
POLICE ACCOUNTABILITY: A COMPREHENSIVE FRAMEWORK



Democratic policing series

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ABOUT HAKI NA USALAMA FORUM

Haki na Usalama (Justice and Security) Forum was established in December 2012 and took its acceleration in 2016 to promote criminal justice reform and, in particular, democratic model of policing. The forum now includes a variety of stakeholders, and provides vital space where the stakeholders can have conversation about police reform.

Current members of the Forum include: Tanganyika Law Society (TLS); Commonwealth Human Rights Initiative (CHRI); Children Dignity Forum (CDF); Tanzania Human Rights Defenders Coalition (THRDC); National Organisation of Legal Assistance (NOLA); Legal and Human Rights Centre (LHRC); Women’s Legal Aid Centre (WLAC); Tanzania Youth Vision Association (TYVA); Tanzania Media Women’s Association (TAMWA); Women Action Towards Economic Development (WATED); Women in Law and Development in Africa (WiLDAF); African Network for the Prevention and Protection Against Child Abuse and Neglect (ANPPCAN).

Partners of the Forum are Tanzania Police Force (TPF); Commission for Human Rights and Good Governance (CHRAGG); Open Society Initiative for East Africa (OSIEA); and Hanns Seidel Foundation (HSF).

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INTRODUCTION

“Accountability and the oversight mechanisms for policing forms the core of democratic governance and is crucial to enhancing rule of law and assisting in restoring public confidence in police; to develop a culture of human rights, integrity and transparency within the police forces; and to promote a good working relationship between the police and the public at large.” - Resolution 103a: African Commission on Human and Peoples’ Rights

In Tanzania, like in other Commonwealth countries, there is a recognition that efforts are needed to reform policing laws and oversight mechanisms. Existing legal and policy frameworks inherited from the colonial regime are not in accordance with international and democratic standards of policing and do not protect human rights adequately. More and more countries, particularly those making political transitions to democracy and those engaged in genuinely deepening democracy, are adopting a democratic model of policing, which is founded on principles of equity and equality, accountability, transparency, participation, respect for diversity, the accommodation of dissent, protection of individual and group rights, and encouragement of human potential.¹

To contribute to the reform discourse, members of Haki na Usalama Forum have conceptualised what would be needed to implement democratic policing in Tanzania. This is the second paper by the Forum and deals with the essential subject of police accountability.

It is crucial to understand the importance of putting in place efficient and effective police accountability mechanisms, not only for the rule of law and justice, but also to build public trust in the police. The

¹ “Police Accountability: Too Important to Neglect, too Urgent to Delay”. *Commonwealth Human Rights Initiative*, 2005, p.12;

willingness to cooperate and follow police directives rests on public perception of the police. The United Nations Office on Drugs and Crime (UNODC) puts it as, “enhancing police accountability and integrity is primarily meant to establish, restore or enhance public trust and (re-)build the legitimacy that is a prerequisite for effective policing”.² The African Commission on Human and Peoples’ Rights (African Commission) has articulated the core issue: accountability and the oversight mechanisms for policing forms the core of democratic governance and is crucial to enhancing the rule of law and assisting in restoring public confidence in police; to develop a culture of human rights, integrity and transparency within the police forces; and to promote a good working relationship between the police and the public at large”.³

Police accountability is a very broad and complex area. This paper provides an overview, or model, of the essential components of a comprehensive police accountability system. It pays special attention to specific aspects of police accountability, such as often overlooked internal accountability mechanisms and independent civilian oversight, since the Forum believes those aspects to be of key importance to better policing in Tanzanian. The best practices and legal formulations are drawn from within Africa and overseas.

² “Handbook on Police Accountability, Oversight and Integrity”, *UNODC*, 2011, p. 8;

³ ACHPR Resolution 103a on Police Reform, Accountability and Civilian Police Oversight in Africa, available at <http://bit.ly/2kh5hT2>;

1. OVERVIEW OF POLICE ACCOUNTABILITY: INTERNATIONAL STANDARDS AND MECHANISMS

This section gives an overview of the international standards that underpin police accountability as applicable to Tanzania, and goes on to present categories of accountability mechanisms. The rest of the paper is structured according to this categorisation.

1.1. INTERNATIONAL POLICE ACCOUNTABILITY STANDARDS

International law provides for a basic framework that demands accountability. A central notion that underpins accountability is the right to remedy, according to which the government must establish mechanisms for the people to seek remedy once their rights have been violated.

Most important, the International Covenant on Civil and Political Rights (ICCPR),⁴ to which Tanzania is a party,⁵ provides for protection of such rights as the right to life, right to liberty, freedom from torture and inhuman and degrading treatment, freedom of expression, right to privacy, and protections of other rights pertaining to criminal justice. To ensure *practical* realisation of these rights, parties to the ICCPR recognise the right to remedy. According to Article 2(3), each state must:

- a) ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

⁴ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://bit.ly/1bNeudO>;

⁵ Tanzania has ratified the ICCPR in 1976. See, <http://indicators.ohchr.org/>;

- b) ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; and
- c) ensure that the competent authorities shall enforce such remedies when granted.

States, and their police organisations, are duty-bound to protect the rights enshrined in the ICCPR. In fact, it is the police that bear the primary responsibility for upholding these rights like no other state agency, given the significant powers that police officers have to curtail civil liberties. Consequently, to balance these powers and prevent their abuse, it is essential that there are mechanisms to hold the police accountable.

The United Nations Code of Conduct for Law Enforcement Officials (UN Code of Conduct)⁶ supplements ICCPR's basic accountability model with features, specifically pertaining to law enforcement. The preamble to the UN Code of Conduct clearly states that "every law enforcement agency should be representative of and responsive and accountable to the community as a whole".⁷ This way, the accountability is diffused and its understanding is extended beyond the right to remedy. At the same time, the Code calls for different forms of external oversight of policing by stating that "the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency".⁸ The Code also provides for an obligation to serving police officers to report human rights

⁶ UN General Assembly resolution 34/169 of 17 December 1979, Code of Conduct for Law Enforcement Officials, available at <http://bit.ly/2jd2vfP>;

⁷ UN Code of Conduct, preamble (a);

⁸ *Id.*, preamble (d);

violations within the chain of command, to other “appropriate authorities vested with reviewing or remedial power” and the media, subject to country’s laws and customs, thus seeking a balance between the need to preserve internal police discipline and the need to deal with human rights violations.⁹ One specific measure the UN Code of Conduct demands is the establishment of procedures and mechanisms to receive and process complaints against the police by members of the public.¹⁰ The existence of these procedures and mechanisms should be made known to the public.¹¹

International law also obliges states to establish accountability mechanisms for specific law enforcement procedures. For example, *United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (UN Basic Principles)¹² demand establishment of comprehensive and effective reporting and review procedures when the firearms were used by the police in the performance of their duty and in cases of death or injury caused by the use of force and/or firearms.¹³ The UN Basic Principles operationalise this obligation in several ways. Firstly, the Principles oblige the governments and the police to ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.¹⁴ Secondly, no criminal or disciplinary sanction should be imposed on law enforcement officials

⁹ UN Code of Conduct, commentary b) to Article 8;

¹⁰ ECOSOC Resolution 1989/61, annex., Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, Part I, Section B, para 4, available at <http://bit.ly/2jlf0Gh>;

¹¹ *Ibid*;

¹² UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 1990, available at <http://bit.ly/1dtR5f7>;

¹³ *Id*, principles 6, 11(f) and 22;

¹⁴ *Id*, principle 24;

who, in compliance with the UN Code of Conduct and the UN Basic Principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.¹⁵ And finally, the obedience to superior orders is not a valid defence if police officers knew that the order would result in serious injury or death, and had a reasonable opportunity to refuse to follow it.¹⁶

Accountability in other international legal instruments

Other international legal instruments expand the notion of accountability even further, creating specific mechanisms for particular situations. For example, *United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (UN Body of Principles)¹⁷ provide for a number of accountability mechanisms to ensure that detainees' rights are respected. They include the obligation to inquire into circumstances of death or disappearance of detained or imprisoned person. UN Body of Principles also provides for the right and obligation to representatives of a competent authority distinct from an authority operating a place of detention, to visit and inspect places of detention, including police stations and affording an opportunity to the detainee to complain and or comment on the detainee rights.¹⁸ In Africa, similar instruments exist, issued primarily by African Commission on Human and Peoples' Rights (*African Commission*). The main instrument issued is the African Charter on Human and Peoples Rights (ACHPR) through which several guidelines were made. For instance, in 2002 the Commission adopted *Robben Island Guidelines for the Prohibition and*

¹⁵ UN Basic Principles, principle 25;

¹⁶ *Id.*, principle 26;

¹⁷ UN General Assembly resolution 43/173 of 9 December 1988, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, available at <http://bit.ly/1M9rtL4>;

¹⁸ *Id.*, principles 29, 33 and 34;

Prevention of Torture in Africa (Robben Island Guidelines).¹⁹ In 2014, the Commission adopted *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa* (Luanda Guidelines)²⁰ that prescribe similar accountability mechanisms to the UN Body of Principles.

The African context poses specific challenges to police accountability, as reflected upon by the African Commission in its Resolution 103a, entitled “Resolution on Police Reform, Accountability and Civilian Police Oversight in Africa”.²¹ Firstly, the African Commission recognised the colonial legacy that many police forces in Africa inherited and that often persevered in police laws and practices.²² Secondly, the African Commission expressed concern that in some countries in Africa there are no independent policing oversight bodies, to which the public may report police misconduct and abuse of power. Thirdly, the African Commission specifically recognised independent policing oversight as a precondition for the police to become “effective instruments of security, safety, justice, and respect for human and peoples’ rights across the continent”.²³ Therefore, the African Commission urged African states to establish independent civilian policing oversight mechanisms (where they do not exist) that should include civilian participation.²⁴ This commitment was re-

¹⁹ ACHPR resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa of 23 October 2002, available at <http://bit.ly/2j3tfnX>;

²⁰ ACHPR, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, 8 May 2014, available at <http://bit.ly/2k1MY78>;

²¹ ACHPR Resolution 103a on Police Reform, Accountability and Civilian Police Oversight in Africa, available at <http://bit.ly/2kh5hT2>;

²² *Id.*, Preamble;

²³ *Ibid.*;

²⁴ *Id.*, art. 3;

affirmed by the African Commission in 2015 through the General Comment No. 3 dealing with the right to life under the ACHPR.²⁵

African Commission General Comment No. 3: The requirement of accountability

The African Commission General Comment No. 3 deals with the requirement of accountability in a comprehensive and holistic manner. Below are the most important highlights:

- State's failure to conduct transparent investigation into suspicious deaths and killings by State's agents, and to identify and hold accountable those responsible is a violation of the right to life. All investigations must be prompt, impartial, thorough and transparent.
- Effective systems and legal processes of police investigation and accountability (including independent oversight mechanisms) should be established.
- Accountability requires investigation and, where appropriate, criminal prosecution. It encompasses measures such as reparation, ensuring non-repetition, disciplinary action, making the truth known, institutional review and, where applicable, reform.
- Reparation should be proportional to the gravity of the violations and the harm suffered. Victims should be treated with respect and appropriate measures should be taken to ensure their safety.
- Appeals to national security or State secrecy can never be a valid basis for failing to hold violators to account.
- Transparency is a necessary part of accountability. Transparency about laws, policies, practices and the circumstances of any limitations of the right to life as well

²⁵ ACHPR, General Comment No. 3 on the African Charter of Human and People's Rights: The Right to Life (Article 4), 18 November 2015, available at <http://bit.ly/2khfTBE>;

as about the process and outcomes of investigations is a necessary element in fulfilling the right to life.

This careful review of the international legal framework reveals that police accountability is deeply entrenched in international law, legal instruments and policy standards. Beginning with the right to remedy enshrined in the ICCPR, it expands, covering more areas and prescribing specific accountability mechanisms from review and reporting obligations to investigation and prosecution of human rights violations by the state agents. The African Commission prioritises one specific accountability mechanism - independent external oversight.

1.2. LEVELS OF POLICE ACCOUNTABILITY

With the international legal framework for police accountability in mind, different states approached its implementation differently, designing different, albeit similar in purpose, accountability systems. However, the basic design is similar, being derived from the principles of democracy and good governance themselves.

In practice, police accountability mechanisms can be clustered in four different areas that correspond to the levels they operate at. They are 1) internal accountability; 2) accountability to the state; 3) accountability to the public; 4) independent external oversight.

A model for police accountability: 3+1

These four areas of police accountability have been conceptualised as the “3+1 model for police accountability” by the Commonwealth Human Rights Initiative.²⁶ An effective model includes oversight by:

²⁶ “Police Accountability: Too Important to Neglect, too Urgent to Delay”. *Commonwealth Human Rights Initiative*, 2005, p.20;

- democratically elected representatives (in national parliaments if police are structured at the national level, in state legislatures if police are organised at the state level, and in local councils if policing is organised at the local level);
- an independent judiciary;
- a responsible executive (through direct or indirect policy control over the police, financial control, and horizontal oversight by other government agencies such as Auditors-General, Service Commissions and Treasuries); and
- at least one independent statutory civilian body, such as an Ombudsman or a Human Rights Commission or, ideally, a dedicated body that deals with public complaints about the police.

For accountability to be effective, these should not be isolated clusters, but mutually complementing mechanisms. Bodies and agencies involved at each level are expected to cooperate with each other in good faith to ensure police accountability.

The task, therefore, is twofold. On the one hand, one must lay down accountability procedures and mechanisms (e.g. police's obligation to receive complaints from the public, internal review and disciplinary procedures etc.). On the other hand, one must define roles and responsibilities of agencies involved in police oversight, as well as safeguard their independence and capacity to effectively oversee law enforcement. Having these two dimensions in mind, this section provides a brief overview of the four areas of police accountability.

Dimensions of police accountability

International standards tend to focus on *a posteriori* accountability, i.e. actions taken *after* misconduct had occurred. However, the

literature on police accountability suggests that *a priori* (preventive) and *ongoing* (during police operations) aspects of police accountability should also be paid close attention to. Anneke Osse, a leading international expert on the subject, describes actions that agencies at each level should take to ensure police accountability.²⁷

For instance, the police must establish systems of reporting problems through the chain of command (*a priori* accountability), ensure operational responsibility in exercising police powers and monitor operational performance and individual behaviour (ongoing accountability), as well as evaluate police performance and ensure corrective action within disciplinary or penal regulations (*a posteriori* accountability).

The Executive must set strategic objectives and allocate resources for the police (*a priori* accountability), oversee law enforcement policy and administration (ongoing accountability), and take corrective action, initiate necessary reform and budgetary changes (*a posteriori* accountability).

At the same time, NGOs and members of the public are encouraged to formulate demands to police (*a priori* accountability), direct dialogue with the police on issues of concern and monitor police performance (ongoing accountability), and document human rights violations and pursue complaints against the police (*a posteriori* accountability).

²⁷ Osse, A. (2006). *Understanding Policing*, Amnesty International, p. 222;

2. INTERNAL POLICE ACCOUNTABILITY

It is the responsibility of the police themselves to ensure that internal systems guarantee integrity/discipline, performance and all round good policing. Universally, internal systems rely almost exclusively on police investigating other police. However, police accountability at this level is not limited to internal investigations, disciplinary hearings and chain of command reporting. Below are some of the most crucial elements that make up a good internal accountability model.

2.1. POLICE LEADERSHIP

The police is an hierarchical organisation with a strict chain of command responsibility - the continuous oversight process, whereby superiors monitor conduct and performance of their subordinates. Therefore, it would be a mistake to underestimate the importance of police leadership in ensuring internal accountability. In other words, rank-and-file police officers would have few incentives to respect rule of law and human rights if their senior officers do not prioritise and enforce them.

Police leadership sets the tone for the prevailing culture and their commitment to creating, and maintaining internal accountability mechanisms and procedures is essential to their success. Too often the lack of such commitment leads to nourishing an institutional culture that tolerates not only habitual bribery and harassment, but also the worst of human rights abuses. In 2002, Kenya's Standing Committee on Human Rights summarised this problem aptly:

“Despite public statements from the Commissioner of Police on efforts to reform the Police Department and to deal firmly with and effectively with police officers, who have committed abuses, the disciplinary sanctions imposed on

officers found guilty of brutality are frequently inadequate. Officers are rarely prosecuted for using excessive force. Investigations of numerous cases alleging torture revealed that the “Code of Silence”, in which officers fail to report brutality, destroy evidence or threaten witnesses in effort to cover up abuses, commands widespread loyalty, contributing to a climate of impunity”.²⁸

The importance of police leadership is augmented in police forces undertaking transition from colonial to democratic policing. Policing is, first and foremost, a service that democratically elected governments are expected to deliver in accordance with high moral, ethical and legal standards. The police leadership bears primary responsibility for shaping the force under their command into conformity with these standards.

The best solution to establish accountable leadership is operational responsibility, addressed in Haki na Usalama Forum’s previous paper.²⁹ In short, operational responsibility guarantees the police functional autonomy in operational matters, while vesting in the government policy-setting and oversight roles. Responsible leadership is a core element of operational responsibility, secured through comprehensive appointment and removal processes as well as the security of tenure.

2.2. INTERNAL REGULATIONS

The police are governed by many laws: from the Constitution, Police act, Police General Orders, the Penal Code and the law on criminal procedure among others. While being cornerstones around which police work should shape, they not always able to bridge the gap

²⁸ Standing Committee on Human Rights (2002), 6th Report to the Appointing Authority, p. 24;

²⁹ “The Police and the Executive: Roles and Responsibilities”, *Haki na Usalama*, 2016, available at <http://bit.ly/2jb3vpO>;

between the law and practice. It is a wise thing for the government to operationalize these laws by issuing regulations and guidelines, which in turn must be closely monitored for compliance. Therefore, internal police regulations are ever important to translate the laws and government guidelines into sets of precise rules and procedures to guide day-to-day police work. In fact, everything discussed in this section should normally be covered by the internal police regulations in great detail.

A spectrum of internal police regulations

It is necessary to distinguish between two different types of internal police regulations. On the one hand, there are regulations that are intended to govern the police over the long-term and cover all police operations. In different countries they have different names. In India, they are contained within the state *Police Manuals*. In Kenya they are known as the *Service Standing Orders*, while the Tanzania Police Force is regulated internally by the *Police General Orders*. On the other hand, there are police regulations that are issued on ad hoc basis and that target specific issues, prescribe a course of action, lay down specific procedures, or provide a clarification. They can be known as circulars, orders or instructions.

It is equally important for the internal police regulations to correctly reflect these laws and guidelines to ensure their correct implementation and the protection of human rights and freedoms. Finally, the internal police regulations must be made available to all the police officers, and any changes to the regulations – communicated to them; members of the public should also have access to the internal police regulations.

Codes of conduct are another kind of internal regulation. They are usually standalone documents, but can be integrated into the internal police regulations (i.e. in Kenya, as a Service Standing Order) or into

the police act itself (i.e. in Uganda, as a Schedule to the Uganda Police Force Act). They too can be known under different names, as Codes of Conduct, Codes of Ethics or Professional Codes. The names tend to reflect their content: while codes of conduct address “the core aspects of police work and powers”, codes of ethics are often restricted to “issues such as punctuality, correct uniform and the manner in which an officer addresses superiors, where a transgression might amount to neglect of duty”.³⁰ For example, American Federation of Police’s *Law Enforcement Code of Ethics* is essentially an oath, featuring provisions like:

“As a law enforcement officer, I should be exemplary in my conduct, edifying in my conversation, honest in my dealings, and obedient to all the lairs of my city state, and nation, and I shall regard these as my sacred honor”.³¹

Australian Federal Police’s (AFP) *Core Values* focuses on six areas, namely integrity, commitment, excellence, accountability, fairness and trust. Its style appeals to individual police officers, urging them to adhere to the AFP values. For example, this is how the code addresses accountability:

“Accountability is about ownership of work or results, and being answerable for outcomes. In the AFP, this means we: 1) accept personal responsibility for the consequences of our efforts; 2) ensure people know what is expected of them, how their work will be evaluated and how success is measured or determined; 3) allow individuals and teams to make decisions about their work; 4) do not assume credit for

³⁰ “Handbook on Police Accountability, Oversight and Integrity”, UNODC, 2011, p. 77;

³¹ American Federation of Police, “Law Enforcement Code of Ethics”, 1966, available at <http://bit.ly/2k7Roa8>;

the work of others; 5) give feedback on work performance”.³²

Several states in Africa have police codes of conduct. For example, the Mauritius Police Force’s *Principle of Police Ethics* is a short, yet comprehensive document, enshrining core values of police accountability, such as:

“Act only within the law, in the understanding that they have no authority to depart from due legal process and that no one may place a requirement on them to do so”.³³

At the same time, Uganda Police Force’s *Disciplinary Code of Conduct* is a much longer document, addressing in greater detail police’s standards of behaviour, chain of command subordination, disciplinary offences by police officers and the corresponding penalties, as well as internal complaint procedures.³⁴

In Tanzania, a code of conduct is placed at Part VII “Discipline” of the Police Force and Auxiliary Services Act which generally resembles Uganda’s *Disciplinary Code of Conduct*. In addition, the Police General Order No. 110 contains *The Rules of Conduct*. At the same time, the Public Leadership Code of Ethics Act obliges public leaders including Inspector-General of Police to:

“act with honesty, compassion, sobriety, continence, and temperance, and uphold the highest possible ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of Government are conserved and enhanced”.³⁵

³² AFP, “AFP Core Values”, available at <http://bit.ly/2kJiFD0>;

³³ Mauritius Police Force, “ Principle of Police Ethics”, available at <http://bit.ly/2jMFL04>;

³⁴ The Police Act (Uganda), Chapter 303, Schedule;

³⁵ The Public Leadership Code of Ethics Act, 1995, s. 6(a);

The Act, however, is almost entirely limited to the public leaders' integrity in the context of the fight against the corruption. The Ministry of Public Safety and Security also issued a *Handbook for the Police Officers Based on Revised Police General Orders* (TPF Handbook) in July 2006, where relevant provisions of the law and the Police General Orders are summarised. While it is a good way to communicate information relevant to police conduct and discipline, a standalone code of conduct with strong accountability provisions would be of benefit too.

Several codes of conduct have been adopted internationally. The previous section has addressed the *UN Code of Conduct for Law Enforcement Officials*. INTERPOL has its own version of the same name.³⁶ It features ten short articles that deal with honesty and integrity, fairness and tolerance, use of force and abuse of authority, performance of duties, lawful orders, confidentiality, impairment, appearance, general conduct, and cooperation and partnership. The International Association of Chiefs of Police (IACP) issued the *Law Enforcement Code of Ethics* as early as 1957.³⁷ The IACP's *Code of Ethics* reads like an oath, not unlike INTERPOL's own *Code of Ethics for Law Enforcement Officials*.³⁸

SARPCCO and EAPCCO Codes of Conduct

Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) developed the *Code of Conduct for Police Officials*³⁹ in 2001, to which Inspector-General of Tanzania Police Force acceded.

³⁶ See, "Handbook on Police Accountability, Oversight and Integrity", *UNODC*, 2011, Annex III, p. 122;

³⁷ "Law Enforcement Code of Ethics", *IACP*, 1957, available at <http://bit.ly/2kK7xC2>;

³⁸ See, "Handbook on Police Accountability, Oversight and Integrity", *UNODC*, 2011, Annex III, p. 124;

³⁹ SARPCCO, "Code of Conduct for Police Officials", 27-31 August 2001, available at <http://bit.ly/2jtVXd3>;

SARPCCO's Code is human rights centred, with the very first article titled "Respect for Human Rights", followed by articles dealing with non-discrimination, use of force, torture, respect for the victims of crime and persons in custody, as well as corruption and abuse of power. The focus on human rights reflects priorities of SARPCCO and police forces of undersigned countries. To strengthen their commitment to the provisions of the Code, SARPCCO police chiefs agreed that they will adopt the Code of Conduct as a minimum standard for their respective police forces, enforce it and report on its implementation to SARPCCO annually.⁴⁰ Unfortunately, compliance with reporting obligations by all SARPCCO police chiefs remains wanting.⁴¹

In 2010, African Policing Civilian Oversight Forum (APCOF) and the Commonwealth Human Rights Initiative (CHRI) developed *Common Standards for Policing in East Africa* (Common Standards).⁴² Common Standards were subsequently adopted by the East Africa Police Chiefs Cooperation Organisation (EAPCCO), of which Tanzania Police Force is a member. The document summarises international norms that apply to all five EAPCCO members and, provide a meaningful overview of minimum standards that East African police forces should follow. Despite the fact that it does not include strict enforcement and reporting obligations like SARPCCO's Code of Conduct does, it can be regarded as a fully-fledged regional code of conduct.

2.3. INTERNAL REPORTING

Internal reporting and disciplinary procedures have traditionally been the core of the internal accountability system. Put simply, internal reporting means institutionalised channels for reporting

⁴⁰ *Id*, preamble;

⁴¹ Interview with Sean Tait, APCOF Director, 3 February 2017;

⁴² "Common Standards for Policing in East Africa", CHRI/APCOF, 2010, available at <http://bit.ly/2jjaan>;

certain police actions, as well as problems within the force. Disciplinary proceedings are a set of rules and procedures that define the way disciplinary offences are investigated, adjudicated and punished. Both mechanisms are usually established in police acts and subsequently operationalised in government guidelines and internal regulations.

International standards applicable to Tanzania oblige the police to always record and report certain actions, such as arrests and detentions;⁴³ granted and refused bails;⁴⁴ searches;⁴⁵ details of suspect's interrogations, confessions and statements;⁴⁶ the fact and results of detainee's medical examination;⁴⁷ and the use of firearms.⁴⁸ It is also common for the police to keep a daily record of actions that do not involve the use of police powers.⁴⁹ Reporting these actions in police logs and journals not only facilitates the police casework, it also creates a permanent record, against which possible human rights violations and/or protection can be verified and conduct of individual police officers evaluated.

It is also important to establish secure channels of reporting problems (especially human rights violations) within the police force, as international standards require.⁵⁰ Given the need for internal discipline of police, the chain of command should be one of the channels for reporting.⁵¹ If no action is taken, a complaining police officer should have a right to report to an internal discipline unit or

⁴³ ACHPR Guidelines on the Arrest and Detention, s. 15(a);

⁴⁴ *Id.*, s. 18(a);

⁴⁵ *Id.*, s. 3(d)(iii);

⁴⁶ *Id.*, s. 9(e); UN Body of Principles, Principle 23;

⁴⁷ *Id.*, s. 9(a)(iii); *id.*, Principle 26;

⁴⁸ UN Code of Conduct, Commentary c) to Article 3; UN Basic Principles, Principles 6 and 11(f);

⁴⁹ Osse, A. (2006). *Understanding Policing*, Amnesty International, p. 197;

⁵⁰ UN Code of Conduct, commentary b) to Article 8;

⁵¹ UN Code of Conduct, commentary b) to Article 8;

to external oversight bodies.⁵² Complaining police officer must suffer no punishment for reporting problems and human rights violations.⁵³ Instead, the UN Code of Conduct suggests that such officers “deserve the respect, the full support and the cooperation of the community and of the law enforcement agency in which they serve”.⁵⁴

Protected disclosure (whistle-blowing)

Protected disclosure, better known as whistle-blowing, is a growing area of interest for accountability experts, as well as governments committed to transparency and good governance. In recent years, a number of countries adopted laws to regulate protected disclosure and protect whistle-blowers from repercussions. However, policing has always been a sensitive area when it comes to whistle-blowing due to the rules of confidentiality and chain-of-command organisation of the police. *UN Code of Conduct* specifies that confidential information should only be disclosed in the performance of duty or to serve the needs of justice.⁵⁵ In turn, classifying information as confidential can prevent whistle-blowing and help cover up abuses.⁵⁶

Legal frameworks dealing with protected disclosure often reflect this complexity. For example, in South Africa there exists an extensive framework of rules and regulations, including the Protected Disclosure Act, 2000 that address whistle-blowing. Reporting misconduct, “which constitutes offence or which is prejudicial to the public interest”, is an obligation for every public service employee. ⁵⁷ However, the police must comply with this obligation only insofar as it is not “contrary to the laws governing

⁵² *Ibid*;

⁵³ *Ibid*;

⁵⁴ *Id*, commentary e) to Article 8;

⁵⁵ UN Code of Conduct, Commentary to Article 4;

⁵⁶ Osse, A. (2006). *Understanding Policing*, Amnesty International, p. 204;

⁵⁷ Code of Conduct for the Public Service (South Africa), Regulation C.4.10 of Chapter 2 of the Public Service Regulations, 2001;

their employment”,⁵⁸ thus redirecting their complaints into internal mechanisms.

South African example illustrates ever-important need to have effective internal disciplinary mechanisms and police leadership committed to accountability. At the same time, the police should have a right to make protected disclosures to external oversight agencies and the media if internal complaint mechanisms fail, in line with international standards.⁵⁹

2.4. INTERNAL DISCIPLINARY MECHANISMS

Following an internal complaint or a complaint from a member of the public, internal disciplinary mechanisms are set in motion. Usually supervisory officers summarily deal with minor violations of regulations, but once there is a suspicion of a more serious wrongdoing, the internal system divides into four parts: complaint, investigation, hearing and appeal.

The need to maintain an unbroken chain of command means that in the end it is the chief of police who has the final say in resolving complaints internally or forwarding them to external bodies, following up on recommendations and deciding whether criminal proceedings should be taken up. How the complaint is dealt with should depend on its gravity.

Different disciplinary procedures for different ranks

In a number of jurisdictions, including Tanzania, different disciplinary procedures exist for officers of different ranks (usually the line divides junior and senior police officers). This system gives

⁵⁸ Department of Justice and Constitutional Development, Practical Guidelines for Employees in Terms of Section 10(4)(a) of Protected Disclosure Act, 2000 (Act No. 26 of 2000), 2011;

⁵⁹ UN Code of Conduct, commentary b) to Article 8;

more opportunity to senior police officers to challenge the allegation tabled against them unlikely to rank and file police who lacks representation opportunity. Complete separation of disciplinary processes means that senior management themselves may not invest in making sure there is a good internal system in place because they are not personally affected by it.

In Tanzania, there is a three-tier system, i.e. the senior (Senior Assistant Commissioner and above), the Assistant Inspector to Assistant Commissioner, and rank and file. Each of the tiers is subjected to different sets of disciplinary procedures. Correspondingly, due process guarantees and oversight over the proceedings are stronger for senior officers. Although revised Police General Orders, 2006 were a step forward, establishing additional guarantees for juniors, the rank-wise division remains, and the less progressive Police Force Service Regulations, 1995 still apply to non-commissioned officers and constables.⁶⁰

Where rank, rather than gravity of offence decides how misconduct will be addressed, it can also breed resentment and a sense of inequity in the lower ranks. These “double standards” do more damage than good to the internal discipline in the long run. This is why more and more countries move towards internal disciplinary systems that deal with offences based on gravity, not the defaulter’s rank.

The crucial part of transition from rank-wise to gravity-wise disciplinary mechanisms is clearly delineating minor offences and more serious transgressions. Offences committed by rank and file police are investigated by an immediate superior, more serious offences are usually investigated by agencies outside the immediate chain of command such as a permanent internal disciplinary unit, an

⁶⁰ “Handbook for the Police Officers Based on Revised Police General Orders”, *Ministry of Public Safety and Security*, 2006, p. 113, para 14;

ad-hoc disciplinary committee composed of senior police officers, or an external complaints agency.

Internal discipline units are usually suggested as a fairly better system because their staff fall outside the immediate chain of command and enjoy a certain degree of autonomy. It is hoped the judgement of its staff remains uncompromised. However, the main challenge is lack of facilities to the committee.

“Corrupted, under-resourced, or insufficiently independent police internal affairs office result in failures to appropriately investigate potential police wrong-doing”.⁶¹

Around the world, internal disciplinary units range from teams with a general mandate to maintain professional and ethical standards, to specialised wings that investigate specific abuses such as corruption or unlawful violence. Most take complaints from both public and the police officers and have delegated authority from the chief of police to conduct investigation and advise on what, if any, disciplinary action to take.

Successful internal discipline unit is characterised by the clarity of its procedures, autonomy, transparency and due process. Specifically, this means:

- Clarity of procedures. Informal or ambiguous internal disciplinary procedures often lead to their abuse. Therefore, disciplinary procedures must be formally established in law and operationalised in internal regulations and known to the officers.
- Autonomy. To prevent conflict of interest and ensure impartiality, it is crucial that the police do not investigate their

⁶¹ “Study on Police Oversight Mechanisms”, report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, UN HRC, A/HRC/14/24/Add.8, para 16;

immediate colleagues. At the very least, “investigating officers should come from a different branch or region and a higher rank than the officer or officers under investigation”.⁶² Internal disciplinary units should be established in law and granted sufficient autonomy, mandate and powers to function properly. To ensure their autonomy, they must operate from a separate office and report to senior police leadership. For example, in Kenya, the law requires for the Internal Affairs Unit to be led by Assistant Inspector-General and located in a separate building from the police’s headquarters.⁶³ Members of the internal discipline unit should also be guaranteed security of tenure to ensure that they can carry out their duties without fear of dismissal or demotion.

- Transparency. To ensure effectiveness, impartiality and fairness of internal disciplinary procedures, review and reporting processes must be put in place. For example, internal disciplinary units usually report to the chief of police, Ombudsman and independent oversight agency. The independent oversight agency can take over the internal investigation if it is not properly conducted.
- Due process. Like any other rule-bound process, internal disciplinary proceedings should follow due process and allow accused police officer to know the charges, mount an adequate defence, examine witnesses, rebut evidence and appeal the decision.

The importance of clear, autonomous, transparent and fair disciplinary mechanisms is twofold. On the one hand they ensure procedural justice. On the other hand, they also reduce resentment (which in turn reduces legitimacy and encourages non-cooperation)

⁶² “Handbook on Police Accountability, Oversight and Integrity”, *UNODC*, 2011, p. 41;

⁶³ National Police Service Act (Kenya), 2011, s. 87(1)(a) and (7);

that police officers, who go through disciplinary hearings and punishment, often feel:

“One of the things that officers often complain about when they are disciplined is the way it was done. ‘I was not treated with respect,’ said one officer. It wasn’t long until that officer’s humiliation turned into anger and then to resentment. An angry, resentful officer is not good for the organization”.⁶⁴

In Tanzania, the current internal police system of receiving and investigating complaints and overseeing discipline is complicated, unknown by the public and confusing to the police themselves. Members of the public and police officers alike can make a complaint about the behaviour of a police officer to the police themselves, or to a “Complaints Desk” at a police station, if the police station has one. However, once a complaint is made, the system of investigation and discipline is murky and not widely known or understood. According to Police General Order 103, every complaint must be recorded in the report book of the station where the complaint is made and reported immediately to the relevant regional command. This is a good practice, but the internal accountability system should be prescribed in the law and lay out clear procedures.

Indicted officers’ due process rights are guaranteed, since they must be informed of any charge against them, given a chance to answer the charge, and an inquiry must be held. However, existence of difference disciplinary procedures is undermining some of the due process guarantees (see box below).

Internal discipline: confusion and legal uncertainty

⁶⁴ Hunt, T. (2009). “Modernizing the Police Disciplinary System”, *American Police Beat* (April): op-ed, as quoted in Stephens, D. W. (2011). “Police Discipline: A Case for Change”, *Harvard Kennedy School/National Institute of Justice*, p. 6;

The main law guiding police disciplinary processes is the Police Force and Auxiliary Services Act, which covers police officers from the rank of Inspector and below. At the same time, the Police Force and Prisons Service Commission Act provides for a mechanism to undertake disciplinary measures against a police officer with the rank of Inspector and above. In order to operationalise the disciplinary mechanism, regulations were also made. These include Police Force Service Regulations, 1995 made under the Police Force and Prisons Service Commission Act (cover all police officers) and the Police General Orders, 2006 (Inspector and below).

These four instruments often contradict each other and create multiple and parallel disciplinary processes. Below is the summary of the contradictions.

The Police Force and Auxiliary Services Act confers responsibility to a Gazetted Officer (Assistant Superintendent of Police)⁶⁵ to undertake disciplinary inquiry and impose punishment on the officers of the ranks of Inspector and below, while the Police Force Service Regulations and the Police General Orders have granted such powers to the Inspector General of Police and the Police Force and Prisons Service Commission. These powers were also extended to all ranks. Furthermore, the Police Force Service Regulations make it clear that the Gazetted Officer cannot discipline a police with the rank of Inspector, contrary to the provisions of the Police Force and Auxiliary Services Act. Thus, a police indicted under these procedures is left to wonder about which law will guide his or her disciplinary proceedings.

⁶⁵ However, taking into account the gravity of the offence, Assistant Superintendent of Police may refer the case to his superior (Superintendent of Police), who in turn may refer the matter to the Inspector General of Police;

As stated above, the Police Force and Prisons Service Commission Act does not provide for a mechanism to undertake disciplinary action against a police officer at the level of Inspector and below. Despite this, the Police Force Service Regulations, made under the Act, are used to draft and charge police officers of all ranks for the misconduct. It is a violation of one of the principles in law that subsequent regulations cannot provide for procedures unknown in the main legal instrument. In other words, since the Act does not provide for a disciplinary mechanism for rank and file, neither should the Police Force Service Regulations.

The police law and regulations alike provide for the right to appeal, but they differ in terms of who is the final authority in disciplinary cases. According to the Police Force and Auxiliary Services Act, rank and file police officers, dissatisfied with the decision of a Gazetted Officer, may appeal to the Superintendent of Police (first appeal), and then to Assistant Commissioner (second appeal). Depending on the punishment imposed, further appeals are directed to either Commissioner of Police or the responsible Minister (final appeal). However, the Police Force Service Regulations provide for a different procedure. Any disciplinary decision must be finalised by the Regional Police Commander, and can be appealed to the Inspector General of Police, who is the final authority. This connotes that the Police Force and Auxiliary Services Act provide more avenues for appeal compared to the Police Force Service Regulations. This, therefore, means that the procedure and options for appeal depend on the law initially used to indict a police officer.

Regarding the initiation of charges, there are also two different procedures. The Police Force and Auxiliary Services Act gives this mandate to the Gazetted Officer, while under the Police Force Service Regulations the charge is initiated by the Tribunal (a single person or a panel authorised to conduct disciplinary proceedings).

This clearly shows that, there are two ways of initiating charges, which also lead to two different final disciplinary organs/bodies. These contradictions cause confusion among the police in relation to the charge, procedure of appeal and finality of decisions.

Moreover, the law gives a lot of discretion to the disciplining officer to impose penalties and punishments. Junior police officers have often complained about the “double standards” in the imposition of penalties, often manifested in a difference of treatment of police officers disciplined under the same charge.

Apart from being inefficient and highly confusing, the oversight is limited, which means that police officers may be investigated and disciplined incorrectly and arbitrarily.

2.5. MECHANISMS TO RECEIVE AND DEAL WITH COMPLAINTS AGAINST THE POLICE FROM MEMBERS OF THE PUBLIC

Ability to receive and deal with complaints against the police, filed by members of the public, is of utmost importance to police accountability. It is equally important that this process has enough safeguards to protect complainants from harassment and reprisals. The governments and the police need to recognise the complaints procedure as an essential feedback channel that not only serves the interests of justice, but also provides the police with a valuable opportunity to improve their procedures and practices.

The first step to establishing an effective internal accountability regime is to ensure availability and accessibility of means to lodge the complaint against the police to members of the public. It means that the law must guarantee the right to lodge a complaint at any police station free of charge; and refusal to register the complaint must be a disciplinary offence. Each police station must be capable of receiving complaints (e.g. via complaints desk). The right to access internal complaint mechanisms should be available to persons in police

custody and pre-trial detention.⁶⁶ It is a good practice to have posters detailing names and contact details of who to access to be available at every police station.

In practice, it also means creating systems for registering complaints. Each complaint must be recorded in a special police journal or log, assigned a number and a receipt for registering the complaint must be issued to the complainant. This creates a permanent record and serves as a basis for any subsequent inquiry.

At the same time, people should have other institutions, independent from the police, to complain to, such as external policing oversight body, national human rights commission, ombudsman or the prosecutor's office (addressed in section 5) as a safeguard against intimidation. Additionally, the police must be obliged to report most serious allegations of police misconduct to independent oversight bodies. For example, in South Africa, the police must *immediately* report to the Independent Police Investigative Directorate any death in police custody; death as result of police actions; any complaint relating to the use of firearms by the police; rape by a police officer (including, off-duty); rape of any person in police custody; any complaint of torture or assault by a police officer.⁶⁷ In Kenya, in all cases involving death or serious injury while in police custody the police must not only notify Independent Policing Oversight Authority (IPOA), but also secure evidence which may be relevant to the investigation.⁶⁸ A police officer who fails to comply with these requirements commits an offence.⁶⁹ Another good example comes from the Indian state of Kerala, where the Kerala Police Act, 2011 casts

⁶⁶ ACHPR, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, 8 May 2014, s. 37, available at <http://bit.ly/2k1MY78>;

⁶⁷ Independent Police Investigative Directorate Act (South Africa), Act no. 1 of 2011, s. 29(1)(a);

⁶⁸ Independent Policing Oversight Authority Act (Kenya), 2011, s. 25(2);

⁶⁹ *Id.*, s. 25(3);

an obligation and gives protection to police officers to report torture or corruption to supervising officers at the district level:

- “(1) Every police officer shall be liable to inform directly to the Deputy Superintendent of Police or the District Police Chief in respect of any act of corruption or of physical torture against any person with the intention of admitting the commission of an offence or creating evidence which such officer believes in good faith is going on in his presence under the circumstances he knows very well.
- (2) No such report, made in good faith, shall be deemed to be a violation of discipline on the reason that the officer reported on was an officer lower in rank than the officer against whom the report was given.
- (3) No police officer shall be deemed to have acted as a partner, protector or an accomplice in the said corruption or torture solely due to the reason that the officer has not informed as such.”⁷⁰

Protection of victims and witnesses of police misconduct

Victims and witnesses of police misconduct, coming forth to complain, need to be confident in internal disciplinary mechanisms, especially when it comes to their safety. Many countries feature competent witness protection schemes, and it is natural that some elements of these programmes are adapted for and apply to the protection of persons complaining of police misconduct.

One of the most basic, but at the same time most essential, safeguards is to maintain the anonymity of the complainant.

⁷⁰ Kerala Police Act, 2011, s. 96;

While it may be difficult to imagine how an individual complaining in person at the police station can remain anonymous, this stresses the importance of establishing sufficiently autonomous internal disciplinary bodies and external oversight mechanisms that are capable of protecting anonymity more efficiently.

In Tanzania, it appears that there are no protections for members of the public who make complaints to local and regional stations, where the police officer that is the subject of the complaint may easily find out about the matter.⁷¹ However, the state make efforts to create enabling environment for Tanzanians to come forward with complaints. Most importantly, the Whistle-blower and Witness Protection Act, 2015 was adopted, which provides for transfer and relocation as protective measures.⁷² Confidentiality is also protected, but this seems to only apply to whistle-blowers.⁷³ A notable shortcoming of the Act is failure to establish Union Witness Protection Unit, as recommended by Principal State Attorney Ayub Yusuf Mwenda.⁷⁴ It would be desirable not only for such a unit to be created, but also for the expansion of available protective options and application of witness protection regime to the complainants against police misconduct.

Furthermore, mechanisms for filing complaints against police misconduct should be complemented with procedures of keeping the complainant informed about the results of disciplinary inquiry. The complainant should also have a right to follow up him- or herself on the progress of the inquiry, to depose and put forth his or her facts of

⁷¹ "A Force for Good? Improving the Policing in Kenya, Tanzania and Uganda", *Commonwealth Human Rights Initiative*, 2014, p. 47;

⁷² The Whistle-blower and Witness Protection Act, 2015, s. 12;

⁷³ *Id.*, s. 4(3);

⁷⁴ Mwenda, A. Y. (2012). "Witness Protection in Tanzania" in *Resource Material Series No. 86*, UNAFEI, 2012, p. 71;

what happened, and to appeal the decision taken if unsatisfied with the outcome.

Providing for clear and procedures of undertaking charges, procedure of appeal and its finality is important in enhancing police accountability. This increases transparency of the police force and contributes to building trust between the police and the community. Currently in Tanzania, there is no process for citizens to be informed of the status of their complaint, or any subsequent investigation. No receipt or documentation of the complaint is required to be provided.

Finally, visibility is a major component of the success of the internal complaints system. It means that the information about how to complain about police misconduct should be widely available. This information should be displayed in police stations and, preferably, public places and institutions of criminal justice.⁷⁵

2.6. PERFORMANCE EVALUATION SYSTEMS

Evaluation of police performance is obviously a crucial rung of accountability. There are various kinds of systems in place, giving many models to learn from. The precondition for any model that policy makers might consider is a comprehensive policy framework. Such framework must prescribe clear, transparent and fair rules and procedure to govern the evaluation process. For example, in its paper, *Haki na Usalama Forum* advocated for establishing an Independent Police Service Commission (IPSC),⁷⁶ a body which would provide an impartial review mechanism both to evaluate officers at an individual level and also conduct organisation wide review of police performance. Empowered with comprehensive policies and guidelines, an IPSC can be expected to secure the confidence of police

⁷⁵ "Handbook on Police Accountability, Oversight and Integrity", *UNODC*, 2011, p. 34;

⁷⁶ *The Police and the Executive: Roles and Responsibilities*", *Haki na Usalama*, 2016, available at <http://bit.ly/2jb3vpO>;

officers that their career path depends on performance against a clearly defined set of rules, not personal connections or favours.

Evaluation of individual police performance should be complemented with a departmental review, i.e. monitoring of achievements and shortcomings at different levels of police hierarchy. This can be done through setting of targets, establishing performance indicators and holding periodic performance interviews. These processes are aimed at promoting desired patterns of conduct and at the same time,

“Achievements must not merely be assessed on the basis of such data as the number of crimes detected, as this can be counterproductive and promote unethical conduct. Instead, achievements need to be assessed on the basis of such criteria as responsiveness to community needs, responsiveness to gender issues and respect for human rights”.⁷⁷

Many countries have adopted sophisticated, technology driven systems of evaluating police performance. New York Police Department introduced COMPSTAT in 1990s to 1) make available timely and accurate information to police managers; 2) introduce evidence-based strategic interventions to meet specific challenges; 3) consequently, deploy human and other resources in a rapid and focused manner; and 4) grow the evidence base about what works in policing.⁷⁸ Similar performance evaluation systems were developed and deployed around the globe.

Notably, South Africa Police Service (SAPS) employs Performance Chart. SAPS Performance Chart was implemented in 2003-4 to gauge

⁷⁷ “Handbook on Police Accountability, Oversight and Integrity”, *UNODC*, 2011, p. 84;

⁷⁸ Faull, A. (2014). “Performance Management in Police Agencies”, p. 1, available at <http://bit.ly/2kRWslj>;

and communicate the police's progress and results. The system is able to compare the performance of all of South Africa's police stations and provinces. Performance is assessed monthly, on the basis of an index that measures progress in seven areas: crime prevention; crime reaction; crime investigation; crime information, skill development and professional conduct; vehicle management; and efficiency. The SAPS Performance Chart also allocates grades (1 star to 5 star) and ratings (A+ to E-) to all police stations, areas and provinces according to their results. By establishing a relatively transparent and competitive internal environment, managers and rank and file focus on results and continuously improving their ratings.⁷⁹

While more and more police services move towards data-driven approach to measuring police performance, this approach should not overshadow other accountability elements. Notably, improving performance in controlling crime must not be seen as license to curb respect for human rights or adherence to accepted standards.

2.7. RECOMMENDATIONS

Responsible police leadership

1. The Constitution and police laws must entrench robust checks in the procedure to appoint and remove the Inspector-General of Police, in order to ensure the independence and impartiality of the Police Force.
2. The Constitution should state that the Parliament should approve the candidate for Inspector-General of Police before the person is appointed by the President.
3. Selection criteria must be developed and integrated into the Police Act.

⁷⁹ "Police Accountability: Too Important to Neglect, too Urgent to Delay". *Commonwealth Human Rights Initiative*, 2005, p. 59;

4. The Constitution should clearly set out the grounds upon which the Inspector-General may be removed, to ensure transparency and accountability in any such decision, with provision for parliamentary involvement in any attempt to remove the Inspector-General before the conclusion of his or her term of office.
5. The Constitution should stipulate a fixed term of office for the Inspector-General of Police. It is recommended that the Constitution should allow for an initial term of four years, renewable once for a maximum tenure of eight years.

Internal regulations

1. Police General Orders should be revised to bring them in conformity with policing laws and to reflect other recommendations pertaining to the internal accountability.
2. The Police Force Service Regulations, 1995 should be abolished in order to simplify the internal regulations regime. Any relevant provisions worth keeping should be transplanted into Police General Orders.
3. Police Code of Conduct should be made public and widely available both to the police and the members of the public.
4. SARPCCO Code of Conduct should be formally integrated into internal regulations and made available to the police and members of the public.

Internal reporting

1. The law should strengthen internal reporting system by obliging the police to record and report the following occurrences: arrests and detentions; granted and refused bails; searches; time, place and duration of interrogations, as well as

the facts of confessions and statements; the fact of detainee's medical examination; and the use of firearms.

2. Formalise internal channels for reporting human rights violations by police officers as follows:
 - a. The scope of what constitutes human rights violations must be properly defined and circulated throughout the police department;
 - b. It should be clearly stated to which rank of officer complaints can be brought; If no action taken, the complainant should be able to complain to the internal discipline unit or external oversight agency;
 - c. The complainant must not suffer any kind of reprisal or punishment for reporting human rights violations.

Internal disciplinary mechanisms

1. Establish a single internal disciplinary unit and provide for its composition, powers, procedures as well as financing in Tanzania Police Force and Auxiliary Services Act;
 - a. The unit should have the power to investigate *suo moto*;
 - b. The unit should report directly to the IGP or Deputy IGP;
 - c. The procedures for appointment, transfer and removal of the head of internal disciplinary unit should be specified in Tanzania Police Force and Auxiliary Services Act;
2. Delineate cases of disciplinary misconduct that are dealt with by superiors and cases that are dealt with by the internal disciplinary unit;
3. Simplify the accountability system by unifying procedures for different ranks, except for the three highest ranks;

4. Provide for a possibility to register a complaint against the police at any police station in Tanzania Police Force and Auxiliary Services Act;
5. Develop a standard Complaint Form with a receipt for complainants, to enable complainants to have evidence of their complaint and details of the police officer who took to the complaint;
6. Enshrine the obligation to register a complaint against the police in Tanzania Police Force and Auxiliary Services Act. Refusing or failing to register a complaint should be a disciplinary offence;
7. All complaints lodged with the police should be forwarded to the internal disciplinary unit to investigate, with a copy sent to the external civilian oversight body;
8. The public and police officers should be made aware of the official channels of registering complaints against the police;
9. Provide for anonymity and, when necessary, witness protection for complainants;
10. Enshrine an obligation to provide a receipt of complaint to the complainant in Tanzania Police Force and Auxiliary Services Act;

Performance evaluation and promotions

1. Establish a Police Force Service Commission in the Constitution.
2. Establish a separate law to govern the Police Force Service Commission; or amend the Police Force and Prisons Service Commission Act, 1990 in line with the recommendations below.

3. The composition of the Commission must be diverse and ensure a balance between government and non-government members.
4. Members should be appointed through an open, competitive and transparent process, based on objective selection criteria, by the President subject to confirmation by the Parliament.

The Commission must be proactive in providing accessible and accurate information and data on its functions, duties, powers and composition in the public domain, through various mediums including the Internet.

3. ACCOUNTABILITY TO THE STATE

The police is an organ of the State, and the police as a whole as well as individual police officers are representative of the State through their performance and actions. Each branch of State have a specific and defined role to play in ensuring democratic governance and, therefore, good policing. In turn, the police are accountable to the State.

3.1. ACCOUNTABILITY TO THE EXECUTIVE

The Executive is the natural supervisor of the police, since the police as an organ is usually established under the Ministry of Home Affairs/Interior. The Executive may have numerous responsibilities vis-à-vis the police. These vary from policy making and appointing police leadership to intervening into matters of operational responsibility and discipline. The latter is the case in Tanzania, where the Minister for Home Affairs can issue directions to the IGP “on the operational control of the Force”⁸⁰ and the President of Tanzania is the ultimate disciplining authority for senior police officers (as discussed above).

This framework has weaknesses as it is permissive to undue interference into police’s operational matters. Experts on police reforms and accountability stress the importance of keeping policy making role of the Executive separate from the operational responsibility of the police to ensure autonomous, yet accountable policing:

“It is important to establish in the law, policy and practice the distinction between appropriate political direction from

⁸⁰ Police Force and Auxiliary Services Act, CAP 322, s. 7(1);

the Executive to the police force and inappropriate interference in operational police matters”.⁸¹

“As the oversight the Executive should not interfere with operational independence, it is crucial to have a clear delineation of roles, responsibilities and relationships between police and ministries that are laid down in law”.⁸²

Recognising the utmost importance of comprehensively regulating the Police-Executive relationship, in October 2016 Haki na Usalama Forum published a position paper dedicated to this issue.⁸³ The paper proposed four key areas for reform to prevent undue political interference in policing. These include adoption of:

- A legal framework that clearly delineate roles, responsibilities and relationships between the police and the Executive;
- Clear and fair procedures for the appointment of the police chief, his/her security of tenure, and guarantees against political meddling enshrined in law;
- Independent, transparent and fair procedures for recruitment, appointment, promotion, transfer and disciplinary control within and outside the police force; and
- Well-defined and adequate sources of financing the police.

This framework for the Police-Executive relationship also serves the needs of accountability. Firstly, a comprehensive legal framework is necessary to delineate the policy-setting role of the Executive from operational responsibility of the police. Secondly, clear and fair procedures governing terms of employment of the police chief

⁸¹ “Police Accountability: Too Important to Neglect, too Urgent to Delay”. *Commonwealth Human Rights Initiative*, 2005, p.36;

⁸² Osse, A. (2006). *Understanding Policing*, Amnesty International, p. 205;

⁸³ “The Police and the Executive: Roles and Responsibilities”, *Haki na Usalama*, 2016, available at <http://bit.ly/2jb3vpO>;

correspond to the need for responsible leadership.⁸⁴ Thirdly, independent, transparent and fair procedures governing terms of service or police personnel (especially through Independent Police Service Commissions) promotes accountability through performance evaluations and promotions.⁸⁵ Finally, adequate financial resources (adequate salaries, housing and other benefits) are a significant boost to police accountability, serving as a safeguard against the conflict of interest (e.g. police officer taking a second job) and as a disincentive to commit an offence (e.g. extorting money from motorists, or even acting as vigilantes or hired killers⁸⁶). Therefore, if adopted, these four proposals create conditions for the Executive to hold the police accountable while preventing government's interference into the police's operational matters.

In Tanzania, the line between policy-setting role of the Executive and non-interference in police operational matters is often blurred. This extends to the area of police accountability. While the Executive should normally focus on *a priori* accountability by developing policies and adopting regulations, in Tanzania, the Executive also has a complaint handling role which are usually reserved for internal mechanisms and independent oversight organs. The Ministry of Home Affairs has a Complaints Handling Unit which deals with complaints lodged against institutions that fall under the Ministry. Although external to TPF, the Complaints Handling Unit actually refers the complaints made to it from the public to the TPF to investigate, which, to an extent, defeats the purpose of external oversight. Complaints made by police officers, largely regarding

⁸⁴ See section 2.1 above;

⁸⁵ See section 2.7 above;

⁸⁶ "Study on Police Oversight Mechanisms", report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, UN HRC, A/HRC/14/24/Add.8, para 9;

promotion, transfer or dismissal, are investigated by the Ministry.⁸⁷ It is however advised that this function be carried out by an autonomous Independent Police Service Commission, while complaints be handled by internal units and external oversight bodies. This is in line with the principles of operational responsibility, whereas the Executive's role is limited to policy making. Accordingly, to ensure independence, impartiality, due process, and fairness of complaints handling process, it should be delegated to a professional and autonomous Police Service Commission.

3.2. ACCOUNTABILITY TO THE PARLIAMENT

Three vital functions of the Parliament are to make and review laws, represent citizens, and hold the Executive to account for policy implementation. Parliaments play a policy-making role insofar as they refine and pass legislation and approve budgets. They also monitor policy implementation through the views of the electorate and by assessing performance. Parliament has the power to question police wrongdoing, to correct systemic faults by passing new laws, to seek accounts of police performance, and to keep policing under constant review.

The challenge for legislators at all levels of government is to bring the values of accountability, transparency and participation firmly to bear on policing. Effective parliamentary oversight must be one of the hallmarks of democratic policing. The quality of this depends on the relative power of the parliament, as well as the capacity of Members of the Parliament (MPs) to effectively comprehend the issues under discussion. Individual elected representatives – whether they are MPs, members of state legislatures or local councils – have many opportunities for influence and initiating corrective action. The

⁸⁷ "A Force for Good? Improving the Policing in Kenya, Tanzania and Uganda", *Commonwealth Human Rights Initiative*, 2014, p. 49;

opposition in particular, are in a prime position to hold the government to account for decisions and policies relating to policing.

Opportunities for oversight of police affairs include question and answers sessions, debates, attention drawing motions, and private members' bills, which, though very often defeated, spur debate and introduce innovations. Special commissions of inquiry may also be established to pursue particularly serious concerns. While these avenues draw occasional attention to the more dramatic aspects of policing, it is the more mundane regular features like departmental reviews, budget sessions and accounts audits that provide opportunities for thorough examination of police functioning, as well as the detailed work in committee, that have a serious impact on creating a better service.

In Tanzania, the police are answerable to two parliamentary committees. The first is the Defence and Security Committee of the Parliament of the United Republic of Tanzania. The second is the Public Accounts Committee of the Parliament of the United Republic of Tanzania, which exercises supervision over the police budget. Each year, when the Ministry of Home Affairs presents its annual budget, the legislature debates the Ministry's performance – and this includes the police budget.

At the same time, the National Assembly, the unicameral federal Parliament, has the power to raise questions, oversee and advise the government in the exercise of its duties. This includes putting any questions to any Minister on matters of public affairs that fall within that Minister's portfolio. Tanzanian MPs have also used that opportunity to raise questions relating to police behaviour. According to the 2006 Commonwealth Human Rights Initiative (CHRI) study, between 1999 and 2004 MPs asked a total of 762 questions related to the police and policing, with a sharp increase

from 19 questions in 1999-2000 to 569 questions in 2003-2004.⁸⁸ Most questions raised related to citizen safety and protection, police facilities, accountability and corruption and human rights violations, denoting the areas of concern to MPs.⁸⁹ The same study described government replies to MPs' questions as unsatisfactory:

“Instead of engaging with the question asked, responses are often a discourse on the problem of policing generally and focus on armed banditry or lack of funds. Shortage of funds is a standard response when a question is asked about continued inaction or slow responses on facilities for officers”.⁹⁰

This denotes the paramount importance of not only continued Parliament's engagement with police oversight, but also the need for the Executive and the police to engage in good faith with the legislature.

3.3. ACCOUNTABILITY TO THE JUDICIARY

The judicial system is entrusted with the protection of human rights and freedoms. Courts also ensure that acts of the Executive and laws made by Parliament comply with and promote international human rights standards. They also protect citizens from the excesses of the state and its agents by bringing to book perpetrators of human rights violations and breaches of law, as well as by ensuring that victims obtain sufficient redress. Accountability for policing may require the judiciary to develop and adopt standards of acceptable behaviour, punish infractions and, at times, keep the Executive in check.

The most immediate police accountability function of the Judiciary is to hold implicated police officers accountable through criminal

⁸⁸ “The Police, the People, the Politics: Police Accountability in Tanzania”. *Commonwealth Human Rights Initiative*, 2006, pp. 34-35;

⁸⁹ *Ibid*;

⁹⁰ *Id*, p. 35;

proceedings. This requires a significant autonomy for the government office running the prosecutions as well as independent judiciary. In Tanzania, while the Judiciary is reasonably independent,⁹¹ the Director of Public Prosecutions is appointed by and answerable to the President, an arrangement which if misused can undermine the discretion which the DPP should have in prosecuting criminal cases against the police. This is exacerbated by the fact that numerous laws provide a cover of immunity for acts that could constitute serious violations by police, such as:

- *Prevention of Terrorism Act, 2002*. Without defining “necessary force”, s. 29(6) states that an officer shall not be liable, in civil or criminal suits, for death or injury caused by use of necessary force under the Act. At the same time, s. 33(8) provides that police officers are protected from being sued for seizures under the Act for any seizure done in good faith;
- *Preventive Detention Act, 1962*. Section 3 stipulates that no order given under the Act can be questioned in any court;
- *Emergency Powers Act, 1986*. Section 26 states that no acts done under the Act can be called into question in court, nor can any civil or criminal proceedings be instituted against any person acting under the Act;
- *Penal Code, 1981*. Section 78 provides that any authorised person or any police officer may do “all things necessary” to disperse a riotous crowd and they will not be criminally or civilly liable for any death or injury occasioned; and
- *Criminal Procedure Act, 1985*. Section 6 states that the police have to comply with the provisions of the Act but where they

⁹¹ Although the Judiciary is financially dependent on the Executive and judges are appointed by the President of the United Republic, the Judiciary managed to preserve sufficient autonomy and stand up to political pressure in the past.

do not, it cannot lead to punishment “unless penalty is expressly provided in respect of the contravention or failure”.

Individuals can also institute private prosecutions, which, however, are often undermined by the reluctance of lawyers to take on cases against the police and the government.⁹²

3.4. RECOMMENDATIONS

Accountability to the Political Executive

1. Law and policy should clearly delineate the roles, responsibilities, and relationship between the police and the Executive.
2. The Executive must always act to respect the operational responsibility of the police. The MHA’s Complaints Handling Unit should be disbanded. It is not appropriate for any police complaints unit to be situated in or governed by any Ministry of government.

Accountability to the Parliament

1. The Parliament should take a leading role in revising police legislation to strengthen existing accountability mechanisms and create new ones, such as independent civilian oversight over the police.
2. The Parliament should amend or repeal sections of the statutes that grant immunity to police officers, in particular:
 - a. Sections 29(6) & 33(8) of the Prevention of Terrorism Act, 2002;
 - b. Section 3 of the Preventive Detention Act, 1962;
 - c. Section 26 of the Emergency Powers Act, 1986;

⁹² “The Police, the People, the Politics: Police Accountability in Tanzania”. *Commonwealth Human Rights Initiative*, 2006, p. 36;

- d. Section 78 of the Penal Code, 1981;
 - e. Section 6 of the Criminal Procedure Act, 1985.
3. The Members of Parliament are encouraged to actively engage the police and the responsible Minister during question-and-answer sessions, and within the Defence and Security Committee and Public Accounts Committee.

Accountability to the Judiciary

1. The Judiciary is encouraged to take a more pro-active stance on police accountability and contribute to the process of police reform by issuing orders and/or guidelines on specific issues.

4. ACCOUNTABILITY TO THE COMMUNITY

The ultimate test of police performance is the community's perception of the police, as well as its trust and confidence in the systems of law enforcement. That is why the notion of *police responsiveness* has gained a lot of traction in police reform programmes across the globe over the last several decades. It was pointed out that, police responsiveness is a necessary condition for the police to be trusted, or, in other words, for the community's "consent" to the police agency and its methods:

"By being responsive to the public, police can enhance "public consent", which is commonly seen as a precondition for effective policing within a democratic framework".⁹³

Consent to and confidence in the police and policing methods has a wide range of practical implications. For example, a recent study found a direct correlation between low confidence in the police and public support for vigilantism.⁹⁴

Responsiveness involves not only increased accessibility of the police to the public and efficient execution of policing tasks, such as prompt response time or registration of complaints, but also adopting "a policing philosophy that seeks to increase the police's sensitivity to the needs of the public and often results from a recognition that police lack public consent".⁹⁵ Therefore, embracing responsiveness involves adopting corresponding initiatives, strategies and practices. Despite being a rather fluid field, public accountability can surely be said to

⁹³ "Handbook on Police Accountability, Oversight and Integrity", UNODC, 2011, p. 101;

⁹⁴ Haas N.E., de Keijser J. W. & Bruinsma G. J. N. (2014). "Public support for vigilantism, confidence in police and police responsiveness", *Policing and Society: An International Journal of Research and Policy*, 24:2;

⁹⁵ Osse, A. (2006). *Understanding Policing*, Amnesty International, p. 210;

contain two aspects: 1) community policing; and 2) responsiveness to civil society.

4.1. COMMUNITY POLICING

Although there is no agreed definition, community policing “signifies collaboration between the police and the community, which identifies and solves community problems”.⁹⁶ Its underlying philosophy is that “the dynamics of crime are often highly localised, that police require community cooperation to fight crime effectively, and that police should be providing a service to the people and be accountable downward to citizens for their performance as well as upwardly accountable to the government”.⁹⁷ This requires more than just frequent contact with the community or information sharing, but rather engaging to establish “on-going efforts to work together in meaningful ways to address problems facing [the community]”.⁹⁸ Needless to say that community policing requires setting of targets and indicators with community input and then reporting back to the community on performance on these, whereas local police districts and departments can adjust their priorities and strategies to meet community’s needs. Furthermore, a police force committed to implementing community policing in good faith can expect a shift in its own focus from solving crime to crime prevention.

Community policing goals

Goals of community policing vary from country to country, but it is important for them to be defined in law and/or policy. For example, South African Police Service Act, 1995 (SAPS Act)

⁹⁶ Bureau of Justice Assistance (1994). “Understanding Community Policing: A framework for action”, p. vii, available at <http://bit.ly/1Q1veQE>;

⁹⁷ Neild, R. (1999). “From national security to citizen security: civil society and the evolution of public order debates”, p. 30, available at <http://bit.ly/2onwISb>;

⁹⁸ “What Works in Community Policing? A Best Practices Context for Measure Y Efforts”, *University of California Berkley, School of Law*, November 2013, p. 7, available at <http://bit.ly/1sBVURg>;

identifies the following goals: 1) establishing and maintaining the partnership between the community and SAPS; 2) promoting communication between the SAPS and the community; 3) promoting co-operation between the SAPS and the community in fulfilling the needs of the community regarding policing; 4) improving the rendering of police services to the community at all levels; 5) enhancing transparency in the SAPS and SAPS accountability to the community; 6) promoting joint problem identification and problem-solving by the SAPS and the community.⁹⁹ Notably, Kenya's National Police Service Act, 2011 includes the same very goals as "objects of community policing".¹⁰⁰

On the ground, community policing is defined by the initiatives that give it substance and meaning. While different countries adopt different initiatives to reflect local context, there are some initiatives that can be regarded as typical:¹⁰¹

- Police department sponsored neighbourhood watches;
- Crime prevention newsletters;
- Crime prevention education for the public;
- Storefront police stations;
- Foot patrols;
- Increased attention to minor offences that are major annoyances to the public;
- More recruitment from among minority groups;
- Increased education level of the police; and
- Reassignment of certain management tasks from police personnel to civilian personnel.

Institutionalised forums, where police and the community have space to engage with each other, have gained certain popularity in Africa.

⁹⁹ South African Police Service Act 68 of 1995, s. 18(1);

¹⁰⁰ National Police Service Act (Kenya), 2011, s. 96(1);

¹⁰¹ Osse, A. (2006). *Understanding Policing*, Amnesty International, p. 96;

South Africa established Community Policing Forums, Kenya created County Policing Authorities and Community Policing Committees, while Uganda tasked Local Councils with some of the community policing functions. In countries with devolved police forces, local departments are encouraged to devise and implement their own contextually appropriate community policing initiatives. For example, Police at the University of North Carolina at Chapel Hill (United States) established a pedestrian safety committee to address pedestrians' concerns.¹⁰²

Tanzania has community policing initiatives including but not limited to;¹⁰³

- Safiri Salama, where the police involve the community in monitoring vehicles to reduce road accidents;
- Usalama Wetu Kwanza and Klabu za Marafiki that provide public education on police and safety issues, especially for school children;
- Youth Sports Programmes, where the police encourage young people to play sports as a way to keep them busy and build trust with the community; and
- Nyumba 10 initiative which divides the community into groups of ten houses, and encourages and teaches them to work together, share information and watch out for any safety and security issues. The police meet with representatives from these groups to gain an understanding of security issues within the community.

¹⁰² Fields, C. (2006). "Award-winning Community Policing Strategies. A Report for International Association of Chiefs of Police", *IACP*, p. 15, available at <http://bit.ly/2nj0AIZ>;

¹⁰³ "A Force for Good? Improving the Policing in Kenya, Tanzania and Uganda", *Commonwealth Human Rights Initiative*, 2014, p. 40;

In spite of suffering from lack of resources and training, these programmes have proven to be “broadly positive”.¹⁰⁴ Adoption of Nyumba 10 initiative by Kenya’s National Police Service can be seen as recognition of the value these initiatives can add to day-to-day policing.¹⁰⁵

As such, Tanzania needs a comprehensive community policing policy and a proper implementation and monitoring strategy. The Police Force Reform Programme (TPFRP) recognises this as a challenge, stating:

“The concept of community policing was introduced and is being implemented without clear policy guidance on how to involve the community in the policing function, its relationship with existing institutional arrangements as well as recent initiatives by the government to decentralise powers and responsibilities to citizens through decentralisation by devolution. The challenge is developing a clear policy that is informed by the above issues”.¹⁰⁶

The Programme was developed in May 2010, and community policing has gained a lot of attention from the police leadership and policy makers, especially under the leadership of former IGP Said Mwema.¹⁰⁷ Now, community policing is being actively developed by the Community Safety Initiative within Tanzania Police Force. However, these efforts have not yet resulted in a “clear policy” as outlined in the Programme.

¹⁰⁴ “A Force for Good? Improving the Policing in Kenya, Tanzania and Uganda”, *Commonwealth Human Rights Initiative*, 2014, p. 40;

¹⁰⁵ *Id*, p. 24;

¹⁰⁶ “Tanzania Police Force Reform Programme (TPFRP): Medium Term Strategy 2010/11 – 2014/15 (Volume I)”, *Ministry of Home Affairs/Tanzania Police Force*, May 2010, p. 47;

¹⁰⁷ “A Force for Good? Improving the Policing in Kenya, Tanzania and Uganda”, *Commonwealth Human Rights Initiative*, 2014, p. 40;

Community policing and people's militias

Because of the lack of agreed definition of community policing, especially in policy, confusion often arises over whether community policing allows delegating certain law enforcement powers to the members of the public. TPFRRP recognises dangers of this confusion, stating that “on the one hand there are perceptions by the general public that the communities can usurp the powers of the police which tends to cause mob justice, while others are of the view that they are being burdened to take over policing responsibilities which they have already paid taxes for the services”.¹⁰⁸ This is further exacerbated by the existence of Auxiliary Police and, especially, People's Militias, which are often filed under the rubric of community policing, echoing the dangers outlined by TPFRRP above.

It should be noted that this situation is not unique to Tanzania. For example, in Uganda poorly regulated militias known as “crime preventers”, who the government claims are part of community policing efforts, on many occasions were accused of committing crimes, acting with impunity as well as interfering in 2016 Presidential Elections.¹⁰⁹

People's militias as “community policing” are a relic of colonial style policing and must be phased out entirely. Emphasis must be laid on ensuring there is sufficient recruitment into the police to meet shortfalls, and that all law enforcement officers are properly trained, professional and subject to accountability and oversight rules. Any community policing mechanism or process set up needs to be responsive to, and representative of the local community.

¹⁰⁸ “Tanzania Police Force Reform Programme (TPFRRP): Medium Term Strategy 2010/11 – 2014/15 (Volume I)”, *Ministry of Home Affairs/Tanzania Police Force*, May 2010, p. 47;

¹⁰⁹ See e.g. “Opposition says Uganda government trains militias to harass them”, *Reuters*, 8 September 2015, available at <http://reut.rs/2ncqvSs>;

4.2. RESPONSIVENESS TO CIVIL SOCIETY

“In a democratic society, policing function should be a shared responsibility between law enforcement organs and the public [household, families, Non-Governmental Organisations (NGOs), Civil Society Organisations (CSOs), Community Based Organisations (CBOs), Faith Based Organisations (FBOs), private sector and others]”.¹¹⁰

The quote above is taken from TPFRRP. Notably, the document takes a progressive view of the civil society as comprising of a variety of groups representing all strata of society. Such a broad view is of great importance, since, according to the UNODC:

“All groups in civil society must have their role in informing the police about their concerns and worries. Police must facilitate all these different groups where they can, listening to their input and responding to their concerns in a professional and legitimate way. Ensuring that all groups have their say prevents police bias, or the perception that such a bias exists towards a particular group, favouring their specific needs rather than serving the public interest”.¹¹¹

The best way to inculcate responsiveness is to engage with civil society groups and organisations, both formal and informal, representing special interests. The TPFRRP list of various groups, cited in the beginning of this subsection, can be a good starting point in identifying civil society voices.

¹¹⁰ “Tanzania Police Force Reform Programme (TPFRRP): Medium Term Strategy 2010/11 – 2014/15 (Volume I)”, *Ministry of Home Affairs/Tanzania Police Force*, May 2010, p. 46;

¹¹¹ “Handbook on Police Accountability, Oversight and Integrity”, *UNODC*, 2011, p. 101;

“It is important for police to relate to groups like these, because they may be able to voice the concerns of particular sectors of society, in particular of those vulnerable groups in society that may have difficulty in gaining access to the police, and similarly the police may find such groups difficult to access”.¹¹²

In Tanzania, Haki na Usalama Forum provides a platform for the police and civil society to engage on matters of national and local policing policy.

Finally, the legal community, media and academia play important part in ensuring police accountability to the community.¹¹³ While lawyers pursue cases on behalf of victims of police misconduct, bar associations, such as Tanganyika Law Society, provide legal services to the government commenting on policing policy. At the same, the media is an ever important accountability stakeholder, both reporting police misconduct and crime, as well as voicing public concerns. Academic research on policing methods, crime victimisation, public perception of safety as well as universities’ legal clinics also play an important part in ensuring police accountability. In this respect, Tanzania Police Force’s engagements with the University of Dar es Salaam are notable.

4.3. RECOMMENDATIONS

Community policing

1. Establish and define community policing in Tanzania Police Force and Auxiliary Services Act.
2. Adopt a community policing policy and its implementation strategy, outlining goals, targets and specific initiatives.

¹¹² “Handbook on Police Accountability, Oversight and Integrity”, UNODC, 2011, p. 103;

¹¹³ *Id.*, p. 104;

3. Devolve community policing in order to let police officers at ward, village and district levels have operational discretion to adapt community policing programmes and strategies to their respective jurisdictions.
4. Establish institutionalised community policing forums to supplement ad hoc community policing initiatives and enhance police engagement with civil society;
5. Develop plans and strategies to phase out people's militias to replace them with / integrate into Tanzania Police Force.

Responsiveness to civil society

1. Establish regular engagement and dialogue between the TPF and civil society, as defined in the TPFRRP, through community policing forums, civil society platforms like Haki na Usalama Forum, academic institutions, as well as media and legal professionals associations like Tanganyika Law Society.

5. EXTERNAL OVERSIGHT

External oversight occupies a prominent place in the body of international police accountability standards. There is no doubt that external oversight is needed, no matter how robust the state and internal mechanisms appear. In a global study on police oversight mechanisms, the Special Rapporteur on extrajudicial, summary or arbitrary executions aptly captured this importance:

“Without external oversight, police are essentially left to police themselves. Victims are often reluctant even to report abuse directly to police, for fear of reprisals, or simply because they do not believe a serious investigation will result. Especially in cases of intentional unlawful killings, purely internal complaint and investigation avenues make it all too easy for the police to cover up wrongdoing, to claim that killings were lawful, to fail to refer cases for criminal prosecution, or to hand down only minor disciplinary measures for serious offences. Importantly, external oversight also plays a role in increasing community trust of the police service, and can thereby increase public-police cooperation and improve the effectiveness of the police force’s ability to address crime”.¹¹⁴

Essentially, the main purpose of setting up external oversight mechanisms is to ensure that complaints against the police are not influenced in an untoward and biased manner.¹¹⁵ Considering the powers and influence of police officers, these mechanisms to hold them accountable for among the most serious wrongdoing must be

¹¹⁴ “Study on Police Oversight Mechanisms”, report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, UN HRC, A/HRC/14/24/Add.8, para 3;

¹¹⁵ “Police Accountability: Too Important to Neglect, too Urgent to Delay”. *Commonwealth Human Rights Initiative*, 2005, p. 64;

fiercely independent, in composition, orientation and mandate; otherwise their very purpose is defeated. For example, the Complaints Handling Unit of the Ministry of Home Affairs in Tanzania, although external to the police, does not allow a degree of separation from the police and the Executive, under which the police operate, to be considered an external police oversight body.

External police oversight may take a variety of forms and shapes. Various named and designed, bodies that monitor police conduct fall into two broad categories: organisations exclusively dedicated to investigating, reviewing and monitoring police related complaints; and/or agencies such as ombudsmen and national human rights institutions with broader mandates that include oversight of police as well.

Ombudsmen primarily investigate cases of maladministration by government bodies but are increasingly expanding their scope to broader issues, including human rights and corruption, and hence intensifying their scrutiny of the police. National human rights institutions, usually known as human rights commissions, investigate complaints against the police as part of their overall mandate to promote and protect human rights. In Tanzania, they have broad mandates, such as the Commission for Human Rights and Good Governance (CHRAGG) or Prevention and Combating of Corruption Bureau (PCCB) focusing on specific issues. External oversight bodies, such as CHRAGG and PCCB, do not exclusively watch over the police, but have mandates to monitor, investigate and address violations of law and human rights by all state agencies. In some countries, there exist numerous human rights commissions dedicated to specific issues. For example, in Kenya, apart from exclusively police oversight bodies, there are Kenya National Commission on Human Rights, Ethics and Anti-Corruption Commission, National Gender and Equality Commission, and Commission on

Administrative Justice (Ombudsman) – all of which accept complaints against the police.

CHRAGG and external police oversight in Tanzania

CHRAGG is mandated to promote and monitor adherence to human rights, inspect places of detention and investigate violations of human rights and good governance. CHRAGG operates in mainland Tanzania and Zanzibar and the President appoints its Commissioners after they are short-listed and recommended by an Appointment Committee.¹¹⁶ The members of the Appointment Committee include the Chief Justice of the Court of Appeal, the Chief Justice of Zanzibar, the Speaker of the National Assembly, Speaker of the House of the Revolutionary Government of Zanzibar and the Deputy Attorney General.¹¹⁷

Once an investigation has taken place, CHRAGG can make recommendations regarding the matter to the police (or other relevant institutions). If the recommendation is not acted on within three months, CHRAGG can institute court proceedings to enforce the recommendation.¹¹⁸ Additionally, not complying with CHRAGG's recommendation is an offence.¹¹⁹ Despite these relatively strong powers, CHRAGG has faced challenges in meeting its oversight functions. The funding allocated to the Commission is not enough to undertake its roles placed to it by the Constitution and the law of parliament providing for its undertakings.

Despite these challenges, CHRAGG continues to exercise its powers to inspect police stations, investigate complaints against police, and provide advice to the Inspector General of Police.

¹¹⁶ The Commission for Human Rights and Good Governance Act, 2001, s. 7(2);

¹¹⁷ "Tanzania Human Rights Report, 2012". *Legal and Human Rights Centre & Zanzibar Legal Services Centre*, 2013, p. 216;

¹¹⁸ The Commission for Human Rights and Good Governance Act, 2001, s. 28;

¹¹⁹ *Id.*, s. 37;

During the inspections CHRAGG can determine the conditions, equipment and resources of the station/post, concerns of officers and conditions of the holding cells. Additionally, there have been some improvements in case management, including the instalment of a computerised Case Management System to record, track and process complaints.¹²⁰ Among others, in 2016 CHRAGG inspected 19 main Police stations at Dar es Salaam region and held meetings with police to assess the challenges facing them in their daily operations so as to recommend vital measures for action by relevant authorities.

This section focuses on the oversight bodies which are specialised and dedicated to handling complaints against the police exclusively. Their mandate can be broadly described as independent civilian oversight over the police.

5.1. WHY INDEPENDENT CIVILIAN OVERSIGHT OVER POLICE?

Historically speaking, independent civilian oversight agencies that exclusively investigate complaints against the police have often been set up in response to policing problems that arose during long periods of violence. For example, in Northern Ireland and South Africa, police-community relations were completely eroded by the conflict and apartheid respectively. In countries such as Sri Lanka, systemic discrimination against minorities, poor policing and egregious human rights violations have prompted governments to create these bodies. Elsewhere, as in Trinidad and Tobago, and Guyana, the civilian oversight agencies were put in place following instances of brutal and abusive police practices.¹²¹ Most recently, Kenya set up the

¹²⁰ Commission for Human Rights and Good Governance, Tanzania, “Ten Years of the Commission for Human Rights and Good Governance: Reflection of a Journey 2002-2012”, 2012, p. xx;

¹²¹ “Police Accountability: Too Important to Neglect, too Urgent to Delay”. *Commonwealth Human Rights Initiative*, 2005, p. 63;

Independent Policing Oversight Authority (IPOA) after critically examining the role of police in the post-electoral violence of 2007-08.

However, one need not wait for such violent events to occur in order to set up an independent civilian oversight body. Such oversight bodies should be established to detect and prevent police excesses in democratic societies. Particularly in countries undergoing transitions to democracy, the police themselves must undergo a transition from *force to service*, with oppressive practices eradicated and new mind-sets inculcated. Existence of independent civilian oversight agency can be of tremendous help to assist the police through such a transition.

It was also pointed out that, broadly speaking,

An oversight of the police services and officers by an independent civilian body is necessary in a democratic society because of their wide and intrusive powers and the enormous resources allocated to them. The awesome powers of the police need to be subject to the oversight of independent bodies such as the judiciary and non-judicial administrative audit/oversight agencies".¹²²

Furthermore, there are purely technical arguments for setting up a separate police oversight agency. According to Sean Tait, Director of African Policing Civilian Oversight Forum (APCOF), the need for such an independent facility is threefold. Firstly, the nature and complexity of policing oversight work is such that it requires the specialised capacity to deal with it. He adds:

¹²² Alemika, E. (2015). "Context of Police Reforms to Institutionalise Civilian Oversight and Police Accountability in Africa", in "Civilian Oversight as a Mechanism of Good Governance in Policing in Africa", Conference report, 13 March 2015, Nairobi, Kenya, IPOA/APCOF, pp. 14-15, available at <http://bit.ly/2nRr0ox>;

“While we do have other external oversight bodies [such as National Human Rights Commissions], the level of specialisation and the amount of time it takes to deal with complaints against the police are not easily managed within a more generic institution, when its mandate includes human rights and administrative justice issues across the spectrum of society and governance”.¹²³

Secondly, looking at the number of complaints on human rights violations reported, the police are reported as among the most frequent perpetrators, this therefore calls for a separate organ to handle such complaints and reports. Finally, the existence of independent credible bodies lends credibility to the fact that the complaints are being dealt with effectively, as well increase access by non-police into the resolution of complaints and/or allegations of criminality by the police.¹²⁴

The need for an independent civilian oversight agency is recognised in Tanzania. In the 2011 United Nations Universal Periodic Review of Tanzania, the Government of Tanzania agreed to “establish an independent body for investigating complaints about the actions of law enforcement officials”.¹²⁵ This comes after a similar recommendation by the United Nations Human Rights Committee in August 2009.¹²⁶ In 2013, following the commitments the Tanzanian government made internationally, Haki na Usalama Forum recommended the establishment of an independent civilian oversight body with strong powers to thoroughly investigate cases regarding

¹²³ Interview with Sean Tait, APCOF Director, 3 February 2017;

¹²⁴ *Ibid*;

¹²⁵ UPR Info, “Recommendations and Pledges: Tanzania”, June 2012, Recommendation 85.45, p. 4, available at <http://bit.ly/2oQ1zS1>;

¹²⁶ International Covenant on Civil and Political Rights Human Rights Committee, CCPR/C/TZA/CO/4, “Concluding observations of the Human Rights Committee: United Republic of Tanzania”, 6 August 2009, para. 18;

serious police misconduct.¹²⁷ The TPF's Community Safety Initiative is currently working on a programme to set up such a body. We urge that there are wide public consultations to deliberate on its mandate, design and composition.

5.2. MODELS OF THE OVERSIGHT BODY

There is no lack of good examples of independent civilian oversight around the world. Oversight agencies can be differently organised, have different mandates and enjoy varying powers. For example, in certain jurisdictions, such as Northern Ireland, El Salvador and some of the Brazilian states, independent civilian police oversight is exercised by a single person – police ombudsman – albeit supported by a varying number of staff and infrastructure in receiving and investigating complaints. Other countries, like Kenya, South Africa, the UK, and others, feature fully fledged police oversight bodies.

However, all of these bodies vary greatly in terms of their purpose, mandate, and powers. According to the UNODC, they can be divided into four categories:¹²⁸

- *Investigative and quality assurance models.* These share responsibility for investigations into allegations of misconduct with the police. They usually deal only with certain types of complaint and more serious complaints;
- *Review and appellate models.* After the police have completed an internal investigation into a complaint, these type of bodies review the file and decide whether a specific case was competently or fairly handled and, if not, request that the problem identified be corrected;

¹²⁷ "Submission to the Constitutional Review Commission", *Haki na Usalama Forum*, 2013, available at <http://bit.ly/2nNM79D>;

¹²⁸ "Handbook on Police Accountability, Oversight and Integrity", *UNODC*, 2011, p. 52;

- *Evaluative and performance-based models.* These do not receive and investigate individual complaints, but are geared to identifying patterns and practices of police misconduct and systemic failures to deal with them; and
- *Mixed models.* Oversight bodies may use a combination of two or more of the above models.

This functions-based categorisation is most useful in understanding what can be expected of a police oversight agency, regardless of what form and shape it takes.

All of these models have their own strengths, but, regardless of which model is chosen, to be truly effective an independent civilian oversight body must be given 1) strong mandate and sufficient powers; 2) financial and operational independence from the Executive and the police; 3) adequate human and financial resources; and 4) political support.¹²⁹ As Philip Alston suggests,

“without these basic elements, an external agency will be little more than a paper tiger – set up as a buffer to civilian complaints, but with no real impact on [policing]”.¹³⁰

These components are addressed below.

5.3. MANDATE AND POWERS OF THE OVERSIGHT BODY

To start with, the independent civilian oversight body must be clearly established in law. Ideally, the Constitution should secure its existence to protect it against any future attempts to abolish independent police oversight through legislation. For example, despite the fact that the South African Constitution does not explicitly refer to the Independent Police Investigative Directorate (IPID), it

¹²⁹ “Study on Police Oversight Mechanisms”, report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, UN HRC, A/HRC/14/24/Add.8, para 4;

¹³⁰ *Ibid*;

does mention police oversight and investigation of complaints by an “independent police complaints body”.¹³¹ While not ideal, this reference helped secure and strengthen the IPID itself.¹³²

Most often, independent civilian oversight body is established through law, either through incorporation into existing Police Act or through creating a separate piece of legislation.¹³³ Police oversight agencies are rarely created through an executive decree (e.g. Hong Kong’s Independent Police Complaints Council between 1986 and 2008), which is the least desirable option, as the oversight body does not have a permanent standing in law and can be easily scrapped.¹³⁴

When set up, an independent civilian oversight body must be given a strong legislative mandate and sufficient powers to be effective. While the personal jurisdiction of an oversight body should be as broad as possible to include *all* police personnel, it is advised that the scope of subject matter jurisdiction should be carefully considered.

“Irrespective of the number of staff an oversight agency has, it is never going to be able to conduct all investigations into complaints against the police. While it is undesirable for oversight agencies to hand over all investigations to the police, pressure of work and paucity of resources means that nearly all oversight agencies rely to some extent on the police to conduct investigations. Most agencies have a system for categorising complaints, and retain powers to investigate those that are either serious in nature (those involving deaths, torture, or racial bias) or involve public interest. Even with respect to the cases that are delegated to

¹³¹ Constitution of the Republic of South Africa, No. 108 of 1996, art. 206 (3) and (6);

¹³² Interview with Sean Tait, APCOF Director, 3 February 2017;

¹³³ Murtaugh, C. & Poe, M. (2010). “Establishing an Independent Police Oversight Body”, INPROL Consolidated Response (10-007), *International Network to Promote the Rule of Law (INPROL)*, p. 2;

¹³⁴ *Ibid*;

the police, these bodies tend to closely supervise investigations by the police, so as to ensure impartiality of police investigations".¹³⁵

For example, South African IPID's subject matter jurisdiction is limited in scope to 1) any deaths in police custody; 2) deaths as a result of police actions; 3) any complaint relating to the use of firearms by the police; 4) rape by a police officer, whether the police officer is on or off duty; 5) rape of any person in police custody; 6) any complaint of torture or assault by the police; 7) corruption matters within the police; and 8) any other matter referred to it by specified authorities.¹³⁶

In contrast, Kenyan Independent Policing Oversight Authority's (IPOA) mandate is not limited and covers "any complaints related to disciplinary or criminal offences committed by any member of the [police]".¹³⁷ This expansive mandate can be regarded favourably, since it allows the IPOA to intervene in the interest of justice in areas other than serious violations. However, realistically such a broad mandate requires reaching an understanding with other oversight agencies (especially internal ones) about the delineation of responsibilities as well as procedures of referring cases to one another in order to avoid overlap and conflict.

In terms of powers, an independent civilian oversight body must be able, at the very least, to receive, record and track complaints. The oversight body should be able to receive complaints from any relevant person, including the victim and his or her family, witnesses, police themselves, or any other official.

¹³⁵ "Feudal Forces: Democratic Nations: Police Accountability in Commonwealth South Asia", *Commonwealth Human Rights Initiative*, 2007, pp. 74-75;

¹³⁶ Independent Police Investigative Directorate Act (South Africa), Act no. 1 of 2011, s. 28(1);

¹³⁷ Independent Policing Oversight Authority Act (Kenya), 2011, s. 6(a);

Additionally, it is important to oblige the police to report most serious allegations of police misconduct (such as death, torture, or serious injury in police custody) to the oversight agency, as discussed in the Section 2.6. Making the failure to report such cases immediately and within 24 hours of occurrence an offence is necessary for reporting requirements to be effective.¹³⁸

Power to initiate investigations suo moto

Ability to monitor and/or investigate abuses on its own initiative (suo moto) is an important power the oversight agency should enjoy. This allows the oversight agency to fulfil its mandate regardless of a possible breakdown in reporting (e.g. police failed to report death in custody) and complaints submission (e.g. media reported a violation, but no complaint was lodged) systems.

A number of independent civilian oversight bodies enjoy this power. Legal formulations, however, may vary. For example, Police (Northern Ireland) Act, 1998 stipulates that Police Ombudsman “may of his own motion formally investigate <...> any matter which –

- a) appears to the Ombudsman to indicate that a member of the police force may have –
 - i. committed a criminal offence; or
 - ii. behaved in a manner which would justify disciplinary proceedings; and
- b) is not the subject of a complaint,

if it appears to the Ombudsman that it is desirable in the public interest that he should do so”.¹³⁹

¹³⁸ “Study on Police Oversight Mechanisms”, report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, UN HRC, A/HRC/14/24/Add.8, para 32;

¹³⁹ Police (Northern Ireland) Act, 1998, s. 55(6);

However, much simpler formulations are more common. According to the Kenya's IPOA Act, 2011, "The Authority shall have the power to investigate the Service on its own motion or on receipt of complaints from members of the public".¹⁴⁰ Similarly, the CHRAGG Act, 2001 states that "The Commission shall investigate any human rights abuses or mal-administration a) on its own initiative; or b) on receipt of a complaint or allegation".¹⁴¹

At the same time, systems of recording and tracking complaints, and supporting the work of the agency otherwise (such as training of investigators) are of utmost importance to the agency's efficiency. Ability to keep comprehensive records and track specific abuses alone can make a difference. In Sao Paulo (Brazil), police ombudsman, despite lacking hard investigatory powers, was able to expose police impunity by tracking homicides that indicated the involvement of police death squads.¹⁴²

The oversight agency should also have the power to conduct investigations into allegations of police misconduct. This power has two aspects. On the one hand, the oversight body should be given *specific* investigatory powers, such as the power to subpoena documents, obtain search warrants, and protect witnesses.¹⁴³ These powers are essential for the agency to be able to conduct independent investigation, without relying on the police. Otherwise, "external oversight bodies are forced to rely upon police investigations, which can be inadequate or non-existent as a result of police bias or

¹⁴⁰ Independent Policing Oversight Authority Act (Kenya), 2011, s. 7(a);

¹⁴¹ The Commission for Human Rights and Good Governance Act, 2001, s. 15(1);

¹⁴² "Study on Police Oversight Mechanisms", report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, UN HRC, A/HRC/14/24/Add.8, para 33;

¹⁴³ *Id.*, para 37;

corruption".¹⁴⁴ The arms-length relationship with the police is key to maintaining the needed distance from the very agency which is being investigated – without this, the efforts to establish an oversight body boil down to being superficial at best.

South Africa and Kenya again offer good examples in this regard, where IPID and IPOA investigators are granted a range of powers which enable truly independent and comprehensive investigation. IPOA, in particular, has the powers to

- requisite reports, records, documents or any other information from any source, including the police;
- enter any premises with a search warrant; to seize any objects from the premises that could be relevant to their investigation;
- interview any person (including police officers and officials) and take their statements; summon any person and compel their attendance;
- summon any police officer to produce any document, thing or information that could be relevant to IPOA investigation; and
- protect witnesses' identity.¹⁴⁵

On the other hand, to ensure the agency's capacity to exercise its investigatory powers, it must be able to compel police cooperation through a court or prosecutor's office.

Finally, an independent civilian oversight body must have strong remedial powers to effect the results of its investigation.

“The ability to fully investigate and report on incidents and complaints, even with complete independence, means little if the [external oversight] authority lacks the capacity to

¹⁴⁴ *Id.*, para 34;

¹⁴⁵ Independent Policing Oversight Authority Act (Kenya), 2011, s. 7(1)(a);

ensure that the police, prosecutors and/or executive act on the basis of their findings".¹⁴⁶

Independent oversight from a complainant's point of view¹⁴⁷

According to an international policing expert, for any system to be effective, it must also attend to the needs of complainants. With this in view, it is important that:

- The procedures of the complaints office are widely publicised;
- The complaints procedures are easily accessible;
- The complainant does not feel threatened;
- The complainant is informed of what to expect and how to keep track of the complaint (this can include the complainant being given a reference number and the name of the officer dealing with the complaint);
- The complainant has access to witness protection if required;
- The system includes opportunities to settle less serious disputes between police and members of the public in an informal way (often a dispute can be settled by a simple apology);
- Members of the public trust the system.

In this regard, specific powers should include 1) the power to refer the case for police investigation or investigation by police's internal accountability unit; 2) the power to refer the case for criminal prosecution, where the investigation revealed a criminal offence; 3) the power to recommend disciplinary punishment, where the investigation revealed disciplinary offence; 4) the power to follow up

¹⁴⁶ "Study on Police Oversight Mechanisms", report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, UN HRC, A/HRC/14/24/Add.8, para 42;

¹⁴⁷ Osse, A. (2006). *Understanding Policing*, Amnesty International, p. 216;

on measures taken by the police and/or other relevant authorities after referring the case to them for action; and 5) the power to enforce compliance with its recommendations in court.

Beyond handling complaints: the oversight body's ability to recommend policy change

It is also a good practice to empower the independent civilian oversight body to recommend change in law enforcement policies and practices. By the very nature of its work, the oversight agency is capable of collecting large amounts of data on police misconduct. This, in turn, allows for identification of patterns of misconduct that can be linked to systemic problems within police's procedures, mechanisms and/or training. Consequently, the oversight agency is usually well placed to propose reforms. Police oversight agencies in a number of jurisdictions, such as Kenya, South Africa and Northern Ireland, enjoy such a power.

Despite the police being the sole focus of independent civilian oversight, recommendations are not always addressed to the police. For example, in Kenya, some of the regular recipients of IPOA's recommendations include: the Executive, the Ministry of Interior and Coordination of National Government, the Office of the Director of Public Prosecutions, Office of the Attorney General and Department of Justice, National Assembly - House Departmental Committees on Administration & National Security and the Budget and Appropriations, the National Police Service, the Internal Affairs Unit of the Police, the National Police Service Commission, the Witness Protection Agency, the Kenya National Commission on Human Rights, Commission for the Administration of Justice, Ethics and Anti-Corruption Commission, National Gender and Equality Commission, FIDA and other organisations dealing with Sexual and Gender-based

Violence (SGBV) and women's rights, the Police Reforms Working Group and members of the public.¹⁴⁸

5.4. INDEPENDENCE OF THE OVERSIGHT BODY

The very term *independent civilian police oversight* denotes the importance of the oversight body to be organisationally and functionally independent, particularly from the police and its parent ministry. Independence of the oversight agency greatly reduces the risks of bias, corruption, and tampering with investigations. Conversely, the lack of independence defeats the very purpose, for which external oversight is established.

Oversight agency's independence starts with the manner of its establishment, briefly addressed in the previous subsection. It is therefore of great importance that the independent civilian oversight body is incorporated as a sole entity under a separate law, preferably in the Constitution. The legal formulation should explicitly refer to its independence.

IPOA and IPID independence in their respective Acts

South African IPID Act and Kenyan IPOA Act that establish their respective civilian oversight agencies specifically refer to their independence, providing good legislative examples for countries drafting similar legislation.

In s. 4, the IPID Act states, rather succinctly:

“(1) The Directorate functions independently from the South African Police Service.

(2) Each organ of state must assist the Directorate to maintain its impartiality and to perform its functions effectively.”¹⁴⁹

¹⁴⁸ Interview with Tom Kagwe, IPOA Board Member, 28 February 2017;

¹⁴⁹ Independent Police Investigative Directorate Act (South Africa), Act no. 1 of 2011, s. 4;

In contrast, the IPOA Act offers a more holistic overview of the agency's independence:

“(1) In the performance of its functions the Authority shall not be subject to any person, office or authority.

(2) The Authority shall observe the principle of impartiality and rules of natural justice in the exercise of its powers and the performance of its functions.

(3) Every Government officer or institution shall accord the Authority such assistance and protection as may be necessary to ensure its independence, impartiality, dignity and effectiveness.

(4) No person or body may interfere with the decision making, functioning or operations of the Authority, and

(5) Parliament shall ensure that the Authority is adequately funded for it to effectively and efficiently perform all of its functions.”¹⁵⁰

Organisationally, there are several crucial safeguards against undue interference with the oversight body's work. Firstly, it is the membership of the organisation, which should not include serving police officers. This reflects the “civilian” part of the *independent civilian police oversight*. The UN Special Rapporteur on Extra-Judicial Killing, flatly states that “the membership of an external agency should not include any members of the police force” in order to “avoid risk and appearance of potential bias”.¹⁵¹ This position may become problematic to achieve, especially for a newly set up oversight agencies, which sometimes have to resort to hiring police because of their background in investigations. If attracting capable investigators is challenging and hiring individuals with law enforcement background is therefore considered, it is recommended

¹⁵⁰ Independent Policing Oversight Authority Act (Kenya), 2011, s. 4;

¹⁵¹ “Study on Police Oversight Mechanisms”, report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, UN HRC, A/HRC/14/24/Add.8, para 52;

to hire retired officers only.¹⁵² However, serving or retired police should not be appointed as adjudicating members of the complaints body.

Secondly, the member must be appointed based on merit, following a transparent and consultative process, and be offered security of tenure. Selection processes are key to establish and facilitate independence from the get-go. For example, the IPOA is governed by the Board, a nine-member body that sets the agency's direction and priorities. Members of the Board are appointed through a rigorous process that involves a selection panel (consisting of representative from various government branches and human rights commissions) considering the applications, shortlisting the candidates and forwarding the shortlisted names to the President of Kenya. The President then nominates members from the shortlisted names to the Parliament, which debates, vets, and approves or rejects President's nominee(s).¹⁵³ When constituted, the Board then appoints the IPOA Director and staff "through an open, transparent and competitive recruitment process".¹⁵⁴ While the IPOA Act does not specify qualifications prospective staff must have to join IPOA,¹⁵⁵ the IPOA Director must be a person, who

- a) is a citizen of Kenya;
- b) holds a degree from a university recognized in Kenya;
- c) has had at least ten years of experience at management level;
- d) has proven relevant experience in any of the following fields—

¹⁵² Independent Policing Oversight Authority Act (Kenya), 2011, s. 11

¹⁵³ *Ibid*;

¹⁵⁴ *Id*, s. 19(2);

¹⁵⁵ The only requirement for the IPOA staff is that "The Board shall ensure that all Board members and members of staff are adequately trained for their respective positions, and in particular that all members of staff directly involved in investigations undergo appropriate training on human rights and fundamental freedoms" (s. 22(2), IPOA Act, 2011);

- i. government;
 - ii. law;
 - iii. management;
 - iv. finance;
 - v. security; or
 - vi. public administration; and
- e) meets the Constitutional requirements of leadership and integrity.¹⁵⁶

South African IPID Act, 2011 is more specific about prospective investigators' qualifications. According to the Act, a person appointed as an investigator

- a) must have at least a grade 12 certificate or a relevant diploma or degree; and
- b) must have-
 - i. knowledge and relevant experience of criminal investigation; or
 - ii. any other relevant experience.
- b) must pass appropriate security screening.¹⁵⁷

Finally, it is important that an independent civilian oversight body is be perceived as being a part of the government of the police and complainants are not deterred from approaching it. Therefore, the newly established police oversight body should be located in an accessible and independent office whose location is widely known and publicised. It certainly must be physically separated from the

¹⁵⁶ Independent Policing Oversight Authority Act (Kenya), 2011, s. 19(3);

¹⁵⁷ Independent Police Investigative Directorate Act (South Africa), Act no. 1 of 2011, s. 22(2);

police and/or government, i.e. its office must be located in a separate building from the police.¹⁵⁸

Apart from organisational independence, the oversight agency should maintain functional independence, i.e. its capacity to independently investigate alleged police misconduct. Adequate resources (addressed in more detail in the next subsection) must be allocated to the oversight body and its staff should be properly trained; otherwise, the agency risks falling victim to undue reliance on police expertise. Ideally, the oversight agency should have capacity to conduct an entire investigation on its own, including forensic, medical and ballistic analysis. One such example, is the Police Integrity Commission of New South Wales, Australia, which maintains strict functional independence.¹⁵⁹ More often, however, independent oversight agencies have to call on Criminal Investigation Departments (CIDs) for assistance. In such cases, clear rules must be put in place to regulate the engagements between the police and the oversight body. In particular, engagement strategies and a working relationship should be devised in such a way that it does not affect the independence of the oversight body.

5.5. RESOURCES FOR THE OVERSIGHT BODY

Adequate financial and human resources are crucial to bring independent civilian oversight of the police to life. The legal framework establishing the external oversight agency may provide for a broad mandate, strong powers, and safeguards against political interference, but without adequate resources any meaningful implementation will be impossible.

¹⁵⁸ “Study on Police Oversight Mechanisms”, report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, UN HRC, A/HRC/14/24/Add.8, para 52;

¹⁵⁹ *Id.*, para 54;

Setting up an independent civilian police oversight body may be an expensive undertaking, but one must remember that the costs of recurring violence and violations are unjustifiably higher.

“Because of the role that external agencies can play in tackling impunity, they are a worthwhile investment of state resources. In weighing up the costs and benefits, countries should also bear in mind not only the importance of the rights at stake, but that the financial cost of continued police violence is also high. For example, between 1995 and 1998, 1,489 civil claims were brought against the South African Police Service on the basis of excessive use of force, and the police service disbursed over 50 million Rand in settlement and remedies”.¹⁶⁰

The need for sufficient financial and human resources has two aspects. On the one hand, the oversight body requires to maintain its functional independence, and therefore needs to attract qualified staff, build support systems (such as records keeping and witness protection), as well as have financial and human capacity to take on police misconduct cases. According to Tom Kagwe, IPOA’s Board member,

“Generally, the kind of work mandated to IPOA requires constant expenditure to sustain it. Investigations, inspections and monitoring exercises, field researches, communication outreach activities require significant budget levels to sustain. Complexities involved in the investigation cases also have a sum effect on the overall cost of investigations”.¹⁶¹

¹⁶⁰ *Id*, para 48;

¹⁶¹ Interview with Tom Kagwe, IPOA Board Member, 28 February 2017;

The financial autonomy of the oversight body must be assured.¹⁶² This requires that the funds of the oversight body should not be tied to the police budget nor decided by the Executive. The oversight body should be able to prepare its own budget estimate and be guaranteed the autonomy to spend the funds as it deems fit. In parallel, the body must be held to account for its expenditure through the appropriate reporting to the legislature and any other government audit institutions.

5.6. POLITICAL AND COMMUNITY SUPPORT

Independent civilian police oversight requires a great deal of political support to make it efficient and effective. The government should embrace the message that oversight bodies are not the enemies of the law enforcement, trying to undermine their efforts at controlling crime, but partners and colleagues, who should work together to ensure that the rule of law is upheld and democracy is strengthened.

The oversight agency itself should take efforts at reaching out to the community, especially those marginalised and affected by police malpractices. Awareness should be raised about the agency, its powers, complaint procedures and all other relevant information to win public trust.

IPOA outreach programmes¹⁶³

Kenya's IPOA pursues numerous outreach strategies, first and foremost – devolution (taking it out of the capital). Currently, IPOA has four offices in Nairobi (Headquarters), Mombasa, Kisumu and

¹⁶² It goes without saying that this requires the oversight body has adequate funds to meet its mandate. This can be made a legal obligation. For example, the IPOA Act requires the Parliament to ensure that the Authority is adequately funded (Independent Policing Oversight Authority Act (Kenya), 2011, s. 4(5);

¹⁶³ Interview with Tom Kagwe, IPOA Board Member, 28 February 2017;

Garissa. The IPOA Decentralisation Strategy envisioned ten initial offices with gradual opening of offices to all the counties.

The Authority's Board also saw the importance of communication and outreach as a vehicle of mobilising public complaints and creation of awareness on the Authority. Consequently, a Communication and Outreach Department was created and a communication strategy was adopted. To date, the Authority has undertaken intensive outreach campaigns in half of the counties in Kenya and reached more than 5 million people with IPOA messages. During the outreach activities, IPOA staff articulate the Authority's mandate, conduct focus group discussions, take in complaints and offer legal aid. During the complaint intake process, potential complainants are assured of anonymity and confidentiality in the process. The authority also has an MoU with the Witness Protection Agency, one of its stakeholders whose mandate is to safeguard complainants through witness protection.

Involving civil society in outreach efforts and generation of public support for independent civilian police oversight is always a good idea. Civil society organisations often have better outreach on the ground and can help community members with filing complaints against the police, guiding them through the process, as well as raising awareness about the oversight body through such means as public meetings and dissemination of public education materials.

5.7. WATCHING THE WATCHDOG: REPORTING OBLIGATIONS OF THE OVERSIGHT BODY

Setting up a strong independent civilian police oversight body requires a corresponding set of transparency and reporting obligations. This is to ensure that the oversight agency is accountable to the public for both delivering on its mandate and its financial expenditures.

Reporting obligations are usually laid out in the law establishing the oversight body itself. The oversight agency should normally be required to submit two types of reports: 1) audit report, detailing income/expenditure and assets/liabilities of the body, which is usually submitted to the Auditor-General (or corresponding body); and 2) annual report, detailing activities that the oversight agency undertook, which is normally submitted to the responsible minister, who then tables it before the Parliament for review. The latter may also contain other information pertaining to the agency's performance. For example, IPOA Act states that the Authority's annual report shall include, *inter alia*, Authority's opinion on the adequacy of its funding (sic!), "such other statistical information as the Authority considers appropriate relating to complaints to the Authority, investigations by the Authority and reports by the Authority on the results of the investigations", as well as "any other information relating to its functions that the Authority considers necessary".¹⁶⁴ This gives the IPOA an opportunity to address the government and the MPs on a range of issues, affecting its performance.

It is also a good practice for the oversight body to be open to public scrutiny by releasing reports and disclosing relevant statistical data pertaining to its activities, as well as making public interventions, such as media appearances. All this information should also be easily available online. To strengthen oversight body credibility, it is also advisable to publicise reports on results of each investigation. For example, Police Ombudsman for Northern Ireland publishes short summaries of each case, investigated by the Ombudsman, on the office's website.¹⁶⁵

¹⁶⁴ Independent Policing Oversight Authority Act (Kenya), 2011, s. 38(3)(b)(d) and (e);

¹⁶⁵ "Investigation reports", *Police Ombudsman for Northern Ireland*, available at <http://bit.ly/2r87Zkl>;

Monitoring performance: IPOA's experience¹⁶⁶

The IPOA Strategic Plan 2014-2018 is the bedrock of performance as it highlights the eventual strategic outcomes envisioned to be achieved by the end of the strategic period. These include; compliance by police to human rights standards; restored public confidence and trust in police; improved detention facilities and police premises; a functional Internal Affairs Unit (IAU); and a model institution on policing oversight in Africa.

Right at inception, the Authority founded and operationalised a Performance Monitoring and Evaluation System as well as the Performance Appraisal System. This system is sustained by a global annual work plan that morphs into the budget with specific input and commitment at an individual employee basis. In April 2015, the Board approved a Performance Management Framework (PMF) Manual that guides the performance execution and reporting cycle. Performance review sessions are conducted at the Management and Board committee levels respectively, based on posted performance against projected performance.

Another important aspect of public accountability is maintaining uninterrupted communication with the complainant. In other words, the complainant should be kept updated about the status of the complaint, investigation progress, and the result of the investigation.

Finally, an independent civilian oversight agency should not have the same reporting lines as the police to avoid undue interference and tampering with investigations. This is precisely the problem with Tanzanian Complaints Handling Unit formed within the Ministry of

¹⁶⁶ Interview with Tom Kagwe, IPOA Board Member, 28 February 2017;

Home Affairs, same Ministry that oversees the Tanzanian Police Force. Instead, the oversight body should report to the Parliament.

5.8. RECOMMENDATIONS

1. The police should fully cooperate with existing oversight bodies, such as PCCB and CHRAGG and be held to account for any instances of non-cooperation.
2. An independent civilian oversight body should be created that investigates allegations of serious misconduct by the police. Key requirements for an effective a body include:
 - a. Establish a robust and independent selection process, based on objective criteria, to appoint the Chair and members;
 - b. Ensure all appointments are approved by Parliament, and there is no scope for political appointees;
 - c. Can take complaints against the police from members of the public and investigate;
 - d. Can initiate an investigation into police action on its own initiative (*suo moto*);
 - e. Mandated to investigate deaths and serious injuries that may have been caused by police action.
 - f. Mandated to investigate all deaths and serious injuries caused in police custody.
 - g. Given sufficient investigatory powers.
 - h. Empowered to make binding recommendations for action including prosecution, discipline or policy review.
 - i. Charged with reporting regularly to Parliament and the public.
 - j. Ensured adequate resources and an autonomous budget

Independent civilian oversight body should be publicly supported by the government and the police.

6. NO MECHANISM IS AN ISLAND: THE NEED FOR AN INTEGRATED POLICE ACCOUNTABILITY SYSTEM

Police accountability is a complex, multi-level and multi-dimensional system, which requires all stakeholders working together to ensure its effectiveness. There are no one-stop solutions. There are no “silver bullets”. There is no single initiative, be it community policing or external oversight that is going to make the police accountable. The accountability system must be seen as a whole, when police reform is being considered. The end result should be a balanced system, where all the different actors mutually reinforce each other while keeping each other in check; and no single actor is dominating.

“It is really important that one has all sorts of different actors in a police accountability framework because all of these serve their own different interests, and the only way to make sure that all of these interests are being served is to have all these different players represented. That is why one needs to have internal accountability, accountability to the state, accountability to the public, and then - external accountability.”¹⁶⁷

This paper has covered all four levels of police accountability. Internal systems and mechanisms are the natural first step at ensuring the police are held accountable. However, the limitations are obvious: from innate bias, the police subculture and the “Code of Silence” to the contingency on factors such as leadership and training. This necessitates the establishment of other oversight mechanisms. While the state oversees the police in its policy-making and policy-setting roles, dealing with individual complaints against police misconduct falls to the Judiciary, quasi-judicial external oversight bodies, and to the police themselves. The latter are particularly suited to investigate

¹⁶⁷ Interview with Anneke Osse, independent expert, 27 January 2017;

police misconduct, especially when they take form of independent civilian police oversight. However, external oversight cannot bring about accountable police force “in a vacuum”, i.e. without other levels of accountability involved. Lastly, police responsiveness to the community completes the integral picture of police accountability, diffusing it in the totality of individual police-public relations.

Therefore, while the government may prioritise one area of police accountability reform over others (due to budgetary constraints or other considerations), this narrow view holds no long-term benefits. Governments and policy makers must adopt a holistic approach that creates a multi-layered police accountability system. This is the only way police accountability has the potential to be truly effective.

RECOMMENDATIONS

Provided below are recommendations targeted for the Tanzanian context:

INTERNAL POLICE ACCOUNTABILITY

Responsible police leadership

6. The Constitution and police laws must entrench robust checks in the procedure to appoint and remove the Inspector-General of Police, in order to ensure the independence and impartiality of the Police Force.
7. The Constitution should state that the Parliament should approve the candidate for Inspector-General of Police before the person is appointed by the President.
8. Selection criteria must be developed and integrated into the Police Act.
9. The Constitution should clearly set out the grounds upon which the Inspector-General may be removed, to ensure transparency and accountability in any such decision, with provision for parliamentary involvement in any attempt to remove the Inspector-General before the conclusion of his or her term of office.
10. The Constitution should stipulate a fixed term of office for the Inspector-General of Police. It is recommended that the Constitution should allow for an initial term of four years, renewable once for a maximum tenure of eight years.

Internal regulations

5. Police General Orders should be revised to bring them in conformity with policing laws and to reflect other recommendations pertaining to the internal accountability.
6. The Police Force Service Regulations, 1995 should be abolished in order to simplify the internal regulations regime. Any relevant provisions worth keeping should be transplanted into Police General Orders.
7. Police Code of Conduct should be made public and widely available both to the police and the members of the public.
8. SARPCCO Code of Conduct should be formally integrated into internal regulations and made available to the police and members of the public.

Internal reporting

3. The law should strengthen internal reporting system by obliging the police to record and report the following occurrences: arrests and detentions; granted and refused bails; searches; time, place and duration of interrogations, as well as the facts of confessions and statements; the fact of detainee's medical examination; and the use of firearms.
4. Formalise internal channels for reporting human rights violations by police officers as follows:
 - a. The scope of what constitutes human rights violations must be properly defined and circulated throughout the police department;
 - b. It should be clearly stated to which rank of officer complaints can be brought; If no action taken, the complainant should be able to complain to the internal discipline unit or external oversight agency;
 - c. The complainant must not suffer any kind of reprisal or punishment for reporting human rights violations.

Internal disciplinary mechanisms

11. Establish a single internal disciplinary unit and provide for its composition, powers, procedures as well as financing in Tanzania Police Force and Auxiliary Services Act;
 - a. The unit should have the power to investigate *suo moto*;
 - b. The unit should report directly to the IGP or Deputy IGP;
 - c. The procedures for appointment, transfer and removal of the head of internal disciplinary unit should be specified in Tanzania Police Force and Auxiliary Services Act;
12. Delineate cases of disciplinary misconduct that are dealt with by superiors and cases that are dealt with by the internal disciplinary unit;
13. Simplify the accountability system by unifying procedures for different ranks, except for the three highest ranks;
14. Provide for a possibility to register a complaint against the police at any police station in Tanzania Police Force and Auxiliary Services Act;
15. Develop a standard Complaint Form with a receipt for complainants, to enable complainants to have evidence of their complaint and details of the police officer who took to the complaint;
16. Enshrine the obligation to register a complaint against the police in Tanzania Police Force and Auxiliary Services Act. Refusing or failing to register a complaint should be a disciplinary offence;

17. All complaints lodged with the police should be forwarded to the internal disciplinary unit to investigate, with a copy sent to the external civilian oversight body;
18. The public and police officers should be made aware of the official channels of registering complaints against the police;
19. Provide for anonymity and, when necessary, witness protection for complainants;
20. Enshrine an obligation to provide a receipt of complaint to the complainant in Tanzania Police Force and Auxiliary Services Act;

Performance evaluation and promotions

5. Establish a Police Force Service Commission in the Constitution.
6. Establish a separate law to govern the Police Force Service Commission; or amend the Police Force and Prisons Service Commission Act, 1990 in line with the recommendations below.
7. The composition of the Commission must be diverse and ensure a balance between government and non-government members.
8. Members should be appointed through an open, competitive and transparent process, based on objective selection criteria, by the President subject to confirmation by the Parliament.

The Commission must be proactive in providing accessible and accurate information and data on its functions, duties, powers and composition in the public domain, through various mediums including the Internet.

ACCOUNTABILITY TO THE STATE

Accountability to the Political Executive

3. Law and policy should clearly delineate the roles, responsibilities, and relationship between the police and the Executive.
4. The Executive must always act to respect the operational responsibility of the police. The MHA's Complaints Handling Unit should be disbanded. It is not appropriate for any police complaints unit to be situated in or governed by any Ministry of government.

Accountability to the Parliament

4. The Parliament should take a leading role in revising police legislation to strengthen existing accountability mechanisms and create new ones, such as independent civilian oversight over the police.
5. The Parliament should amend or repeal sections of the statutes that grant immunity to police officers, in particular:
 - a. Sections 29(6) & 33(8) of the Prevention of Terrorism Act, 2002;
 - b. Section 3 of the Preventive Detention Act, 1962;
 - c. Section 26 of the Emergency Powers Act, 1986;
 - d. Section 78 of the Penal Code, 1981;
 - e. Section 6 of the Criminal Procedure Act, 1985.
6. The Members of Parliament are encouraged to actively engage the police and the responsible Minister during question-and-answer sessions, and within the Defence and Security Committee and Public Accounts Committee.

Accountability to the Judiciary

2. The Judiciary is encouraged to take a more pro-active stance on police accountability and contribute to the process of police reform by issuing orders and/or guidelines on specific issues.

ACCOUNTABILITY TO COMMUNITY

Community policing

6. Establish and define community policing in Tanzania Police Force and Auxiliary Services Act.
7. Adopt a community policing policy and its implementation strategy, outlining goals, targets and specific initiatives.
8. Devolve community policing in order to let police officers at ward, village and district levels have operational discretion to adapt community policing programmes and strategies to their respective jurisdictions.
9. Establish institutionalised community policing forums to supplement ad hoc community policing initiatives and enhance police engagement with civil society;
10. Develop plans and strategies to phase out people's militias to replace them with / integrate into Tanzania Police Force.

Responsiveness to civil society

2. Establish regular engagement and dialogue between the TPF and civil society, as defined in the TPFRRP, through community policing forums, civil society platforms like Haki na Usalama Forum, academic institutions, as well as media and legal professionals associations like Tanganyika Law Society.

EXTERNAL OVERSIGHT

3. The police should fully cooperate with existing oversight bodies, such as PCCB and CHRAGG and be held to account for any instances of non-cooperation.
4. An independent civilian oversight body should be created that investigates allegations of serious misconduct by the police. Key requirements for an effective a body include:
 - a. Establish a robust and independent selection process, based on objective criteria, to appoint the Chair and members;
 - b. Ensure all appointments are approved by Parliament, and there is no scope for political appointees;
 - c. Can take complaints against the police from members of the public and investigate;
 - d. Can initiate an investigation into police action on its own initiative (*suo moto*);
 - e. Mandated to investigate deaths and serious injuries that may have been caused by police action.
 - f. Mandated to investigate all deaths and serious injuries caused in police custody.
 - g. Given sufficient investigatory powers.
 - h. Empowered to make binding recommendations for action including prosecution, discipline or policy review.
 - i. Charged with reporting regularly to Parliament and the public.
 - j. Ensured adequate resources and an autonomous budget
5. Independent civilian oversight body should be publicly supported by the government and the police.

BIBLIOGRAPHY

INTERNATIONAL LAW

“Law Enforcement Code of Ethics”, *IACP*, 1957, available at <http://bit.ly/2kK7xC2>

“Study on Police Oversight Mechanisms”, report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, UN HRC, A/HRC/14/24/Add.8

ECOSOC Resolution 1989/61, annex., Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, available at <http://bit.ly/2jlf0Gh>

International Covenant on Civil and Political Rights Human Rights Committee, CCPR/C/TZA/CO/4, “Concluding observations of the Human Rights Committee: United Republic of Tanzania”, 6 August 2009

UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 1990, available at <http://bit.ly/1dtR5f7>

UN General Assembly resolution 34/169 of 17 December 1979, Code of Conduct for Law Enforcement Officials, available at <http://bit.ly/2jd2vfP>

UN General Assembly resolution 43/173 of 9 December 1988, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, available at <http://bit.ly/1M9rtL4>

UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, available at: <http://bit.ly/1bNeudO>

UPR Info, “Recommendations and Pledges: Tanzania”, June 2012, Recommendation 85.45, available at <http://bit.ly/2oQ1zS1>

REGIONAL LAW

ACHPR Resolution 103a on Police Reform, Accountability and Civilian Police Oversight in Africa, available at <http://bit.ly/2kh5hT2>

ACHPR resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa of 23 October 2002, available at <http://bit.ly/2j3tfnX>

ACHPR, General Comment No. 3 on the African Charter of Human and People’s Rights: The Right to Life (Article 4), 18 November 2015, available at <http://bit.ly/2khfTBE>

ACHPR, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, 8 May 2014, available at <http://bit.ly/2k1MY78>

SARPCCO, “Code of Conduct for Police Officials”, 27-31 August 2001, available at <http://bit.ly/2jtVXd3>

TANZANIAN LAWS AND REGULATIONS

“Handbook for the Police Officers Based on Revised Police General Orders”, *Ministry of Public Safety and Security*, 2006

“Tanzania Police Force Reform Programme (TPFRP): Medium Term Strategy 2010/11 - 2014/15 (Volume I)”, *Ministry of Home Affairs/Tanzania Police Force*, May 2010

Police Force and Auxiliary Services Act, CAP 322

The Commission for Human Rights and Good Governance Act, 2001

The Public Leadership Code of Ethics Act, 1995

The Whistleblower and Witness Protection Act, 2015

OTHER COUNTRIES' LAWS AND REGULATIONS

AFP, "AFP Core Values", available at <http://bit.ly/2kJiFD0>

American Federation of Police, "Law Enforcement Code of Ethics", 1966, available at <http://bit.ly/2k7Roa8>

Bureau of Justice Assistance (1994). "Understanding Community Policing; A framework for action", available at <http://bit.ly/1Q1veQE>;

Code of Conduct for the Public Service (South Africa), Regulation C.4.10 of Chapter 2 of the Public Service Regulations, 2001

Constitution of the Republic of South Africa, No. 108 of 1996

Department of Justice and Constitutional Development, Practical Guidelines for Employees in Terms of Section 10(4)(a) of Protected Disclosure Act, 2000 (Act No. 26 of 2000), 2011

Independent Police Investigative Directorate Act (South Africa), Act no. 1 of 2011

Independent Policing Oversight Authority Act (Kenya), 2011

Kerala Police Act, 2011

Mauritius Police Force, "Principle of Police Ethics", available at <http://bit.ly/2jMFL04>

National Police Service Act (Kenya), 2011

Police (Northern Ireland) Act, 1998

South African Police Service Act 68 of 1995

Standing Committee on Human Rights (2002), 6th Report to the Appointing Authority

The Police Act (Uganda), Chapter 303

BOOKS AND REPORTS

“A Force for Good? Improving the Policing in Kenya, Tanzania and Uganda”, *Commonwealth Human Rights Initiative*, 2014

“Common Standards for Policing in East Africa”, *CHRI/APCOF*, 2010, available at <http://bit.ly/2jJiaan>

“Feudal Forces: Democratic Nations: Police Accountability in Commonwealth South Asia”, *Commonwealth Human Rights Initiative*, 2007

“Handbook on Police Accountability, Oversight and Integrity”, *UNODC*, 2011

“Police Accountability: Too Important to Neglect, too Urgent to Delay”. *Commonwealth Human Rights Initiative*, 2005

“Tanzania Human Rights Report, 2012”. *Legal and Human Rights Centre & Zanzibar Legal Services Centre*, 2013

“Ten Years of the Commission for Human Rights and Good Governance: Reflection of a Journey 2002-2012”, *Commission for Human Rights and Good Governance, Tanzania*, 2012

“The Police, the People, the Politics: Police Accountability in Tanzania”. *Commonwealth Human Rights Initiative*, 2006

“What Works in Community Policing? A Best Practices Context for Measure Y Efforts”, *University of California Berkley, School of Law*, November 2013, available at <http://bit.ly/1sBVURg>;

Alemika, E. (2015). “Context of Police Reforms to Institutionalise Civilian Oversight and Police Accountability in Africa”, in “Civilian Oversight as a Mechanism of Good Governance in Policing in Africa”, Conference report, 13 March 2015, Nairobi, Kenya, *IPOA/APCOF*, available at <http://bit.ly/2nRr0ox>

Faull, A. (2014). “Performance Management in Police Agencies”, available at <http://bit.ly/2kRWslj>;

Fields, C. (2006). “Award-winning Community Policing Strategies. A Report for International Association of Chiefs of Police”, *IACP*, available at <http://bit.ly/2nj0AIZ>

Haas N.E., de Keijser J. W. & Bruinsma G. J. N. (2014). “Public support for vigilantism, confidence in police and police responsiveness”, *Policing and Society: An International Journal of Research and Policy*, 24:2

Hunt, T. (2009). “Modernizing the Police Disciplinary System”, *American Police Beat* (April): op-ed, as quoted in Stephens, D. W. (2011). “Police Discipline: A Case for Change”, *Harvard Kennedy School/National Institute of Justice*

Murtaugh, C. & Poe, M. (2010). “Establishing an Independent Police Oversight Body”, *INPROL Consolidated Response (10-007)*, *International Network to Promote the Rule of Law (INPROL)*

Mwenda, A. Y. (2012). “Witness Protection in Tanzania” in *Resource Material Series No. 86*, UNAFEI, 2012

Neild, R. (1999). “From national security to citizen security: civil society and the evolution of public order debates”, available at <http://bit.ly/2onw1Sb>

Osse, A. (2006). *Understanding Policing*, Amnesty International

Stephens, D. W. (2011). "Police Discipline: A Case for Change", *Harvard Kennedy School/National Institute of Justice*

The Police and the Executive: Roles and Responsibilities", *Haki na Usalama*, 2016, available at <http://bit.ly/2jb3vpO>

MISCELLANEOUS

"Investigation reports", Police Ombudsman for Northern Ireland, available at <http://bit.ly/2r87Zkl>;

"Opposition says Uganda government trains militias to harass them", *Reuters*, 8 September 2015, available at <http://reut.rs/2ncqvSs>

"Submission to the Constitutional Review Commission", *Haki na Usalama Forum*, 2013, available at <http://bit.ly/2nNM79D>

Interview with Anneke Osse, independent expert, 27 January 2017

Interview with Sean Tait, APCOF Director, 3 February 2017

Interview with Tom Kagwe, IPOA Board Member, 28 February 2017

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