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Situating Security Sector Reforms in Kenya’s Discourse on Inclusion and National Dialogue Process

Introduction: The 2017 Elections and “the Handshake”

The 2007 post-election violence and resulting large number of deaths and widespread destruction brought to the fore the deep and persistent ethnic divisions in Kenya. Previous ethnic clashes had been limited to pockets of Kenya where land grievances were always viewed to be the main drivers of the conflict. The 2007 violence demonstrated a systemic failure to address ethnic tensions as a result of real or perceived exclusion of groups from political power. With 1,133 persons dead and 600,000 displaced, the political elite went to the negotiating table to craft a new power-sharing arrangement that was meant to help heal the nation. This negotiation led to the new Constitution; the Truth, Justice and Reconciliation Commission (TJRC); an accountability mechanism for criminal and institutional responsibility for the 2007 post-election violence (the Commission of Inquiry Into the 2007 Post-Election Violence); the Police Reforms Taskforce; the Judges and Magistrates Vetting Board; and so on.

These efforts, however, have failed to bear much fruit, and the country faced another crisis following the divisive 2017 general election. The fallout from this crisis tested the nation’s resolve to cohere. The failure of the Independent Electoral Boundaries Commission to deliver a credible presidential election further deepened ethnic divisions. With the economy on its knees, swelling disenchantment with the outcome of the election, and calls for secessions abounding in the Coast and the Western Provinces, a return to political negotiation was inevitable.

On March 24, 2018, following a handshake between the newly elected President Uhuru Kenyatta and opposition leader Raila Odinga, a taskforce was established to advise on the challenges that have continued to bedevil the nation. The Building Bridges to Unity Advisory Taskforce, headed by Senator Hon. Yusuf Haji, was established to recommend solutions to mend the divisions that emerged after the 2017 election.

A key driver of the agreement was the sentiment shared by many groups that they are politically excluded and thereby not sufficiently Kenyan. This feeling of exclusion appears to have roots in the past, and regular elections are now seemingly unable to address their grievances.

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About the Author

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This paper explores political exclusion in Kenya and its consequences on the social fabric of the nation. It draws from past governmental reports and analysis to formulate new recommendations that can inform current discourse. It first provides an overview of ethnicity in Kenya, its role in the country's politics and the debate on inclusion, and how political elites often benefit from ethnic tensions. Next, it describes experiences of exclusion by minority groups, as well as state responses to exclusion. The paper then looks at efforts to reform the security sector, specifically the police who have contributed to ethnic violence and committed human rights abuses. It closes by offering some general guiding principles and recommendations for developing an agenda to reform the security sector and for a national dialogue process.

Background: Ethnicity as a Major Focal Point in the Inclusion Debate

The most salient social and political cleavage in Kenya is ethnicity. Kenya is one of the most ethno-linguistically fragmented countries in the world.¹ In Kenya, there is no ethnic group that is numerically large enough to politically dominate other ethnic groups. Five groups account for about 65 percent of the Kenyan population—Kikuyu (18 percent) and Luyha, Luo, Kalenjin, and Kamba (each between 11 percent and 14 percent). The Kisii, Meru, Somali, and Mijikenda account for about 15 percent in total. In essence, about nine groups account for 85 percent of the population. In multi-ethnic countries such as Kenya where ethnicity is the dominant theme, ethnic conflict will arise if ethnicity is politicized and ethnic groups are mobilized in the struggle for political power.² The absence of one single dominant group makes ethnicity in politics all the more important.

Elections in Kenya are sort of an ethnic census, a zero-sum game where the winning ethnopolitical outfit is rewarded, and the losers are marginalized and excluded. Professor Karuti Kanyinga notes rightly that “the state became the institution critically necessary for changing the economic fortunes of individuals and their ethnic constituencies.”³ Once in power, the political elites seek economic gain for themselves and those around them at the exclusion of the other ethnic groups in the country. Because of weak democratic institutions, the attitude among elites toward state power (that it is to be used for personal enrichment, prestige, and social status rather than in the service of some ideal or public good) has persisted.⁴ Ethnicity is therefore not only a basis of mobilization for political support, but also of political exclusion.⁵ According to Samwel Eguu, “For ethnicity to concretize, there must be deliberate mobilization and use of ethnic criteria to foster and advance the cause of individuals and groups at the expense of other individuals and groups.”⁶

1 Patrick Asingo, “Ethnicity and Political Inclusivity in Kenya: Retrospective Analysis and Prospective Solutions” in *Ethnicity and Politicization in Kenya: The National Study*, ed. Kenya Human Rights Commission (Nairobi: Kenya Human Rights Commission, 2018), 96-122. Kenya's ethno-linguistic fractionalization index (ELF) is 0.859, putting it among the top 10 most ethno-linguistically divided countries in the world. The ELF index measures the probability that any two randomly selected persons in any country would belong to different ethnic groups. It ranges from 0 to 1, with 1 being the most heterogeneous and 0 being the least heterogeneous.

2 Karuti Kanyinga, “Pluralism, Ethnicity and Governance in Kenya” in *Ethnicity, Nationhood and Pluralism: Kenyan Perspectives*, eds. Yash Pal Ghai and Jill Cottrell Ghai (Nairobi: Katiba Institute, 2013), 49. See also Walter Oyugi, “Ethnic Relations and the Democratisation Process in Kenya” *African Journal of Political Sciences* 2, 1 (1997). See also Archie Mefeje, “Ethnicity and Intra-Class Conflict in Africa,” Research paper submitted to CODESRIA (1997), 51.

3 Karuti Kanyinga, “Governance Institutions and Inequality in Kenya” in *Readings on Inequality in Kenya: Sectoral Dynamics and Perspectives*, ed. Society for International Development (Nairobi: Society for International Development), 345-398.

4 P. Anyang' Nyong'o, “State and Society in Kenya: The Disintegration of the Nationalist Coalitions and the Rise of Presidential Authoritarianism 1963-78,” *African Affairs* 88, 351 (1989): 229-251.

5 Otiende Juma and Macharia Munene, “The Colonial Policies of Segregating the Kikuyu,” *International Journal of the School of Social Sciences* 2, 1 (2002): 36-38.

6 Yash Pal Ghai and Jill Cottrell Ghai, eds., *Ethnicity, Nationhood, and Pluralism: Kenyan Perspectives* (Ottawa: Global Centre for Pluralism, 2013), 50.

Given the largess that comes with state power, the imperative for politicians is to remain in power. To do so, politicians in Kenya must stir up ethnic loyalties and animosities in order to build support for their political objectives. These tensions then spill into other spheres of Kenyans lives (such as reduced intermarriages across ethnic groups), leaving a lasting legacy of hatred and division.

The instrumentalization of ethnicity by Kenya's elites is a strategy borrowed from British colonial regime who had perfected a "divide-and-rule" policy. During the colonial period in Kenya, the British divided the country into provinces based on where different ethnic groups resided and gave these states different names. These colonial states came to be segregation boundaries. Examples of these states include "White Highlands," "native reserves," "outlying districts," and "closed districts." Buffer zones were, for example, set up between the Kispsigis and Gusii, the Kispsigis and Nandi, the Kispsigis and Luo, Nandi and Terik, and Kikuyu and Maasai.⁷ As a result, the sense of ethnic identity intensified and fossilized as different communities were segregated from each other and not allowed to interact. Subsequent governments used the divide-and-rule tactic after independence to great effect, in their bid to consolidate and exercise power.⁸

Exclusion's Perceived Benefits to Elites in Power

One of the markers of a society characterized by ethnic politics is that political power must translate to ethnic hegemony, in which one ethnic group uses state resources to its exclusive benefit.⁹ Ethnic lineage is used as a criterion for appointing officials, who in turn advance the political and socioeconomic welfare of their own ethnic groups and thereby consolidate their ethno-political bases.¹⁰

In Kenya, the presidency is the seat of political power, but all four presidents have come from only two ethnic groups: the Kikuyu and the Kalenjin. The first, President Jomo Kenyatta, was Kikuyu and governed for about 15 years, while the second, President Daniel Moi, was Kalenjin and remained in office for 24 years. The third and fourth presidents were both Kikuyu: President Mwai Kibaki served two five-year terms and President Uhuru Kenyatta will have held the office for 10 years when his second term expires in 2022. In current political debates, Deputy President William Ruto, who is Kalenjin, is widely considered to be a frontrunner to succeed President Kenyatta. While Ruto's election is not a forgone conclusion, it would have certain implications for the national discourse on inclusion.

7 Pius Kakai Wanyonyi, "Historicizing Negative Ethnicity in Kenya," in *(Re)membering Kenya: Identity, Culture and Freedom, Volume 1*, eds. Mbũgwa wa-Mũngai and George Gona (Nairobi: Twaweza Communications, 2010), 32-49.

8 See Truth, Justice and Reconciliation Commission of Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume I" (2013), 24. See also Truth, Justice and Reconciliation Commission of Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume IIA" (2013), 153. The TJRC found that, to further its own agenda, the British colonial administration had pursued a divide-and-rule approach to the local population that resulted in a negative ethnic dynamic, the consequences of which are still being felt today. As in other parts of the British Empire, colonial officials in Kenya became experts at implementing a policy of "divide and rule." Differences among various communities were ruthlessly exploited in order to further colonial agendas. Some communities were designated allies and others, enemies; previous alliances were discarded, and new ones forged. All of this made for a volatile and unpredictable environment prone to outbreaks of extreme violence.

9 Japhet Biegon, "Politicization of Ethnic Identity in Kenya: Historical Evolution, Major Manifestations and the Enduring Implications" in *Ethnicity and Politicization in Kenya: The National Study*, ed. Kenya Human Rights Commission (Nairobi: Kenya Human Rights Commission, 2018), 15.

10 Oscar Gakuo Mwangi, *The Politics of Public Enterprise Privatization: The Role of Clientelism with Special Reference to Kenya* (Nairobi: University of Nairobi, 1993), 136; and Karuti Kanyinga, "Governance Institutions and Inequality in Kenya" in *Readings on Inequality in Kenya: Sectoral Dynamics and Perspectives*, ed. Society for International Development Eastern Africa Regional Office (Nairobi: Regal Press Kenya Ltd., 2006), 391.

A 2012 ethnic diversity audit of the civil service by the National Cohesion and Integration Commission revealed that the representation of Kikuyu and Kalenjin ethnic groups in the civil service was disproportionate to their population.¹¹ A 2015 evaluation report by the Public Service Commission corroborates this study.¹² The disproportionate representation of select ethnic groups in the civil service can be interpreted as a first, direct benefit of political patronage.

Linked to this first benefit is a second one: Public positions are often used as conduits through which the elites funnel state resources to the regions from where they come. Resources are allocated in favor of powerful groups and in line with the share of power held by the political elites. In return, elites expect their groups to provide coherent and consistent political support. The local communities are expected to defend these practices; otherwise, they will lose out on development-related benefits.

In addition, there is the perceived direct benefit to an ethnic group or region. The elected president and the president's close associates have historically been accused of channeling public resources to their backyards as a way of rewarding their communities for unqualified loyalty and support.¹³ This unequal distribution of resources reinforces other ethnic communities in their quest to capture the presidency at whatever cost.

Ethnic Minorities' Experiences of Exclusion

The economic, social, and political exclusion of ethnic minority groups results in inequalities and human rights violations that have lasting, adverse effects on those communities for generations. Such inequalities are reflected in a disproportionate lack of access to key services and patterns of poverty in various regions that are visible today.¹⁴ While poverty is a national problem, certain regions marked by economic marginalization experience disproportionate burdens of poverty.¹⁵ These imbalances in poverty are attributable to exclusionary practices in the distribution of public resources.

Political patronage has played a significant role in the selection of road projects, for example. Politicians including those in power use targeted investment in road construction to win elections and maintain power.¹⁶ Electoral strategies are often based on ethnic groupings and involve the targeting of resources (including funding for road construction), so as to develop and maintain patronage networks.

According to Malim and Mwaura (2013), the neglect of excluded groups, particularly those in the arid and semi-arid lands (ASALs) of Kenya, is evident in the following

11 National Cohesion and Integration Commission, "Towards National Cohesion and Unity in Kenya: Ethnic Diversity and Audit of The Civil Service, Volume I" (2012), 5-7.

12 Public Service Commission, "Evaluation Report for the Year 2015/2016 on Public Service Compliance with the Values and Principles in Article 10 and 232 of the Constitution of Kenya" (2016).

13 The Commission of Inquiry into the Irregular/Illegal Allocation of Public Land in Kenya (also known as the Ndung'u Commission after its Chairman Paul Ndung'u), "Report of the Commission of Inquiry into the Irregular/Illegal Allocation of Public Land in Kenya" (2004), 104. The Ndung'u Land Commission report noted that the coincidence between those who received allocations of public land and those who supported winners of general elections reinforced the commission's conclusion that public land was allocated as political reward or patronage.

14 Karuti Kanyinga, "Governance Institutions and Inequality in Kenya" in *Readings on Inequality in Kenya: Sectoral Dynamics and Perspectives*, ed. Society for International Development Eastern Africa Regional Office (Nairobi: Regal Press Kenya, Ltd., 2006), 366-368.

15 Truth, Justice and Reconciliation Commission of Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume IIB" (2013), paras. 167 and 168.

16 Overseas Development Institute Report, "Leaving No One Behind in the Roads Sector: An SDG Stocktake in Kenya" (2016), 31-32.

statistics.¹⁷ Only 15 percent of the railway lines in Kenya are in ASALs despite ASALs occupying 80 percent of Kenya's landmass. Of this landmass, only 0.1 percent is tarmac road. Kenya's total tarmac road is about 10,000 kilometers (or 6 percent of its total road network of about 178,000 kilometers).¹⁸ According to the Kenyan government's own data, less than 1 percent of the road network in North Eastern Province, which is major part of the ASAL and covers approximately 30 percent of the country's land mass, is paved.¹⁹

In the education sector, ASALs have only about 19 percent of the country's public secondary schools. This level of neglect and marginalization has adversely affected human development in Kenya, saddling it with an index lower than that of Sierra Leone, a country ravaged by over 20 years of war.²⁰

According to the TJRC, the consequences of discrimination still linger. Since the pre-independence period through all post-independence regimes, enforced isolation and discriminatory development policies delayed the development of ASALs, resulting in social and economic underdevelopment. Economic marginalization manifests in high levels of poverty, insecurity, high illiteracy rates and poor educational facilities, underdeveloped human resources, inadequate and poor infrastructure, and high morbidity and mortality rates.²¹ In its report, the TJRC found:

The intersection of politics and power in a context where the private sector remained insignificant over the years heightened political competition and increased opportunities for conflict over resources because the state had positioned itself as the main agency of development and "dispenser of largesse." In the Commission's view, this situation has had particular importance for economic marginalisation or inclusion; it meant that economic fortunes of individuals and groups depended on their acquisition, holding and wielding power or proximity to it.²²

For the political elite, the North has been viewed as primitive, unfamiliar, and even threatening. This attitude has translated into neglect, collective punishment, and active exclusion. Leslie Farson has aptly described the consequences of this attitude: "There is one half of Kenya about which the other half knows nothing and seems even to care less."²³ The biggest effect of this attitude can be seen on the security sector front. There is inadequate policing of pastoralist areas, as both the national and district police and security forces seem to be either unable or unwilling to confront cattle rustlers who have more often than not struck with impunity. The state is conspicuously failing to fulfill its duty to provide security to citizens in northern Kenya. The sense from members of the com-

17 Abdirahman Maalim Abass and Francis Mwaura, "Re-membering the Drylands of Kenya: Integrating ASAL Economies in Vision 2030," in *(Re)membering Kenya: Interrogating Marginalization and Governance, Volume 2*, eds. George Gona and Mbũgwa wa-Mũngai (Nairobi: Twaweza Communications, 2013), 88-113.

18 Kenya National Highways Authority, "Map Classification," www.kenha.co.ke/index.php/road-network

19 Kenya Ministry of Transport, "Integrated National Transport Policy: Moving a Working Nation" (2009), 39. According to the World Bank, the North Eastern counties of Isiolo (25,336 km²), Wajir (55,840 km²), Mandera (25,798 km²), and Garissa (45,720 km²) cover a total area of approximately 152,694 km² or about 26 percent of Kenya's land mass but has a road network of only 9,386 km or 6 percent of the total road network in the country and is predominately unpaved.

20 Abdirahman Maalim Abass and Francis Mwaura, "Re-membering the Drylands of Kenya: Integrating ASAL Economies in Vision 2030," in *(Re)membering Kenya: Interrogating Marginalization and Governance, Volume 2*, eds. George Gona and Mbũgwa wa-Mũngai (Nairobi: Twaweza Communications, 2013), 88-113.

21 Truth, Justice and Reconciliation Commission of Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume IIB" (2013), para. 193.

22 *Ibid.*, para. 148.

23 *Ibid.*, 55.

munities in this region is that the state is actively marginalizing them as form of collective punishment and with the intent to subjugate them.²⁴

State Responses to Agitation Following Exclusion: State-Sponsored Violence and Collective Punishment

Once excluded, groups led by their own leaders and other elites begin to agitate for inclusion within governing institutions. Those in power regularly respond to such agitation with minor acknowledgments or by co-opting excluded groups' elites, directing state-sponsored violence, or refusing to protect excluded groups from organized violence. Where the state has acknowledged grievances, it responded by ceding to minor demands for inclusiveness and the wider distribution of national resources, though it largely addressed these demands through co-opted individuals from particular ethnic or regional constituencies. Such responses left intact the existing political structure and patronage networks and did not resolve the inequitable flow of resources from the capital to favored regions.

By co-opting some leaders of the excluded minorities, those in power intended to pacify a few, while consigning the majority to the fringes of the economic system.²⁵ This tactic would usually fail to assuage excluded groups. The political elite would then adopt collective punishment as a second response. In its report, the TJRC found:

Kenyatta, having realized that he would not be able to meet the needs and expectations of all Kenyans, engaged in measures that would ensure political survival and self-sustenance of his government. This led to a strengthening of the role of the security agencies similar to the role they played during the colonial period, and particularly aimed at controlling, and suppressing dissent and organized political opposition. In brief, in the words of Charles Hornsby, "the Independent State soon echoed its colonial parents' repressive attitudes to dissent."²⁶ During the Kenyatta administration, there were cases, reported and unreported, of extra-judicial killings and enforced disappearances. The killings that took place during this period took the form of either political assassinations, mass killings or deaths resulting from excessive use of force by the police and security agents.

The incumbent government pursued an authoritarian course of action against group agitating for change, detaining individuals without trial, torturing them, and dispensing collective punishment.²⁷ Collective punishment, frequently in the guise of security or disarmament operations, has often resulted in massacres of innocent citizens. Such massacres include those in Bulla Karatasi, Wagalla, Malka Mari, Lotirir, and Murkutwa.²⁸ A host of other gross violations of human rights were also committed during these operations, including sexual violence, torture, and denial of social and economic rights.

Government reports on ethnic clashes in 1992, 1997, and 2007 indicate that ethnic violence was usually state sponsored and that the security sector was deeply involved. Elites in control of the state used the security apparatus to commit human rights viola-

²⁴ Ibid., para. 420.

²⁵ Truth, Justice and Reconciliation Commission of Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume IIA" (2013), para. 442-445.

²⁶ Charles Hornsby, *Kenya: A History Since Independence* (New York: I.B. Tauris, 2011), 109.

²⁷ Truth, Justice and Reconciliation Commission of Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume IIA" (2013), para. 440.

²⁸ Truth, Justice and Reconciliation Commission of Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume IIC" (2013), 238.

tions directly against ethnic groups deemed opposed to their hold on power. In other instances, the state allowed informal actors to organize and terrorize groups perceived to be against the interests of elites in power at the time. During these election cycles, politically excluded communities have suffered targeted human rights violations, including killings, displacement, sexual violence, enforced disappearance, extrajudicial executions, and persecution, among other crimes and atrocities.

According to the TJRC, there was “widespread and systemic” use of torture to crush dissent and intimidate opposition parties.²⁹ Specific incidents include, among others, during the Shifta War, in the aftermath of an attempted coup in 1982, and most recently in 2008 during Operation Okoa Maisha, which was a security operation to flush out members of the Sabaot Land Defence Force (SLDF) in the Mount Elgon region.³⁰ The report also documents the 3,000 civilian deaths following the Garissa Massacre, a government operation to apprehend a local gangster in the village of Bulla Kartasi in 1980:³¹

Collective punishment was a key component of the Bulla Karatasi operation. The operation ... cannot be described as targeted or investigation-driven. The police had no suspects and they had no names. They developed no profile other than the ubiquitous Shifta. As the Commission established, however, the problem facing the people of Garissa was that they were all classified by the administration as either Shifta or Shifta supporters. This meant that the entire population of the town was assumed to be somehow responsible for the actions of a handful of rogue and criminal gunmen. And it was on this basis that men, women and children were indiscriminately collected onto the field at the primary school. A sifting of sorts took place at the playing fields. Non-Somalis, such as Randiki, who had been caught up in the swoop were apparently allowed to leave; the assumption of course being that their very ethnic identity was a marker of their ignorance of and innocence in the entire affair. Women, children, the sick and elderly were also released. This left a cohort of men of Somali origin who were subjected to a screening and interrogation process conducted by the police and the administration police. Special Branch officers spearheaded the questioning of the people caught in the indiscriminate dragnet thrown over Garissa on the night and the early morning of the 9 and 10 November. The collective and undifferentiated approach applied to Garissa residents was a hallmark of the Bulla Karatasi operation.

According to historical records, many of the conflicts between minority communities and the state were over land.³² When minority communities resisted the illegal allocation of their land or their uncompensated eviction, the state regularly responded with violence perpetrated through the police. Violence would begin at an individual level, with regular beatings and arrests of members of an indigenous community who tried to access land from which they had been evicted.³³ When communities took collective action, the state escalated the response. According to the UN Special Rapporteur on indigenous peoples,

29 Truth, Justice and Reconciliation Commission of Kenya, “Report of the Truth, Justice and Reconciliation Commission, Volume IIA” (2013), 590.

30 Ibid.

31 Truth, Justice and Reconciliation Commission of Kenya, “Report of the Truth, Justice and Reconciliation Commission, Volume I,” (2013), 205.

32 The Commission of Inquiry into the Irregular/Illegal Allocation of Public Land in Kenya, “Report of the Commission of Inquiry into the Irregular/Illegal Allocation of Public Land in Kenya” (2004), 147.

33 World Organisation Against Torture, Centre for Minority Rights Development, and the Kenyan Section of the International Commission of Jurists, “The Lie of The Land: Addressing the Economic, Social and Cultural Root Causes of Torture and Other Forms of Violence in Kenya: An Alternative Report to the Committee on Economic, Social and Cultural Rights” (2008), 29.

Kenyan police severely repressed Maasai protesters, who in 2004 demonstrated in Laikipia to mark the expiration of their land leases under the 1904 treaty with the British.³⁴ The violence resulted in the death of a community elder and serious injury to four people. Women were also reportedly raped and local villages looted as part of the ensuing state security operation.

The Sengwer community, for example, has a long history of conflict with state security forces. Members of the community moved into the Embobut Forest in Western Kenya after being displaced from their traditional settlements in the plains. According to reports, security forces tend to argue that the Sengwer have no rights and are not entitled to protection from the state because they are viewed as illegal squatters in the forest. Accordingly, every few years, security forces enter the forest and burn down Sengwer homes. In 2006, the forest service evicted approximately 8,000 Sengwer from the forests, where they had taken up residence, without any compensation or resettlement assistance.³⁵

Community members, who have in the past staged protests against illegal acquisition of their land, have had their protests often violently thwarted in ways that were likely to generate more violence and conflict. The provincial administration directed police officers to arrest and forcibly transfer citizens protesting violations of their land rights, as a way of intimidating them.³⁶

Women and girls from targeted communities, in particular, bear the brunt of state reprisals. All too often, security forces perpetrate sexual and gender-based violence against women and girls as a way to message the central government's displeasure with the agitations carried out by the leaders of these communities. One reason they suffer these abuses is because, as women, they are often viewed as symbolic bearers of a community's cultural and ethnic identity.³⁷ Women are also victims of other forms of violence by dint of being members of the targeted community; violations that they have experienced during security operations include killings, torture, inhuman and degrading treatment, and mutilations.³⁸

The Commission of Inquiry into Post-Election Violence (CIPEV) in 2007 and the Kenya National Commission for Human Rights (KNCHR) in the 2017 election period found that victims of the violence under investigation in both periods were disproportionately women and girls who targeted because of their ethnicity and political associations. The KNCHR found that, in the 2017 post-election violence, security forces perpetrated a majority of the sexual violence—about 55 percent.³⁹ Both the CIPEV 2007 and KNCHR 2017 reports include reports of police making statements blaming the women victims that were political in nature and that faulted their ethnicity or alleged political affiliation as the cause of their tribulations.⁴⁰

34 U.N. General Assembly, "Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen: Addendum: Mission to Kenya" (A/HRC/4/32/Add.3), para. 60.

35 Kenya Office of the President, Ministry of Water and Irrigation, and Ministry of Environment and Natural Resources, "Indigenous Peoples Planning Framework for the Western Kenya Community Driven Development and Flood Mitigation Project and the Natural Resource Management Project: Final Report" (2006).

36 Ibid.

37 Truth, Justice and Reconciliation Commission of Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume IIC" (2013), 86.

38 Ibid., 88.

39 Kenya National Commission on Human Rights, "Silhouettes of Brutality: An Account of Sexual Violence During and After The 2017 General Election" (2019), 43.

40 Ibid., 35.

Situating Security Sector Reform in the Inclusion Debate

Security sector reform (SSR) involves bringing security agencies under civilian control and aligning their operations to international best practices. SSR also means transforming the underlying values, norms, and politics that guide the operations of security agencies. The tenets of SSR include establishing effective governance, oversight, and accountability within the security sector and improving and promoting the sustainable delivery of security and justice, with a view toward peace and respect for the rule of law.⁴¹

SSR approaches that incorporate concerns for justice include two phases.⁴² The first phase is the preparation for and enabling of the reform. It entails mapping the justice and security sectors, auditing security agencies and judicial institutions, identifying and taking a census of security sector personnel to determine their number and characteristics, and assessing whether the prevailing institutional conditions are conducive to reforms and accountability measures. The second phase is the implementation of the reform. SSR can take different forms and address various issues, including vetting and lustration, democratic oversight, accountability, structural reforms that increase capacity and integrity, and training and capacity-building activities linking the reform to other transitional justice processes.

Kenyans have a relatively strong basis for pursuing SSR. First of all, the Constitution establishes a framework for the security sector by setting out the core principles and values that should guide it. Key to SSR are the faithful adherence to the Constitution and the implementation of the other recommendations from past reports by relevant oversight bodies. For example, both the Waki report and the Ransley report identify several broad principles that a reformed Kenya police force should respect.⁴³ These principles include a representative police force that reflects Kenya's diverse communities, impartiality, the decentralization of policing, respect for human rights, and accountability. These reports recommend that the government instill these principles by implementing proper recruitment processes, better training, and new codes of conduct, and by vetting officers to identify those who are suitable and competent. Similarly, the Alston report recommends vetting officers and urges political leaders to publicly declare their commitment to investigate, bring to justice, and end unlawful killings by security personnel.⁴⁴

Measures for Reforming the Police

Recruitment in the National Police Service

Earlier, it was argued that groups that perceive themselves as beneficiaries of public largess will seek to underwrite oppressive undemocratic regimes based on that perception. The first and most immediate benefits for doing so are usually appointments or employment in the public service. In this regard, analysis shows that the practice of rewarding cronies and tribesmen has been rampant in the recruitment processes within the security sector.

41 Organisation for Economic Co-operation and Development, "The OECD DAC Handbook on Security System Reforms (SSR): Supporting Security and Justice" (2007).

42 Njonjo Mue, "A Security Sector Respectful of Human Rights," paper presented at the conference, The Contribution of Parliaments to Long-Term Peace in the Extended Great Lakes Region, on December 7, 2009 in Nairobi.

43 Commission of Inquiry into Post-Election Violence, "Report of the Commission of Inquiry into Post-Election Violence" (Waki report) (2008), 430-440; National Task Force on Police Reforms, "Report of The National Task Force on Police Reforms" (Ransley report) 17-40. (2009), 17-49.

44 United Nations Office of the High Commission for Human Rights, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (A/HRC/11/2/Add. 6 26 May 2009)* (Alston report).

It has taken a constitutional provision, Article 238(2), to attempt to turn the tide. Article 238(2) states that “principles of national security which include ... recruitment by national security organs shall reflect the diversity of the Kenyan people in equitable proportions.” The National Police Service (NPS) has strived to increase its ethnic diversity in a bid to become a more inclusive police service. However, it has failed miserably when it comes the gender balance. There are far too few women serving in the NPS—short of the one-third constitutional requirement. Specialized and targeted recruitment procedures would be useful in bridging this gender gap. Improving the terms of services and prestige of the institution would also contribute to solving these challenges.

Corruption has afflicted the recruitment processes and contributed to a lack of diversity in the past and feelings of exclusion. The Ransley Taskforce found that Kenyans generally believed that the police’s recruitment process is corrupt: “The exercises are riddled with corruption, with prospective candidates openly admitting to having paid as much as Ksh.100,000 to secure a place in the Forces. This then presents a basic contradiction in values; in that a police officer, who is expected to uphold law and order, has entered the police force on a corruption platform.”⁴⁵

In 2014, the High Court nullified the police recruitment exercise following a review by the Independent Policing Oversight Authority (IPOA), which found evidence of bribery, nepotism, tribalism, and all manner of corruption throughout the recruitment process. In its report, the IPOA concluded that police recruitment was not undertaken in line with constitutional standards, a conclusion with which both the High Court and Court of Appeal agreed.⁴⁶ The Kenya National Commission on Human Rights (KNCHR) also issued a report, in which it similarly found corruption to be deeply entrenched within the NPS itself, especially in its recruitment practices.⁴⁷ The National Police Service Commission, which is responsible for recruiting new trainees into the force, was expected to curtail corruption. However, the nullification of the recruitment exercise results in some centers, following the last recruitment exercise, indicates that corruption remains a major impediment to the professionalization of the NPS.⁴⁸

Corruption rooted in the politics of ethnic identity is a major driver in the exclusion of ethnic groups not aligned with the political elite. Corrupt recruitment practices deny these groups access to public jobs and the opportunity to serve the nation. The National Task Force on Police Reforms (Ransley Taskforce) considered fair and equitable recruitment as the bedrock of a solid and professional police service. The quality of police personnel, including officers’ attitude and performance, and its ultimate impact on policing practices begins at the recruitment stage. Poor-quality police recruitments always result in poor-quality police service.⁴⁹

45 Ransley report, 98.

46 In July 2014, the IPOA monitored the National Police Service Commission’s recruitment of members of the NPS, in line with its mandate in various centers, and observed that the exercise was marred with corruption, fraud, and massive irregularities. The IPOA filed a case in the High Court to nullify the whole exercise and order a repeat of the recruitment. The High Court agreed with the IPOA and the exercise was nullified. This order was upheld by the Court of Appeal under Petition No. 390 of 2014 and Civil Appeal No. 324 of 2014 (Recruitment Decisions).

47 Kenya National Commission on Human Rights, “A Country Under Siege: The State of Security in Kenya: An Occasional Report (2010–2014)” (2014).

48 Ibid., 31.

49 Ransley report, 98.

General Policy and Practice on Transfers and Deployment of Police Officers

The NPS has been accused of excesses when maintaining public order in opposition strongholds, particularly during election cycles in which voters protest election results. A KNCHR report, for example, found that the police were biased against supporters of opposition party candidates and used lethal force against them when they held anti-government rallies. The police failed to arrest and charge government supporters, who often donned military regalia during pro-government rallies.⁵⁰ The lack of zeal when dealing with government supporters on the one hand, while employing a brutalizing approach toward opposition protesters on the other, constitutes a brutal repression of human and political rights. In the context of Kenya, it also sends the message of “not belonging.”

Evidence of the government policy to violently repress political opposition is the concerted, heavy deployment of police forces in opposition strongholds before or during elections. This practice does not appear to pursue the objective of protecting local communities, but rather to repress opposition groups. The transfer and deployment of police officers during an election, or that are otherwise politically motivated, often result in the police committing human rights abuses. Police officers deployed in such instances are never held accountable as they are serving a political objective. This abuse of the police service by the state results in deeper distrust of the police and feelings of exclusion among ethnic groups not aligned with the political elite.

IPOA raised this issue more recently, in 2018, when it concluded that “late transfers of officers before elections date should be discouraged as this provides avenues for the Service to be misconstrued as partisan.”⁵¹ Even worse is when these transfers are ethnically or politically motivated.

The Ransley report recommends that the NPS should align the deployment of its officers to their areas of specialization. The service trains officers for different functions of essence, in line with an individual officer's expertise, talents, and skills. The Ransley Taskforce, however, found that the decision to deploy any particular officer was often made, not according to the officer's function or specialized skills, but rather based on an officer's links with decision makers, making these decisions and the deployments themselves prone to abuse.

Deployment should also take gender balance into consideration. In the current context, deploying female officers to the country's forward, or hardship, areas is unworkable due to the lack of resources available to officers serving in these areas. Some current gender-insensitive policies and practices (for example, lack of accommodations for lactating mothers who are police officers) also make it difficult for female officers to serve in forward zones. Nonetheless, given how critical it is for training purposes that a plurality of officers serve in these zones, a deployment policy should be put in place that allows female police officers to gain deployment experience, but not in such a way that this experience drives them to leave the force as is currently the case.

Promoting ethnic minorities and women within the force is also critical to inclusion. The National Police Service Commission (NPSC) should use of its powers to expedite the pro-

⁵⁰ Kenya National Commission on Human Rights, “Still a Mirage at Dusk: A Human Rights Account of the 2017 Fresh Presidential Poll” (2018).

⁵¹ Independent Policing Oversight Authority, “End-Term Board Report 2012-2018” (2018), 136.

motion and career advancement of qualified officers from underrepresented groups, including women. It should do so with a view to increasing their number in key decision-making ranks of the service.⁵²

Review of the Policies and Practices of Security Operations That Adversely Affect Inclusion

According to the TJRC report, the history of security operations conducted by the police, military, or both in areas inhabited by excluded ethnic groups has been dominated by accounts of the use of brutal force, unlawful killings (sometimes in large scale), rape and sexual violence, and burning and looting of property. These security operations have been nothing other than collective punishment; officers have indiscriminately rounded up individuals in a specific area and then brutally punished them all, with the hope that doing so would force them into submission. Thus, since independence, Kenyans have viewed and described both the police and military as rogue institutions; they fear them and see them as perennial violators of human rights rather than protectors.⁵³ Kenyans perceive the security sector, particularly the NPS, as an inefficient and brutal institution that is hostile to the general public and lacking in transparency and accountability.⁵⁴

According to the Commission of Inquiry into the Post-Election Violence (CIPEV), most contingents of the security sector threw away all pretence at professionalism during the 2007-2008 election crisis.⁵⁵ While some allowed themselves to be actively used for partisan political purposes, others rendered services to citizens in distress based on their political affiliation and ethnic identity. Still others became complicit in criminal acts and committed murder, rape, arson, and theft.⁵⁶

For example, the security sector's responses to terror attacks in ethnically excluded communities has largely consisted of accusing the entire community of having collaborated with the terrorists and collectively punishing the residents. In September 2018, for example, the Kenya Defence Forces (KDF) rounded up herders in northern Kenya's Garissa County, after an improvised explosive device exploded and injured members of a KDF unit days earlier. KDF soldiers stripped naked, beat, and tortured the herders, claiming they were sympathizers of the terrorist group Al Shabaab.⁵⁷

This incident is not an isolated one. In a report on national security in Kenya,⁵⁸ the KNCHR found that Kenyan security agencies, in their response to emerging security threats such as terrorism, have isolated and profiled particular communities, fueling ethnic tensions. In some instances, security agencies have expelled members of these communities or targeted them for reprisals.

52 Ibid., 146.

53 Truth, Justice and Reconciliation Commission of Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume I," (2013), 34.

54 See Transparency International-Kenya, "Kenya Bribery Index" (2001-2010), among other periodic reports produced by Kenyan and international human rights groups.

55 Former President Mwai Kibaki established the CIPEV on May 23, 2008, to investigate the post-election violence and make recommendations on the punishment of the perpetrators of atrocities and the prevention of potential outbreaks of violence in the future. *The Kenya Gazette* Notice No. 4473 Vol. CX No. 4 of 23 May 2008. For information on the decline of professionalism within the NPS, see Waki report, Chapter 11.

56 Waki report, 396-398.

57 Abdimalik Hajir, "8 Herders Nursing Serious Injuries after "Torture" by KDF Soldiers," *Daily Nation* September 4, 2018 Counties Section, Garissa Section.

58 Kenya National Commission on Human Rights, "Report on Securing National Security and Protection of Human Rights: A Comparative Analysis of the Efficacy of Counter Terrorism" (2018), 20-22.

In another report,⁵⁹ the KNCHR concluded that security agencies committed systematic, widespread, and well-coordinated violations in their operations in the North.⁶⁰ These violations include arbitrary arrests, extortion, illegal detention, torture, killings, and disappearances. The KNCHR documented incidents of suspects being rounded up and detained for periods ranging from a few hours to many days in extremely overcrowded, inhumane, and degrading conditions. Those tortured reportedly sustained serious physical injuries and psychological harm. The methods of torture that were used included severe beatings, waterboarding, electric shocks, genital mutilation, exposure to extreme cold or heat, hanging from trees, mock executions, exposure to stinging by wild ants, and sleep and food deprivation.

Kenyan security agencies have continued to conduct abusive operations against individuals and groups suspected of terrorism or to be associated with terror attacks in various parts of the country. The KNCHR report, for example, documented 120 cases of egregious human rights violations during counterterrorism operations, including 25 extrajudicial killings and 81 enforced disappearances.⁶¹

This does not augur well for Kenya's national and social cohesion. Current strategies to combat threats to national security are sadly fueling feelings of exclusion, discrimination, marginalization, and hostility.⁶² By deploying police officers with requisite knowledge, training, and skills, the NPS could help prevent the profiling of communities and eventual human rights violations.

Security operations in targeted communities that result in serious human rights violations tear at the social fabric of the nation. Police oversight bodies should therefore take more deliberate measures to hold to account police officers and their commanders who use police powers to suppress groups that are exercising constitutional and internationally guaranteed human rights. It has been shown that the lack of accountability for gross violations committed by security sector actors has an even greater negative impact on national cohesion, compared with when perpetrators of such violations are brought to justice. It is not only rare but almost unheard of for the state to undertake genuine investigations into atrocities committed during politically motivated security operations. Accountability measures could range from compensation for victims to lustration, disciplinary action, and prosecution for perpetrators.

Accountability, particularly for violations committed against targeted communities, is critical for promoting inclusion. Moreover, accountability efforts should be especially vigorous in cases of sexual and gender-based violence. Accountability measures that promote gender justice could include, among others, a combination of compensation for victims and lustration, disciplinary action, and prosecution for perpetrators.

59 Kenya National Commission on Human Rights, "The Error of Fighting Terror with Terror" (2015), 7.

60 These security agencies included contingents from the Kenya Defense Forces, National Intelligence Service, Kenya Wildlife Services, County Commissioners, Deputy or Assistant County Commissioners, and County Chiefs, and various units of the NPS, including the Anti-Terrorism Police Unit, Kenya Police Reservists, Rapid Deployment Unit of the Administration Police, Border Patrol Unit, and the General Service Unit.

61 Kenya National Commission on Human Rights, "Error of Fighting Terror with Terror: Preliminary Report of KNCHR Investigations on Human Rights Abuses in the Ongoing Crackdown Against Terrorism" (2015), 6.

62 Kenya National Commission on Human Rights, "A Country Under Siege: The State of Security in Kenya: An Occasional Report (2010–2014)" (2014), 13.

The security sector should therefore adopt a range of reform measures, particularly a gender-sensitive approach, at all stages of security operations, including planning, implementation, and monitoring and evaluation. It should also prioritize the welfare of victims and cooperate and coordinate with other sectors to provide essential services to victims of sexual or gender-based violence. The security sector should put in place operational protocols and procedures to enable victims of sexual or gender-based violence to report these violations for purposes of accountability.

It should also develop special measures for child and male survivors of sexual violence to ensure their safety and access to justice while avoiding stigma. Security sector personnel should receive gender-sensitivity training, and a zero-tolerance code of conduct should be put in place—both critical measures.⁶³

Collective Reparations as a Remedy for Collective Punishment

Reforming the security sector should be but one element of a broader effort to make society and its institutions more inclusive in the aftermath of human rights violations. Collective reparations, for example, can offer redress to communities that have suffered collective punishment at the hands of security sector institutions and thereby contribute to the rebuilding of trust and cohesion. Collective reparations, however, should not be used to ignore individual harms suffered or to excuse the state from issuing individual reparations, as this obligation would remain undischarged. In certain instances, it can be argued that, based on the nature of the harm experienced and the manner in which the community suffered, collective reparations may be more feasible or more practical than individual reparations.⁶⁴

Collective reparations can be defined as reparations for collective harm and may include any of the following: an appropriate verification of the facts; searching for the whereabouts of the disappeared; public apology, including acknowledgment of the facts and acceptance of responsibility; guarantees of non-repetition, such as security sector reforms; and commemorations and tributes to the victims.

The TJRC recommends collective reparations for communities affected in the Wagalla Massacre (Wajir), Loitirir Massacre (West Pokot), Turbi and Bubisa Massacre (Marsabit), Malka Mari Massacre (Mandera), and Bulla Kartasi/Garissa Gubai Massacre (Garissa).⁶⁵ The TJRC's form for taking statements included a section for recording recommendations for reparation. The form specifically asked those giving statements to indicate what form of reparation they preferred, individual or collective. It also asked claimants to recommend what they thought was best for the nation. Table 1 presents the TJRC's analysis of the recommendations proposed by communities.

63 Megan Bastick, Karin Grimm, and Rahel Kunz, *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector* (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2007).

64 Ruben Carranza R., Cristián Correa, and Elena Naughton, International Center for Transitional Justice, "Forms of Justice: A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations" (2007).

65 Truth, Justice and Reconciliation Commission of Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume IV" (2013), 100.

Table 1: Forms of Reparations Proposed by Communities

Reparations	Statement
Promote peace	7,122
Build a school	4,280
Build hospital	1,604
Repair or build roads	725
Repair or build water facilities	633
Repair or build houses	733
Improved security	2,297
Identification of perpetrators	273
Exhumation and burial	222
Annual religious service	1,550
Recovery of stolen funds/property	3,611
Affirmation action	4,103
Replacement of goods	575
Community service	61
Other	5,009

Source: *Truth, Justice and Reconciliation Commission of Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume IV" (2013).*

Kenya's Office of the Attorney General has indicated a willingness to use the Restorative Justice Fund for collective reparations.⁶⁶ The government's readiness to pursue collective reparations, however, is a most disappointing turn of event for victims of historical injustices, especially victims of violations committed by security sector actors, who have long argued for individual reparations.

A collective reparations program must be implemented using a victim-centered approach. Such an approach requires the participation of victims in all stages of the reparations process; all reasonable and appropriate measures must be taken to facilitate victims' participation. Collective reparations should be nondiscriminatory, especially with respect to ethnicity, given the harms these reparations would be redressing in Kenya. The Constitution provides for the equal treatment of women and men and recognizes that the historical disadvantages that women face in society's political, economic, social, and cultural spheres. Therefore, a collective reparations program must also be undertaken from a gender-sensitive perspective. This means assessing the program's implications for women and men throughout all its phases, including the design, implementation, and monitoring and evaluation to ensure that women and men benefit equally and that structural inequality is not perpetuated.

Addressing past collective injustices requires a process of consultation with the affected communities to determine policies and projects that could help them overcome the legacies of those violations. These policies and projects may include security sector reforms

66 President Uhuru Kenyatta, "Speech by His Excellency Hon. Uhuru Kenyatta, C.G.H., President and Commander in Chief of the Defence Forces of the Republic of Kenya During the State of the Nation Address at Parliament Buildings, Nairobi on Thursday, 26th March, 2015" (2015), paras. 75, 78, and 83.

and the provision of existing services—such as those related to education, health care, infrastructure including roads and electrification, agriculture, or economic development—to neglected regions not receiving them. They may also provide for other specific forms of redress that could address legacies of violations.

The first step should be to examine the list of communities affected by violence or marginalization identified by the TJRC. Factors to be considered when examining options for collective reparations include the following: concentration of individual human rights violations; destruction, leveling, or razing of entire communities; massive displacement; destruction of the community's governing institutions (number of community authorities killed or displaced, prohibition of or limitations of community assembling or meeting, and so on); destruction of community properties or infrastructure; destruction or loss of community natural resources. An assessment based on these factors could help identify the most-affected communities that should be prioritized in the implementation of reparations. The assessment could also help identify the areas where different reparations projects will be implemented.

Women and girls should be encouraged and provided ample opportunities to participate in the consultation process, and they should see their contributions meaningfully considered by authorities. Attention should be paid to the design of the collective reparations program to ensure that it uses a gender-sensitive approach. Special measures should be put in place that guarantee women who have suffered violations at the hands of security actors can participate in both the assessment process and design stage so that the collective reparations, whatever form they take, respond to their needs. It is important to bear in mind, however, that neither individual nor collective reparations can ever fully compensate victims for the harm they suffered. Moreover, collective reparations are not a substitute for individual reparations, particularly for victims of sexual or gender-based violations.

An Agenda for Security Sector Reform That Advances the National Dialogue Process

If reforming Kenya's security sector is to help the nation achieve greater cohesion and inclusion firmly grounded in a respect for human dignity, then any reform agenda must take into consideration the following general principles:

1. The security sector must acknowledge and operate according to the principle that national institutions must protect Kenyans' fundamental rights and freedoms. Currently, there is a sense that the role of the security sector is to serve interests of the political elite rather than to protect ordinary citizens including ethnic groups that are not in power.
2. Security sector actors and the sector as a whole must be held accountable for misconduct. Violations (including sexual and gender-based violations) perpetrated by security sector actors, and that are politically motivated, should be investigated and prosecuted and given the highest priority to that end.
3. Security sector reforms should be undertaken with the understanding that Kenya is a multi-ethnic, multi-party democracy where women and men are equal and a plurality of voices (most especially those of women yearning to lead) can freely participate in the political discourse. The political elite on power should no longer use the security sector to oppress dissent.

4. Security sector reforms should result in policies, laws, regulations, and practices that safeguard fundamental freedoms, particularly those that allow for communities that perceive themselves as excluded to demonstrate peacefully against repression and violations, for their inclusion in governance and decision making, or for the provision of services.
5. Security sector officers and personnel should have the resources and tools necessary for effectively and efficiently addressing threats to security and crime. The state should prioritize the provision of these resources and tools.

By taking into account these general principles, a reform agenda should lead to the following concrete resolutions and actions, which must be debated within the security sector and are of critical concern to the ordinary citizens.

1. First, victims and their suffering must be acknowledged and redressed through concrete measures, in particular individual and collective reparations. Doing so is a critical part of the national dialogue process and in line with recommendations of the KNCHR and National Victims and Survivors Network. Both the KNCHR and the survivors network have explicitly acknowledged the violations committed by the security sector actors, the responsibility of leaders in the security sector for those violations, and the need for criminal prosecutions. Collective reparations should be issued in areas where the security sector collectively punished communities.
2. Second, there must be a clear commitment to ensuring that the security sector's recruitment and personnel promotion practices are accountable and free from ethnic bias, nepotism, and corruption, consistent with the Constitution. Furthermore, these recruitment and promotion practices should be gender sensitive and move the NPS and other security organs closer to meeting the constitutional gender quota. As per recommendations of the IPOA and Ransley Taskforce, and in line with the 2015 National Police Service Commission Recruitment and Appointment Regulations, recruitment should not happen in one day as has been the case. Recruitment should happen over a limited yet extended period of time, during which physical fitness, aptitude, and medical tests are administered and educational qualifications are assessed. As recommended by the Ransley Taskforce, the recruitment process should consist of a first, second, and third stage, to guarantee the selection of high-quality recruits. To boost confidence in the recruitment process, it should incorporate a complaints mechanism. The names of successful candidates should be made publicly available immediately in digital format. These names should be published nationwide to enhance accountability and the transparency of the process.
3. Third, as per IPOA's recommendations, an audit of the police service should be urgently undertaken to identify irregular and unregulated deployment of officers and to reduce abuses committed by them, particularly in politically excluded communities. The audit should assess who is assigned where and when and the reasons for the assignment in order to identify irregular or unjustified deployment of officers and any other relevant issue. It should also examine attrition patterns in the service. Such an audit should also provide important information for improving recruitment practices. The NPSC is the institution that is legally mandated to conduct such an audit. The NPSC should also spearhead the effort to end the use of deployment as a means to punish and intimidate targeted communities and regions. Deployment should also be used to provide opportunities to historically excluded groups including women to gain the vital experience required to serve in more senior ranks.

4. Fourth, the police service must demonstrate a strong commitment to the observance of Kenyans' human rights, as enshrined in the Bill of Rights, particularly with respect to the freedoms of expression and association. The police must maintain and manage public order, while guaranteeing the rights of protestors and communities aggrieved by the state's conduct. Article 239 of the Constitution requires that national security organs, when performing their duties, should not act in a partisan manner, prejudice a political interest, or further the political interest of a political party or cause. To fully realize these fundamental rights and freedoms, the NPS, in consultation with stakeholders, should quickly develop the Public Order Management Policy and Regulations and repeal the archaic Public Order Act (Cap. 56). This policy should clearly limit the illegal use of lethal force, such as the use of live bullets, and unwarranted use of force on protestors, especially those from communities in opposition strongholds. Further, the state must strengthen policing oversight mechanisms, such as the IPOA and the Internal Affairs Unit of the NPS.
5. The police service should put in place operational protocols and procedures to enhance accountability in the event of gross human rights violations and procedures that enable victims of sexual violence to report their violations for purposes of accountability. These measures should also include special procedures and provision of essential services for vulnerable groups.
6. The police service must demonstrate a strong commitment to professionalizing its force through the retraining of its officers, including training on gender sensitivity. The retraining should center on the new constitutional order that is now in effect following the adoption of the 2010 Constitution and other laws.
7. There should be a clear commitment to implementing legislation that supports accountability efforts. This includes operationalizing laws such as the Coroners Act, Persons Deprived of Liberty Act, Prevention of Torture Act, and Victim Protection Act. It includes passing and operationalizing critical regulations, such as the National Police Service Act Regulations on the Use of Firearms (Rule 8 of the Sixth Schedule), Regulations on the Use of Force, and Regulations on Recruitment and Discipline, and the IPOA Regulations on Complaints. It also includes taking administrative actions such as fulling observing arrest and detention rules, particularly Rules 5 and 8 of Fifth Schedule of the National Police Service Act.
8. Lastly, the president should establish a commission of inquiry into enforced disappearances and extrajudicial killings targeting marginalized groups who have suffered such harm by dint of their ethnicity. Victims of historical injustices, particularly victims of violations committed by the security sector actors, have demanded such a commission. This commission of inquiry would be established with the understanding that neither past transitional justice efforts (the Commission of Inquiry into the 2007 Post-Election Violence or the TJRC) have had a focused analysis on these occurrences. Numerous allegations of abuse of power by the police in counties such as the Coast and North Eastern remain uninvestigated, further contributing to communities' feelings of victimization and exclusion within those societies.

Conclusion

This paper reflects on the dynamics that result from political competition in ethnically fragmented societies. Specifically, in Kenya's government and electoral process, there are clear winners and losers. The issue at hand, however, is that the losing group retains inalienable rights that cannot be ignored. Historically, the Kenyan state has used the security sector, and particularly the police, to suppress the rights of the losing ethnic groups. As part of the Building Bridges Taskforce and national dialogue process, the role of the security sector and police must be examined. Their role in supporting a fairer and more democratic society cannot be gainsaid. To ensure they fulfill this role, reform measures must be proposed and implemented. Although political power invariably shifts to the ethnic communities to which those who are elected into office belong, communities that are excluded still hold fundamental rights and freedoms that the security sector and, in particular, the police must observe, protect, and promote. Their role is nothing short of guaranteeing the success of a multi-ethnic democratic state. Where violations have occurred, they must be acknowledged and collectively repaired. Measures should be finally put in place to institutionally reform the security sector and the police and to prevent the recurrence of violations. Excluded groups should have the freedom to exercise their right to assemble and to demand better representation in and services from the government, and they should be protected and supported in their exercise of this right. The state should take all measures to observe, protect, and fulfill their rights and freedoms, especially socioeconomic rights. In this way, security sector reforms can bring about greater inclusion.

