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## Security Sector Reform and Transitional Justice in Kenya

Efforts underway to address the 2008 Kenyan post-election crisis and the conditions that caused it have provided the country with a unique opportunity to address its long history of human rights violations. From the unspeakable atrocities of the pre-independence State of Emergency period, to the dark years of the repressive one-party state, to the emergence of state-sponsored ethnic violence in the 1990s, Kenya's democratic institutions and its framework for human rights enforcement have tended to be unable to stem the tide of human rights problems. In some cases, democratic institutions, such as the police and the judiciary, have even been co-opted into the service of repression.

The post-election crisis has brought into sharp focus the urgent need to fundamentally review the entire edifice of governance in Kenya as it relates to security, human rights, the rule of law, and democracy. The cornerstones of this ongoing reform process are the interlinked issues of transitional justice and constitutional change.<sup>1</sup> While transitional justice refers to the set of activities and processes that can bring closure to the memory of past injustices and atrocities, constitutional change speaks to the need to create a new, democratic and human rights-responsive framework of governance. The two processes are now running concurrently as stipulated by Agenda IV of the Agreement on the Principles of Partnership of the Coalition Government (popularly known as the National Accord), which brought an end to the post-election violence (PEV).

Agenda IV sets out a long-term national reconciliation and healing process that takes a deep look into the country's past. As agreed under the National Accord, the state established a Truth, Justice, and Reconciliation Commission (TJRC) in July 2009 to spearhead a national process of truth-telling, healing, and reconciliation.<sup>2</sup> Arguably, the commission may turn out to be an important mechanism that can enable the country to change its human rights behavior in a lasting way. Agenda IV also mandates the current coalition government to enact a new, democratic constitution before the next general election, in addition to undertaking extensive reforms of state institutions, including security sector and criminal justice institutions.

Security sector reform (SSR) is therefore especially urgent as the Kenyan security sector has been intimately involved with many of the country's human rights problems.<sup>3</sup> SSR refers to the variety of constitutional, legal, and policy changes that may be required to infuse the principles of accountability, professionalism, and efficiency into a security sector which has had a history of operating beyond the rule of law. Experiences from post-conflict and transitional societies such as Sierra Leone and South Africa show that improving security governance helps create peace and other suitable conditions for meaningful social reconstruction and development to take place. Security agencies must work in the interests of citizens hence the need to transform the framework for security governance.

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SSR involves bringing security agencies under civilian control and aligning their operations to international best practices. SSR also involves transforming the underlying values, norms, and politics that frame the operations of security agencies. Successful SSR implementation will therefore partly depend on whether the state actually punishes human rights violations and corrupt acts committed by security personnel. So far, however, the rather slow pace of reforms in Kenya's criminal justice system continues to shield abusive security personnel.

In light of this background, ICTJ brought together eight experts with backgrounds in civil society, academia, and the security sector to share perspectives at a two-day meeting which sought to build new understanding on SSR.<sup>4</sup> The first presentation contextualized the idea of SSR within the broader issue of transitional justice. The second presentation examined international best practice for SSR as it relates to Kenya. The third presentation focused on the state and performance of Kenya's security agencies, drawing its analysis from three official reports: the Report of the Commission of Inquiry into Post-Election Violence, the Report of the National Task Force on Police Reforms, and the Report of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. The fourth presentation examined how the practice of vetting might be used to transform Kenya's security agencies, while the fifth and sixth ones discussed the possibilities for a police oversight body and penal reform, respectively. The seventh presentation explored SSR as it relates to the problem of the proliferation of vigilantes, gangs, and militia in Kenya. Finally, the eighth presentation argued for the need to regulate the Kenyan private security sector.

This briefing paper is a synthesis and analysis of the eight presentations and the ensuing debate which took place among the broader group of 25 participants. It explores several questions among them: What is the state of security and the security sector in Kenya? What have been the outcomes of SSR measures undertaken so far? What approaches for security sector transformation are desirable for Kenya and how might they be pursued? What kind of linkages are policy-makers making between SSR and other issues in the governance realm?

### The State of Security and the Security Sector in Kenya

Kenya's security governance challenges play out at the local, regional, and international levels. Crime and insecurity persist as major challenges in both urban and rural areas. It seems the daily reality for many Kenyans is defined by the fear of becoming victim to violent robbers, car hijackers, sexual predators, and burglars, among other criminals. The country's northern parts are prone to banditry and international terrorism has also claimed the lives of hundreds of Kenyans.

It appears that greater democratization in the last two decades has been accompanied by growing disorder and the proliferation of organized gangs and militia. Many of these groups now operate extortion rings, in addition to "providing security services" in different parts of the country. Some scholars reason that their rise and role in security governance signals the decline of the state's dominion over security.<sup>5</sup>

#### Case Study 1: SSR and Vigilantes, Gangs, and Militia

In the past two decades, organized crime groups and informal security groups have proliferated in Kenya; and it seems that some of them are increasingly asserting their presence in security governance. Where the Kenya Police and other state security actors previously monopolized the use of force, there is now a plurality of actors including vigilantes, gangs, and militia.

Kenyan vigilantes tend to be concerned with providing security and enforcing order in their specific areas of operation.<sup>6</sup> Conversely, gangs operating mainly in urban areas are generally concerned with the control of "their" territory and various enterprises, including levying fees for "protection". Some militia groups such as Mungiki and the Sabaot Land Defence Force (SLDF) appear to have political aspirations and an interest in changing the social status

quo. As the case of Mungiki shows, the character of organized criminal groups and informal security groups can be indeterminate. Vigilantes can turn into gangs and gangs can turn into armed militia with political interests.

SSR actors grappling with the impact of these groups should therefore try to explain their emergence in Kenyan society. What has led to their formation? Why are they proliferating at this point in Kenya's history? Could it be that informal groups are increasingly beginning to assert themselves in security governance because the Kenyan state is gradually losing its legitimacy and effectiveness or evolving a new structure?<sup>7</sup>

Taking these questions into consideration, how then should SSR actors deal with vigilantes, gangs and militia? If it is determined that vigilantes can play a useful role in security governance, should they then be accorded official recognition like private security companies? If it can be agreed that policy is best informed by those closest to the problem, would it then be appropriate to try to reach out to gangs and militia in order to involve them in security policy design and implementation?

Complex as it may be, perhaps the best way to address the proliferation of vigilantes, gangs, and militia might be to increase public spending on programs and other interventions that target the drivers of crime and violence. If, however, Kenya decides that the most suitable approach is to continue to confront these groups through the criminal law framework, then SSR actors need to clarify what security agencies need to do to fight crime and how and why those approaches should be used. Needless to say, a "fight crime" approach has its shortfalls: it may lead to increased reliance on force as well as the militarization of policing authorities.

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Deteriorating security conditions have been attributed to the uneven performance of some of the country's security agencies, which are often accused of being operationally ineffective, corrupt, and politically pliant. Some policy-makers and researchers have tended also to associate the high rates of crime and violence with the existence of economic and social inequalities.<sup>8</sup> They argue that the high incidences of unemployment and poverty among Kenya's youth are the main drivers of crime. In fact, the framers of both Vision 2030 as well as Agenda IV of the National Accord seem to accept that if left unaddressed, the social and economic exclusion of the youth will lead to higher rates of crime and violence.

That Kenya's security sector is in need of far-reaching reforms has been evident long before PEV engulfed the country in 2008. To be sure, the post-election crisis vividly exposed the grave shortcomings of the Kenya security sector whose image was badly tarnished by the illegal and unjustifiable actions of some of its members. For a start, many Kenyans perceive the security sector, particularly the Kenya Police, as an inefficient, brutal, anti-people institution that lacks transparency and accountability.<sup>9</sup> According to the Commission of Inquiry into the Post-election Violence (CIPEV), most elements in the security sector threw away all pretence at professionalism during the crisis.<sup>10</sup> While some allowed themselves to be actively used for partisan political purposes, others rendered assistance to citizens in distress based on their political alignment and ethnic identity or affiliation. Still others became complicit in criminal acts and committed murder, rape, arson, and theft.<sup>11</sup>

Furthermore, the Report of the Commission of Inquiry into Post-Election Violence (the Waki report) found that the Kenya Police was completely unprepared for the violence.<sup>12</sup> There was hardly any contingency planning, and where there was some, available intelligence was ignored so it was unsurprising that the police were overwhelmed by the scope and nature of the violence. Members of the Kenya Police were also found to have used unnecessary and disproportionate force. Of the 1,133 people that CIPEV established to have died during the violence, 405 had died from gunshots, a significant number shot from the back.<sup>13</sup> Of the 3,561 who were injured and treated, 557 had gunshot wounds. CIPEV also identified several occasions where there was direct political interference with the police, the most

glaring being the attempt to use 1,600 Administration Police officers as political party agents in Nyanza.<sup>14</sup>

In its report CIPEV decried the lack of a national security policy in Kenya and the fact that in dealing with PEV, the security agencies acted separately, with no joint planning or coordination.<sup>15</sup> While the Kenya Security Intelligence Machinery was generally found to have done well at forecasting the likelihood of violence, CIPEV noted significant weakness in translating the intelligence into operational interventions.<sup>16</sup> Even though the National Security Intelligence Service (NSIS) was found to have been the best prepared of all the security agencies, it was faulted for engaging in questionable activities.<sup>17</sup> These included its attempt to obtain accreditation from the Electoral Commission of Kenya (ECK) to be part of the election process, and purporting to advise the ECK on the electoral process.

However, the Kenyan military was praised for preparing contingency plans, rehearsing how to respond appropriately depending on unfolding scenarios, and sensitizing its members on the need to stay apolitical and uphold military values.<sup>18</sup> In general, the military's involvement in the post-election crisis was identified as supportive of the victims of violence and CIPEV found that the military was never required to and did not use force in the crisis.

#### Case Study 2: Penal Reform

The prison system rarely receives recognition as a critical security agency yet it plays an important role in the criminal justice and security governance cycle.

As at December 2009, Kenya's 98 prisons remained overcrowded, holding 48,273 prisoners among them 19,142 remand prisoners and 29,131.<sup>19</sup> In 1999, the Community Service Orders Programme was developed to bolster efforts to decongest prisons. Since 2003, the sector-wide Governance Justice Law and Order Sector (GJLOS) reform program has facilitated increases in penal reform investments.

While contemporary rehabilitation activities tend to emphasise skills training for prisoners, there is still a lot to be done if Kenyan prisons are to be turned into effective rehabilitation centers. Other challenges include long delays of remand prisoners' cases in the courts and high recidivism rates associated with the lack of economic opportunities for ex-prisoners.

Although there have been nominal improvements in their terms and conditions of service, and plans are underway to provide them with better housing, it appears the capacities of many prison officials are misdirected, underutilized, or are otherwise applied in ways not necessarily beneficial to them or the Kenya Prisons Department. Out of the total of about 19,600 prison officials, 3,000 can be expected to be on leave at any given time. An overwhelming 2,000 officers are allocated administrative duties, while about 500 are essentially full-time sportswomen and sportsmen. About 1,000 are drivers, guards, and even cooks assigned to various government agencies and senior officials. A further 1,000 have been recruited into regional and international peacekeeping missions or into intelligence gathering work.

In April 2008, prison warders sent shock waves across the country when they down their tools to protest what they termed poor working conditions. A government task force appointed to study the situation found that warders suffered from overcrowded housing and unsanitary conditions, poor medical care, high rates of HIV/AIDS, and vulnerability to attacks at the hands of violent prisoners. It also found that promotions and deployment are based on ethnicity and political affiliation. The task force subsequently recommended several reforms among them the need for risk and/or life insurance for prison warders.

## SSR Outcomes: Some Achievements and Impediments

In 2003, the Kenya Government initiated, for the first time, a relatively extensive SSR process that targeted the Kenya Police in particular.<sup>20</sup> The police reform program was conceived under the government's Economic Recovery and Wealth Creation Strategy (2003) and the sector-wide GJLOS program. Steered by the National Task Force on Police Reforms,<sup>21</sup> the stated goal of the police reform process was to transform the Kenya Police into an effective, efficient, human rights-compliant, people-oriented, and accountable institution. Envisioned to cost at least 52 billion Kenyan shillings over the five year lifetime of the Kenya Police Strategic Plan 2004–2008, the reforms prioritized the improvement of policing and security as fundamental prerequisites of economic growth.

Police officers' welfare, including remuneration, terms of service, and housing have improved somewhat, although it does not appear that there has been a corresponding change in their performance generally.<sup>22</sup> The National Task Force-steered police rebranding program has also improved the public relations capacity of the Kenya Police but it remains unclear how much its public image has actually been transformed.<sup>23</sup> Additionally, the National Comprehensive Community-Policing Programme has seen more citizen and police cooperation but its implementation suffers from conceptual confusion.<sup>24</sup> In the past year, a Police Oversight Board has been established and even more far-reaching changes to the Kenya Police have been proposed in the Report of the National Task Force on Police Reforms (The Ransley Report) as well as the pending draft constitution.<sup>25</sup>

These reforms have tended to be inadequate and ineffective because they have been implemented on the false premise that there was nothing fundamentally wrong with the philosophy, structure, and set up of Kenya's security sector, namely that its problems are really only the result of the lack of capacity and resources. Indeed, in its interactions with the police, GJLOS program coordinators have had to contend with the persistent police assertion that improved performance is contingent on the acquisition of modern equipment and better terms and conditions of service.

Is it possible that the foregoing outlook and disposition of the Kenya Police persists because the country's transition from authoritarianism to democracy is still unfinished business? Must it be the case that SSR processes cannot succeed where security agencies are led by anti-reformists? Would this mean that a purge targeting the leadership of any given security agency is a prerequisite for the implementation of reforms? If this is the case, how then would one reconcile past trends in Latin America where repressive senior security personnel were brought to justice by regimes which themselves had poor human rights records?

Other observers argue that the national debate on SSR suffers critically from unavailability of sufficient media access to accurate SSR information. This situation is compounded by the technical nature of security-related information and the secrecy with which it is handled by security agencies.

## Security Sector Transformation: Goals and Strategies

The foregoing quote should provoke SSR actors to think critically about the roles Kenyan society needs its security agencies to play in the 21st century. For instance, do Kenyans want their security agencies to play a social work role or do they want "tough" crime fighting agencies? What kind of individuals ought to be recruited into security agencies? Whatever the case, Kenyans and peoples living in developing contexts need to design innovative SSR processes that are responsive to their own unique contexts.

In Africa, for instance, there are different contexts within which SSR may be implemented. Some countries, such as Liberia and Sierra Leone, are undertaking SSR having only recently emerged from civil war. Others are transiting from long periods of authoritarian or minority rule to more open forms of government, while others such as Guinea and Zimbabwe are

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*“I found myself kitted up with gas mask, baton gun, flameproof suit, crash helmet—I was elevated into a very aggressive role. The next day I was back in my Dixon of Dock Green role knocking on someone’s door asking to see his driving licence. I think really it’s a very unfair position to expect us to be in. We can’t pat kids on the head one day and shoot them with plastic bullets the next.”*

British police officer in BBC Television interview, October 1986

altogether averse to the idea of democracy. This variety of national contexts should illustrate the futility of imagining that there is a universal set of SSR prescriptions that can apply to all cases.

SSR actors should therefore first clearly define the results—institutional, policy, legal, or constitutional changes in the field of security governance—they desire to see before they design a strategy that can help them to realize their objectives. Both the objectives and ensuing strategy ought to result from a national dialogue and consensus on security governance that is carefully tailored to the specific context. At any rate, security governance strategies ought to be reviewed constantly as it is unlikely societies will ever be fully assured of their security.

In setting out SSR goals, there is need to achieve consensus on the definition of the concept of security which tends to be highly contested. Establishing the constitutional basis of the idea of security, especially as it relates to the social contract between citizens and their state, is an important starting point for designing an effective security governance policy framework. Articulating a strong security governance policy that can win public support and cooperation may require an inclusive SSR process that is shaped partly by the broader public. It is likely that the legitimacy and acceptability of such a process could also be enhanced if it is designed and funded domestically.<sup>26</sup>

Kenyans have a relatively strong basis from which to start a comprehensive SSR process. For one, the pending draft constitution establishes a constitutional framework for the security sector which sets out the core principles and values that should guide the sector. The adoption of the constitution and the faithful implementation of the other detailed recommendations set out in the Waki Report, the Ransley Report, and the Report of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (The Alston Report)<sup>27</sup> will almost certainly bequeath the country a security sector that is radically different from the existing one.

Both the Waki Report and the Ransley Report identified several broad principles that must be reflected in a reformed Kenya Police.<sup>28</sup> These include representativeness to ensure that the police reflect a proper mix of the Kenya communities, impartiality, decentralization of policing, respect for human rights, and accountability. They have recommended that the government infuse these principles in the institution through the implementation of a new training curriculum, a new code of conduct, and vetting of the suitability of serving officers. Similarly, the Alston Report recommended vetting and urged the political leadership to publicly declare its commitment to investigate, resolve, and end unlawful killings by security personnel.

Besides urging the development of a National Security Policy, a National Policing Policy and the enactment of a Police Reforms Act to implement the proposed reforms, the Ransley Report recommended the creation of a Police Reforms Implementation Commission (PRIC), an Independent Policing Oversight Authority (IPOA) and a Police Service Commission (PSC). Another radical recommendation calls for a Witness Protection Programme that is independent of the Office of the Attorney General and the security agencies.

### Case Study 3: Possibilities for a Police Oversight Body

Some human rights groups argue the establishment of a police oversight body (POB) will improve police accountability in Kenya. If established, such a body ought to be non-partisan and operationally and financially autonomous. Its primary role should be to investigate and review complaints against the Kenya Police, and it should have the authority to issue its findings and make recommendations independently. A POB should also have powers to develop policing policies, set policing budgets, and monitor the general performance of the Kenya Police. Importantly, both security officials and civilians should be incorporated in the POB’s leadership to enhance its credibility in the eyes of the citizenry.

Even though Kenya established the Kenya Police Oversight Board in 2009, the institution was created by administrative fiat and lacks a firm legal basis.<sup>29</sup> Opportunely, however, the Waki Report calls for the establishment of an independent Kenya Police Service Commission to deal with police management, recruitment, and welfare issues. The Ransley Report also urges the government to establish a proposed Independent Policing Oversight Authority (IPOA) which ought to have powers to investigate and institute prosecutions against abusive police officers. Be that as it may, the police ought to be checked by a variety of institutions, including parliament, oversight bodies such as the Public Complaints Steering Committee, the Kenya National Commission on Human Rights, and civil society groups.

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Without a doubt, these are important, timely recommendations. But is it possible to undertake effective police reforms without developing a policing policy or a broader national security policy? Have Kenyans critically reflected on the internal, regional, and international contexts within which planned SSR measures will be implemented? How might SSR actors empower Kenyans to participate freely and confidently in the SSR process?

Fortunately, Kenya's stability offers ample room to hold a national dialogue on some of the foregoing questions. However, the SSR process is controlled by the national elite and there is the risk that different interests and concerns, including fears about accountability, can turn the conversation into a conflict. This means that civil society actors need to think critically and innovatively about how they can help to cultivate the level of political will that is required to see the SSR process through.

#### **Case Study 4: Vetting and Transformation of Security Sector Agencies**

Vetting refers to the screening and exclusion of public officials from state institutions where they are under investigation, are being prosecuted, or have been convicted of involvement in human rights violations and serious crimes.<sup>30</sup> Vetting is a critical step in achieving public service reform and transitional justice and the process must therefore be clearly defined in a specific piece of legislation. Vetting should be conducted transparently as it contributes to social reconstruction in post-conflict or post-authoritarian states by disabling repressive structures and replacing them with democratic state institutions. The process also enables states in transition to exclude and punish individuals who may otherwise obstruct reform initiatives and transitional justice efforts. Through the process of vetting, human rights violators and public officials found to be responsible for serious crimes are prohibited from holding public office.

Vetting may be carried out in phases and can affect a variety of public officials ranging from members of the police, intelligence, and military services, to judges and prosecutors, to administrators and politicians. Vetting may, however, turn out to be legally challenging, operationally complex, and politically sensitive. There is the added risk that the process can be sabotaged or manipulated and turned into a politically-driven purge. This particular problem raises the question of who should be vetted in times of transition and who should do the vetting. In a country such as Kenya where it is fairly common for past human rights violators to restyle themselves as "reformists," an official under scrutiny in a vetting process may be tempted to ask his or her screener, "how can you purport to vet me when you too should be vetted?" What, therefore, should be done to insure the legitimacy of the vetting process in a context such as Kenya?

The Waki, Ransley, and Alston reports as well the KNCHR report<sup>31</sup> on the post-election crisis all suggest that reforming the Kenya Police may require some degree of vetting if human rights violators and corrupt officers are to be excluded. Naturally, the targets of the vetting process ought to be officers or specific groups or units linked to human rights violations and other corrupt practices. In any case, there should be a vigorous debate, especially within parliament, about the targets of vetting and the criteria for their disqualification.

Of course, the vetting process should safeguard the due process protections of its targets. Ideally, the burden of proof required to exclude an officer ought to extend beyond “the balance of probability” but need not to be “beyond reasonable doubt.” The process might possibly entail the setting up of an interim police service commission that works in conjunction with the KNCHR and the recently established TJRC.

While a reformed Kenya Police, whose members have been vetted, may become much more effective in maintaining law and order and upholding human rights, what, on the other hand, might be the social impact of discharging hundreds or perhaps even thousands of unethical police officers from duty? Facing potential unemployment, might they turn to crime? In fact, some observers argue that Kenya experienced a surge in the incidence of violent crimes soon after the government discharged 3,000 military personnel in the aftermath of the 1982 attempted coup d’état. Might this scenario repeat itself if vetting is chosen as a police reform strategy?

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#### Case Study 5: Regulating the Private Security Sector

Private security can entail the different forms of security provided by individuals, companies, and other organizations to a client at a fee as opposed to public security which is a public good provided by the state.<sup>32</sup> The private security industry fills the gaps that governments may be unable to bridge using their conventional security architecture which typically includes policing, military, and intelligence institutions. Governments also contract private security firms where the option is cost-effective.

In Kenya, the private security industry is one of the fastest growing sectors of the economy and it is a significant employer. In 2004, the industry was valued at 43 million USD and provided employment to about 50,000 Kenyans. It is spread across the country, although it is much more visible in urban centers than it is in rural areas. Many leading companies, both local and international, depend on private security companies to secure their investments.

A better regulated private security industry could possibly improve security conditions in Kenya besides creating more opportunities for employment. Consequently, anticipated SSR measures ought to address the relationship between private security companies and law enforcement agencies. Perhaps a specific policy framework may be required to enhance their cooperation in the areas of crime detection, prevention, and deterrence. So far, a parliamentary bill—the Private Security Regulation Bill of 2004—has been drafted to provide a framework for state regulation of private security firms.<sup>33</sup>

The possibility of a well-regulated private security industry also raises a number of problems inherent with the increased privatization of public goods such as security. Is it possible that enhanced regulation of the private security industry will encourage the state to decrease spending on security governance? How might such a development affect less affluent Kenyans? What should the state do if well-regulated private security firms lobby it to grant their officials the authority to bear firearms? Should the arming of private security firms be sanctioned and what impact might this have on security in the country?

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#### Making the Linkages Between SSR and Other Governance Issues

Reforming the security governance environment partly depends on recognizing the linkages between the idea of security and other issues in the governance realm.<sup>34</sup> Some observers argue, however, that SSR actors in Kenya do not make these linkages. They fail to realize that the idea of security is locked into a symbiotic relationship with other elements of governance, including the ideas of democracy, development, human rights, and peace, which all have an impact on how security is conceptualized and experienced.

In fact, conceptual breakthroughs in the studies of economics and development show that the ideas of security, peace, human rights and development are interdependent.<sup>35</sup> Even so, it is astounding that though the Millennium Development Goals (MDGs) acknowledge the linkages among these ideas, there is no specific MDG devoted to the idea of security.<sup>36</sup> Similarly, the national debate in Kenya has not clearly linked the idea of security to human rights. Perhaps for this reason the “right to security” is not enshrined in the Bill of Rights contained in the pending draft constitution.

In relation to law enforcement, SSR measures could consider broadening security sector planning to emphasise the idea of policing budgets as opposed to police budgets. In this way, other sectors of government, such as education or environmental protection agencies, could complement the work of traditional policing agencies more effectively. This approach may also focus greater public and official attention on the need to improve the standard of policing in rural areas.<sup>37</sup>

Policymakers ought also to be less orthodox in their thinking about security when planning cities, for instance. It can be argued reasonably that homeowners are more likely to take a keener interest in the security of their neighbourhoods in contrast to tenants. Might authorities therefore want to develop specially targeted policy interventions that can encourage home owners to make greater investments in public safety and security program? How, for instance, would security be impacted if planners increased the scope and efficiency of public transport systems? Would it not be cheaper and potentially easier to police an intra-city train as opposed to a highway with hundreds or thousands of motorists?

## Recommendations

1. Comprehensive SSR cannot take place without the input of the diversity of society’s members. Consequently, politicians and the greater Kenyan community will need to work together advocating for, implementing, and monitoring SSR initiatives. Civil society groups and development partners stand to play a critical role in facilitating this collaboration.
2. The different SSR actors and stakeholders need also to reflect on how to better integrate SSR issues into the ongoing transitional justice processes. For instance, there could be discussion about how the TJRC ought to address the security sector’s historical involvement in human rights violations.
3. Civil society groups need to publicize the idea of SSR and its linkages to other issues in the governance realm such as human rights, justice, peace, and development.
4. The media is a particularly important channel through which to create public understanding and participation on security issues. Civil society groups need therefore to develop a strategic outlook in their engagement with the media on SSR issues.
5. Research institutions in Kenya need to work with civil society groups to assist them to improve their conceptual understanding of security. This requires making the necessary investments required to locally generate new knowledge on security.
6. There are gaps in knowledge and information about the role civil society groups have played or stand to play in the realm of security governance. Development partners ought therefore to consider supporting research studies that can shed light on the security-centered work of these groups.
7. The SSR debate is still at an embryonic state and security sector players and policymakers generally are yet to see the benefits of a broader, strategic engagement with civil society groups. This situation may require civil society groups to review their confronta-

tional stance in respect to security-related matters generally and to think critically about what they actually “bring to the table” in this debate.

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## Annex 2: Key Security Sector Institutions (Kenya)

### INTELLIGENCE COMMUNITY AND POLICY COORDINATION

Cabinet Security Committee

Provincial Administration

Administration Police

National Security Advisory Committee

National Committee on Security and Foreign Relations

National Security Intelligence Service

### MILITARY

National Defence Council

Department of Defence

Kenya Army

Kenya Air Force

Kenya Navy

Kenya Ordnance Corporation

### POLICING AUTHORITIES

Kenya Police

Criminal Investigations Department

General Service Unit

Anti-Terrorism Police Unit

Kenya Prisons Department

Department of Immigration

### PARLIAMENT

Parliamentary Departmental Committee on Administration, National Security and Local Authorities

Parliamentary Departmental Committee on Administration of Justice and Legal Affairs

Parliamentary Departmental Committee on Defence and Foreign Relations

## Acronyms

CIPEV	Commission of Inquiry into Post-election Violence in Kenya
ECK	Electoral Commission of Kenya
GJLOS	Governance Justice Law and Order Sector
ICC	International Criminal Court
ICTJ	International Center for Transitional Justice
KNCHR	Kenya National Commission on Human Rights
MDGs	Millennium Development Goals
NSIS	National Security Intelligence Service
PCSC	Public Complaints Standing Committee
PEV	Post-election Violence
POB	Police Oversight Body
SLDF	Sabaot Land Defence Force
SSR	Security Sector Reform
TJRC	Truth, Justice, and Reconciliation Commission
UN	United Nations

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## Endnotes

1. Other important reforms include the establishment of the Interim Independent Elections Commission, the Interim Boundaries Commission and passage of the Political Parties Act, and the National Cohesion and Integration Act (2008). The latter Act establishes the National Cohesion and Integration Commission whose mandate is to counter the problem of ethnic discrimination.
2. The TJRC is mandated to gather evidence and make recommendations on reconciliation in relation to atrocities and injustices that have occurred since Kenya won independence in 1963. The commission's membership consists of six Kenyans and three foreigners.
3. In February 2009, the UN Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions concluded in that the Kenya Police had carried out systematic and widespread executions of Mungiki members. See United Nations Office of the High Commission for Human Rights, Report of the Special Rapporteur. The Commission of Inquiry into Post-election Violence (CIPEV) similarly accused security personnel of using excessive force against unarmed civilians, which led to the deaths of some 405 people or almost half of all PEV fatalities (See Republic of Kenya, Report of the Commission of Inquiry, 331). The Kenya Government has itself recently admitted before the United Nations Human Rights Council that its security personnel have been responsible for serious human rights violations which call for far-reaching SSR measures. (See Government of Kenya submission to the UNHRC, June 2009).
4. The meeting was held on 11th and 12th December 2009 at the Holiday Inn Mayfair Hotel in Nairobi.
5. Some scholars have referred to this fragmentation as the polycentric governance of security. See Bayley and Shearing, "The Future of Policing."
6. Vigilantes come in different shades. On the one hand, vigilantism is a social voluntarism that can be practiced by either private citizens or state officials outside of the confines of the official justice system. There is also the possibility of official vigilantism or "establishment violence" in furtherance of "conservative" ends. In this case, governments may surreptitiously form, support, condone or reinvent vigilantes. See Huggins, "Introduction: Vigilantism and the State-A Look South and North" and Pinheiro, "Police and Political Crisis: The Case of Military Police" in Huggins, *Vigilantism and the State*.
7. This phenomenon has been termed as "horizontal sovereignties" by South African scholar John Comaroff. See "Forward" in Lazarus-Black and Susan Hirsh (eds.), *Contested States*.
8. See Ruteere, *Dilemmas of Crime*; Turner and Brownhill, "African Jubilee"
9. See Kenya Bribery Index (2001-2010), published by Transparency International-Kenya, among other periodic reports produced by Kenyan and international human rights groups.
10. Kenyan president Mwai Kibaki established CIPEV on 23rd May 2008, to investigate PEV and make recommendations on the punishment of the perpetrators of atrocities and the prevention of potential outbreaks of violence in the future (see Kenya Gazette Notice No. 4473 Vol. CX No. 4 of 23rd May 2008). On the decline of professionalism within the Kenya Police, see generally "Chapter 11" in Report on Commission of Inquiry.
11. Republic of Kenya, Report on Commission of Inquiry, 396-398.

12. The report is dubbed “The Waki Report” after CIPEV’s chair, Hon. Justice Phillip Waki, who sits in Kenya’s Court of Appeal. See p. 372 for CIPEV’s conclusion on the unpreparedness of the Kenya Police during the post-election crisis.
13. Republic of Kenya, Report on Commission of Inquiry, 384-393.
14. Ibid: 364; 405-406.
15. Ibid: 372-376.
16. Ibid: 361.
17. Ibid: 365-367.
18. Ibid: 367-368; 379-380.
19. The statistics in this case study have been availed by Legal Resources Foundation (LRF). LRF’s work focuses on prisoners’ rights and penal reform.
20. For a review of the police reform process during 2003-2006, see Ajuang, “Police Accountability in Kenya.”
21. This particular Task Force is distinct from the Justice Phillip Ransley-led National Task Force on Police Reforms, which was established in 2009 and is described in footnote 25.
22. In January 2004, the Kenya Government doubled the pay of junior police officers from US\$65 to US\$130 per month (see “Huge pay rise for Kenya’s police,” BBC News <http://news.bbc.co.uk/2/hi/africa/3419293.stm>). In August 2006, the Kenya Government also approved the construction of 27,000 housing units for the junior police officers (see <http://www.kenyapolice.go.ke/News38.asp>).
23. Since 2003, the Kenya Police’s Public Relations Department has been much more active, even establishing a website with downloadable forms (see [www.kenyapolice.go.ke](http://www.kenyapolice.go.ke)).
24. The launch of the programme came after a five-year period of growth in police-citizen partnership which had been led largely by civil society groups. A study of these partnerships found that it appears the police expect citizens to act as informers and crime spotters. In many cases, citizens involved in community policing have themselves been unaccountable to the communities they purport to serve. Different forms of community policing in practice in Kenya tend to reproduce human rights violations (See Ruteere and Pommerolle, “Democratizing Security or Decentralizing Repression?”) The orientation of the ongoing, official community policing program has not changed much.
25. This report was authored by the National Task Force on Police Reforms, whose establishment in 2009 was recommended by CIPEV (see Kenya Gazette No. 4790 of 8th May 2009). The report is popularly known as “The Ransley Report” after its author, retired Hon. Justice Phillip Ransley, who previously served as a judge in Kenya’s High Court.
26. Scholars warn of the potential pitfalls of donor-funded SSR processes. While donor funding is sometimes essential, uncritical use of donor SSR concepts can create the perception that a donor agency enjoys the right to promote its particular vision of security. See Hendrikson, “Key Challenges Facing Security Sector Reform.”
27. “The Alston Report” gets this popular version of its title from its author Professor Phillip Alston, who has been the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions since 2004.
28. Republic of Kenya, Report on Commission of Inquiry, 430-440; Ransley Task Force Report: 17-40.
29. The Kenya Police Oversight Board was established by an order issued by the Minister of Internal Security in September 2009. (See Gazette Notice No 8144 of September 2008).
30. Comprehensive information on vetting approaches is available in United Nations Office of the High Commissioner for Human Rights (OHCHR), “Rule-of-Law Tools for Post-Conflict States;” United Nations Department of Peace-Keeping Operations (DPKO) Policy Paper, “Support for Vetting of Police and other Law Enforcement Personnel.”
31. See Kenya National Commission on Human Rights, On the Brink of the Precipice.
32. For detailed information related to this case study see Wairagu, Kamenju and Singo, Private Security in Kenya.
33. The bill lapsed at the end of the ninth parliament. It is yet to be introduced in the current parliament.
34. This argument is supported by security experts Olonisakin, Ikpe and Badong in “The Future of Security and Justice for the Poor.”
35. See Sen, Development as Freedom; Ismail and Hendrickson, “What is the Case for a Security and Justice Focus in Development Assistance Programming?”
36. See “Forward” United Nations, Report of the Secretary General on the Millennium Development Goals.
37. SSR actors appear to see policing largely as an urban issue probably because the Kenya Police is generally absent in rural areas. In fact, a recent one-month research tour of the Coast Province by the author of this briefing paper found that many Kenyans living in the province look to the Provincial Administration and its Administration Police for security. This dimension has not really been considered in the ongoing national debate on whether the Administration Police should be merged with the Kenya Police as recommended in the pending draft constitution.

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