

ICJ KENYA COMMUNIQUE ON POLICE BRUTALITY: STRIVING FOR ACCOUNTABILITY

HELD ON TUESDAY 7 JULY 2020

1. The Kenyan Section of International Commission of Jurists (ICJ Kenya) is conducting a series of webinars to discuss human rights, the administration of justice and the rule of law;
2. On 7 July 2020 ICJ Kenya held its 14th of these webinar series to discuss mechanisms to promote police accountability against the backdrop of *Saba Saba Day*;
3. The webinar was held in solidarity with the Kenyan citizenry and global call for police accountability under the #BlackLivesMatter movement and Human Rights Defenders in Kenya who took to the streets to protest against the increasing cases of police brutality under the banner of #SabaSabaMarchforOurLives which was held on the same day;
4. The participants followed the deliberations on zoom, social media and online streaming services including YouTube, Twitter, Facebook and WhatsApp. The participants were drawn from the civil society, the private sector and the government.
5. The topic of the webinar was informed by the need to interrogate why police brutality was persistent despite public outcry and mechanisms to hold police officers accountable for committing criminal offences;
6. The panellists and participants discussed the following;
 - a) The complexities involved in investigating police misconduct;
 - b) The avenues available to citizens to submit complaints against police officers;
 - c) The internal disciplinary mechanisms that exist within the police service;
 - d) The challenges faced by the Independent Policing Oversight Authority (IPOA) in carrying out its mandate; and
 - e) International and regional mechanisms that regulate police conduct and accountability.
7. **Based on the extensive and highly interactive deliberations guided by panellists and thematic experts, the following resolutions were adopted:**

A. To the Internal Affairs Unit:

- i) Enhance public awareness on the mandate of the office;
- ii) Develop a data base of all police officers who have faced disciplinary action within the service;
- iii) Develop data and document incidences on the use of force for purposes of accountability;
- iv) Develop a strict code of conduct with criminal liability for police officers who are on interdiction to ensure strict compliance with non-interference of witnesses and evidence during investigation and prosecution.

B. To the Legislators

- i. Enact legislation specifically addressing police excesses or amend existing legislation to include the crimes that are specific to abuse of authority and excessive use of force. The legislation may also include civil action that may be taken by the victim including reparations;
- ii) Demand accountability of funds allocated to the National Police Service (NPS) that ought to be used towards modernization and professionalization of the police service;
- iii) Amend the National Police Service Act and the Independent Police Oversight Authority (IPOA) Act to provide for instances when IPOA and the Directorate of Criminal Investigations (DCI) should conduct investigations in order to avoid parallel investigations by the two institutions;
- iv) Strengthen the Witness Protection Agency (WPA) and the witness protection fund to offer adequate protection to witnesses of police excesses;
- v) Direct the implementation committee to provide a report on the implementation status of the Police Reform Commission;
- vi) Operationalise the Victims Fund under the Victim Protection Act 2014.

C. To the Inspector General of Police and the National Police Service:

- i) Ensure that police officers while on duty wear uniforms, badges and drive official police vehicles that are identifiable to the public;
- ii) Ensure proper documentation of persons on duty and serial number of firearms issued to police officers to foster accountability and transparency;
- iii) Encourage and demand cooperation from police officers in investigating police excesses;
- iv) Ensure that police officers who are under investigation for misconduct are placed on administrative leave;
- v) Put in place firm measures to ensure that police officers who are under investigation for police misconduct are monitored to ensure non-interference with witnesses and evidence;
- vi) Adopt the use of modern investigative techniques such as body cameras to aid in expeditious prosecution of police excesses;
- vii) Engage in review of the police training curriculum to incorporate modern human rights-based approaches and standards to policing;
- viii) Regularly conduct periodic training of all officers and inculcate a strict compliance to international human rights standards and principles;
- ix) Ensure compliance with Section 5 Part B of the Sixth Schedule as read with Section 2 Part C of the Sixth schedule of the National Police Service (NPS) Act and Section 25 of the IPOA Act, which mandates the Officer-in-Charge or another direct superior of the person who caused the death or injury to report to IPOA;
- x) Take cognizance of the militarization of the community policing and *Nyumba Kumi* programmes and engage in constructive dialogue with community leaders to centre the conversations back to their initial objective which was to bring harmony within the community;
- xi) Foster community engagement between local leaders and the police in order to build trust;



- xii) Institute the forensic laboratories that will be crucial in analysing forensic evidence;
- xiii) Introduce training on the provisions of public order management in the curriculum.

D. To the Independent Policing Oversight Authority:

- i) Engage the Inspector General's office to create parallel reporting mechanisms in compliance with the 24-hour reporting rule;
- ii) Work closely with the Witness Protection Agency in order to avoid the withdrawal of witnesses due to intimidation which often leads to delayed prosecution;
- iii) Reintroduce an awards scheme for officers who have been lauded for their service to the people.

E. To the Office of the Director of Public Prosecutions:

- i) Enhance visibility of the existence of the Human Rights desk;
- ii) Continue prioritizing cases of police brutality for expedited prosecution;
- iii) Sensitize the duty bearers and the public on the decision to charge and decision to prosecute guidelines;
- iv) Develop prosecution guidelines for criminal conduct by the police and security agents;
- v) Initiate command and superior responsibility jurisprudence and discourse in prosecuting police officers;
- vi) Develop a mechanism to hear evidence in which the burden of proof is lowered from the current heavy evidential burden in special cases for example Sexual and Gender Based Violence (SGBV) during a pandemic;
- vii) Continue engaging the National Police Service in order to foster mutually beneficial and collegial work relations.

F. To the Judiciary:

- i) Develop guidelines on the expeditious disposal and completion of cases of police brutality as they are matters of great public interest;
- ii) Prioritise criminal cases of police brutality owing to the sensitive nature of the cases.

G. To Civil Society actors:

- i) Enhance sensitisation of the citizenry on community policing and its overriding objective;
- ii) Sensitise the community on the options available to sanction police other than criminal prosecution such as taking civil action;
- iii) Track and audit the implementation of the various reports such as the Police Reform Commission.

Signed



Kelvin Mogeni
Chairman
ICJ Kenya