powers are explained in further detail in the Force Standing Orders, Police Regulations, and the Police Manual.

2.14 The statutes that created the two police forces are operational and do not link the functions of the police force to the constitution, that is, the Police Act and the Administration Police Act merely specify operating methods and procedures through a series of subsidiary rules, regulations, and manuals, leaving the two police forces legally fragile and vulnerable to political interference. Both the Force Standing Orders and the Police Regulations are only subsidiary legislation and the Police Manual is a departmental handbook without the force of law behind it. To the extent that the rules deal with accountability, the system is hierarchical (as in the military, officers are expected to follow orders from their superiors and not question them) and not democratic, in that the police do not report to Parliament except only indirectly when the vote on budgets and benefits of the Office of the President is being considered. At the same time, independent oversight mechanisms and complaints procedures for people aggrieved by the conduct of individual officers are not available.

2.15 Under the provisions of the current constitution, neither the appointment nor the management of the police service is legally secure from interference. As table 6 shows, the power to appoint the police commissioner is vested in and exercised by the president under plenary discretion.

Table 6: The Power to Appoint Police Officers under the Current Constitution

Section of the constitution	Appointment of	Effect
108(1)	Police commissioner	Appointed by the president and may be removed by the president under plenary discretion.
108(2)–(3)	Assistant inspectors and higher ranks	<ul style="list-style-type: none"> The power to appoint, discipline, and remove officers at these ranks is vested in the Public Service Commission (but this provision is nullified by the ruling in <i>Mwangi Stephen Muriithi v. The Republic</i>, which determined that the president could exercise these powers). The power to appoint, discipline, and/or remove officers can be delegated to any public service commissioner or to the police commissioner.
	Ranks below assistant inspector	<ul style="list-style-type: none"> The power to appoint, discipline, and remove officers of these ranks is vested in the police commissioner.

Source: Constitution of the Republic of Kenya, 1963, as amended in 2008.

2.16 As shown in table 6, officers of the rank of assistant inspector and above are, in theory, appointed, disciplined, and removed from office by the Public Service Commission. In practice, two factors hobble this provision. First, the powers of the Public Service Commission under this clause can be, and usually are, delegated to the police commissioner, but the police commissioner's powers are constitutionally weak, because the commissioner holds office at the discretion of the president. Some may argue that the Public Service Commission's right to delegate need not erode its operational autonomy if appropriate criteria and professional considerations were used to appoint the police commissioner. One could argue that the appointment of a commissioner at the sole discretion of the president is not the issue, but that the issue is the quality of the person that the president designates as the police commissioner. This raises the question of what considerations go into the appointment of the police commissioner, but because these matters are rarely, if ever, made public, little is actually known about the selection process.

2.17 Second, and more problematic, even if the Public Service Commission were to exercise its functions under the constitution, it is not itself insulated from presidential attack. In the case of *Mwangi Stephen Muriithi v. The Republic*, the High Court found that, notwithstanding the powers given to the police commissioner and the Public Service Commission, Section 25(1) of the constitution gives the president unfettered discretion to discharge anyone working in the service of the Republic.⁴ While this decision has been roundly criticized for misreading the constitution and for mistakenly applying the principles of English constitutional practice to Kenya without considering that Kenya, unlike the United Kingdom, has a written constitution, it is still valid law.

2.18 The provisions of the current constitution leave open these and many other questions that are central to effective and accountable policing. Unfortunately, relevant laws such as the Police Act, the Administration Police Act, and the Forces Standing Orders do not address these concerns. Thus the resulting weak legal and institutional framework subjects the police to political abuse and interference. Without a firm constitutional foundation, the Police Act, the Force Standing Orders and Police Regulations, and the Police Manual are insufficient for securing an autonomous and accountable police force. Moreover, even though the Police Manual contains some progressive ideas, the Police Act has not been substantively reviewed since it was first enacted in 1961. Modern concepts of policing and accountability have yet to find their way into the law.

C. Organization of the Police

2.19 The two primary agencies responsible for policing in Kenya are the KPF and the Administration Police. As explained earlier, both branches had their genesis in the

⁴ An argument that is often made is that the High Court's recognition of the president's inherent right to hire and fire at will is plainly mistaken (Africa Watch 1991). At issue in this case was Section 25 of the constitution, which is clearly and unambiguously prefaced by "Save in so far as may be otherwise provided in this Constitution or by any other law." This implies that the president's powers are subject to other parts of the constitution and to any other law. The powers delineated in Section 25 could not displace the powers of the Public Service Commission under Article 108. The court's rejection of this argument prompted one scholar of the judiciary to characterize it as "being more executive minded than the executive."

colonial administration. The 1961 Police Act established the KPF to maintain law and order, preserve peace, and prevent and detect crime. The Administration Police had been created a few years earlier under the 1958 Administration Police Act. While the functions of the Administration Police are similar, this branch remains entirely separate from the KPF and has its own command structure, standing orders, and regulations.

2.20 The often overlapping roles, responsibilities, and deployment undermine an already weak system of operation, oversight, and accountability and have direct consequences for policing. For example, one significant limitation is that the Administration Police has no power to hold people in custody or to prosecute them. Because the KPF must perform all arrests and investigations, evidence and charges are sometimes deliberately or inadvertently changed on arrest dockets each time the KPF assumes control of a case from the Administration Police.

i. The Kenya Police Force

2.21 The KPF has about 40,000 rank and file members and is structured on the basis of units and provincial formations. Each provincial formation is structured into divisions, stations, posts, and patrol bases and is commanded by a provincial police officer. Officers responsible for police divisions report to the provincial police officer and officers commanding stations report to officers responsible for police divisions.

2.22 Provincial formations are divided into 11 units, each headed by a commander, though not every province has all 11 units. These units are (a) the General Service Unit, (b) the Kenya Police College, (c) the Traffic Police, (d) the Presidential Escort, (e) the Kenya Airport Police, (f) the Anti-Stock Theft Unit, (g) the Dog Unit, (h) the Police Air Wing, (i) the Kenya Railways Police, (j) the Anti-Terrorism Unit, and (k) the Tourist Police Unit. Each unit commander reports directly to the police commissioner.

2.23 The KPF sets up specialized squads as needed. These include the Spider Squad, which targets rape, and the Rhino Squad, formed to deal with the Mungiki.

2.24 Reformers are particularly interested in the General Service Unit because of its history during the politically repressive regimes of past governments. The General Service Unit, established under the KPF Standing Orders to deal with “special operations and civil disorders,” has about 6,000 members and has a particularly brutal reputation in relation to suppressing unrest.

2.25 Several different reports have reviewed the structure, performance, and integrity of the KPF in 2003, 2006, 2007, and, 2008 (see, for example, CHRI and KHRC 2006; Kenya Police Service 2003). All the reports generally agree that the KPF’s performance falls far short of what is expected of a police force in terms of guaranteeing security and safety and fostering economic development. The police’s own review of its performance, as outlined in its strategic plan (Kenya Police Service 2003, p. 8), provides a harsh indictment of its failures: “In the last two decades the security system deteriorated to a point where the government was unable to guarantee security to its citizens and their property. This has emerged as a result of low morale, lack of professionalism, inadequate resources, political interference and endemic corruption in the service.”

2.26 The police recognize many of the challenges to policing that limit their ability to provide quality police services. The Police Strategic Plan specifically identifies the following:

- delayed responses to crime scenes,
- low rate of crime prevention and detection,
- poor management of crime scenes,
- understaffing,
- lack of proper human resource management systems,
- lack of autonomy,
- poor terms and conditions of service,
- lack of adequate resources,
- lengthy bureaucratic procedures for acquiring new equipment.

The police believe that low morale, lack of professionalism, inadequate resources, political interference, and corruption have all contributed to the weakness of their organization. What remain unacknowledged are the widespread instances of torture and extrajudicial killings and the inadequacy and inhumane conditions of detention facilities that undermine the legitimacy of the force.

2.27 Internal systems and processes for recruitment, training, retention, and promotion—that is, the conditions that enhance institutional performance, raise standards, and foster professionalism—are weak or dysfunctional. For instance, an effective police organization should reflect the demographics of the community it is policing. If the police force is misbalanced in terms of representation, whether by ethnic group or gender, particularly in senior ranks, then the public will lose trust and confidence in it. Although figures for the ethnic makeup of the police are unavailable, statistics show that as of June 2004, only 6.2 percent of KPF personnel were women and that the country had only four female divisional commanders (Commonwealth Human Rights Initiative 2006).

2.28 Moreover, as is the case elsewhere in Sub-Saharan Africa, political interference, economic inducements, and other considerations factor into recruitment, deployment, and promotion decisions. The strategic plan (Kenya Police Service 2003, p. 14) admits that “many police officers, at all ranks, owe their positions not to their academic qualifications or to their performance on the job, but rather to the patronage of powerful individuals outside the police force” and advocates for “establishing clear and appropriate criteria both for recruitment and promotion within the force.” Officers have been appointed or promoted on the basis of their ethnicity or affiliation to powerful individuals. When this problem starts at the top with the appointment of the police commissioner,⁵ a culture that neglects meritocracy can infect the entire force, as shown

⁵ On the appointment of the top leadership of the police, the Police Strategic Plan (Kenya Police Service 2003, p. 16) notes the following: “The establishment of the office of the Inspector General with rules governing the appointment, removal and security of tenure of the office will play a crucial role in determining whether the service is properly insulated from interference and certainly increase his/her ability to act in obedience to the law, and to make operational decisions in accordance with his/her own best judgment. If this process is transparent, objective, and impartial, the Inspector General will be afforded expanded space for operational autonomy and subject to clear policy directions.”

in the example presented in box 1 of opaque recruitment of a police commissioner. The strategic plan recognizes that promoting officers based on, say, the number of arrests they make will lead to a different type of police service from a situation where, say, promotions are based on investigative techniques and ability to communicate effectively with civilians, and integrity.

Box 1: The Appointment of Bernard Kiarie Njiinu as Police Commissioner

Mr. Njiinu told the *Sunday Nation* that he got the feeling things had gone really wrong on the day he was appointed police boss, August 21, 1982, only three weeks after the coup attempt.

He had been Deputy Commissioner in charge of operations. The night before his appointment, he received a call summoning him to State House first thing in the morning. "On arrival, I was abruptly ushered into an empty room and left alone for almost an hour. For once, I thought I was under arrest and headed for detention." Then he was ushered into the President's office and found the Head of State and Chief Secretary Jeremiah Kiereini waiting. Without any ado, the President handed him a one-paragraph letter that read: "Owing to the confidence I have in you, I have appointed you the Police Commissioner with immediate effect. I hope you won't betray my trust." The air was heavy and the room tense. Mr Njiinu answered: "Thank you, Sir. I'll work hard and won't betray your trust." As the new Police Commissioner made to leave, the President beckoned him to sit down. "You are going to wait here until I give you the green light to go to your office," the President said. Then he turned to Mr Kiereini and ordered: "From here you go and have Gethi (Ben Gethi, then Commissioner of Police) arrested and telephone me to say he is on the way to Kamiti." The President and Mr Njiinu remained silent in their seats. None spoke to the other.

In less than half an hour, Mr Kiereini telephoned back to say Mr Gethi had been arrested from his office by Sokhi Singh, head of operations at the CID headquarters, and was on his way to Kamiti Maximum-Security Prison. The President turned to Mr Njiinu and said: "You will now go straight to the office and start working".

Source: Quoted from Auerbach 2003, p. 288.

2.29 In the wake of the postelection violence, human rights and advocacy groups charged that in some areas the police stood by as rampaging youth evicted from their homes and beat up people seen to have opposing political views. The immediate cause of this would seem to be the politicization of Kenya's multiethnic security forces, including the police. Over the years, different governments used the police for political purposes, especially the General Service Unit, which is often deployed to disperse political rallies.

2.30 As concerns motivation, even though the government reported a substantial increase in of police officers' salaries in 2007, a variety of factors continue to erode performance and motivation. One key factor is the poor work conditions, including lack of essential facilities at the precinct level and of appropriate housing. A second key factor is personal safety and security. Even though advocacy and human rights groups have rightly condemned extrajudicial killings by the police, they have neglected the killings of officers in the line of duty. While police works necessarily entails some risk, high levels of death and injury can demotivate officers and lead to slow responses to crime scenes.

2.31 Appointment and promotion criteria need to be buttressed by clear and appropriate criteria for deployment. Police officers who cross the paths of the politically powerful have frequently found themselves deployed to undesirable postings, typically hardship areas, and often at great inconvenience to their families.

2.32 The KPF has few women. Positive measures to encourage greater gender equity as well as sensitivity training to put an end to the force's misogynistic practices and attitudes are urgently needed. These efforts need to be complemented by wider reforms to attack the prevailing culture of corruption and impunity. Central to that effort is the need to make the transition from a "force" to a "service."

ii. The Administration Police

2.33 The Administration Police force has 18,000 members operating under the leadership of its commandant. The Administration Police is divided into three main units and eight provincial commands. The latter are headed by provincial Administration Police commandants who are responsible for district commands. Like the KPF, the Administration Police is divided into a number of specialized units, such as the Administration Police Training College, the Security of Government Building Unit, and the Rapid Deployment Unit.

2.34 In addition to being governed by provincial Administration Police commandants, the Administration Police is also governed by the provincial administration. De-linking the Administration Police from the provincial administration has been the subject of ongoing debate, especially because the primary purpose of the Administration Police at its formation—the enforcement of customary law—has been negated by the evolution of Kenyan law. More important, the Administration Police is more prone to political abuse given its proximity to the provincial administration. Indeed, the investigation into the postelection violence cited specific cases where the Administration Police was accused of direct involvement in criminal activities. This led the Commission of Inquiry into Post-Election Violence to recommend wide-ranging reforms, including combining the Administration Police with the KPF (box 2). One of the more controversial incidents involving the administration during the election period was the deployment of 1,600 Administration Police officers in plain clothes to act as “agents of government in disrupting or otherwise being involved in the elections processes” (CIPEV 2008, p. 442).

Box 2: The Benefits of Integrating the KPF and the Administration Police

The Commission (CIPEV) believes that developing a world class police service for Kenya would be best achieved through the creation of a single police agency. This means integrating the current two police organs. Given the revelations around the unlawful use of Administration Police (APs) around the elections, the fact that the current structure is inextricably linked to the provincial administration system, and many of the senior officers are not police professionals integrating the APs into the Kenya Police Service is a priority activity. It is recognized that there are difficulties in completing this important work (merging two cultures, ideals, systems and approaches) but the benefits will greatly outweigh these temporary obstacles. Integration will provide accountability, resourcing, service delivery and performance benefits many of which are listed here. Benefits include but are not limited to:

1. Total independence from the provincial administration structure and separation from national government oversight;
2. Unified command and control;
3. Across the board consistency and uniformity in all facets of policing including; standardized policing service delivery, standard operating procedures (SOPs), improved investigations capability and intelligence gathering and dissemination;
4. Increased trust and confidence in the Police and policing;
5. A single and unified Police Services Board, one head of Police (Commissioner), one strategic plan and a single integrated and well understood service delivery offering;
6. A single piece of enabling legislation, *Force Standing Orders*, guidelines, practice and operational arrangements;
7. Standard systems of recruitment options, entry standards including lateral entry options, basic and specialized training, conditions of service including living conditions and remuneration, human resource management arrangements, promotion and advancement, and leadership development including command and control. Significant efficiency gains from budgeting, purchasing, and utility of resources (capital, equipment and people).
8. The elimination of inter-agency tension and conflicts that impact negatively on service delivery.

Source: Quoted from CIPEV 2008, p. 434.

2.35 The Administration Police faces many of the same challenges as the KPF, including lack of independence from politicians, outdated legislation, limited finances and other resources, persistent external interference and abuse of command, weak succession planning, and poor conditions of service. In the ongoing reform programs, the Administration Police have prioritized promoting community-based partnerships and see themselves as taking the lead role in this area by building peace and preventing conflict. An issue that needs to be addressed in relation to the two forces is that the roles of the Administration Police and the KPF overlap and are blurred, creating confusion and inefficiency.

III. CRIME AND IMPLICATIONS FOR DEVELOPMENT

3.1 The colonial government set up the Kenya Police Force (KPF) in the early stages of British rule,⁶ primarily to buttress its own powers and used it initially to provide protection for those building the railroad to Uganda. The Imperial British East Africa Company, which oversaw the coastal region of Kenya, also had a police force, but it was relatively underdeveloped. Subsequently, the colonial government redeployed the KPF, in combination with the British Expeditionary Forces, to carry out reprisals (Berman and Lonsdale 1992, chapter 1), mete out collective punishments (Trench 1993), and mobilize African labor for settler agriculture. From these beginnings, the police force grew as an instrument of control and was institutionally connected to politics. The political role of the police became particularly accentuated from 1953 onward, when the KPF, the Kenya Regiment, and the Kings African Rifles, together with other units of the British military, were collectively mobilized against the Mau Mau uprising. Even though these forces were, ostensibly, targeted at the guerrillas, in practice little distinction was made between the Mau Mau and the civilian population (Elkins 2005).

3.2 Despite the far-reaching changes reflected in the constitution adopted at the time of independence in 1963, these were never implemented. Instead, the management of the police was centralized in the Office of the President and officers were routinely deployed for political purposes. For instance, during much of the post independence period, the government used the General Service Unit of the KPF to crack down on its opponents. In 1992 and 1993 and again in 1997 and 1998, the reputation of the police was tarnished by credible evidence that some police officers were complicit in politically instigated ethnic violence that erupted in parts of western Kenya, the Central Highlands of the Rift Valley, and the Coast Province.

3.3 Not only do citizens consider the police force thoroughly corrupt, they do not feel any safer because of its presence. Despite official crimes figures showing a downward trend in the number of reported crimes—the number of reported crimes fell from 77,340 in 2003 to 63,028 in 2007 (National Economic and Social Council of Kenya 2007)—insecurity remains pervasive. Figures for rape show a marked increase since 2001, although estimates indicate that up to 40 percent of women and girls who are raped do not report the assaults. Statistics from police headquarters show that 2,005 women and children were raped in 2002, 2,308 in 2003, and 2,908 in 2004 (The Daily Nation 2005).

⁶ The history of policing in Kenya started in 1896, when the British Foreign Office ordered the first police station to be opened in Mombasa (see, for example, Deflen 1994).

These figures have almost tripled since 1998, when 1,124 cases of rape were reported (Kenya Police Force 1998). These numbers imply that insecurity is imposing significant direct costs on businesses and aggravating gender inequalities because fear of rape affects parents' willingness to send their daughters to school and women's willingness to work outside the home or during certain hours. That "violence against women is an obstacle to the achievement of the objective of equality, development and peace" is universally acknowledged (United Nations 2005, para. 112). The fear of violence is a "permanent constraint on the mobility of women and limits their access to resources and basic activities" and results in "high social, health and economic costs to the individual and society" (United Nations 2005, para. 117).

3.4 The situation is no less dire away from urban areas: four out of five of Kenya's international borders (those with Ethiopia, Somalia, Sudan, and northern Uganda) are lightly policed and are porous spillways for small arms and other contraband associated with past and current conflicts in the region. Rural crime has also climbed steadily. The poor have become particularly vulnerable to vigilante groups and extortion rackets. Some of these groups have not only usurped the police function, but are also performing a variety of illegal prosecutorial and judicial functions, routinely fining and punishing suspected criminals. In particular, the security needs of far-flung marginal districts and border communities, such as those in northern and northeastern Kenya, the poorest of all Kenyan districts, have deepened. Indeed, their security needs have barely been addressed since independence.

3.5 The weakening of the police function has had a dual economic impact: it has fed criminal violence in many parts of the country and, more perniciously, it now sustains a pervasive culture of impunity to the law that supports a growing and lucrative underground economy. Poor policing in outlying border regions not only generates persistent general insecurity, but also allows regular plunder by roving bandits in search of cattle and guns. In turn, communities respond by accumulating small arms, which are readily available from conflicts in the region. As a result bandits, communal militias, and home guards (private security guards hired by individuals to protect their homes and businesses) are often better armed than the police. Violence in these areas is intimately connected with violence and insecurity in other areas of the country. When guns cross borders, they go where they can yield a return, usually to underwrite robbery, carjacking, and drug running in urban areas.

A. Public Encounters with Corruption in the Police Force

3.6 Transparency International-Kenya (2007, p. 19) concludes that the police force is "the most costly institution in Kenya in terms of bribery." It notes that in 2006, the bribery burden (average expenditure per person) in relation to the police increased by Kshs. 100 (nearly 14 percent), from Kshs. 740 per month in 2005 to K Sh 840 per month.⁷ Moreover, the police and local authorities are the only government institutions that are consistently perceived as the most corrupt public institutions. This persistence

⁷ Even though the increase was 14 percent for the same period for the Immigration Department, the worry in relation to the police force is the persistence of high numbers each year.

despite regime changes and continuing reform measures exemplifies the extent of the problem.

3.7 Between 2004 and 2006, both the average size of bribes given and the cost of bribery fell (table 2). In addition, whereas in 2004 the police topped all but one of the seven Transparency International categories, in 2006 the police topped only three. In two categories—the possibility of being denied service without a bribe and the average bribe amount paid—the police were not among the top 10 culprits. Several reasons may have accounted for the progress made in addressing some of the concerns flagged earlier. Principal among these was the determination of the police in September 2006 to take steps via the Rapid Results Initiative to improve service delivery, which they believe was partly responsible for fueling the poor public perceptions of the police force. The Transparency International Index rankings can be viewed as symptomatic of the crisis of legitimacy and accountability that defines the police force’s relationship with ordinary Kenyans.

Table 2: Public Encounters with Corruption in the Police Force, 2004–6

Indicator	2004		2005		2006	
	Rank on the TI Index	Percentage	Rank on the TI Index	Percentage	Rank on the TI Index	Percentage
Aggregate index	1	72.4	1	60.3	1	46.6
Likelihood (percentage of agency’s clients encountering bribery)	1	81.6	1	82.3	10	63.5
Impact (victims as a percentage of respondents)	1	25.5	1	32.0	1	36.7
Severity(chances of being denied service without a bribe)	15	44.9	1	38.8	1	17.2
Frequency (average number of bribes paid per person)	1	2.5	1	5.5	2	7.7
Size of bribes (average bribe amount in K Sh)	2	10,831	18	629	19	1,066
Cost of bribery (average expenditure per person)	1	2,377	1	740	1	840

Source: Transparency International-Kenya 2005, 2006, 2007.

Note: TI = Transparency International.

B. The Police and the Judicial Process

3.8 The police are considered to be the “gate-keepers of the criminal justice system” (CHRI and KHRC 2006, p. 31). If they fail, the criminal justice system can become dangerously compromised. Persistent and credible claims assert that certain police officers are abusing the process. As early as 2003, the Kenya Standing Committee on Human Rights, the predecessor of the Kenya National Commission on Human Rights

(KNCHR),⁸ noted the tendency “by errant police officers to conspire with prosecutors to abuse the court process by instituting fabricated or trumped up charges as a cover up for malpractice in the course of duty” (CHRI and KHRC 2006, p. 23). The committee lamented that this conduct was systematic and widespread throughout the police force (CHRI and KHRC 2006). According to the CHRI and KHRC (2006) report, the methods by which the police abuse the criminal justice system are (a) delaying investigations of crimes, (b) withholding certain forms required for all cases of assault, (c) falsifying evidence, and (d) intimidating witnesses.

3.9 With reference to the postelection violence, the investigative arm of the police performed poorly. The Commission of Inquiry into Post-Election Violence (CIPEV 2008, p. 394) records its disappointment at the “lack of investigative work by the police even when provided with strong evidence identifying offenders.” The commission notes instances where witnesses “identified the looters by name and address and gave definitive information to the police” (p. 394), but in some cases were told by the police that “they should be grateful that they are alive and forget what happened” (p. 394).

3.10 Kenyan police have considerable powers over the administration of criminal justice because they are also prosecutors, and this combination of investigatory and prosecutorial functions expands the scope for abuse. For example, an investigation docket prepared by one police officer is unlikely to be as critically scrutinized by another officer as it would be by an independent prosecutor. The draft prosecution policy developed by the Office of the Director of Public Prosecutions in 2004 had proposed abolishing the prosecutorial role of the police, but the recommendation has not yet been adopted. Under the proposals made in the policy, all police prosecutors would have to choose whether to stay in the force as police officers or to transfer to the Office of the Director of Public Prosecutions, which would entail additional training and the development of a prosecutorial career path. An alternative proposal is that the police force should recruit lawyers to be deployed as prosecutors. This is neither appropriate nor desirable. Ideally the country should have a single prosecution service. In terms of checks and balances, the investigatory function, for which the police are responsible, should be clearly demarcated from the prosecutorial function, for which the attorney general should be responsible.

C. Crime Levels and Growth of Contact Crimes

3.11 Official crimes figures show an overall downward trend in the number of reported crimes, but these numbers are at best ambiguous (table 3) because insecurity remains a pervasive problem. Moreover, the number of contact crimes, defined as crimes that entail “physical contact between the victim and the perpetrator,” and include murder, attempted murder, rape, attempted rape, and assault, have grown tremendously since 2003 (Africa Governance, Monitoring and Advocacy Project and Open Society Foundation for South Africa 2005, p. 107). This is significant, because when contact crimes increase, even if overall crime figures drop, citizens tend to feel more vulnerable and insecure.

⁸ Note that the Kenya Human Rights Commission and the KNCHR are two different entities. The former is a nongovernment organization and the latter is a government agency.

Table 3: Number of Crimes Reported to Police Stations, 2002–6

Type of Offence	2002	2003	2004	2005	2006
<i>Thefts against people or property</i>					
Homicide	2,027	2,098	2,411	2,313	2,090
Offences against morality	2,556	3,117	3,439	3,153	3,525
Other offences against persons	13,881	19,741	20,247	17,304	18,723
Robbery	6,854	7,678	7,967	6,936	5,234
Break-ins	7,864	8,378	9,242	8,454	7,420
Theft of stock	1,602	1,699	2,380	2,219	2,209
Stealing	10,518	11,684	13,119	12,589	10,874
Theft by servants	2,446	2,765	3,217	2,574	2,700
Vehicle and other thefts	1,733	1,910	2,037	1,718	1,660
Subtotal	49,481	63,745	64,059	57,260	53,935
<i>Other types of crimes</i>					
Dangerous drugs	4,439	5,187	5,761	6,356	5,821
Traffic offences	37	57	60	38	62
Criminal damage	3,611	4,039	3,852	3,236	3,518
Economic crimes	1,555	1,624	1,868	1,390	1,873
Corruption	98	62	182	107	252
Offences involving police officers	68	145	6	29	76
Offences involving tourists	27	22	40	32	40
Other penal code offences	7,507	6,934	8,013	6,652	6,104
Subtotal	17,342	18,070	19,782	17,840	17,746
Total	70,423	77,340	83,841	75,400	72,225
Offences against people or property as a percentage of all offenses	70.3	82.4	76.4	75.9	74.7

Source: Kenya National Bureau of Statistics 2007, table 3.26.

As noted earlier, the growth in crime has given rise to a proliferation of private security firms in urban areas. In a 2004 survey quoted in CHRI and KHRC (2006), businesses reported that they were spending amounts equivalent to 7 percent of their sales on security, 4 percent on insurance, and 2 percent on neighborhood security. Crimes against people and property have remained high as a percentage of total crimes reported, showing an insignificant decline of only 1.7 percent since 2004 (table 3).

3.12 Not even politicians and cabinet ministers have escaped crime. In 2006, the office of Member of Parliament for Mwingi North and Vice President Kalonzo Musyoka was burgled, former Minister for Trade Mukhisa Kituyi was carjacked and robbed, and the home of former Minister for Local Government Musikari Kombo was raided. A Daily Nation (2006) editorial lamented that if politicians' homes and offices can be routinely raided and the attackers escape, then something is seriously wrong with the entire security system. It also means that the situation is even worse for ordinary citizens who have no police or other protection (see also International Commission of Jurists 2006).

3.13 Given the persistent, widespread, and high levels of crime and the police's chronic inability to create a safe and secure environment, investment is severely constrained. Thus a comprehensive and sustainable reform process that will transform the police force

into an effective, efficient, accountable, responsive, and professional law enforcement agency that can promote and maintain peace and security is urgently needed to promote development and economic growth.

IV. INSTITUTIONAL STRUCTURE OF THE POLICE FORCE

4.1 The contemporary Kenyan police system has evolved largely as a result of a variety of influences that the British had on the whole of East Africa during the colonial period. Authority over the police force was ceded to the Kenyan government after the nation became an independent state in 1963. By the mid-1980s, Kenya's police force had grown to 19,000 and included female officers.

A. The Constitutional Framework

4.2 Under the colonial regime, the KPF was operationally divided into two services, the regular police and the Administration Police which reflected the dual logic behind colonial policing in Kenya. The regular police evolved to service settlers' needs and the demands of civil order, while the Administration Police emerged as a law and order tool for the African population and was mandated to handle issues of customary law.

4.3 In institutional terms, the police paid a heavy price for their proximity to the colonial politics, and by independence in 1963 they were widely reviled and distrusted. At independence, the constitution introduced two radical changes. First, it ended the force's dual nature. With the end of institutionalized racism, the logic that propped up the two separate services disappeared and the police force was established as a single entity divided into regional contingents and specialized branches. Second, it wrested the police from partisan political control by establishing a professional, politically neutral police service along with the independent inspector general, the Police Service Commission, and the National Security Council (table 4). The specifics of the police structure at independence are important because they closely resemble many of the proposals made by the Commission of Inquiry into Post-Election Violence and those made by the Constitution of Kenya Review Commission on the constitutional aspects of police reform.

Table 4: Relevant Provisions of the 1963 Constitution

Section of the 1963 Constitution	Effect of the provision	Key features
147	Establishing the police force	The force consisted of separate contingents for each of the seven regions and a Nairobi contingent plus specialized branches. Regional contingents were financed by regional funds while the Nairobi contingent was funded by the central legislature. Although they were under the general command of the inspector general, regional contingents were accountable to regional governments and to regional commissioners, but their salaries and conditions of service were set by the central legislature.
148 and 149	Establishing and determining the functions of the	The council consisted of the governors, deputy governors, ministers, and chairs of the law and order committees of each regional assembly. The inspector general and the representative

Section of the 1963 Constitution	Effect of the provision	Key features
	National Security Council	of the Nairobi area were entitled to sit in on council meetings. The council was responsible for maintaining law and order. It was also responsible for the administration and size of the police force generally and for the total number of officers –ranked higher than superintendent that would serve on each regional contingent.
150	Establishing the Police Service Commission	The Police Service Commission consisted of two ex-officio members, namely, the chair of the Public Service Commission and a judge of the Court of Appeal or Supreme Court appointed by the chief justice, and three members appointed by the two ex-officio members in consultation with the inspector general. Those ineligible for appointment included (a) sitting members of any legislative assembly, (b) people who had run in any election for a legislative position, (c) officials of any political party, and (d) public officers.
151	Determining the functions of the Police Service Commission	Mandated to review all matters relating to salaries, conditions of service, qualifications, and standards and to advise the president and minister on these issues.
152	Appointing and removing the inspector general	The president appointed the inspector general based on advice from the Police Service Commission. The inspector general could only be removed from office because of inability or misbehavior and on the recommendation of a tribunal consisting of a chair appointed by the president and two persons appointed by the chief justice who served as or were qualified to serve as judges.
153	Appointing other members of the police force	The power to appoint and remove police officers above the rank of assistant superintendent was vested in the Police Service Commission. These powers could be delegated to the inspector general or regional commissioners. The power to appoint officers below this rank was vested in the inspector general, but regional commissioners had to agree with the appointments. When the inspector general or regional commissioner disciplined an officer, the officer had the right to appeal to the Police Service Commission.
155	Determining the functions of regional commissioners of police	Regional commissioners had operational command of all police units deployed in the field, but had to do so in accordance with policies as set by the law and order committees of the regional assemblies. They could also ask the inspector general for instructions, but the latter had to consult with the committees before providing any instructions.
156	Determining the functions of the inspector general	The inspector general had general command of the police force and direct command of the Nairobi contingent and was answerable to the minister for the specialized branches. The inspector general was responsible for carrying out periodic inspections of the regional contingents and reporting the findings to the regional assemblies. The regional assemblies could ask the inspector general to send specialized units or the Nairobi contingent to supplement regional contingents. Such deployments could take place without the consent of regional assemblies if national security was at stake, but only with the consent of the National Security Council.

Source: Constitution of the Republic of Kenya, 1963.

4.4 The changes introduced by the constitution adopted following independence did not last. First, implementation of the devolved police structure depended upon the establishment of regional governments, which never happened. Second, the provisions governing regional governments and those setting up regional police contingents were deleted from the constitution within three years of its adoption. Almost immediately, the police force returned to the jurisdiction of the Office of the President, under which it was centrally managed. The revival of the provincial administration in place of regional assemblies restored the justification for an administration police force. As a result, the police service was once again divided into the regular police, originally created under the Police Act of 1961, and the administration police, created under the Administration Police Act of 1958.

4.5 As under colonial rule, the removal of the mechanisms and institutions that were intended to secure the independence of the police force set the stage for political deployment of the police. The Administration Police evolved to be a tool of locally powerful chiefs and sub chiefs, while the General Service Unit, a specialized unit within the regular police, was often used to violently quell unrest and pacify protesters.

4.6 No real changes to the police were proposed or widely debated until 1990, when the party in power, the Kenya African National Union, set up a review committee to solicit views from Kenyans on pressing reform issues. Even though the committee's initial mandate was limited to reviewing the party's own internal procedures, it was later expanded to include other constitutional and legal matters. While the party changed many of its internal electoral procedures following these consultations, only three sets of constitutional changes were implemented, all of which were significant. These were the restoration of the independence of constitutional offices in December 1990, the repeal of one-party law in November 1991, and the changes relating to the procedures for electing the president and members of parliament and to the composition and powers of the Electoral Commission.

4.7 Changes affecting the police did not take place until 1997 under reforms instituted by the Inter-Parties Parliamentary Group (for a detailed description and analysis see Centre for Governance and Development 1997). Some minor changes were made to the Administration Police Act. The Police Act was changed to declare the political neutrality of the police force and to mandate that police treat all political parties equally: henceforth police officers would be guilty of a felony if they discriminated against anyone based on their political affiliation. Furthermore, provisions of the Public Order Act that required political parties to seek a license before holding a rally were repealed. Instead, parties were now required to notify the police that they were planning a rally at a specified venue. The legislative intent was to enable the police to provide security and deal with any public order matters that might arise.

4.8 None of these measures worked as effectively as the legislature had anticipated. For example, the police treated notification requirements for holding rallies as licensing underscoring the fundamental changes that would be necessary to reorient the police to the demands of a fledgling democracy. While the service resisted reforms, some individuals within the police force recognized the need for fundamental reforms. For example, when the constitutional reform process began under the Constitution of Kenya

Review Commission in 2000, the police force presented a detailed memorandum arguing for a politically autonomous service. This echoed many of the suggestions made by the public and was the basis for the detailed provisions in the draft constitution summarized in table 5. Otherwise, the proposals in the draft constitution largely duplicated the provisions of the independence constitution.

Table 5: Relevant Provisions as Proposed under the 2005 Draft Constitution

Section of 2005 draft constitution	Effect of the provision	Key features
263	Establishing the Kenya Police Service	<ul style="list-style-type: none"> • The Kenya Police Service is to be established as a national police service, but to be divided and organized in a manner that takes the devolution of power proposed by the constitution into account. • Parliament is required to enact legislation to give effect to the provision.
264	Determining the functions of the Kenya Police Service	<p>The police force is required to</p> <ul style="list-style-type: none"> • act professionally, with integrity and discipline, and in a nonpartisan manner (it should not further or harm the interests of any political party); • respect human rights and the rule of law, be transparent and accountable, and eliminate corruption; • maintain law and order, prevent and detect crime, provide security to the public, protect life and property, protect rights and freedoms, and support victims of crime and disorder.
265	Establishing the inspector general of police	<ul style="list-style-type: none"> • The president is to appoint the inspector general to one five-year term. • The inspector general would have command of the Kenya Police Service and perform other functions specified by legislation. • The president can remove the inspector general from office or he or she may resign.
266	Establishing the Police Service Commission	<ul style="list-style-type: none"> • The commission is to consist of eight members: (a) a person qualified to be a judge, (b) two retired senior police officers, (c) three people who have served the public with distinction, (d) the inspector general of police, and (e) the commandant of the administration police. The president would appoint a chair from this group. • The functions of the commission are to include the power to (a) recruit people to the police service, (b) set the standards and qualifications needed to serve as a police officer, (c) determine salaries and allowances, (d) exercise disciplinary control over the service, and (e) perform any other functions specified by law.
267	Establishing the Administration Police service	This is to be established as a separate service from the Kenya Police Service, but would also fall under the Police Service Commission, which would be organized to take the devolution into account.
268	Determining the functions of the Administration Police	The functions and operational principles are to overlap with those of the police service.
269	Appointing and removing the commandant	<ul style="list-style-type: none"> • The commandant, who would have command of the Administration Police, is to be appointed by the president with the approval of Parliament. • The president can remove the commandant from office or he or she

	of the Administration Police	may resign.
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Source: Draft Constitution of the Republic of Kenya, 2005.

Note: A majority of voters (58 percent) voted down the proposed new constitution in a referendum held on November 21, 2005.

4.9 Unlike the independence constitution, the draft constitution did not merge the two police services. Instead, it established them as two separate services with overlapping law and order mandates, but under one service commission. In addition, perhaps more innovatively, the draft constitution specified the protection of human rights as the function of both services. It also provided for parliamentary confirmation of the commandant of the administration police, but, strangely, not the inspector general of the Kenya Police Service.⁹

4.10 A referendum held in 2005 rejected the draft constitution, which meant that the reform program envisaged by and for the police would not be implemented. In legal terms, this also meant that any reforms that were contingent upon the adoption of the new constitution had to be redrafted and enacted without constitutional protection.

B. Current Legal and Institutional Structure of the Police Force

4.11 The constitution, the Police Act, the Administration Police Act, the Force Standing Orders, and directives and regulations issued from time to time set out the current legal framework for the police. The Police Act elaborates the functions and powers of the police force. As set out in Section 14 of the act, the functions of the police are to (a) maintain law and order, (b) keep the peace, (c) protect life and property, (d) prevent and detect crime, (e) apprehend offenders, and (f) enforce all laws and regulations as charged. The powers are explained in further detail in the Force Standing Orders, Police Regulations, and the Police Manual.

4.12 The statutes that created the two police forces are operational and do not link the functions of the police force to the constitution, that is, the Police Act and the Administration Police Act merely specify operating methods and procedures through a series of subsidiary rules, regulations, and manuals, leaving the two police forces legally fragile and vulnerable to political interference. Both the Force Standing Orders and the Police Regulations are only subsidiary legislation and the Police Manual is a departmental handbook without the force of law behind it. To the extent that the rules deal with accountability, the system is hierarchical (as in the military, officers are expected to follow orders from their superiors and not question them) and not democratic, in that the police do not report to Parliament except only indirectly when the vote on budgets and benefits of the Office of the President is being considered. At the same time, independent oversight mechanisms and complaints procedures for people aggrieved by the conduct of individual officers are not available.

⁹ This was different from the independence constitution, which required the president to seek the advice of the Police Service Commission when appointing the inspector general of the police service. The autonomy of the inspector general was weaker under the draft constitution than under the independence constitution.

4.13 Under the provisions of the current constitution, neither the appointment nor the management of the police service is legally secure from interference. As table 6 shows, the power to appoint the police commissioner is vested in and exercised by the president under plenary discretion.

Table 6: The Power to Appoint Police Officers under the Current Constitution

Section of the constitution	Appointment of	Effect
108(1)	Police commissioner	Appointed by the president and may be removed by the president under plenary discretion.
108(2) –(3)	Assistant inspectors and higher ranks	<ul style="list-style-type: none"> • The power to appoint, discipline, and remove officers at these ranks is vested in the Public Service Commission (but this provision is nullified by the ruling in <i>Mwangi Stephen Muriithi v. The Republic</i>, which determined that the president could exercise these powers). • The power to appoint, discipline, and/or remove officers can be delegated to any public service commissioner or to the police commissioner.
	Ranks below assistant inspector	<ul style="list-style-type: none"> • The power to appoint, discipline, and remove officers of these ranks is vested in the police commissioner.

Source: Constitution of the Republic of Kenya, 1963, as amended in 2008.

4.14 As shown in table 6, officers of the rank of assistant inspector and above are, in theory, appointed, disciplined, and removed from office by the Public Service Commission. In practice, two factors hobble this provision. First, the powers of the Public Service Commission under this clause can be, and usually are, delegated to the police commissioner, but the police commissioner’s powers are constitutionally weak, because the commissioner holds office at the discretion of the president. Some may argue that the Public Service Commission’s right to delegate need not erode its operational autonomy if appropriate criteria and professional considerations were used to appoint the police commissioner. One could argue that the appointment of a commissioner at the sole discretion of the president is not the issue, but that the issue is the quality of the person that the president designates as the police commissioner. This raises the question of what considerations go into the appointment of the police commissioner, but because these matters are rarely, if ever, made public, little is actually known about the selection process.

4.15 Second, and more problematic, even if the Public Service Commission were to exercise its functions under the constitution, it is not itself insulated from presidential attack. In the case of *Mwangi Stephen Muriithi v. The Republic*, the High Court found that, notwithstanding the powers given to the police commissioner and the Public Service Commission, Section 25(1) of the constitution gives the president unfettered discretion to discharge anyone working in the service of the Republic.¹⁰ While this decision has been

¹⁰ An argument that is often made is that the High Court’s recognition of the president’s inherent right to hire and fire at will is plainly mistaken (Africa Watch 1991). At issue in this case was Section 25 of the constitution, which is clearly and unambiguously prefaced by “Save in so far as may be otherwise provided in this Constitution or by any other law.” This implies that the president’s powers are subject to other parts of the constitution and to any other law. The powers delineated in Section 25 could not displace the powers

roundly criticized for misreading the constitution and for mistakenly applying the principles of English constitutional practice to Kenya without considering that Kenya, unlike the United Kingdom, has a written constitution, it is still valid law.

4.16 The provisions of the current constitution leave open these and many other questions that are central to effective and accountable policing. Unfortunately, relevant laws such as the Police Act, the Administration Police Act, and the Forces Standing Orders do not address these concerns. Thus the resulting weak legal and institutional framework subjects the police to political abuse and interference. Without a firm constitutional foundation, the Police Act, the Force Standing Orders and Police Regulations, and the Police Manual are insufficient for securing an autonomous and accountable police force. Moreover, even though the Police Manual contains some progressive ideas, the Police Act has not been substantively reviewed since it was first enacted in 1961. Modern concepts of policing and accountability have yet to find their way into the law.

C. Organization of the Police

4.17 The two primary agencies responsible for policing in Kenya are the KPF and the Administration Police. As explained earlier, both branches had their genesis in the colonial administration. The 1961 Police Act established the KPF to maintain law and order, preserve peace, and prevent and detect crime. The Administration Police had been created a few years earlier under the 1958 Administration Police Act. While the functions of the Administration Police are similar, this branch remains entirely separate from the KPF and has its own command structure, standing orders, and regulations.

4.18 The often overlapping roles, responsibilities, and deployment undermine an already weak system of operation, oversight, and accountability and have direct consequences for policing. For example, one significant limitation is that the Administration Police has no power to hold people in custody or to prosecute them. Because the KPF must perform all arrests and investigations, evidence and charges are sometimes deliberately or inadvertently changed on arrest dockets each time the KPF assumes control of a case from the Administration Police.

i. The Kenya Police Force

4.19 The KPF has about 40,000 rank and file members and is structured on the basis of units and provincial formations. Each provincial formation is structured into divisions, stations, posts, and patrol bases and is commanded by a provincial police officer. Officers responsible for police divisions report to the provincial police officer and officers commanding stations report to officers responsible for police divisions.

4.20 Provincial formations are divided into 11 units, each headed by a commander, though not every province has all 11 units. These units are (a) the General Service Unit, (b) the Kenya Police College, (c) the Traffic Police, (d) the Presidential Escort, (e) the

of the Public Service Commission under Article 108. The court's rejection of this argument prompted one scholar of the judiciary to characterize it as "being more executive minded than the executive."

Kenya Airport Police, (f) the Anti-Stock Theft Unit, (g) the Dog Unit, (h) the Police Air Wing, (i) the Kenya Railways Police, (j) the Anti-Terrorism Unit, and (k) the Tourist Police Unit. Each unit commander reports directly to the police commissioner.

4.21 The KPF sets up specialized squads as needed. These include the Spider Squad, which targets rape, and the Rhino Squad, formed to deal with the Mungiki.

4.22 Reformers are particularly interested in the General Service Unit because of its history during the politically repressive regimes of past governments. The General Service Unit, established under the KPF Standing Orders to deal with “special operations and civil disorders,” has about 6,000 members and has a particularly brutal reputation in relation to suppressing unrest.

4.23 Several different reports have reviewed the structure, performance, and integrity of the KPF in 2003, 2006, 2007, and, 2008 (see, for example, CHRI and KHRC 2006; Kenya Police Service 2003). All the reports generally agree that the KPF’s performance falls far short of what is expected of a police force in terms of guaranteeing security and safety and fostering economic development. The police’s own review of its performance, as outlined in its strategic plan (Kenya Police Service 2003, p. 8), provides a harsh indictment of its failures: “In the last two decades the security system deteriorated to a point where the government was unable to guarantee security to its citizens and their property. This has emerged as a result of low morale, lack of professionalism, inadequate resources, political interference and endemic corruption in the service.”

4.24 The police recognize many of the challenges to policing that limit their ability to provide quality police services. The Police Strategic Plan specifically identifies the following:

- delayed responses to crime scenes,
- low rate of crime prevention and detection,
- poor management of crime scenes,
- understaffing,
- lack of proper human resource management systems,
- lack of autonomy,
- poor terms and conditions of service,
- lack of adequate resources,
- lengthy bureaucratic procedures for acquiring new equipment.

The police believe that low morale, lack of professionalism, inadequate resources, political interference, and corruption have all contributed to the weakness of their organization. What remain unacknowledged are the widespread instances of torture and extrajudicial killings and the inadequacy and inhumane conditions of detention facilities that undermine the legitimacy of the force.

4.25 Internal systems and processes for recruitment, training, retention, and promotion—that is, the conditions that enhance institutional performance, raise standards, and foster professionalism—are weak or dysfunctional. For instance, an effective police organization should reflect the demographics of the community it is policing. If the police

force is misbalanced in terms of representation, whether by ethnic group or gender, particularly in senior ranks, then the public will lose trust and confidence in it. Although figures for the ethnic makeup of the police are unavailable, statistics show that as of June 2004, only 6.2 percent of KPF personnel were women and that the country had only four female divisional commanders (Commonwealth Human Rights Initiative 2006).

4.26 Moreover, as is the case elsewhere in Sub-Saharan Africa, political interference, economic inducements, and other considerations factor into recruitment, deployment, and promotion decisions. The strategic plan (Kenya Police Service 2003, p. 14) admits that “many police officers, at all ranks, owe their positions not to their academic qualifications or to their performance on the job, but rather to the patronage of powerful individuals outside the police force” and advocates for “establishing clear and appropriate criteria both for recruitment and promotion within the force.” Officers have been appointed or promoted on the basis of their ethnicity or affiliation to powerful individuals. When this problem starts at the top with the appointment of the police commissioner,¹¹ a culture that neglects meritocracy can infect the entire force, as shown in the example presented in box 1 of opaque recruitment of a police commissioner. The strategic plan recognizes that promoting officers based on, say, the number of arrests they make will lead to a different type of police service from a situation where, say, promotions are based on investigative techniques and ability to communicate effectively with civilians, and integrity.

¹¹ On the appointment of the top leadership of the police, the Police Strategic Plan (Kenya Police Service 2003, p. 16) notes the following: “The establishment of the office of the Inspector General with rules governing the appointment, removal and security of tenure of the office will play a crucial role in determining whether the service is properly insulated from interference and certainly increase his/her ability to act in obedience to the law, and to make operational decisions in accordance with his/her own best judgment. If this process is transparent, objective, and impartial, the Inspector General will be afforded expanded space for operational autonomy and subject to clear policy directions.”

Box 1: The Appointment of Bernard Kiarie Njiinu as Police Commissioner

Mr. Njiinu told the *Sunday Nation* that he got the feeling things had gone really wrong on the day he was appointed police boss, August 21, 1982, only three weeks after the coup attempt.

He had been Deputy Commissioner in charge of operations. The night before his appointment, he received a call summoning him to State House first thing in the morning. "On arrival, I was abruptly ushered into an empty room and left alone for almost an hour. For once, I thought I was under arrest and headed for detention." Then he was ushered into the President's office and found the Head of State and Chief Secretary Jeremiah Kiereini waiting. Without any ado, the President handed him a one-paragraph letter that read: "Owing to the confidence I have in you, I have appointed you the Police Commissioner with immediate effect. I hope you won't betray my trust." The air was heavy and the room tense. Mr Njiinu answered: "Thank you, Sir. I'll work hard and won't betray your trust." As the new Police Commissioner made to leave, the President beckoned him to sit down. "You are going to wait here until I give you the green light to go to your office," the President said. Then he turned to Mr Kiereini and ordered: "From here you go and have Gethi (Ben Gethi, then Commissioner of Police) arrested and telephone me to say he is on the way to Kamiti." The President and Mr Njiinu remained silent in their seats. None spoke to the other.

In less than half an hour, Mr Kiereini telephoned back to say Mr Gethi had been arrested from his office by Sokhi Singh, head of operations at the CID headquarters, and was on his way to Kamiti Maximum-Security Prison. The President turned to Mr Njiinu and said: "You will now go straight to the office and start working".

Source: Quoted from Auerbach 2003, p. 288.

4.27 In the wake of the postelection violence, human rights and advocacy groups charged that in some areas the police stood by as rampaging youth evicted from their homes and beat up people seen to have opposing political views. The immediate cause of this would seem to be the politicization of Kenya's multiethnic security forces, including the police. Over the years, different governments used the police for political purposes, especially the General Service Unit, which is often deployed to disperse political rallies.

4.28 As concerns motivation, even though the government reported a substantial increase in of police officers' salaries in 2007, a variety of factors continue to erode performance and motivation. One key factor is the poor work conditions, including lack of essential facilities at the precinct level and of appropriate housing. A second key factor is personal safety and security. Even though advocacy and human rights groups have rightly condemned extrajudicial killings by the police, they have neglected the killings of officers in the line of duty. While police work necessarily entails some risk, high levels of death and injury can demotivate officers and lead to slow responses to crime scenes.

4.29 Appointment and promotion criteria need to be buttressed by clear and appropriate criteria for deployment. Police officers who cross the paths of the politically powerful have frequently found themselves deployed to undesirable postings, typically hardship areas, and often at great inconvenience to their families.

4.30 The KPF has few women. Positive measures to encourage greater gender equity as well as sensitivity training to put an end to the force's misogynistic practices and attitudes are urgently needed. These efforts need to be complemented by wider reforms to attack the prevailing culture of corruption and impunity. Central to that effort is the need to make the transition from a "force" to a "service."

ii. *The Administration Police*

4.31 The Administration Police force has 18,000 members operating under the leadership of its commandant. The Administration Police is divided into three main units and eight provincial commands. The latter are headed by provincial Administration Police commandants who are responsible for district commands. Like the KPF, the Administration Police is divided into a number of specialized units, such as the Administration Police Training College, the Security of Government Building Unit, and the Rapid Deployment Unit.

4.32 In addition to being governed by provincial Administration Police commandants, the Administration Police is also governed by the provincial administration. De-linking the Administration Police from the provincial administration has been the subject of ongoing debate, especially because the primary purpose of the Administration Police at its formation—the enforcement of customary law—has been negated by the evolution of Kenyan law. More important, the Administration Police is more prone to political abuse given its proximity to the provincial administration. Indeed, the investigation into the postelection violence cited specific cases where the Administration Police was accused of direct involvement in criminal activities. This led the Commission of Inquiry into Post-Election Violence to recommend wide-ranging reforms, including combining the Administration Police with the KPF (box 2). One of the more controversial incidents involving the administration during the election period was the deployment of 1,600 Administration Police officers in plain clothes to act as “agents of government in disrupting or otherwise being involved in the elections processes” (CIPEV 2008, p. 442).

Box 2: The Benefits of Integrating the KPF and the Administration Police

The Commission (CIPEV) believes that developing a world class police service for Kenya would be best achieved through the creation of a single police agency. This means integrating the current two police organs. Given the revelations around the unlawful use of Administration Police (APs) around the elections, the fact that the current structure is inextricably linked to the provincial administration system, and many of the senior officers are not police professionals integrating the APs into the Kenya Police Service is a priority activity. It is recognized that there are difficulties in completing this important work (merging two cultures, ideals, systems and approaches) but the benefits will greatly outweigh these temporary obstacles. Integration will provide accountability, resourcing, service delivery and performance benefits many of which are listed here. Benefits include but are not limited to:

1. Total independence from the provincial administration structure and separation from national government oversight;
2. Unified command and control;
3. Across the board consistency and uniformity in all facets of policing including; standardized policing service delivery, standard operating procedures (SOPs), improved investigations capability and intelligence gathering and dissemination;
4. Increased trust and confidence in the Police and policing;
5. A single and unified Police Services Board, one head of Police (Commissioner), one strategic plan and a single integrated and well understood service delivery offering;
6. A single piece of enabling legislation, *Force Standing Orders*, guidelines, practice and operational arrangements;
7. Standard systems of recruitment options, entry standards including lateral entry options, basic and specialized training, conditions of service including living conditions and remuneration, human resource management arrangements, promotion and advancement, and leadership development including command and control. Significant efficiency gains from budgeting, purchasing, and utility of resources (capital, equipment and people).
8. The elimination of inter-agency tension and conflicts that impact negatively on service delivery.

Source: Quoted from CIPEV 2008, p. 434.

4.33 The Administration Police faces many of the same challenges as the KPF, including lack of independence from politicians, outdated legislation, limited finances and other resources, persistent external interference and abuse of command, weak succession planning, and poor conditions of service. In the ongoing reform programs, the Administration Police have prioritized promoting community-based partnerships and see themselves as taking the lead role in this area by building peace and preventing conflict. An issue that needs to be addressed in relation to the two forces is that the roles of the Administration Police and the KPF overlap and are blurred, creating confusion and inefficiency.

V. CONTEXT AND RATIONALE FOR POLICE REFORM: COMPARATIVE LESSONS

5.1 Several countries have undertaken police reform as part of their attempts to transit from conflict or authoritarian polity to a democratic system of government. The range of tools adopted for reform and the degree of success realized vary considerably. Police reform programs are to a large extent determined by the contexts of the countries.

A. Police Reform Context

5.2 Reform entails implementing measures to correct undesirable situations within a society or organization. The quest for police reform occurs against a backdrop of observed defects in or disaffection with a nation's police force. In the last 30 years, police reform as an economic development issue has attracted considerable interest among governments, donors, and civil society organizations (CSOs) in various countries during the past three decades. (Alemika 2004c; Bayley 2006; Carothers 2003; Goldsmith 2005; O'Neill 2005; Organization for Security and Co-operation in Europe 2004). The factors that have driven interest in police reform at the global level include the end of the Cold War; a wave of human rights discourse and advocacy; the globalization of trade; the global spread of political values of competitive elections and democratic governance; the rise of criminal and terrorist networks; the presence of pervasive conflicts and the associated violence and insecurity; and a new governance ethos that emphasizes effectiveness, efficiency, responsiveness, and equity.

5.3 In every country, identifiable factors and conditions influence the demand for and supply of police reform. Large-scale police reform tends to occur in societies in transition from a dictatorial political system to a liberal democracy and vice versa. Varenik (2003, p. 4) identifies four major conditions that create the "political momentum to make fundamental, as opposed to incremental changes." These are post conflict situations; attainment of independence from an occupying power; disintegration of an old regime; and change of government paradigm, such as the transition from an authoritarian political system to a liberal democracy (see also Lindholt and others 2003). Varenik argues that police reform in other contexts tends to be less fundamental and more evolutionary and episodic. Marenin (1996) notes that demand for police reform occurs in different societies under different conditions. A survey of the literature indicates that the primary conditions that spur demand for police reform are loss of confidence in the police because of their brutality and repression; corruption; ineffectiveness and inefficiency; impunity;

and lack of representativeness of community diversity, resulting in discrimination and inequity in service delivery across socioeconomic groups and neighborhoods (Alemika 2004c, 2008; Goldsmith 2005; Lindholt and others 2003).

In relatively stable polities, demand for reform occurs when the following problems are observed and a significant segment of the population with the sociopolitical and economic leverage to influence or shape government policy and decisions regards them as acute:

- exposure of systematic and institutionalized corruption, excessive use of force and brutality, discrimination, and racketeering, including protection of organized criminal enterprises within and by a police force;
- abuse of police powers by the government, especially in circumstances where the police repress and brutalize opponents and critics of the government, minorities, and oppressed groups;
- exposure of incidents of endemic violence against members of the public or identifiable subcultures (racial, ethnic, social, religious, social class, gender, and age groups) in society;
- emergence from a civil war during which the country's police force did not disintegrate;
- inadequate and improper recruiting, training, and equipping of the police;
- poor remuneration and supervision of personnel with consequent negative impacts on police efficiency, accountability, and integrity;
- protracted problems of ineffective and inefficient crime prevention and control services, especially intelligence, detection, investigation, and prosecution;
- inadequate professionalism and independence because of political manipulation, resulting in abuse of police and prosecutorial powers;
- pervasive violation of human rights and subversion of the rule of law by the police;
- ineffectiveness and waste associated with a multiplicity and proliferation of law enforcement agencies vested with similar functions and powers and without effective and appropriate coordination for overall efficiency;
- ineffective internal and external accountability mechanisms resulting in indiscipline, corruption, and impunity;
- transnational criminality in such areas as terrorism, human trafficking, arms and drug smuggling, and financial fraud.¹²

5.4 Exposure of such conditions by the media, CSOs, opposition parties, professionals, and intellectuals often set the stage for demand for police reform in various countries, including stable democracies such as the United Kingdom and the United States.

¹² Since the September 11, 2001, terrorist attacks on the United States and the increasing incidence of terrorist attacks, several governments have reformed their police forces to establish antiterrorism units. Over the last 20 years, many national police forces have also been restructured to accommodate specialized units to handle human, arms, and drug trafficking and transnational money laundering. Globalization has had an effect on both transnational criminality and policing.

B. Global Police Reform

5.5 Governments introduce and implement police reform for a variety of reasons, including a desire to promote democracy and the rule of law and to promote safety and security, all of which can be attained only by means of efficient, properly resourced, civil, accountable, representative, and responsive police forces (Lindholt and others 2003). Especially in post conflict and post authoritarian societies, “reform of the police service is critical for the development of a stable democracy, the creation of an open market economy, and the development of political and economic structures that support the values and needs of society” (Organization for Security and Co-operation in Europe 2004, p. 17; see also Bayley 2006; Goldsmith 2005). Whereas the coercive powers of the police can threaten freedom, safety, and security, they are necessary conditions for peace, security, and freedom (Alemika 2006b; Bayley 2006). An effective accountability mechanism is required to minimize the threat of abuse of police powers. The role and significance of such accountability mechanisms in curbing abuse of police powers has led some to equate police reform with the establishment of police accountability agencies (Alemika and Chukwuma 2003; Perez 2000).

5.6 Police reform generally aims at establishing and sustaining the core values of democratic policing (Bayley 2006; Osse 2006; Stone and Ward 2000). These are (a) effective, efficient, and equitable delivery of safety and security services; (b) transparency in decision making and accountability to legislative, judicial, and executive authorities and civil society; (c) professionalism based on strong ethical codes; (d) clear delineation of functions and powers; (e) quality training and equipping; (f) strict but fair supervision and discipline; (g) relative autonomy of the police from partisan political control; (h) management with integrity aimed at minimizing corruption and abuse of power; (i) fair representation of women and minority groups; (j) respect for human rights of citizens; and (k) internal democracy within the police force.

5.7 The overarching objective of police reform is to create an appropriate constitutional and legal framework for the institutionalization of effective and accountable policing (Bayley 2006; Lindholt and others 2003). Much donor assistance focuses on providing training in human rights, limiting the use of force, providing equipment and facilities, and improving efficiency and equitable service delivery. Within this overall framework, the typical items on the policy reform agenda include (a) reviewing the legal instruments relating to the establishment, control, command, operations, and management of the police; (b) demilitarizing the police, (c) providing human rights training to enhance the understanding and capacity of law enforcement officials; (d) providing funding and facilities; (e) ensuring proper remuneration; (f) passing laws and regulations to insulate the police force from political manipulation; (g) strengthening crime prevention; (h) strengthening civil society participation; (i) providing public access to information; and (j) introducing effective police performance indicators.

C. Oversight Mechanisms and Accountable Policing

5.8 Accountability means different things to the police and to the public. Police officers sometimes view accountability as a restraint on police powers that undermines their effectiveness, while proponents of good governance, including human rights activists,

perceive accountability as a requirement of good governance that guarantees public scrutiny of government actions. Accountability is vital for building and sustaining public trust in the police and is essential for the police force's efficiency and legitimacy (Goldsmith 2005; Kaariainen 2007). Alemika (2004a, 2004b) observes the existence of a strong correlation between trust in the police and trust in the government. Trust in the police is necessary for their effectiveness and legitimacy. It is undermined by excessive force, brutality, corruption and extortion, incivility, neglect of citizens' demands for service, indifference and unresponsiveness to citizens' distress, incompetence, and discrimination (Goldsmith 2005).

5.9 In institutional terms, accountability involves "the continuing concern for checks and oversight, for surveillance and institutional restraint on the exercise of power" (Schedler 1999, p. 13). The critical elements of accountability are answerability (public officials' obligation to inform the public about what they are doing and why) and enforcement (agencies' capacity to impose sanctions on holders of power who have violated the public's trust). Accountability entails "subjecting power to the threat of sanctions, obliging it to be exercised in transparent ways, and forcing it to justify its acts" (Schedler 1999, p. 14). Establishing effective police accountability is critical to the attainment and sustenance of democratic policing.

5.10 Concern for accountability has led many countries to establish external police accountability or oversight agencies. To be effective, a police oversight agency] must incorporate certain elements that are consistent with those spelled out in the Paris Principles and that address the minimum requirements for the establishment, composition, and management of national human rights commissions (Ball and Fayemi 2004). These are as follows (Alemika 2006a; Alemika and Chukwuma 2003, chapter 1; Perez 2000):

- independence from presidential, ministerial, and police manipulation;
- adequate, predictable, and timely funding;
- competent and incorrupt leadership and staff;
- competence in research, monitoring, and evaluation to assess police performance, conduct, and relationships with the public;
- prompt handling of complaints and sensitive responses to complainants;
- partnerships with appropriate CSOs to gain their confidence;
- comprehensive mandates covering police operations, discipline, and conduct and legal powers to reward good police officers and commands and to punish errant police officer,;
- protection of police officers from abuse by their superiors and commands, thereby gaining the support of the police, including encouraging whistle-blowing;
- synergy with internal police disciplinary and control units;
- independence of action subject to the rule of law, effectiveness and efficiency, fairness, self-restraint, and incorruptibility on the part of leaders of the oversight organization.

D. Neglected Areas of Police Reform

5.11 Police reform efforts, especially in Sub-Saharan Africa, have not paid sufficient attention to the following four areas critical to police efficiency and accountability:

- sensitivity to the structures and systems within which the goals and operations of the police are determined and executed;
- recognition, regulation, and coordination of public and private police service providers;
- concerns of female officers and female victims of crime within the police force;
- data collection, research, and planning (including monitoring and evaluation).

5.12 In authoritarian contexts, police reforms have had only short-term impacts. The failed efforts or short-lived impacts of police reform in Latin America and the Russian Federation since the 1990s show that democratic policing cannot coexist with authoritarian political domination. Moreover, successful police reform cannot be accomplished without reforming other elements of the justice system, such as the legal environment, the judiciary, the prosecution system, and the prisons. Without comprehensive reform, the justice system tends to suffer from system overload and breakdown, because various units' objectives may be counterproductive and mutually contradictory.

5.13 The nature and structure of policing has changed rapidly over the last 30 years. One trend is the growth of nonstate providers of policing, such as private security companies, community-based crime watch organizations, and vigilante groups (Jones and Newburn 2006; O'Malley 1997). Despite the recent literature's advocacy of a new approach to the governance of policing (Berg 2007; Johnston and Clifford 2003; Loader and Walker 2007; Wood and Dupont 2006; Wood and Shearing 2007), police reform efforts still frequently ignore these developments. The insight from the emerging literature is that analysis of and policies on policing must take account of the many entities providing policing services. Police reform in Sub-Saharan Africa must not ignore the shifts in views on policing as well as the socioeconomic and political structures that affect police and policing both positively and negatively.

5.14 In many cases, police reforms have failed to address the concerns of female police officers and victims sufficiently. Under authoritarian politics, women tend to be subjected to a variety of discriminatory practices, exclusion, and insensitivity. Reports frequently cite grave abuses of women and children at the hands of police and security agencies in both conflict and post conflict situations. Furthermore, in societies characterized by high rates of violence, including gender-based violence, women are often denied the assistance and justice they need. In many countries, the pervasiveness of gender discrimination is such that female police officers are subject to discrimination in the work place (Alemika and Agugua 2001). Thus reform must address the capacity of police forces to handle women's and children's concerns sensitively and responsively.

5.15 Finally, police reform has often not been accompanied by measures to strengthen capacity for data collection and analysis, research, and planning. As a result, many reforms lack any demonstrable impact on police behavior, efficiency, and integrity.

E. Growing Support for Police Reform

5.16 Despite those areas police reforms have tended to neglect, in general, police reforms have been widespread. Distinguishing police reform from police reconstruction is useful at this point. Reform occurs when measures are geared toward restructuring, equipping, enhancing incentives and discipline, improving management, retraining, and reorienting personnel in an existing police force. Police reconstruction refers to the establishment of new police forces following conflict. In the latter context, police forces have usually fragmented along political, ethnic, religious, and/or other lines and lack effective command and control. The reconstruction process may entail (a) vetting or other elements of transitional justice, (b) integrating “rebel” or “liberation” forces, and (c) enlisting officers not previously employed by the police or engaged in armed conflict. However, the literature has often not made this analytical distinction except in the context of peacekeeping operations and post conflict reconstruction by United Nations agencies. This report uses the term police reform to encompass both reform and reconstruction.

5.17 Despite its particular salience in fragile countries, emerging democracies, and post conflict countries, many other countries have also embarked on police reform over the last 30 years. Many stable democracies such as the United Kingdom and the United States have also undertaken restructuring and reorientation of their police forces in response to the threat of terrorism and transnational criminality. Some countries have undertaken police reform in response to scandals associated with police corruption, brutality, and discrimination.

5.18 Police reform has attracted the interest and support of a variety of actors, such as national governments; local, national, and international CSOs; donor agencies; and United Nations agencies. For example, United Nations agencies have helped to reform or create new police forces in Angola, Bosnia and Herzegovina, Burundi, Cambodia, the Democratic Republic of Congo, Croatia, El Salvador, Georgia and Abkhazia, Guatemala, Haiti, Kosovo, Liberia, Rwanda, Sierra Leone, and Timor-Leste (O’Neill 2005). Since 2005, the United Nations Development Programme has been implementing police reform programs in 19 countries and territories: Albania, Argentina, Bangladesh, Brazil, Colombia, Ecuador, El Salvador, Guatemala, Haiti, Indonesia, Kosovo, Liberia, Moldova, Mozambique, Nicaragua, Rwanda, Sierra Leone, Somalia, and Sudan (O’Neill 2005). The U.K. Department for International Development is supporting police reform in several countries, including Nigeria. International CSOs and donor agencies such as the Ford Foundation, the MacArthur Foundation, and the Open Society Institute are supporting police reform through grants to local nongovernmental organizations (NGOs) working in the field.¹³ Despite these efforts, evaluations of the impact of police reforms on police conduct and integrity reveal mixed results. The following subsections look at

¹³ For example, both are supporting such local NGOs as the CLEEN Foundation and the Network on Police Reform in Nigeria to enable them to partner with the police to improve human rights training, internal and external disciplinary controls, and amendment of the Police Act.

cases of police reform in selected countries to identify and highlight lessons learned from their experiences.

F. Police Reform in Africa

5.19 Colonial rulers established most African police forces in the 19th century to suppress indigenous peoples and defending their own interests. The colonial police forces were organized as paramilitary organizations and were commanded by serving or retired military personnel from the colonizers' home countries. The forces committed various atrocities against the indigenous populations with impunity. As a result, the indigenous populations in many countries detested and feared the police. During apartheid rule in South Africa, the country's police force was a vital instrument used to maintain the oppression and exclusion of the black population. As postcolonial governments in a number of African countries did not undertake substantive reform of the police, most African police forces are still instruments of political oppression.

5.20 While some post independence African rulers engaged in political rhetoric about police reform, police reform in post-colonial African nations was limited to such things as piecemeal reviews of entry qualifications for enlistment, length of training, curricula, and the creation of public relation offices and committees (O'Neill 2005). Literature on police and policing in Africa largely depicts African police forces as brutal, corrupt, inefficient, unresponsive and unaccountable to the general public. Consequently, most people do not trust or have confidence in their police forces (O'Neill 2005). The adoption of political and economic liberalization programs in various African countries since the late 1980s has engendered demand for police reform, without which political stability and economic development are unsustainable. As events during recent elections in Kenya, Nigeria, and Zimbabwe have demonstrated, incumbent regimes have used the security forces to forestall free and fair elections.

5.21 Consensus on the need for police reform is emerging among African governments and citizens, even if the objectives and directions of such reform remain contentious. Some countries, such as Ghana, Kenya, Mozambique, Nigeria, South Africa, and Uganda, have witnessed growing engagement between CSOs and the government on reforms of the security and justice sector, including the police, but comprehensive police reform embedded in wider justice sector reform is rare. International development and donor agencies, such as the United Nations Development Programme, the U.K. Department for International Development, and the European Commission, as well as international NGOs like the Ford Foundation, the MacArthur Foundation, and the various foundations operating under the umbrella of the Open Society Institute, continue to work with governments and CSOs in several African countries to develop appropriate frameworks for justice sector reform.

i. Liberia

5.22 Liberia emerged from civil war in August 2003 following the signing of the Comprehensive Peace Agreement by the warring parties. During the 1989–2003 war, tens of thousands of people were killed and hundreds lost their legs and hands to amputation. The United Nations Mission to Liberia was established in 2003 to coordinate the

international assistance needed for building peace. Although the transition from civil war has been slow, progress appears to be steady. For example, in 2005, Ellen Johnson Shirleaf was elected president, making her Africa's first female president.

5.23 Attempts to reform the police have taken place against a backdrop that includes the politicization and polarization of the police; a legacy of brutality, corruption, and impunity aggravated by the civil war and arms proliferation; and a lack of public confidence in the police. The parties to the Comprehensive Peace Agreement (Part Four, Article VII [5]) resolved to “call on the United Nations Civil Police Component and other relevant International Agencies to assist in the development and implementation of training programs for the Liberian National Police Force.” Furthermore, the United Nations Security Council (Resolution 1509 of September 19, 2003) directed the United Nations Mission to Liberia to assist “the transitional government of Liberia in monitoring and restructuring the police force of Liberia, consistent with democratic policing, to develop a civilian police training program, and to otherwise assist in the training of civilian police, in cooperation with ECOWAS [Economic Community of West African States], international organizations and interested States.”

5.24 In response, foreign governments provided financial assistance and technical support for the reform program. The United Kingdom provided US\$3.9million for equipment and for severance benefits for the more than 2,000 officers removed from the force (Griffiths 2008). The United States provided funds for training and procurement of uniforms and accessories, while the Nigerian government provided arms and other equipment for the police and also made training available for the Police Support Unit (Griffiths 2008). Griffiths also notes that under the United Nations mandate, about 1,100 police officers from some 35 countries have been involved in training and monitoring police officers in Liberia, and that other African countries, including the Arab Republic of Egypt and Ghana, have also participated by providing scholarships for police officers to undergo advance and specialized training in police science.

5.25 CSOs within the country, led by the Liberia National Law Enforcement Association, are also involved in advocating a broadly based, participatory, and comprehensive police reform process (Griffiths 2008). An amalgam of academic and professional networks, under the aegis of the Security Transformation Facilitation Team for Liberia,¹⁴ is also engaging in the reform process by providing technical advice and intellectual leadership. An important component of the reconstruction of the police force was the introduction of a vetting procedure to prevent people who had violated human rights and/or participated in combat during the civil war from enlisting in the new police force. This resulted in more than 2,000 former police officers being let go and paid severance benefits. However, because of a combination of factors—lack of information, illiteracy, and poor information dissemination—many such “undesirables” might have reenlisted.

¹⁴ Team members include representatives of the Conflict Security and Development Group, the Liberia Working Group at King's College, University of London; the African Security Sector Network; the African Security Dialogue; the Centre for Democracy and Development (Nigeria); and the Geneva Centre for the Democratic Control of Armed Forces.

5.26 Despite these efforts, Griffiths (2008), an analyst who has been involved in advocating for police reform in Liberia notes that despite the international community's efforts to enhance the professional integrity and competence of the police and other security agencies, public feelings about and attitudes toward them have not improved. He further observes that the local police, which are currently being reformed, have been unable to address the crime situation adequately. The police department lacks the logistics needed to enable them to combat crime effectively and communication is poor: getting through to the police emergency number is difficult, and when callers do get through, the police take a long time to respond to emergencies or other calls for assistance.

Police reform in Liberia has encountered the following difficulties:

- Unlike in South Africa, Liberia's peace agreement lacked coherence and a detailed articulation of the vision for police reform. Consequently, development of a comprehensive and sustainable reform agenda has been slow.
- The drivers of the reform process have largely been foreign donors and an array of CSOs and security sector reform networks. Local ownership is therefore relatively weak.
- A number of problems associated with the conflict situation, such as high rates of poverty and of violent and economic crimes, as well as vigilantism, challenge police capacity and undermine public confidence.
- Many important actions, including key elements of democratic governance, such as introducing a disciplinary and accountability mechanism and merit-based promotion and rationalizing and coordinating functions across agencies, have yet to be effectively implemented.

ii. Nigeria

5.27 The Nigeria Police Force was established in 1930 under the constitution. It is a national law enforcement agency that currently employs about 310,000 rank and file officers who police an estimated population of 140 million as recorded by the 2006 national census.

5.28 Since the colonial era, the Nigeria Police Force has been perceived as repressive, corrupt, uncivil, unresponsive, and ineffective (Ahire 1993; Alemika 1993; Rotimi 1993; Shirley 1948; Tamuno 1970). Successive governments have taken ad hoc measures to enhance the force's effectiveness, but protracted military rule and intermittent autocratic civil rule have allowed these problems to persist. Critical concerns confronting the force include lack of capacity to gather, analyze, and use intelligence for crime prevention and control; poor remuneration and general conditions of service; inadequate training; poor resource management by the leadership; inadequate equipment, including arms and ammunition, uniforms, and accoutrements; insufficient telecommunication and transportation facilities in terms of both quality and quantity; limited contacts or relationships with the general public; poor knowledge of the law; and disregard for human rights (Alemika 1993, 2003b). In addition, the Nigeria Police Force has been associated with engaging in gross violations of human rights and unethical behavior, including engaging in brutality, corruption, and extortion; undertaking frivolous searches

and arrests; colluding with criminals; procuring and supplying false evidence and tampering with evidence; and making false accusations.

5.29 Nigeria's police reform measures can be classified into two broad categories: constitutional actions and executive actions. Nigeria commenced democratic transition in 1999 with multiparty elections and a federal constitution. Provisions in the 1999 constitution created the Nigeria Police Council and the Police Service Commission. The Nigeria Police Council consists of the president, who is also its chair; the governors of every state of the federation; the chair of the Police Service Commission; and the inspector general of police. The constitution defined the council's functions to include (a) organizing and administering the Nigeria Police Force and all other related matters except those relating to the use and operational control of the force or the appointment, disciplinary control, and dismissal of members of the force) (b) undertaking general supervision of the Nigeria Police Force; and (c) advising the president on the appointment of the inspector general of police.

5.30 The Police Service Commission was set up with a chair and seven to nine additional members as prescribed by the National Assembly. The commission has the power to appoint and promote officers other than the inspector general of police and to dismiss and discipline police officers. The commission is also empowered to formulate and implement policies to improve efficiency and discipline with the force. The commission's membership currently includes representatives of the human rights community, the private sector, and the media; a retired senior police officer; women; and a retired justice of the Superior Court of Record. If strengthened in terms of its organization, finances and other resources, and staff and allowed to function as an independent organization as provided for by the constitution, the Police Service Commission would be one of the most powerful and autonomous civilian oversight institutions for the police in the world. Thus far, however, the commission has not realized its potential (Alemika 2003a).

5.31 The major executive actions concerning police reform between 1999 and 2008 were the following:

- The government increased the strength of the force from about 140,000 officers in 1999 to more than 300,000 in 2003. Unfortunately, the huge increase was achieved at the cost of poor pre-recruitment screening and inadequate training.
- The Ministry of Police Affairs developed a blueprint for the police that was aimed at making the force more effective and responsive to public needs, properly equipping the force, improving the welfare and working conditions of police personnel, and enhancing collaboration between the police and communities.
- The Presidential Committee on Police Reform was established in 2006. A white paper on the report of the committee has been produced and approved by the government, but has not yet been implemented to any significant extent.
- A second Presidential Committee on Police Reform, with members drawn mainly from among retired inspectors general of police, was constituted in January 2008 and completed its work in April 2008. The recommendations of this committee and the earlier one were similar and included reorganizing police divisions and units; rationalizing ranks; providing better funding and equipment; improving training;

enhancing remuneration; adopting community policing; improving relations between the police and the public; and prioritizing capacity development in the areas of intelligence, investigation, forensics, prosecution, and information management. The white paper has yet to be released.

5.32 Nigeria has obtained assistance for police reform from a number of external organizations, such as the U.K. Department for International Development, the governments of France and Italy (especially for tackling human trafficking), and the European Union. In particular, with support from the U.K. Department for International Development, the Nigeria Police Force introduced a community policing program in six states at the end of 2006 (a component of the Security Justice Growth Program). The program's impact remains to be demonstrated, especially as the implementation strategy was unable to create a critical mass of support for the program within the police force. The critical components of community policing, such as beat patrols and extensive police-public consultations, have only recently been incorporated into the program.

5.33 CSOs, especially human rights NGOs, the media, academia, and the Bar Association, actively advocate police reform. Many organizations with grants from international donors organize workshops and seminars and undertake pilot projects in the area of policing. These activities continue to put pressure on the government to reform the criminal justice system, including the police. Some of the organizations, especially the CLEEN Foundation, collaborate with the police and the Police Service Commission to build their capacity and strengthen internal and external accountability mechanisms.¹⁵ A bill seeking to review the Police Act is before the National Assembly. A coalition of CSOs sponsored the bill in 2007, but the legislature has not passed it.

5.34 Even though the government has continued to declare its intent to reform the police during the past nine years and has occasionally introduced measures to that end, it has shown less than the necessary enthusiasm and political will for implementing comprehensive police reform. Lessons learned from Nigeria's experience include the following:

- Political will and national leadership are necessary to design and implement comprehensive police reform that is in tune with democratic governance.
- CSOs must advocate for police reform for the government to sustain interest in or demonstrate any form of support for police reform.
- Collaborative activities between CSOs and police agencies to improve policing can broaden consensus on the need for and parameters of police reform, curb egregious rights violations by the police, and open avenues for incremental reform initiatives.
- Governments in post authoritarian societies tend to be resistant to efforts to minimize executive control and manipulation of the police.
- Opportunities for fundamental transformation of the police are limited in post authoritarian societies if political and economic liberalization programs fail to promote and sustain a new class of rulers.

¹⁵ In 2003, the CLEEN Foundation and the Open Society Justice Initiative helped the Police Service Commission monitor police conduct during the elections. The CLEEN Foundation also worked with police force commands in several states to reactivate their public complaints bureaus by training personnel and donating equipment.

- Resistance to reform is strongest among the most senior police officers notwithstanding their public statements in favor of police reform. For them, reform is limited to an increase in funding and equipment, but not greater accountability.
- High crime rates, especially violent, economic, and political crimes, can undermine advocacy for or lead to reversal of civil policing. In Nigeria, members of the public are generally insensitive to human rights violations involved in extrajudicial killings of robbery suspects, therefore police reform must incorporate measures to minimize criminal activity in order to reduce public tolerance of police brutality.
- Local ownership of foreign models of policing such as community policing is often weak. Some groups attempt to adopt community policing principles to strengthen vigilantism. Reform programs should therefore establish police regulatory (not repressive) powers over local crime prevention initiatives using such means as registration, joint operations, and periodic consultations.

iii. South Africa

5.35 South Africa is a relatively successful case of police reform. Until 1990, South Africa was an apartheid country in which nonwhites were deemed inferior to whites and excluded from national governance and economic structures. The regime used the police to oppress and exploit the black and other nonwhite populations. The police routinely murdered and tortured black people, which they justified as counterinsurgency measures. As Marais and Rauch (1992, p. 11) observe: “In the colonial and apartheid periods, black people were viewed by the state as “inferior”, and racial oppression routinely led to the degradation of black life. In the context of police power and the legalized use of force for the purposes of dealing with political opposition, brutality towards the black community was tacitly condoned, and seldom resulted in disciplinary action.” The counterrevolutionary strategy of the police was designed to destroy the African National Congress and its allies and establish a firm police and army presence in the townships. This allowed the police to suppress protest and resistance and eliminate its leadership through mass detentions, trials, harassment, and assassinations (Cawthra 1993).

5.36 Apartheid collapsed after decades of both diplomacy and armed struggle. In 1990, the apartheid government lifted the ban on the African National Congress and released its leaders, including Nelson Mandela, who had been imprisoned for nearly three decades. Comprehensive negotiations of the terms for the transition to democracy took place between 1990 and 1994. The first democratic election was conducted in 1994 and Nelson Mandela was elected president. The critical components of the police reform program that followed this democratic transition include the following (Bruce 2003):

- creating a new police force by integrating the 10 homeland police services and the South African Police whereby personnel from the latter accounted for about 80 percent of the new 141,000-member force;
- enacting a new police law that reflected the requirements of democratic policing, including the creation of layers of oversight agencies and a community police forum;
- adopting a new command structure and changing the police rank system and their uniforms, insignia, and color of their vehicles to symbolically de-emphasize militaristic or repressive policing;
- introducing an affirmative action principle to promote representation of the diverse groups in society in the police force;

- changing the name of the force from the South African Police to the South African Police Service to reflect the intent to move away from the apartheid era police force to a national police force of the Republic of South Africa that proclaims racial tolerance;
- establishing internal and external accountability mechanisms, including the Independent Complaints Directorate;
- introducing measures to reduce hostility between the police and the public and to enhance partnerships by setting up community policing forums and adopting a community policing model;
- introducing more equitable access to police services, especially by historically disadvantaged communities;
- introducing a new system for recruiting, training, and retaining human resources.

5.37 The transition agreements, the constitution, and subsidiary legislation articulated the elements of the reform program well. The reform strategies were generally implemented vigorously and with assistance from foreign and domestic CSOs. The police reform in South Africa has been successful overall, and the performance of the South African Police Service has been relatively satisfactory in terms of both its efficiency and integrity.

The following lessons may be learned from South Africa's police reform program:

- A post conflict context can offer considerable opportunities for transforming the police within a relatively short time given strong national consensus, political will, and leadership. A lack of consensus and political leadership help account for the less successful reforms in such countries as Guatemala and Nigeria.
- The availability of adequate resources (human, financial, and technical) to support reforms on a long-term basis, as was the case in South Africa, is important for their success.
- A participatory reform process is important. Since the early 1990s, the interest of CSOs, especially university research institutes, research-based NGOs, and policy institutes in the reform has been sustained, in part because of the engagement between them and the police authorities.¹⁶
- A police reform can give rise to new problems. A major development in South Africa is the rapid growth of private security companies whose employees bear arms and deploy sophisticated technologies. This has led to inequality in access to security and safety whereby rich (predominately white) areas are better protected than those areas where the poor and nonwhites live. This is an issue that must be addressed given the high rates of violent crime in South Africa.
- The country's community police forums are not as active as expected, in part because it is still expected that the police will take the lead in launching many community policing initiatives. At the same time, the evidence does not indicate that community policing would be more successful if it were community driven because of several factors, such as limited resources or capacity within communities. A strong institutional framework, perhaps tied to local government, may be a better approach

¹⁶ Examples include the Institute for Democracy in South Africa, the Institute for Security Studies, the Centre for the Study of Violence and Reconciliation, and the South African Institute for International Affairs.

to partnerships between the police and the public at the community level. The lesson here is not to overestimate communities' capacity to engage the police on a sustainable or continuous basis.

- The reform goal of sustaining high confidence in the police can be negated by high rates of crime, especially violent crime. The high crime rates in South Africa are partly responsible for the public's declining confidence in the South African Police Service. Reform efforts must take into account the impact of poverty, unemployment, and other forms of deprivation and exclusion on crime as well as on police performance and integrity.

G. Police Reform in Latin America

5.38 Several Latin American countries can be described as being both post conflict and post authoritarian societies, including Colombia, El Salvador, Guatemala, and Peru. High levels of violence by criminal organizations, citizens, and governments characterize many countries in the region, including El Salvador and Guatemala. The United Nations and foreign governments, especially the United States through the U.S. Agency for International Development, undertook intensive efforts to help the governments of several Latin American countries implement police force reforms in the 1990s. Despite reports indicating short-term success of the reforms, they have tended to be reversed in the long run as a result of instability, fierce political competition, and spiraling violence. Police reforms in El Salvador and Guatemala underscore the importance of a comprehensive reform framework in any agreement signed at the cessation of conflict as well as the significance of political consensus and political will.

iv. El Salvador

5.39 The 12-year civil war in El Salvador ended on January 12, 1992, after the signing of the Chapultepec Peace Accord, facilitated by the United Nations. The accord's provisions were comprehensive. It included a mandate for reform of the military, the judiciary, and the police and provided for compliance monitoring agencies, namely, the National Commission for the Consolidation of Peace and the United Nations Observer Mission in El Salvador.

5.40 The implementation of the accord's provisions with respect to security sector reform led to the dissolution of the three forces under the Ministry of Defense. According to Call (2002), combining government troops and rebel forces, along with demobilizing the Treasury Police, the National Guard, and the civil defense patrols, effectively cut the coercive forces available for deployment from some 60,000 to 6,000 in just a few weeks. A new civilian police, the National Civilian Police, was created under the Ministry of Interior and Public Security. This police force consisted of new recruits (60 percent), members of the former military police (20 percent), and demobilized guerrillas (20 percent). The demobilization of the old police force was completed within two years. The accord also mandated the new police force to prevent and combat all types of crime and to maintain internal peace. Under the constitution, the military were restrained from performing routine public order functions. The police were required to protect individual freedom and to avoid the use of torture.

5.41 The major elements of the police reform program included age, education, and other requirements for those seeking to enter the force. It also encouraged the employment of women and minorities. The National Public Security Academy was responsible for training and educating recruits and trained about 9,000 police officials and officers within three years. The country's police force was centralized with regional forces and specialized units. Under the program, the president and the inspector general were responsible for oversight of the National Civilian Police.

5.42 The police reform program in El Salvador is generally considered to have been successful in the short run (Neild 2002; Washington Office on Latin America 1995). Most observers attribute its relative success to the comprehensive mandate enshrined in the Chapultepec Peace Accord. The program's impact included implementation of community policing projects that increased partnerships between the public and the police and reduced levels of homicide and other crimes. The program also established internal and external accountability mechanisms, although the impact of these on protecting human rights was not significant (Swedish International Development Cooperation Agency 2003). A relatively high level of professionalism was reported.

5.43 A major aspect of the reform was its implementation within two years. However, many of its achievements were eroded in the long run because of protracted problems of insecurity and high crime rates that led to demands for tough measures against crime. Police misconduct persisted on a large scale, but willingness to institute disciplinary action, including purging the police force of corrupt officers, was also reported (Neild 2002). The establishment of the Human Rights Ombudsman's Office provided citizens with a way to register complaints against abusive police officials. According to Call (2002), six years after the accords were signed, the National Civilian Police were more humane, accountable, transparent, and civilian controlled than the old security forces, despite having many of the same faults than their predecessors. However, in contrast to the past, officers accused of torture, killings, vigilante activities, and excessive use of force were subject to internal sanctions and prosecution. Despite the observed problems, evaluations of the reform in the literature were generally positive.

v. *Guatemala*

5.44 Guatemala's 36-year civil war ended in December 1996 with the Agreement on a Firm and Lasting Peace. The agreement contained references to protecting human rights, including the rights of indigenous peoples, but despite several provisions in the various agreements signed by the parties concerned,¹⁷ no comprehensive mandate for reform of the police was included. The agreement on policing (Agreement on the Strengthening of Civilian Power and on the Role of Armed Forces in a Democratic Society), however, provided for revision of the constitution to contain the following specific provisions: "The National Civil Police shall be a professional and hierarchical institution. It shall be the only armed police force at the national level whose function is to protect and guarantee the exercise of the rights and freedoms of the individual; prevent, investigate and combat crime; and maintain public order and internal security. It shall be under the

¹⁷ These were the Comprehensive Agreement on Human Rights, the Agreement on the Strengthening of Civilian Power, and the Agreement on the Role of Armed Forces in a Democratic Society.

direction of the civil authorities and shall maintain absolute respect for human rights in carrying out its functions” (paragraph 23).¹⁸

5.45 This agreement in paragraph 23 further provided that the “law shall govern the requirements and procedures for admission to the police profession, as well as promotions, advancement, transfers, disciplinary action against officers and employees in the profession and other questions relating to the function of the National Civil Police.” Paragraphs 26–30 continue with extensive provisions for organization, training, remuneration, establishment of a police academy and its functions, community participation, promotion of the police profession, and adequate funding of the force over a five-year period. Despite robust articulation of the legal requirements for a democratic police force, a lack of political consensus, cohesion, and political will undermined the reform.

5.46 Even in the absence of a comprehensive agreement on police reform, the government introduced several reform measures. The National Civil Police was created under a civilian Ministry of Interior and made responsible for public order and internal security. In addition, the police force was restructured into specialized departments and priority was given to strengthening criminal investigation and introducing a police training curriculum that emphasized human rights. The Advisory Council on Security was created and charged with oversight responsibilities. Funding was also increased by 50 percent over a five-year period. Officers’ salaries were increased and the strength of the force was also increased substantially between 1996 and 1999.

5.47 Assessments of the police reform in Guatemala indicate that the program was not implemented effectively (Call 2002; Neild 2002). As a result, many of its targets went unrealized. The separation of the military from police duties was not enforced and the target of recruiting and training 20,000 police personnel by 1999 was not met until 2001. In addition, the education requirements for police officers, especially those involved in criminal investigation, were not substantially enforced, entry requirements remained low, and a code of ethics for policing was not developed at the expected time. Furthermore minorities remained underrepresented and a strong oversight mechanism was not established (United Nations 2002).

5.48 Despite the poor implementation of the police reform program, a few positive results have been reported, including (a) a reduction in crime levels; (b) an improvement in the relationship between the police and communities, partly because of the establishment and activities of local security councils (established in 231 of the country’s 331 municipalities [Neild 2002]) that mobilize public participation and partnership with the police in promoting public security; and (c) an improved police image. Other positive results reported include increased budgetary allocation and nationwide deployment of the police (Neild 2002). However, the United Nations (2002, paragraph 48), reports a recent reversal in gains:

The National Civilian Police began promisingly with the creation of the new force and its academy in 1997. It grew to 20,000 agents nationwide

¹⁸ The English-language version is available at <http://www.un.org/Depts/minugua/paz9.htm>.

over the next three years and gained acceptance by the population. Since then, neglect, constant turnover in leadership and corruption have combined to set the force on a downward spiral. One of the root problems was the recycling into the force of a large number of former members of the corrupt and militarized police force that had been disbanded to make room for the PNC [National Civil Police]. Today, lacking the minimal resources and infrastructure to do their jobs, many honest and hardworking members of the police are demoralized. Cases of criminality and abuse by police are on the rise.

H. Summary of Lessons Learned

5.49 An assessment of the reforms in the selected countries in Sub-Saharan Africa and Latin America suggests the following 11 critical lessons for police reformers that are equally valid everywhere:

- *In post conflict societies, articulating a clear and coherent reform program is important.* The case studies show that in post conflict societies where such a program was not articulated, that is, in El Salvador, Guatemala, and Liberia, the reform program faced significant hindrances. Where such a program was articulated and incorporated into the constitution and the law, as in South Africa, it was implemented. Moreover, the case of El Salvador shows that the risk of relapse in relation to police performance is high if high levels of insecurity and crime persist.
- *Consensus and political leadership are essential.* Strong national consensus, political will, and leadership are key ingredients for success. Lack of consensus and leadership are partly to blame for the less successful reforms in such countries as Guatemala and Nigeria.
- *Civil society involvement is important.* Even though CSO involvement is not a sufficient condition for the success of police reform, it is a necessary one. Collaboration between CSOs and the police or government can promote consensus on reforms.
- *Police reform can engender new forms of policing and some of these may come with their own problems.* An example is the growth of private security companies in South Africa, which has led to overpolicing of rich neighborhoods and underpolicing of poorer ones.
- *Growing rates of crime undermine reform.* If police reform takes place in lockstep with growing rates of crime, a fall in public confidence and trust will undermine the reform. High levels of violent crime coupled with poverty and a shallow democratic culture halt, and sometimes reverse, efforts to transform the police from repressive paramilitary forces to client-focused service organizations.
- *Most governments in post authoritarian societies will resist efforts to minimize executive control and manipulation of the police.* If the old order manages to hang on to power, the scope for police reform is limited.
- The leadership of the police may resist reforms even if it embraces pro-reform rhetoric. Resistance to reform is strongest among the most senior police officers, notwithstanding their public statements to the contrary. Their preference is usually for reforms to be limited to an increase in funding and equipment, but not greater accountability. Getting the support of the leadership early in the process is essential for success.

- *Foreigners can help, but in a supplemental capacity.* While foreign agencies have an important role to play, local ownership of the reform agenda is essential for success.
- *Reformers should combine operational reforms with institutional reforms.* Wider institutional reforms within the police must go hand-in-hand with operational reforms. Thus efficiency, operational control, merit-based promotions, and resources are just as critical as the key elements of democratic governance.
- *Key challenges in police reforms are linked to broader public sector reform challenges.* These challenges typically include insufficient budgeting and mismatched inputs.
- *Availability of information is critical to help improve performance and enhance accountability.* Holding the police accountable requires accurate crime statistics. Police reforms should not commence until significant efforts have been devoted to developing a system for keeping track of crime.

VI. LOCAL AND INTERNATIONAL SUPPORT FOR REFORM IN KENYA

6.1 This section assesses local and international support for police reform efforts in Kenya detailing the success and challenges of such support with specific reference to the issue of policing and citizen oversight. It identifies gaps in the oversight function and provides suggestions that could form the basis for dialogue among stakeholders on a policy for proper oversight over the police as well as options for engagement by development partners.

A. Comparative and Local Context

6.2 The previous chapters of this report provide both logical and factual arguments for police reform in Kenya. In addition, the eruption of violence in the aftermath of the elections has led to questions of whether the police and the army did enough to quell the violence and if not, why not.¹⁹

6.3 The political will to undertake police reform and a strong domestic constituency in support of such reform have, to date, been lacking. At the same time, the failure of the police to anticipate and then contain the spread of political violence in the wake of the elections has energized local CSOs and political leaders into questioning the nature, size, and quality of police service that Kenya needs. This is crucial point, because the case studies from other Sub-Saharan African countries show that consensus and political leadership play a significant role in the success or failure of police reform.

¹⁹ Donors supporting the elections in Kenya in December 2007 had agreed to ask the police to strengthen their capacity to preempt violence before and after the elections, but by June 2007, they had not received any confirmation from the authorities to provide assistance in this area. It was therefore recommended that to mitigate election-related violence, the focus should be on designing specific training for the police who were to be attached to the Electoral Commission of Kenya during elections. This never happened. In July 2007, the United Nations Development Programme contacted the deputy police commissioner and was informed that the police had already developed an elaborate security plan for the election. Clearly this was not the case.

6.4 As recognized by the Kenya Police Force (2003), the task of reforming the police is substantial and pressing. A combination of donor-funded and government-initiated police reforms has taken place since that time, but with mixed results. This chapter reviews these efforts and assesses the extent to which they have met the objectives of accountable policing. The discussion details the nature of the reforms undertaken under the various efforts described, identifies gaps in the oversight function, and provides suggestions that could form the basis for dialogue among stakeholders on a policy for proper oversight and options for engagement by development partners.

B. The GJLOS Reform Program 2003–7

6.5 Launched in November 2003, the GJLOS Reform Program is a comprehensive justice reform initiative that accounts for the bulk of local and international support for police reform in Kenya. It is designed to pursue a gradual, as opposed to radical, approach to reform across several phases. The first phase (2003–4), the Short-Term Priorities Program (STPP), was intended to whet the appetite for reform by focusing on institutional components of reform. The second phase, the Medium-Term Strategy (MTS) (2005–9), was intended to deepen reform by focusing on changes in policies and laws. The third phase of the program, scheduled for 2009–12, will be guided by the forthcoming policy framework paper for the GJLOS Reform Program. The paper was envisioned as a result of the realization during implementation of the MTS that policy and legal reform choices being made by the more than 30 institutions (including the police) participating in the GJLOS Reform Program were not being informed by a set of shared principles and values.

6.6 The GJLOS Reform Program (2005, p. v) builds on earlier efforts to “address weaknesses in previous legal sector reform strategies in an integrated and holistic manner.” These previous initiatives had limited success because of their inability to curb corruption or improve the performance of relevant institutions. The rationale behind the current initiative was to link program reforms to the Economic Recovery Strategy for Wealth and Employment Creation (the overarching development policy that was replaced in 2008 with Vision 2030). This link rested on the diagnosis that weak governance had attenuated the government’s ability to grow the economy, and thus to reduce poverty. Within this framework, the GJLOS Reform Program was defined as the bedrock of social and economic reform in Kenya, the foundation upon which a democratic, just and prosperous society would be built.

6.7 Good governance was a top priority of the Economic Recovery Strategy and it proposed specific measures to improve security. The most relevant of these were commitments to:

- increase the overall police to population ratio to close the gap (despite improvements from a low of 1:1,150, the ratio at that time stood at 1:821) in Kenya and the recommended United Nations ratio of 1:450;
- provide the police service with modern equipment and technology;
- enhance police effectiveness and service coverage through recruitment and training in modern technology;
- improve housing and other terms and conditions of work;
- emphasize the need for police to work within the law;

- review and enact laws to deal with modern crimes, including terrorism, money laundering, tax evasion, and cyber crimes;
- develop cross-border, collaborative security management with neighboring countries;
- strengthen the partnership between the police and private security providers.

6.8 The government and international donors committed substantial resources to the GJLOS Reform Program. The estimated amount allocated to the program over five years, 2003–8, was equivalent to €219 million, four times more than a similar sector-wide reform program in Malawi (interview with J. Carstens, GJLOS Reform Program chief technical coordinator, May 8, 2008). The program’s annual budget in the fiscal year ending June 2007 was K Sh 5.3 billion, of which the government of Kenya contributed K Sh 2.8 billion (53 percent). Other sources of funding were the GJLOS basket funding provide by participating donors of K Sh 2.1 billion (39 percent) and contributions by direct development partners of K Sh 436 million (8 percent) (GJLOS 2007b). Of this total, significant resources were to be invested in police reforms.

The GJLOS Reform Program identified six key priority areas with respect to the police, namely:

- introducing codes of conduct and establishing independent complaint and oversight mechanisms,
- improving responses to police corruption,
- improving local police service delivery by shifting from reactive to proactive policing;
- enhancing crime reporting procedures as a service to victims.
- providing training in investigation techniques for the Criminal Investigation Division,
- providing better equipment and technical assistance to promote intelligence-led investigations.

6.9 The program was initiated through the STPP, which focused on quick gains. The STPP had two goals: to develop a strategic reform program for ongoing government initiatives and to identify reform priorities to be implemented at a later date under a more comprehensive program. The STPP concentrated on re-equipping and retooling in relation to physical resources and enhancing staff skills and quality. According to both internal and independent reviewers, the STPP achieved several key goals. Specifically, several hundred police officers received human rights, anticorruption, and customer service training; 50 police officers were trained in dealing with domestic violence; and 28 highway patrol vehicles were purchased (Michuki 2008).

6.10 The reviewers also identified several of the program’s shortcomings (GJLOS Reform Program 2005). First, while the government showed leadership and ownership of the program, its inability or unwillingness to incorporate inputs from development partners and nonstate actors reduced the program’s effectiveness and its capacity to insulate itself from external political interference. Second, links with other public sector reforms were weak, resulting in the GJLOS Reform Program being perceived by a broad range of justice sector partners as a Department of Justice project rather than as a sector-

wide intervention. Third, a significant portion of STPP activities were directed at Nairobi, and rollout of the program to other districts was limited. Fourth, poor planning and sequencing of activities to ensure that financing arrangements were in place caused delays. Fifth, the institutions involved did not have a clear understanding of the implementation process, causing delays in later implementation of more difficult reform objectives. Finally, the lack of strong program management hampered the STTP.

6.11 The STPP's greatest weakness, however, was built into its design and rationale: by pursuing a program of short-term quick fixes, it postponed true and lasting reform. Moreover, the GJLOS Reform Program set such high standards for reform, raising the stakes for public servants who would forthwith "be judged on their openness and accountability to the public" and would be expected to "live and breathe" program values in their daily work, that critics argued that the program did not, and could not, match ambition to execution (GJLOS Reform Program 2005, p. 24).

6.12 The second phase of the GJLOS Reform Program, the MTS, establishes a strategy for reform by building on the strengths of the STPP, giving precedence to effectiveness over efficiency. The MTS prioritizes four key areas for reform: (a) drafting responsive policy and passing and implementing enforceable law and regulations, (b) enhancing the effectiveness of program institutions, (c) promoting informed participation by citizens and CSOs, (d) achieving more effective management and coordination of the GJLOS Reform Program.

6.13 A midterm review of the MTS assessed the program in terms of its relevance, efficiency, effectiveness, impact, and sustainability (Government of Kenya and Ministry of Justice and Constitutional Affairs 2007). The reviewers affirmed the program's relevance, particularly the need to rationalize and modernize legal policy and to restore public confidence in law and order institutions. The reviewers also approved of the program's scope, determining that the sector-wide approach and the institutional capacity-building initiatives seemed to be effective in improving service delivery and the quality of service. They did, however, criticize the program on several procedural considerations, such as the lack of a prefeasibility study to link the program's objectives to specific problems and the way in which progress would be reported. In terms of program design, the reviewers faulted the lack of decentralization outside Nairobi and emphasized the need to continually invigorate management structures.

6.14 Under the MTS, the reforms focused largely on infrastructure, a continuation of the STPP's quick gains strategy. This focus is embedded in the program's design: initial budget allocations earmarked 56 percent of the funds for infrastructure development, mainly the construction or rehabilitation of housing units and the purchase of security equipment for the Kenya Police and the Administration Police (GJLOS 2007b). Of the K Sh 35 billion provided by the government, K Sh 2 billion had been earmarked for housing and K Sh 30 billion for recurring expenses such as salaries. Of the remaining K Sh 3 billion, a significant portion was spent on security equipment and an anticorruption campaign and not, for example, on interventions to promote community police relations (GJLOS Reform Program 2005). Thus while institutions are experiencing "significant improvement in staff morale which has been boosted through improvements in working environments, provision of office equipment, and training," and police performance has

improved, fundamental law and order challenges have not been resolved (Government of Kenya and Ministry of Justice and Constitutional Affairs 2007, p. 24).

6.15 Other commentators are much more critical of the program, questioning its continuation even after it became apparent that the political will to initiate needed reforms was absent:

Of these bilateral programs the most absurd is the Governance, Justice Law and Order Sector Reform Program whose theme was improved governance. This was a well intentioned program at its inception but even when it became clear that the central ingredient of political will to reform was absent - after non action on corruption; the sending of masked armed police led by strange mercenaries with official police accreditation to attack a private media station; and increased negative and hard-line rhetoric and action by the Minister of Justice against independent voices and critics - the program continued as normal focusing on modernization rather than reform. The current crisis in Kenya is a crisis of governance ridiculing the program and its donors (Kiai 2009, p. 8).

6.16 Despite a less than glowing review, the GJLOS Reform Program, through the MTS, is playing a leading role in the development of a national policy framework to prepare for the establishment of a formal GJLOS. The creation of this framework coincides with the completion of the Economic Recovery Strategy in 2007 and the development of the new guiding national strategy, Kenya Vision 2030 (National Economic and Social Council of Kenya 2007). Kenya Vision 2030 expands on the good governance ideals of the Economic Recovery Strategy by elevating those ideals to democratic governance (GJLOS Reform Program 2005).

6.17 The policy framework of the GJLOS Reform Program is likely to have a number of important consequences for police reform, namely:

- The establishment of a formal GJLOS, as opposed to the current fragmented arrangement whereby individual ministries are responsible for prisons and for justice, will mean that the sector will budget collectively as opposed to ministries receiving individual budgets. Thus by structuring the GJLOS as a single sector, a system-wide approach to criminal justice reform, including police reform, is budgeted for within the medium-term expenditure framework, ensuring appropriate and sustained fiscal support (GJLOS Reform Program 2005).
- The policy framework of the GJLOS Reform Program is focused on the demand side, that is, on citizens' issues. This is reflected in the specific objective to establish principles, key priorities, and programs in the areas of good governance, anticorruption, and safety and security, first from a demand-led perspective and then from the supply side (GJLOS Reform Program 2007a).
- The accountability theme remains high on the agenda. In pursuit of the objective of good governance, the policy framework focuses on "increasing accountability on the one hand and participation on the other; ensuring effective representation, raising issues around the nature of popular participation, the importance of information and the role of oversight institutions, including civil society" (GJLOS Reform Program 2007a, p. 14).
- The opportunity for policy development in the area of police accountability is identified within the broader framework of promoting democratic policing

“supported by Government through appropriate fiscal, policy and legislative measures that place police agencies under civilian authority with regular review and meaningful oversight by the legislature, the executive, judiciary and local authorities, while a dedicated Independent Oversight body to investigate complaints against the police is established” (GJLOS Reform Program 2007a, p. 29).

6.18 Following the disputed December 2007 elections, the GJLOS Reform Program, along with other programs, was halted for several months, but has since resumed. Understandably, at that time the government had to focus on dealing with those internally displaced and securing areas of conflict. However, an assessment of the GJLOS Reform Program conducted by the GJLOS Program Coordination Office in the aftermath of the election crisis identified opportunities for reform that had not been fully taken advantage of.

C. The Police Strategic Plan 2003–7

6.19 The Police Strategic Plan, prepared under the auspices of the GJLOS Reform Program, is billed as the cornerstone of a five-year police reform program. It establishes a framework for police reform and establishes reduced fear of crime and increased security as indicators against which performance can be judged. The plan begins by acknowledging the weakness of the KPF including low morale, insufficient resources, and endemic corruption. It admits to the public’s lack of faith in the police and acknowledges the allegations of brutality, criminality, and human rights abuses leveled against the police. The plan concedes that public perceptions are justified and result in low levels of crime reporting (Kenya Police Force 2003).

6.20 The progress reports for the GJLOS Reform Program report on progress on the strategic plan. Critics argue, however, that the plan prioritizes the KPF’s organizational needs rather than the more pressing accountability and oversight objectives (CHRI and KHRC 2006).

6.21 The strategic plan acknowledges the importance of partnership with the community and recognizes that an infusion of funds alone will not reform the police. Genuine reform would require substantial and sustainable institutional reforms, such as establishing transparent performance management systems, setting performance standards, establishing a police service commission, and creating an independent oversight body to monitor performance and investigate misconduct. The plan’s key challenge in this area is, therefore, to adopt an operational strategy that prioritizes those concerns that the police actually have the power to implement. While the plan reflects the government’s reform aspirations, many of its objectives, such as the establishment of a police service commission and an independent complaints authority, are beyond the scope of the police organization. Equally important, the plan does not provide a budget for achieving these goals. These are key aspects that should be considered when drafting the new strategic plan for 2009–14 that is currently being developed.

D. Task Force on Police Reform

6.22 In 2003, shortly after he was sworn in as president, Kibaki set up the Task Force on Police Reform to spearhead reforms that would include the oversight and accountability challenges. The terms of reference of the task force were to:

- examine the existing policy and administrative, operational, institutional, and legislative structures and recommend appropriate changes that would promote police efficiency and effectiveness in the short, medium, and long term;
- examine existing competencies, skills, knowledge, and attitudes of senior police management and undertake an urgent review of the suitability of the incumbents;
- evaluate human resource management and development policies in relation to standards and practices pertaining to recruitment, deployment, training, career progression, and exit and recommend changes that would promote morale, meritocracy, and professionalism;
- evaluate the logistical and technological capacity of the police and recommend changes that would sustain modern crime prevention and rapid response mechanisms;
- review the state of preparedness of the police to combat insecurity and other forms of transnational security challenges such as terrorism, drug trafficking, industrial espionage, cyber crime, and economic crime;
- develop measures to promote relationships between the public and the police in relation to crime management, including combating and preventing crime;
- review the budgetary and funding arrangements for policing and quantify any financial implications arising from the task force's recommendations;
- design appropriate evaluation tools to measure progress;
- develop an implementation matrix that clearly highlights areas that require immediate redress and funding.

6.23 The task force consisted of representatives from relevant ministries, the police leadership, civil society, and the KNCHR. Among the reforms it recommended were the adoption of a public relations campaign, aimed at both the police and the public, to establish communication channels between them and negate each one's negative perception of the other. The task force also proposed organizational reforms (enhancing recruitment approaches, providing training and career development policies, and reducing the number of police engaged in noncore duties), institutional restructuring (reviewing the Force Standing Orders and establishing an independent police service commission), and developing corresponding legal and policy frameworks (improving parliamentary oversight and implementing community-based policing) (interview with Saferworld officials, April 18, 2008).

6.24 While there are obvious similarities between the recommendations of the task force and the GJLOS Reform Program, their activities are not directly linked, even though some high-ranking officials were involved in both the task force and the program. In addition, just as with the GJLOS Reform Program, the task force focused on the resource and technological improvements necessary to develop a modern police without paying sufficient attention to oversight and accountability concerns (KNCHR 2008c). Even though the task force has not convened for several months, it is still recognized as a

potentially important platform that could facilitate accountability and oversight discussions.

E. Community Policing

6.25 Community policing is an important component of the reform strategy for both the KPF and the Administration Police. It carries with it both the promise of a more responsive and a more accountable police force, but is not without its challenges, one of which is that the concept is open to varying interpretations depending on the particular interests and issues at stake. The ambiguity of the term community policing becomes even more contested in a situation where the definitions of what constitutes crime are contested, the police themselves are often seen as significant perpetrators of crimes, and the concept of community is in dispute (Ruteere and Pommerolle 2003).

6.26 Amnesty International defines community policing as “a collaborative effort between the police and the community that identifies problems of crime and disorder and involves all elements of the community in the search for a solution to these problems” (Osse 2006, p. 95). It is based on the assumption that the police alone cannot control crime, but require the active support of the community to prevent and detect crime, to reduce the fear of crime, and to improve relations between the community and the police. Achieving these goals entails mobilizing communities, adopting a problem solving approach, and transforming the police force into a more operationally independent and flexible entity at the local level that develops close partnerships with stakeholders (Osse 2006). Often, however, the concept of community policing is used inaccurately, for example, in many cases it is seen as any practically any contact with any member of the public, a significant dilution of its meaning and intent (Osse 2006).

6.27 Saferworld (2008, p. 2) defines its model of community policing as community-based policing. This is “an approach to policing that brings together the police, civil society and local communities to develop local solutions to local safety and security concerns. This helps to improve community safety, reduce crime and the fear of crime, enhance access to justice and create more peaceful communities. CBP [community-based policing], whilst a policing style, is also an attitude of mind, both for the police and for the public. It involves a profound shift in police and community thinking about policing.”

According to the KPF (2008), community policing seeks to promote the following:²⁰

- creating understanding between the police and the community about the roles of both in crime prevention;
- supplementing police patrols through the use of private guards and neighborhood watch groups;
- enhancing KPF personnel and community members through education and capacity building to enable constructive participation in dealing with crime;
- setting up community policing victim support centers;
- training response units;
- improving street lighting;

²⁰ <http://www.kenyapolice.go.ke/community%20policing.asp#what>, accessed April 14, 2008.

- evaluating community policing programs;
- paying special attention to vulnerable groups, such as women and children, who are the most likely to become victims;
- sharing of responsibility, decision making, and sustained commitment with regard to safety and security needs by both the police and the community;
- enhancing the accountability of the police to the community they serve;
- resolving conflicts between and within communities in a manner that enhances peace and stability;
- basing problem solving activities on a consultative approach that constantly seeks to be responsive to identified community needs;
- having all members of the KPF participate in community policing and problem solving initiatives.
- ensuring that community policing informs, guides, and sustains all policing activities.

6.28 While the KPF recognizes the independence and shared responsibility of the police and the community in ensuring a safe and secure environment for all citizens, the absence of a single policy on community policing has led to the establishment of different models of community policing.

i. Kibera and Isiolo Community-Based Policing Project

6.29 The NGOs Saferworld and PeaceNet have been supporting the implementation of community policing since 2003.²¹ Their aim is to improve relations between the community and the police and to enable them to work together to find solutions to security concerns. Under their community-based policing model, communities in one village in Kibera, a large urban slum in Nairobi, and Isiolo, a rural area, are actively involved in identifying problems and in monitoring progress and providing feedback. These pilot projects were launched at the government's request and are implemented through the Office of the President. The pilots focus on policy development, transformation of the pilot sites into model sites, and capacity building (Saferworld 2008). Both pilots concentrate on providing training in and increasing awareness of community-based policing and providing support for practical projects, for example, providing drop boxes where citizens can confidentially pass information on to the police, building gated fences around certain residential areas, running campaigns on such issues such as the dangers of drug use, and erecting street lights. (Saferworld 2008).

6.30 The pilot projects have recorded significant successes, with crime rates down 40 percent and schools and businesses opening up again, although the accuracy of these

²¹ Saferworld is an independent organization whose aim is to prevent armed violence and create safer communities in which people can lead peaceful and rewarding lives. One of its core activities is to work toward integrated security sector reform and access to justice strategies that can enhance safety and security for local communities. The organization has programs in Africa, Europe, and South Asia. The Peace and Development Network (known as PeaceNet) is a national network of NGOs, community-based organizations, faith-based organizations, and individuals working in the areas of peace building, conflict management, and security sector development in Kenya. The network's national strategy focuses on strengthening government-civil society partnership institutions and enhancing civil society's capacity for effective participation in the development of Kenya's security sector.

figures is questionable given the absence of independent verification (KNCHR 2008c). However, the project has not expanded beyond the pilot sites. Saferworld attributes the challenges to expansion and development of community policing to the politicization of policing actions and the ongoing major obstacles to police reform identified earlier in this paper (Saferworld 2008). Specifically, Saferworld points to excessive and unpredictable staff rotation and resource limitations, along with the need for capacity building, particularly in rural areas. Other shortcomings include a policy vacuum, resulting in a proliferation of models that do not always adhere to the principles of community-based policing, coordination and procedural challenges within the criminal justice system, and lack of oversight and accountability (Saferworld 2008).

6.31 In addition to supporting the pilots, Saferworld and PeaceNet also participated in developing the national community policing policy and in various training interventions. They provided training in community-based policing to the Community Policing Unit of the KPF, training in data management to the Department of Planning and Training of the KPF, and advice on media and communication strategy to the Administration Police. The two NGOs also developed a curriculum for training in community-based policing with the KPF Training College, the Institute of Administration, and the Administration Police Training College. The training manual includes a section on human rights and emphasizes that changes in attitude and organizational culture are needed. A train the trainer program was developed and core training teams were established that consist of one KPF officer, one Administration Police officer, and one member of the public in each of the eight provinces responsible for coordinating training (Saferworld 2008).

ii. Nairobi Central Business District and Kangemi Community Policing Projects

6.32 The Kenya Human Rights Commission, an NGO, established its Community Policing Initiative in Kangemi, a slum in west Nairobi. This initiative has adopted the neighborhood watch model. Because of conflict with police about tenant rights, this neighborhood has always tried to keep the police out. The committee set up through the initiative receives reports about crime and relays these to the police, taking on a monitoring and liaison role with the police (Ruteere and Pommerolle 2003). The Nairobi Central Business District Association community policing project, set up by the business district association, the KPF, the Administration Police, and the Nairobi City Council, enjoys a good relationship with the police based largely on the participants' shared objectives and the resources offered by the association (Ruteere and M. Pommerolle 2003).

6.33 In assessing its community policing, the Kenya Human Rights Commission observed that while the public seems interested in participating in the program, a high level of distrust and suspicion still exists between the public and the police that complicates the smooth running of the initiative. The public and the police also appear to have a different understanding of the program's purpose, whereby some members of the public had essentially been pursuing vigilante justice and not community-oriented policing.

6.34 In 2003, two independent researchers evaluated the success of these community policing initiatives (Ruteere and Pommerolle 2003). According to the authors (p. 59), the

Nairobi Central Business District and Kangemi Community Policing projects raised questions as to whether community policing as currently implemented in Kenya is not just a “reproduction of the undemocratic order that defines the wider Kenyan society.” While the Nairobi project has reduced crime, this has been at the expense of hawkers and people living on the street. It has also exacerbated problems of bribery and extortion for corner businesses, street traders, and street children, in that “the community police initiative has assumed the nature of an extortion racket operated by the police” (Ruteere and Pommerolle 2003, p. 600). The authors further note that the Kangemi community policing project has failed to address the underlying causes for mistrust between community and police. The community continues to be suspicious and continue with its own style of community policing, relying on the police only for backup. While community policing has the potential to alter the culture of the police, it is unlikely to succeed in its democratic goals if the wider problems of clientism, corruption, and coercion (where the basic interaction between the community and police is one of confrontation and lack of accountability) are ignored (Ruteere and Pommerolle 2003).

iii. Policing by Vigilantes

6.35 Often termed vigilante because they operate outside any relationship with the police, vigilante groups are nevertheless important to understand, because they are a significant feature of the community policing landscape. Vigilante community policing enjoys a complex relationship with the state and the law. Some groups have delivered significant safety and security benefits, while others (and often the same ones depending on researchers’ perceptions) are seen as perpetuating serious abuses of human rights.

6.36 Heald (2007) identifies the Sungusungu of the Kuria District in southwestern Kenya as among the most successful exponents of community policing, having developed independently of the government and in opposition to the police (largely as a result of distrust in the police). In contrast, the Commonwealth Human Rights Initiative views the same group less favorably because of their role in illegitimate trials and the punishment of suspects (CHRI and KHRC 2006). Another vigilante group is the Sabaot Land Forces, an armed group founded in 2005 to resist the government’s eviction of squatters in the Chebyuk area of Mount Elgon. According to Human Rights Watch, Sabaot militia have killed more than 600 people since 2006 and the local population has been terrorized through assaults and the seizure and destruction of property (Human Rights Watch 2008b). Meanwhile the heightened instability has led to increased deployment of security forces in the area that now stand accused of committing atrocities against the population (KNCHR 2008a).

iv. Draft Community Policing Policy

6.37 Saferworld (2008) cites the absence of a single community policing policy as the reason for the proliferation of a number of interventions that have not always adhered to the principles of community policing. An important output of the GJLOS Reform Program and the Task Force on Police Reform has been a draft policy on community

policing, which seeks to address this challenge.²² It defines community policing as when “security agencies work in a proactive and accountable partnership with the community. The community hereby participates in its own policing and the two work together in mobilizing resources to promote long-term safety and support security initiatives rather than the security agencies alone reacting in an ad hoc manner and short-term basis to incidents as they occur” (National Task Force on Police Reforms 2007, p. 2). The draft policy provides a framework for communication, partnership, awareness creation, resource mobilization, monitoring, and accountability and notes that accountability is one of the reasons why community policing is important. The strategy is to be achieved by building trust between the police and the community and creating confidence. The two partners share relevant information and the public becomes an active partner in promoting public safety and security.

6.38 The policy outlines a number of challenges for community policing, including weak information and data systems, distrust, use of community policing to promote other agendas, lack of awareness, and inadequate support. The policy proposes a series of actions and an institutional framework that would establish community police committees by block, village, sub location and location police precinct, and divisional levels.

F. Kenya National Commission on Human Rights

6.39 The KNCHR is a statutory body that was established in 2002 by an act of Parliament and began operations in July 2003. Its mandate is to enhance the promotion and protection of human rights. It monitors government institutions, investigates alleged human rights violations, and provides redress to those whose rights have been violated. It operates several programs, two of which are directly relevant to policing. The first is the Complaints and Investigations Program, which investigates complaints against the police relating to discrimination, misuse of force, and denial of rights. The other, the Campaigns and Advocacy Program, focuses on the reform of law enforcement institutions. One of the missions of this program is to reform prisons and other places of detention and, through this, the police service.²³

6.40 In pursuing its objectives, the KNCHR has developed a score card of police reform to monitor policing at the police station level. Since its inception, the commission has conducted about 100 monitoring visits, during which commission representatives interview police officials and inmates (Omar 2007).

6.41 The KNCHR has also been involved in various types of policing oversight initiatives. It commissioned billboards that were to be installed at police stations to display policing duties and the rights of citizens, but to date the police have not permitted their display. In 2005, the KNCHR produced a video on police abuse and the rights of citizens under the law that has been aired on television as part of a community awareness campaign. To create demand for police reform, the commission has held community

²² The work was completed in 2004. In 2005 the president launched a standard operating procedure for community policing. This met with some criticism, because it was launched before the adoption of a national policy on community policing.

²³ <http://www.knchr.org/>, accessed April 18, 2008.

meetings to sensitize community members to the need for such reform (Omar 2007). In September 2007, the KNCHR conducted the first phase of a public inquiry on national security and national integration to discuss the state of insecurity in the country and formulate conflict prevention and crime prevention strategies (KNCHR 2008c).

6.42 Reporting on its work on policing, the KNCHR (2007) notes that during 2006–7 it conducted several short training courses on human rights for, and at the request of, KPF police officers and Administration Police officers. The KNCHR conducted visits to at least 23 police stations, posts, and patrol bases to investigate complaints. According to the commission, these visits helped to monitor police excesses toward suspects held in custody and occasionally resulted in the release of people who had been confined illegally. The commission has continued to advocate for the establishment of an oversight mechanism for the police and in June 2007 facilitated a regional conference of national institutions and CSOs to discuss policing, with a focus on oversight (KNCHR 2007).

6.43 Since the disputed December 2007 elections and the violence that erupted in their wake, the KNCHR has been undertaking extensive investigation and documentation of the postelection violence, including analyzing the role of police officers (KNCHR 2008b). An upcoming report on police reform will provide the public with a deeper understanding of police reform. An early draft of the report (KNCHR 2008c) notes that resistance to change among senior police officers has prevented full achievement of police reforms. It attributes the continuing ineffectiveness of the police in reducing crime levels to poor systems of internal and external accountability. On a more positive note, the report acknowledges a reduction in torture and police brutality and an improvement in the police's interaction with the general public.

6.44 While the KNCHR has had some impressive successes since its creation, it continues to be mired in inefficiency. The commission has little control over the police beyond undertaking investigations, making recommendations, and ordering remedial action for people whose rights have been violated. It has limited financial resources and an inadequate number of staff to carry out its mission: in its 2005 annual report, the KNCHR reported a 90 percent staff deficit and a budgetary deficit of K Sh 91 million (KNCHR 2005).

6.45 The KNCHR has a clear mandate to promote police oversight and has undertaken this task with zeal and dedication. This has brought it into conflict with the police and often strained relations between the two organizations. Consequently, several opportunities for collaboration have slipped away, to the detriment of both organizations. The absence of police representation (because of their refusal to attend) from the Public Enquiry on National Security and National Integration, for example, prevented them from participating in an important event that could benefit both their community policing and crime prevention objectives. Under its current mandate, the KNCHR will continue to be a key player in the campaign against police excesses and for effective oversight. Among the issues identified by the KNCHR to improve its performance in relation to police oversight are integrating the oversight functions found in various statutes and consolidating them within the commission's mandate (as one possible option for strengthening police oversight); formulating an interagency protocol to guide the relationship between various oversight bodies; and undertaking mediation between the

KNCHR and the police, perhaps facilitated by the United Nations, to break the standoff between the two institutions (KNCHR 2008c).

G. The World Bank's Justice for the Poor Program

6.46 The World Bank's Justice for the Poor program is a research program that seeks to develop an empirical understanding of the demand side of community justice systems to influence justice reform efforts at the local level.²⁴ The Bank believes that local approaches are more likely to succeed at breaking the cycle of crime, inequality, and violence, and at a lower cost, than their formal counterparts.

6.47 The World Bank program aims to (a) address the immediate justice-related needs of the poor while recognizing that developing more equitable formal legal systems may be a multigenerational endeavor; (b) enhance the effectiveness of other development efforts by helping them address those aspects of their work pertaining to justice and conflict management; and (c) bring about incremental systemic change to justice sector institutions and systems of governance by supporting demand-side pressures for reform.

6.48 To achieve these aims, the Justice for the Poor program has the following objectives: (a) build a solid, empirically-founded knowledge base of the dynamics of local-level decision making and dispute resolution processes and of inequality traps; (b) enhance local-level capacity to conduct policy research and undertake evidence-based policy reform; (c) design, implement, and evaluate innovative, pro-poor justice initiatives in the form of pilot programs and include such activities as part of broader program mainstreaming; (d) enhance local ownership of and citizen engagement in the reform process; and (e) contribute to global dialogue on pro-poor justice issues.

6.49 The first phase of the program entails field-based research on how poor people defend their interests through formal and informal justice systems. These research findings will be used to inform and develop operational activities and provide baseline data for ongoing monitoring and evaluation during the second phase of the program.

6.50 The program was launched among the pastoral communities of northern, northeastern, and western Kenya and in Nyanza Province. Under its broad umbrella, the program developed three subprograms. The first is the Assessment of Access to Justice among the Pastoralist Communities in the Arid and Semi-Arid Lands of Kenya, which includes a study of grievances triggered by natural and biological resources and by development projects or funds. The second is the Assessment of Women's Access to Land and Labor Rights to identify local principles of fairness and cultural values to inform the design of community outreach campaigns on women's rights. Finally, the Kenya Judicial Sector Assessment will provide a better understanding of how local magistrates work so as to advise policy makers working on judicial reforms.

6.51 A World Bank country social analysis in Kenya recognized the potential for a more diversified approach to security governance. The report emphasized the problems of

²⁴This section is based on World Bank (2007).

corruption and inefficiency of institutions and suggested that, where appropriate, justice institutions should be based on the strength of indigenous features.

6.52 The Justice for the Poor program is compiling its research findings and a set of general recommendations for justice and development practitioners.

H. Assessment of Reforms to Date

6.53 An analysis of the reforms undertaken in Kenya to date reveals that its experience is similar to that of other countries. As the case of South Africa indicated, having adequate resources to provide long-term human, financial, and technical support to police reform is important, but at the same time, the need for long-term resources must be aligned with a clear vision of how the resources are to be used. In the case of Kenya, the GJLOS Reform Program has made significant investments in police reform, but as its critics note, while this may have improved the operational efficiency of the police, in certain key areas, especially in relation to the escalation of violence, overall performance may have declined markedly.

6.54 Moreover, high rates of crime, especially of violent contact crimes, can, as in South Africa, significantly erode public trust and confidence in the police. When citizens perceive that such escalation in crime coincides with declining integrity and pervasive corruption among the police, they may prefer self-help or security provided by vigilantes. Given the presence of more than 1.5 million unemployed youth in Kenya, police reform efforts must be implemented jointly with wider policy measures to reduce poverty and unemployment and combat other forms of deprivation and exclusion. The persistent underperformance of the police in all public confidence surveys in Kenya suggests that the reforms are not influencing public attitudes.

6.55 The mismatch between police performance and public expectations suggests the existence of reform gaps that need to be plugged. What most of the reform measures undertaken to date have lacked is a coherently articulated vision of a reformed, democratically accountable police force. While policy documents no doubt recognize the vital role the police can play in maintaining law and order, whether the implementers of the reform ever recognized the goals articulated in the policy documents as critical before the precipitous decline into postelection violence is an open question. The point is that genuine police reform has not been on the agenda since police reforms begun in earnest in 2003.

I. Policing Oversight

6.56 Good governance of the security and justice sector has three basic components: capable and responsive institutions and a system of layered oversight, governing principles and norms, and a comprehensive legal framework (OECD 2007). Experts usually regard a layered system of policing oversight comprising internal and external oversight mechanisms as more effective than either in the absence of the other in its ability to speak to different audiences and in having the various layers complement each

other's work. Generally, this layering happens at three levels: government control, social or civilian control, and internal control (Stone and Ward 2000). Each of these spheres of oversight is important and together they can provide for a comprehensive system of accountability. The absence of an internal system reduces the ability of the police force to take ownership of managing errant behavior by its members, an external system can provide credible checks and balances to the internal system, and social or civilian control can raise public awareness and communicate actions and the outcomes of investigations to the public. While the broad framework for a police oversight system exists, each sphere of control is extremely weak.

v. Internal Oversight

6.57 The KPF has an internal complaints system in place. Two mechanisms of internal oversight are in place. First, complaints procedures are set out in the Force Standing Orders and the Police Manual, and when necessary, a court of inquiry may be established. Second, disciplinary procedures remain the official mechanism for holding police officers to account. The code of conduct and offences are contained in the Force Standing Orders. Police officers consider disciplinary complaints against fellow officers through established disciplinary mechanisms and a finding of guilt can result in removal from the force, but is not mandatory. No procedure exists for evaluating decisions to initiate proceedings, leaving junior officers vulnerable to victimization by senior officers.

6.58 Critics have argued that the KPF internal oversight mechanisms are extremely weak and that police officers are rarely prosecuted for excessive use of force. Only 5 percent of officers who faced capital offences in 2005 were punished, while those who committed other forms of human rights violations were either transferred to other stations or retired (Oscar Foundation Free Legal Aid Clinic-Kenya 2006). In response to allegations of police brutality and killings following the contested December 2007 elections, as of February 4, 2008, the police were investigating 142 cases. At that time, only two officers had been charged with excessive force (Human Rights Watch 2008a).

vi. External Oversight

6.59 External oversight mechanisms include Parliament, external bodies such as the KNCHR, the National Anti-Corruption Campaign Steering Committee, the Public Service Commission, the judiciary, NGOs, and the media. While all these organizations provide for various aspects of civilian oversight, none of them has a dedicated police focus. Furthermore, they all are relatively weak in the area of policing oversight.

6.60 Parliament has the power to question unlawful activity, address systemic faults, demand an account of performance, and review budgets and annual reports. It does so through the use of both parliamentary questions and the committee system. The Departmental Committee on Administration, National Security, and Local Authorities and the Departmental Committee on Justice and Legal Affairs have the power to summon people to appear before them to give evidence and account for their actions. The Public Accounts Committee scrutinizes budget allocations and annual reports. However, Parliament's overall oversight function is weak. More specifically, Parliament has not developed any oversight capacity over policing, and is therefore somewhat ineffectual in

this regard (CHRI and KHRC 2006). The judiciary also has an important oversight role in its ability to dismiss cases if due process has not been followed or to issue opinions on unacceptable policing practices. The readmission of police-generated confessions in 2007 is a step back in the fight against police torture and is likely to add further challenges to the role of the judiciary (Republic of Kenya 2007). Like the judiciary, government prosecutors can scrutinize police investigations and can decline evidence or request additional information, but the recommendations of the Attorney General's Office are often ignored, undermining the whole system.

6.61 Civil claims can be made against the police, but this method of oversight is hampered by access issues and is usually ineffective. Instead, CSOs play an important oversight role in highlighting abuses and advocating for change. Often their advocacy focuses on specific issues, such as torture, access to justice, or human rights causes. Civil society has been a critical stakeholder in the ongoing police reforms, with CSOs participating in the GJLOS Reform Program and in the Task Force on Police Reform, but this participation has not been without its challenges (Ornemark, Nyamweya, and Mwai 2006).²⁵ Moreover, at the local level, community members could potentially identify policing priorities and hold police to account in meeting these needs, but the current imbalance in the relationship between local communities and the police severely limits opportunities for a meaningful exercise of accountability at this level.

6.62 On September 4, 2008, the Police Oversight Board was established by notice in the Kenya Gazette (Notice 8144). The 10-member board is tasked with investigating complaints against both the KPF and the Administration Police. Among other things, the board is to:

- receive and evaluate all complaints against the police from the public;
- receive and evaluate internal complaints from officers against their colleagues and prepare recommendations to the commissioner and/or commandant for action;
- develop national action plans to promote, monitor, and evaluate effective implementation of discipline in the force;
- make proposals and recommendations for improving the police service and its performance and welfare.

J. Challenges to Police Reform

6.63 This section identifies various problems and challenges that have affected the implementation of Police reforms in Kenya.

vii. Social or Civilian Oversight

6.64 The progress of the GJLOS Reform Program in relation to police reform shows that the objective of restoring public confidence in law and order institutions has not been

²⁵ According to an observer, nonstate actors have not been spared the destructive consequences of ethnic rivalries. In addition, the autonomy of civil society from the state may be more apparent than real, as the state still retains some control over resources. Many CSOs have therefore been compromised by the government, severely limiting their effectiveness and credibility (Ornemark, Nyamweya, and Mwai 2006).

met. This is confirmed in the MTS review, which voices frustration at the continued focus on infrastructure despite the contrary recommendations of the STPP. According to the MTS review, this indicates the disrepair of justice system institutions and the ongoing difficulty in undertaking genuine reform. The MTS review clearly notes the continued need to shift resources to other key results areas if the program is to engage in what it terms as substantial reforms (GJLOS 2007b).

6.65 The MTS midterm review (Government of Kenya and Ministry of Justice and Constitutional Affairs 2007) echoes these findings. The review argues that context should continue to inform program implementation, particularly the need for the program to move beyond supply-side objectives to more substantive reform initiatives. According to the review, the GJLOS Reform Program did not significantly affect sector reforms during the STPP phase, focusing instead on capacity-building activities, and is thus unlikely to produce any different result in the short term. Short-term pressures may lead to an immediate focus on capacity building, but experience has shown that without addressing governance and accountability issues, such advances are often not sustainable. In addition, state building cannot take place if the oversight capacity of civil society, Parliament, the judiciary, and the executive is not addressed (OECD 2007).

6.66 All the reform projects have identified the need for promoting accountability and oversight, but since the violence following the disputed December 2007 elections, pressure for delivery in this area has increased. Given the current climate, and without significant steps to improve partnership and accountability, the public is likely to view the continuation of supply-side reforms with suspicion and this carries the danger of a negative backlash that can undermine all reform efforts.²⁶

viii. Limited Success in Building Trust and Partnerships

6.67 Trust is a critical factor in the establishment of a community policing model that rests on the principles of partnership. Building trust in a police service, particularly after many years of continuing abuses of power and poor service, is acknowledged to be a difficult and complex task, but the existence of external civilian oversight has been found to be one of the best ways to achieve legitimacy in the eyes of the public (Perez 2002).

6.68 Local oversight mechanisms are acknowledged to be particularly important for institutions such as the police, as they encourage accountability to the communities they serve (OECD 2007). While community policing models recognize the accountability role of community policing, the implementation of community policing has been weak.²⁷ According to Van der Spuy and Rontsch (2007, p. 16), the primary role of the community in community policing in the view of the KPF is to “supplement police patrols through private guards and neighborhood watch schemes.” A secondary role is to work with the police “and to be the eyes and ears of the police by becoming involved in informal

²⁶ Some critics believe that the GJLOS Reform Program has only succeeded in better equipping the police to crackdown on people and suppress legitimate dissent more effectively (conversation with civil society member, Nairobi, February 18, 2008).

²⁷ The notion of accountability introduces a tension into community policing between the need to develop partnerships and the need to hold the police to account as evidenced in South Africa. This tension can be managed effectively, but requires clear policy and legislative guidelines.

community surveillance and by providing the police with criminal intelligence.” The Administrative Police’s view of community policing is about creating partnerships to “share information about training content and delivery, and to co-ordinate its activities.”

6.69 According to Ruteere and Pommerolle (2003), the KPF interpretation of community policing is based more on hierarchical control and law and order than on an ethos of trust, cooperation, and accountability. The Kenya Human Rights Commission finds that community policing cannot achieve much unless the police change their approach and view communities not as villains and informers but citizens interested in safety (Ouma 2007).

6.70 A code of conduct for police and community members and the establishment of public complaints and feedback mechanisms, as proposed in the draft policy, are intended to increase accountability (Task Force on Police Reform 2007). However, the focus on accountability in the draft community policing policy is limited. It is put into action under the banner of monitoring and evaluation: “The implementation of priorities will be monitored and performance against meeting these priorities evaluated both internally and externally with the latter assessing the extent to which the overall objectives of community policing are met” (Task Force on Police Reform 2007, p. 14). Without a strong accountability foundation and trust-building mechanisms, a fruitful partnership for community policing is highly unlikely to develop, which is an almost certain outcome given the climate of fear and mistrust that arose following the postelection violence.

ix. Limited Intervention Efforts Outside Nairobi

6.71 The government recognizes the need to expand the GJLOS Reform Program beyond Nairobi (Government of Kenya and Ministry of Justice and Constitutional Affairs 2007). Stakeholders outside the capital currently have limited opportunities to improve and engage in issues pertaining to citizen oversight within the context of the reform efforts being considered. In addition, different dynamics outside the capital may open new possibilities for the reform project.

6.72 Reform efforts, particularly those focusing on promoting accountability and developing trust between communities and the police, should be undertaken in those areas most affected by the postelection violence. These are also the areas that are likely to be the most difficult to access and will require the most complex intervention strategies.

x. Need to Promote Participation by Nonstate Actors in the GJLOS Reform Program

6.73 Nonstate actors have an important role to play in policing oversight and in promoting reform in the justice sector in general, but capacity and access limitations undermine the potential of this resource (Oscar Foundation Free Legal Aid Clinic-Kenya 2006). The importance of participation by nonstate actors in the GJLOS Reform Program is recognized, and a strategic framework to support nonstate actors in and around Kenya’s GJLOS sector has been developed (Ornemark, Nyamweya, and Mwai 2006).

6.74 However, any preexisting political and ethnic tensions within CSOs will probably have been exacerbated following the postelection violence (for an account of schisms in

civil society see Ornemark, Nyamweya, and Mwai 2006). A reconsolidation of civil society around a common vision for police reform is critical to the future of the police reform program and any efforts to achieve significant change. However, beyond CSOs and private sector organizations, nonstate actors should include those providing security (within the law), within communities, including neighborhood watches and nonstate policing interventions.

xi. Need to Define Special Beneficiaries

6.75 The GJLOS Reform Program recognizes the need to define special beneficiaries, such as women, children, the poor, and ethnic minorities, but limited attention has been paid to specific analyses of the needs of such groups and how to accommodate them within the reform's initiatives (Government of Kenya and Ministry of Justice and Constitutional Affairs 2007). Articulation of the specific needs of vulnerable groups and mechanisms to monitor compliance in this regard could add significantly to developing a culture of accountability. Issues such as gender-based violence, equity issues, and trafficking are acknowledged as important entry points for better interventions in oversight (OECD 2007).

xii. Limited Role of Parliamentarians

6.76 The GJLOS Reform program does not pay enough attention to Parliament and local authorities in relation to their status as key governance institutions that are likely to affect the program (Ornemark, Nyamweya, and Mwai 2006). This is a serious omission given the importance of the legislature as one of the pillars of governance and oversight in any system of democratic policing. The elections and the subsequent reconciliation process have ushered in a new government of unity and new parliamentarians. These men and women can have a significant impact on moving relevant policy through the legislature and playing an important policing oversight role.

xiii. Peace Building

6.77 The recent inclusion of peace building in the policy framework for the GJLOS (GJLOS Reform Program 2007a) cannot be seen as addressing a gap. Rather, it should be viewed as an emerging area of the police reform agenda that, following the establishment of a government of national unity, can provide important impetus to police reform.

VII. FRAMEWORK AND ELEMENTS OF REFORM AND OPPORTUNITIES FOR ENGAGEMENT BY DEVELOPMENT PARTNERS

7.1 There is general acknowledgement in Kenya that police reform is necessary and urgent, even while consensus on the exact nature of the reforms continues to be built. Even though reforms have been ongoing for a few years, these have not been clearly articulated and coherently laid out in the country's constitution and laws, something that comparisons with other countries indicate is a prerequisite for success. Many past reforms have lacked both a strong legal and institutional anchor and a focus on

addressing internal structural and management issues within the police force to advance an internal cultural and philosophical shift from an internal hierarchical accountability (of junior to senior officers) to accountability to citizens and oversight institutions. The current reform measures are hobbled by a weak legal framework, a deeply embedded historical legacy of weak accountability, and the absence of a broadly based constituency for police reform that seeks to address internal structural problems within the police force. For police reform to succeed, it needs internal as well as external support. Without leadership of a police organization that is committed to improvement, external calls for reform will rarely penetrate to the daily delivery of police services. However, without external support for reform, even the most committed police leadership will lose the political backing and resources necessary to sustain a successful reform process. The absence of a broadly based constituency for police reforms is evident from the incremental way the reform agenda has been moving over the years. This is in sharp contrast to the Kibaki administration's enthusiasm for and leadership in relation to implementing performance contracts for senior government officials, for which the country was awarded the United Nations' Public Service Award in the category of "Improving Transparency, Accountability, and Responsiveness in the Public Service."

7.2 As noted earlier, public confidence in the police is low. While this has been the situation historically, the poor performance of the security machinery earlier in the year coupled with persistent corruption has no doubt exacerbated the situation. Citizens pay bribes to get out of custody, to avoid arrest, to refrain from being harassed, and even to avoid police violence. Neither the current legal framework nor proposed reforms have succeeded in restoring public confidence. The problem of corruption exists alongside a pervasive culture of secrecy and impunity. The various measures that have been proposed under the GJLOS Reform Program, the Police Strategic Plan, and the Task Force on Police Reform are intended to address the issue of public confidence. Even the government's own assessment of the GJLOS Reform Program has found it falling short of its objectives in this respect. The Police Strategic Plan has attracted withering criticism for not matching intent to action, and the task force was notably unsuccessful. Overall, the reforms have faltered because they focused excessively on improving operational capabilities, paid insufficient attention to internal and external accountability, and were stymied by a lack of political will to push difficult reforms.

A. Measures to Improve Transparency and Accountability

7.3 This paper has emphasized the accountability and oversight gaps in Kenya's policing function. Filling these gaps should be the first goal of police reform. According to Bruce and Neild (2005, p. 22), police activity "must be open to observation and regularly reported to outsiders. This requirement applies to information about the behavior of individual officers as well as to the operations of the institution as a whole, especially whether the police are achieving the results expected in a cost efficient manner." Oversight is ineffective if the overseers have no information on which to base their supervision or sufficient authority to correct wrongdoing.

i. Constitutional and Legal Foundations for Accountability

7.4 **Affirming the Principles of Accountable Policing.** Given the long history of political manipulation of the police service and the legacy of distrust, postelection police reform would profit from clear articulation of the constitutional principles and democratic values that should underpin a modern police force. These principles and values would be the ethical anchor of the reform program. The relevant principles include (a) providing equal protection for contending political groups; (b) arresting all those who promote their political objectives through violence; (c) managing public gatherings and demonstrations in a manner that supports freedom of association and assembly; (d) making a commitment to accountability and transparency; and (e) providing service delivery in a way that ensures safety, justice, and security.

7.5 **Enacting the Provisions of the Draft Constitution.** The provisions of the draft constitution relating to the autonomy and accountability of the police force should be enacted when, as agreed, both the government and the opposition have reviewed the constitution. Specifically, the following measures are necessary (and are in the draft): (a) securing the independence of the police commissioner, (b) creating and insulating the Police Service Commission from political interference and empowering it to recruit and discipline police officers, and (c) obligating the police service to report to Parliament and to local governments on a periodic basis. The provisions protecting the police from political interference need to be prescriptive, not declaratory. The current boilerplate provision on constitutional commissions that merely states that “in the exercise of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority” is insufficient. It needs to specify that politicians cannot interfere with the work of the police as an institution in general and cannot interfere with specific investigations, arrests, and prosecutions.

7.6 **Introducing Complementary Policy Measures to Secure Constitutional Independence.** While a constitutional foundation is necessary, alone it is insufficient to secure the autonomy and independence of the police service. The government must be committed to democracy and to police reform, as it will have to develop laws and policies for the police and will eventually make the budget and resource decisions that will determine whether the police can function. The enactment of constitutional provisions to secure the independence of the police service should occur in tandem with measures to reinforce that independence. However, the independence of police action must be distinguished from judicial independence. What is at stake here is the independence of the police to make policing decisions without political interference. Citing examples of the lack of operational independence, the Commission of Inquiry into Post-Election Violence said: “Instances of inappropriate decision-making due to outside interference and influence were discovered by the Commission. These included instructions from the Commissioner of Police to release arrested prisoners, the failure to continue with and finalize cases of police officers and government employees who were discovered committing offences and the blatant use of the administration police in electioneering activities” (CIPEV 2008, p. 422).

7.7 **Reviewing the Police Act and the Administrative Police Act.** Changes to the constitution will require an overhaul of existing police legislation. One central question is

whether to have a unified police service under a single commissioner, as recommended by the Commission of Inquiry into Post-Election Violence, or whether to have to operationally independent services as proposed by the 2005 draft constitution. Both approaches have their merits. This report does not take a position on this question as both proposals are consistent with the accountability principles underscored throughout the report. Whichever option is chosen, additional reforms will be needed. The Police Strategic Plan has anticipated some of these.

7.8 The most important change is a reorientation that shifts the police attitude from a force culture to a service culture. This will involve both training and organizational change. Training must deemphasize control and focus on protection. Organizationally, the service needs a performance appraisal mechanism that rewards officers who fulfill previously agreed service delivery benchmarks. In other words, the government should review the Police Act to bring it in line with international standards and government obligations as set out by various United Nations conventions, protocols, and codes. The Police Act should create mechanisms for effective external civilian oversight as well as internal disciplinary units. It should also clearly specify the responsibilities of the police in relation to the three branches of government (executive, legislature, and judiciary) for issues such as command and deployment, oversight, and judicial direction, respectively. It should provide for security of tenure of the leader of the police force, which may be partly attained by basing the nomination by the executive branch on wide consultations with regional governors and hearings and confirmations by the national legislature.

ii. Citizen Involvement and Oversight

7.9 Establishing an Independent Complaints Mechanism. The Police Strategic Plan proposes the creation of a police oversight board that would establish a police complaints authority, which would help reduce conflicts between the public and the police (CIPEV 2008). Even though the plan did not propose any measures that would have led to the establishment of such a board or authority, the establishment of the Police Oversight Board on September 4, 2008, is a positive step (Kenya Gazette, Notice 8144, September 4, 2008). Building the board's capacity and enabling the board to function as a credible oversight agent could have significant benefits.

7.10 While the board's capacity and powers have yet to be tested, some concerns have already been raised (Saferworld, African Policing Civilian Oversight Forum, and CHRI 2008). For example: (a) the notice's use of the term "evaluate" as opposed to "investigate" in relation to complaints against the police is interesting in terms of its what its impact on the powers of the board might be; (b) the notice is silent on when and how complaints are to be referred to the board; (c) the board is not established by legislation but by notice, which implies that it could be disbanded as easily as it was established; (d) the appointment of the Police Complaints departments of both the KPF and the Administration Police as secretariat to the board raises issues of independence; and (e) the composition of the board and the inability to co-opt additional members is viewed with suspicion. Nevertheless, the board's role in providing inputs into police and security issues in general can be useful for the ongoing debate on police reform.

7.11 The Independent Commission on Policing for Northern Ireland (1999, pp. 25–26) notes that a good complaints mechanism should be “accessible, fair to complainants and police officers, respectful of human rights and dignity, open and accountable, timely, thorough, impartial, independent and should take account of both the ‘public interest’ and the interests of the parties involved in the complaint. It should also be appropriately balanced between formal and informal procedures for resolving complaints, between remedial and punitive dispositions, and between internal management and external oversight. It should provide appropriate systemic information to police management and governing authorities, and it should avoid unnecessary duplication or overlap with internal disciplinary and grievance processes.” Usually, the institution hearing complaints should also be responsible for compiling data on trends and patterns in complaints against the police and for accumulating complaints against individual officers.

7.12 Establishing an effective process for handling public complaints requires several preconditions: a sound legislative foundation; the employment of dedicated, competent, and experienced and/or trained personnel to administer it; a reasonable level of commitment and cooperation on the part of the police organizations and personnel to whom the process applies; an adequate degree of knowledge of, confidence in, and willingness to use the process and good faith on the part of potential complainants in particular and the public more generally; and the commitment of adequate resources for full and effective implementation of the process (Stenning 1998).

7.13 **Maintaining Proper Financial Records.** Police budgets and finances, like those of many other agencies and departments in the security services, have been opaque, and related financial management issues such as procurement have been a source of corruption. The Police Strategic Plan does not even consider this issue. Yet without “a proper account of expenditure, the control exercised by Parliament over the police is rendered ineffectual” (Bruce and Neild 2005, p. 26). Accordingly, financial and budget reforms within the police need to be seen as complementary to the constitutional changes referred to earlier. To lay a proper financial foundation, the police should be encouraged to prepare a fully budgeted annual policing plan, not merely generic annual estimates that are negotiated with the Treasury; to develop strong internal audit capabilities with specific financial targets; and to implement measurable value for money programs.

7.14 **Ensuring Transparency and Citizen Involvement in Policing.** The “presumption should be that everything should be available for public scrutiny unless it is in the public interest—not the police interest—to hold it back” (Independent Commission on Policing for Northern Ireland 1999, p. 38). Participation fortifies openness. Policing is too important a matter to be vested exclusively in the hands of the police. Civilian involvement can take a variety of forms. The challenge is to make community policing a real partnership between citizens and the police. As the Patten Commission on policing in Northern Ireland laments (Independent Commission on Policing for Northern Ireland 1999, p. 40), the term community policing “has many definitions and has become somewhat devalued by frequent and indiscriminate use.” Preferring the term “policing with the community,” the commission prefers a model where “the police working in partnership with the community; the community thereby participating in its own policing; and the two working together, mobilizing resources to solve problems affecting public

safety over the longer term rather than the police, alone, reacting short term to incidents as they occur” (Independent Commission on Policing for Northern Ireland 1999, p. 40).

7.15 **Enhancing the Quality of Police Information.** Participation and transparency depend crucially on good information. Like all information paid for by taxes, information about crime is a public asset. How such information is collected, analyzed, and presented is fundamental to fighting crime and to public confidence in the police service. Reforms to enhance participation and transparency need to move in tandem with improvements in the collection, analysis, and presentation of data by the police.

B. Measures to Improve Operational Performance

7.16 Effective policing is fundamental to a safe and secure society, but resource constraints coupled with various capacity and other challenges identified in various parts of this study have hindered Kenya’s police from being a truly effective institution. The KPF should use information it collects to undertake more meaningful analysis of which units are doing the most to prevent, solve, and reduce crime given the resources they are provided. This kind of information would help the KPF better understand its relative strengths and weaknesses. This section highlights measures the police can take to improve their operational performance.

iii. Preventing Extrajudicial Killings

7.17 The burgeoning figures for extrajudicial killings and the dubious circumstances in which some people have been killed indicate an urgent need for reform. The release of the United Nations special rapporteur’s report on extrajudicial killing in Kenya in February 2009 confirmed the existence of systematic and widespread strategies within the KPF to execute individuals on a regular basis and, in particular, the murder of 500 suspected Mungiki members by the police in 2007. The subsequent fallout from the report confirms the critical importance of addressing extrajudicial killing. Events have included the murder of two prominent police human rights activists, Oscar Kingara and John Olulu of the Oscar Foundation Free Legal Aid Clinic; death threats to many other prominent members of Kenyan civil society; and protests at police action that saw one police officer and several civilians killed during mass action in early March 2009 (Alston 2009; Mail and Guardian 2009; Reuters 2009).

7.18 Three important measures are required in this connection: providing a procedure for independent and proper investigations of all deaths at the hands of the police, reforming the law relating to the use of firearms, and keeping better track of guns recovered by the police.

7.19 **Investigating Deaths at the Hands of the Police.** The current law mandates holding an inquest in the case of a suspicious death. This law covers all deaths, not only deaths at the hands of the police. The police should be required to report all deaths of people in custody. Suspicious deaths that occur as a result of actions by law enforcement officers, whether or not they occur during confinement, should also be subject to different and

more straightforward procedures than traditional inquests. This may entail the enactment of new legislation or amendments to the current law on inquests.

7.20 *Reviewing the Law on Firearm Use.* Kenya has pursued a contradictory use of firearms policy since the mid-1970s. At different times in its history, and even though the law bans the use of force without cause, the police have been authorized to use lethal force whenever they perceive that violent crimes have escalated. This has usually bred a permissiveness that has led to the death of innocent civilians. More stringent rules for carrying and using firearms need to be developed consistent with emerging best practice. The use of force and firearms should be proportionate to the level of violence or threat posed. The circumstances justifying lethal force should be defined and limited.

7.21 *Keeping Track of Guns Recovered by the Police.* Despite detailed rules governing the guns that are issued to the police, no rules regulate the stockpiling and accounting of guns recovered from criminals. Since the early 1990s, the number of crimes involving firearms has risen rapidly and the media routinely report the recovery of firearms by the police. The manner in which these arms are catalogued, stored, or destroyed is opaque. Some have voiced suspicions that recovered guns may be recycled back to criminals or to rogue police officers through corrupt sales.

iv. Enabling Research and Statistics

7.22 The Police Strategic Plan recommends the establishment of research capacity, but does not specify what such research should consist of. An effective police strategy builds on solid data. Current crime and offender data are uncertain and questionable. As a step toward systematic data collection, a matrix of relevant data should be developed within the policing community and collection parameters should be set. This system would then be digitized and appropriate data capture sites would be identified. The data now available for free download on the KPF Web site give only crime figures. Missing information includes of the total arrested, how many were freed before they appeared in court? Why? Of those charged in court, how many were eventually tried and convicted? Of those arrested, how many were repeat offenders? What is the total number of guns recovered by the police from criminals every year? Of these, are any subsequently lost? How many complaints are made against the police? How many were resolved and how?

v. Updating and Sharpening the Police Strategic Plan

7.23 The Police Strategic Plan has a detailed list of much needed operational reforms and some analysis, but no actions in relation to broader institutional reforms. Many of these reforms—bolstering force numbers, providing better facilities, and upgrading infrastructure—are sorely needed and remain important. However, the Police Strategic Plan should be revised and strengthened: a sharper focus on a few key themes prioritized according to the public's most important and urgent needs will lead to more efficient and effective use of resources. Conversely, an efflorescence of truncated reform measures without a coherent strategic framework coupled with multiple indicators will only dissipate police efforts and hobble them with tedious process management tasks. Thus the recommendation is for a leaner strategic plan that focuses on a few strategic priorities.

vi. Increasing Services to Underserved Regions and Groups

7.24 Kenya's uneven economic development, which is aggravated by discriminatory economic policies that have skewed the investment of national resources to certain areas, has had a detrimental effect on policing in other areas. The Police Strategic Plan needs considerable financial resources and political support from the government to address the challenges of police reform outside the capital. For example, nonpolicing inputs such as improving infrastructure like grading, or even building, roads; increasing cooperation with neighboring countries; and strengthening border stations and increasing immigration personnel will have an impact on policing effectiveness and efficiency. These are clearly budget issues that are contingent upon winning sufficient political approval for police reform. A central challenge in the coming years will be forging a coalition of stakeholders across government departments to drive reforms that will provide security for underserved areas in Kenya.

vii. Enhancing Qualifications, Training, and Remuneration

7.25 While training is a key element of the Police Strategic Plan, a more immediate issue is the philosophy and orientation of that training. Another issue is integrating training with requirements as revealed by police appraisals and tying it to professional growth within the force. The concern is broader than the allocation of funds for expanding the Kenya Police College or constructing a police school of management and police academy, as the current Police Strategic Plan proposes. The pressing questions are what attitudinal training is needed for democratic policing? How can the police training curriculum be modified to incorporate human rights principles and applications to every aspect of police work? What are the responsibilities of a police officer not merely as an officer, but also as a citizen? These are urgent concerns that any new training program for the police must address.

viii. Implementing Other Reforms Already Identified

7.26 This review is one of several ongoing studies and initiatives on police reform. The focus here is to encourage reforms that would strengthen oversight and accountability. In general, this report supports the implementation of other reforms that have been identified under the Police Strategic Plan. Moreover, except in the specific instances where this assessment has proposed the modification of reforms now taking place, this report endorses most of the operational changes desired by the police. The challenge, as described earlier, is to promote effective accountability mechanisms to match operational efficiency.

C. Opportunities for Engagement by Development Partners

7.27 Support from development partners for police reform has, in most cases, been part of wider support for improving the justice sector. Development partners recognize that such reforms require a long-term commitment and resources if it is going to succeed. This section highlights various opportunities for development partners to provide long-term sustained support to the police and security sector.

ix. Assessing the GJLOS Reform Program and Deciding Its Future

7.28 The GJLOS Reform Program is an example of donor coordination in a broad and comprehensive approach to security sector reform. The effects of the interruption of this program because of the postelection crisis must be carefully considered. The costs of another freeze of a coordinated, basket-funded approach to security sector reform are likely to be significant, and funding from this source and of this magnitude may not be available again in the short to medium term. At the same time, the criticisms leveled against the program cannot be ignored. The program needs to be assessed to consider realigning it with the priorities emerging from current events.

x. Developing the Role of Parliamentarians

7.29 The role of Parliament and legislators in promoting deeper oversight and accountability over the police structure remains underdeveloped. Several interventions can be considered, including building parliamentarians' capacity in policy making in the sector and in more proactive oversight. In South Africa, the development of a police station monitoring system has proved beneficial to the work of the National Assembly's Portfolio Committee on Safety and Security. It supports station visits by members of parliament by and facilitates the collection, recording, and analysis of information. A system of annual strategic plans for the committee has helped focus and evaluate its work and a guide to safety and security sector oversight has proved invaluable for new members of provincial committees (Open Society Foundation for South Africa 2006).

xi. Supporting the Conceptualization and Rollout of the National Dialogue and Reconciliation to the Local Level

7.30 Peace, security, and stability can be promoted through active involvement of local actors in promoting and participating in police reform and in identifying areas that would benefit from reform. This requires the creation of mechanisms to facilitate ongoing dialogue; encourage participation by interest groups; and act as a central point for keeping track of outcomes and of understandings among the parties involved. The Task Force on Police Reform provides a mechanism that ideally should be replicated at the provincial and local levels. Given the history of ambivalent engagement by the police with review and reform processes, this facility needs to have legal and political standing.

7.31 The National Dialogue and Reconciliation Process, which was established in 2008 as a result of the postelection crisis, can be cascaded down to the local level as has occurred in other countries. In South Africa, the National Peace Accord contained a code of conduct for police; extended oversight of the police through a variety of means, including a public complaints procedure and special investigative units responsible for processing complaints received from police reporting officers; provided for a police board comprising citizens and police that had a policy advisory role and a system of regional and local peace committees that had a dispute resolution function; and laid the foundation for police liaison forums, predecessors of the community police forums (Van Der Spuy 2001).

7.32 The government of Kenya has initiated several interventions to restore peace following the postelection violence. In Nairobi, a group known as the Concerned Citizens for Peace has been facilitating a peace committee that includes representatives from the city council, the Administration Police, and civil society. Unfortunately, the police force has not participated in a systematic way (interview with Dekha Ibrahim, Concerned Citizens for Peace, Nairobi, February 17, 2008). For such peace-building initiatives to succeed, the police should be an integral player in planning and implementing them.

xii. Completing and Releasing a Policing Policy

7.33 A policing policy that reflects the overarching national vision for the sector is still outstanding. A policing policy would also provide a framework for community policing. Strategic plans and policies must align with established overarching policing policy and legislation. Issues such as the removal of the police from direct control of the executive; the roles, functions, and chain of command of the various law enforcement agencies; the transparency of laws and orders affecting police performance; and the conduct of independent oversight should be considered as part of an overarching policy. In addition, the policy should extend beyond the state police to private and nonstate actors and policing networks given Kenya's significant reliance on nonstate resources.

xiii. Supporting the Establishment of External Policing Oversight Mechanisms

7.34 The establishment of an independent complaints mechanism (like South Africa's Independent Complaints Directorate, whose powers include investigating charges of misconduct and death as a result of police action or while in police custody) and a police service commission (like Nigeria's Police Service Commission, which provides independent oversight and review of personnel discipline and promotion issues) must be pursued. They can be established on an interim basis until a final policy has been developed and implementing legislation has been enacted. The mission of a complaints mechanism should be broad enough to oversee the activities of nonstate and private security actors.

7.35 A system whereby members of the public visit police detention facilities can also be considered, but should not detract from the need to set up a dedicated external oversight facility. The United Kingdom introduced a lay visitors' scheme in the 1980s to restore relations between the community and the police after the riots of 1981. The evidence indicates that detention facility visits hold some potential for giving practical expression to the needs for transparency and accountability (Van Der Spuy 2008).

7.36 Protocols such as the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel and Inhuman or Degrading Treatment or Punishment (known as the Robben Island Guidelines) of the African Commission on Human and Peoples' Rights need to be applied. Kenya has signed, but not ratified, the Optional Protocol for the Convention against Torture. This provides for independent monitoring of detention facilities through a system of national preventive mechanisms, which can play an important role in oversight of police detention facilities.

xiv. Supporting the Development of a Safety and Security Strategy

7.37 Police reform that does not address citizens' safety and security needs is unlikely to find long-term traction. Police efforts will be swayed in the direction of increased capacity rather than substantial reform in favor of accountability. Popular sentiment toward punishment in the face of increased insecurity and crime is likely to encourage the re-introduction of harsh and punitive measures, which can quickly result in a rollback of reforms. A comprehensive discussion on policing reform should include dialogue on developing policing and safety strategies that will underpin the business of policing within the context of the reform being sought.

xv. Supporting the Incorporation of Transitional Justice Issues into the Police Reform Process

7.38 The dialogue on police reform needs to engage significantly with issues of transitional justice, particularly as many security personnel are likely to be implicated in the postelection violence. Issues also include amnesty for perpetrators of violence and compensation for victims. Police reform needs to be considered when considering the terms of reference of commissions such as the Truth, Justice, and Reconciliation Commission and the Commission of Inquiry into Post-Election Violence.

xvi. Supporting Reform That Addresses the Needs of Vulnerable and Underrepresented Groups

7.39 Articulation of the specific needs of vulnerable groups and the mechanisms for monitoring compliance in relation to actions taken to address these needs could add significantly to developing a culture of accountability. For example in relation to mainstreaming gender in the police, reforms should (a) promote an overarching organizational culture by stating that the police organization is committed to diversity and gender issues; (b) develop a comprehensive internal and external communications strategy in support of goals pertaining to equity, including gender equity, within the police; (c) establish measurable gender equity goals and tracking mechanisms; (d) undertake a comprehensive review of recruitment procedures to identify and remove barriers to hiring underrepresented groups and to analyze why unsuccessful applicants failed to get into the force; (e) develop an employee mentoring program that mentors women within the police at all levels; and (f) establish mechanisms whereby all members of the Promotion Review Board understand and demonstrate commitment to gender equality.

xvii. Supporting the Development of Eastern African Standards for Policing

7.40 The integration of the East Africa Community is advanced: 2012 is the target date for political union. While policing is a feature of the ongoing debate on defense and security and of the integration strategies of the East Africa Community, a unified regional approach to policing remains largely underdeveloped. In particular, no single set of guiding values and principles exists for the region against which collaborative projects and protocols for harmonizing reforms can be constructed. This is problematic not only for police organizations, but for the many stakeholders with which they engage, including

governments, human rights commissions, civil society, and private sector partners (African Policing Civilian Oversight Forum and CHRI 2008). At this juncture in Kenya's police reform, examining the reform issues that could arise ahead of greater political integration and the extent to which a guiding set of policing principles could support Kenya's police reform efforts might be useful.

D. Conclusion

7.41 The police force needs stronger accountability and oversight mechanisms. According to Bayley (2001), creating effective disciplinary systems within the police should be the top priority of any reform agenda. However, in the current heightened environment of distrust and the absence of strong external oversight mechanisms, the former should receive preference and can hold the key to unblocking a significant part of the Kenyan police reform project. This can be achieved through a combination of developing policy, establishing police-community partnerships, and developing dedicated oversight mechanisms. At the same time, as the police engage with the current crisis and the reform agenda, resources will remain stretched and focused on security-related issues rather than on reform. Meanwhile, reliance on and development of nonstate security arrangements are likely to grow.

7.42 Police reform should also include organizational restructuring and transformation to optimize the use of physical, human, and financial assets in ways that further the mission and objectives of the police force. Structural reforms and capacity-building efforts are all required to improve the performance of the entire force.

7.43 The need to assess the GJLOS Reform Project is pressing. This should be viewed against the backdrop and the urgent need to expand the reform project outside Nairobi, to engage nonstate actors, to focus on vulnerable groups, and to engage with peace-building issues. The above-mentioned issues provide the opportunity and illustrate the need to approach policing reform more broadly, that is, to go beyond reform of just the state police, and to include examining ways in which the state can provide a policy environment and regulatory framework for private and community-based policing initiatives.

7.44 According to Zedner (2006), while the state can no longer claim a monopoly over policing, it can insist upon its rights to delineate and uphold the democratic norms necessary to protect public interests. This is as true in Kenya as elsewhere.

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