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November 2019

Reforming Kenya’s Security Sector

Policing Culture and Youth

In the wake of the political discord following the 2017 presidential election in Kenya, President Uhuru Kenyatta and Rt. Hon. Raila Odinga decided to negotiate a peace pact. Together, they issued a joint communiqué entitled “Building Bridges to a New Kenyan Nation,” in which they announced a program to “create a united nation for all Kenyans living today, and all future generations” and to achieve their shared objectives on nine critical issues.¹ The program, led by the 14-member Building Bridges to Unity Advisory Task Force, is advising President Kenyatta and Hon. Odinga on the implementation of policies meant to enable sustainable solutions for Kenya.

The task force is mandated to conduct consultations with citizens including youth, representatives of the faith-based sector, cultural leaders, representatives of the private sector, and experts at the county and national levels.² These consultations are intended to give a broad spectrum of Kenyan society a chance to meaningfully participate in the Building Bridges Initiative, propose solutions to their most pressing concerns, and help shape the policy agenda.

However, according to young people who spoke to ICTJ, the advisory task force has done little to reach out to and engage with young people from urban informal settlements on various topics of concern to them, especially related to security sector reforms. The most egregious complaints raised by young people, so far as their experience of policing is concerned, remain about the unlawful use of lethal force by the police, especially in informal settlements. The youth argued that the use of firearms in numerous unjustifiable instances suggests a possible informal policy of extrajudicial killing. Those from the various urban slum areas gave personal examples of friends and colleagues who had been executed by police officers.³ The youth people’s sentiments about the unnecessary and excessive use of lethal force are shared by members of the public more broadly.

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¹ The issues are (1) ethnic antagonism and competition, (2) lack of a national ethos, (3) inclusivity, (4) devolution, (5) divisive elections, (6) safety and security, (7) corruption, (8) shared prosperity, and (9) responsibilities and rights. www.president.go.ke/2018/03/09/building-bridges-to-a-new-kenyan-nation/.

² *The Kenya Gazette*, Vol. CXX, No. 64, p. 1658 (Gazette Notice No. 5154).

³ See Akello Odenyo, “Slums Fear and Revere ‘Killer Police Squads,’” *The Star*, February 15, 2019, www.the-star.co.ke/news/big-read/2019-02-15-slums-fear-and-revere-killer-police-squads/. See also “Why Officer Filmed Killing Teenager Is ‘Loved’ in Eastleigh,” *NairobiNews*, April 9, 2017, <https://nairobinews.nation.co.ke/news/officer-filmed-killing-teenager>.

About the Author

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One incident still fresh in the minds of many young people in the informal settlements exemplifies their concern. On March 31, 2017, a video clip of the execution of a young man in Nairobi's Eastleigh area by a police officer believed to be affiliated with the Pangani Police Station in Nairobi went viral on social media platforms.⁴ In the clip, the police officer wearing plainclothes is seen shooting a young man who had surrendered and was lying on the ground. The officer (identified as Corporal Ahmed Rashid) appeared to have extrajudicially executed the young man in cold blood.⁵ This incident occurred next to an informal settlement in Nairobi, in the presence of uniformed police officers. In the video, they can be seen cordoning off the area and keeping curious onlookers at bay. The executive branch, through the cabinet secretary, defended this act of lawlessness by the National Police Service (NPS), maintaining it was necessary to fight crime.⁶

The incident harkens back to colonial experiences in policing built to cater to a politically powerful British colonial elite while dealing with the African population with brutal force and devastating violence.⁷ Early policing approaches had strong racial and class undertones, given the demand by settlers to be policed not by natives but by other Europeans. Moreover, unlike settler areas, native areas were "thinly" policed. Intense policing activities usually covered areas where the colonial governments had an interest in protecting European settlers' lives, property, economic interests, and infrastructure. Lack of police personnel and the demands of the expansive territory gave rise to very unconventional and sometimes alarming forms of law enforcement that included torture, extended illegal detention, and denial of food and basic necessities while in custody.⁸ The execution in Eastleigh exemplifies a general attitude—an attitude held by both the police and the public—that the purpose of policing is to protect the wealthy and elite from crimes committed by the poor. In stark contrast to the Eastleigh incident was one captured in the news in October 2018 in which a police officer foiled a robbery in an upscale part of Nairobi, the Westlands area. In this case, an Asian man and an African man were arrested and arraigned in court, and the police officer, Joash Ombati, was rightly honored for not only stopping the robbers but also resisting calls from members of the public to summarily execute the suspects.⁹

Between April 15 and May 3, 2019, ICTJ held a number of consultations with young people from several informal settlements in Nairobi and Mombasa to reflect on their understanding of security sector reforms and their connection to the ongoing national dialogue process, particularly as it relates to inclusion. These informal settlements were chosen because they had been most affected during the 2007 and 2017 election violence,

4 Abdi Latif Dahir and Lily Kuo, "Kenyan Police Reportedly Killed Two Teenagers in Broad Daylight—and Much of the Public Approved," Quartz Africa, April 4, 2017, <http://bit.ly/2DtOCZ8>.

5 BBC News Africa, "Hunting Down Gangsters with Kenya's Ahmed Rashid—Full Documentary—BBC Africa Eye," YouTube, September 9, 2018, www.youtube.com/watch?v=pQjYnSAAcnQ.

6 Medika Medi, Kenya Human Rights Commission, "Police Brutality and Evasive Justice," January 14, 2019, www.khrc.or.ke/2015-03-04-10-37-01/blog/672-police-brutality-evasive-justice.html; Ndung'u Wainaina, "Uhuru's Carte Blanche to Police Driving Kenya into Lawlessness," Kenya Free Press, November 18, 2007, www.kenyafreepress.com/top-stories/national/2934/uhuru-s-carte-blanche-to-police-driving-kenya-into-lawlessness

7 Peter Karari, "Modus Operandi of Oppressing the 'Savages': The Kenyan British Colonial Experience," Peace and Conflict Studies Journal 25.1 (2018): Article 2; Truth, Justice and Reconciliation Commission Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume 2A" (2013), 99, <https://digitalcommons.law.seattleu.edu/tjrc-core/>.

8 Truth, Justice and Reconciliation Commission Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume 2A" (2013), 49.; Peter Karari, "Modus Operandi of Oppressing the 'Savages': The Kenyan British Colonial Experience," Peace and Conflict Studies Journal 25.1 (2018):

9 Global Village—Africa, "Joash Ombati, Kenya Police Constable Who Saved a Life and Recovered KSh 400,000 from Armed Robbers," YouTube, October 18, 2018, www.youtube.com/watch?v=TxqNoZWVWccU. See also Stella Cheron, "I Was Only Doing My Job, Says Officer in Nairobi Abduction Drama," Daily Nation, October 19, 2018, www.nation.co.ke/news/Officer-in-city-abduction-drama/1056-4812612-123eg52/index.html.

with numerous violations reported in each area. ICTJ used its recent briefing paper on security sector reform and inclusion to guide this dialogue.¹⁰ About 120 young people, from Dandora, Kayole, and Mukuru Kwa Njenga in Nairobi and Changamwe in Mombasa, participated in the focus group discussions; between 30 and 40 young people took part in each discussion. Their instructive input served as the basis for this briefing paper and should form a key part of discussions about the national dialogue process in relation to young people's inclusion and security.

ICTJ engaged with these youth through the Social Justice Centre Working Group and specifically the Dandora Social Justice Centre, Kayole Social Justice Centre, Mukuru Kwa Njenga Social Justice Centre, and Changamwe Social Justice Centre. The formation of the social justice centers is a direct result of the numerous extrajudicial police killings witnessed in the slum areas. The centers were established to demand accountability for these killings of youth between the ages of 13 and 24 years and to contest their normalization, and to help find solutions for other social injustices and gross human rights violations that have occurred mostly in the urban poor settlements, but in poor rural areas as well.

Five key issues emerged from these dialogue sessions:

1. The mode of policing in Kenya remains geared toward protecting the rich and elite against the poor. It is based on the assumption that the poor are generally criminals who should be prevented from being a nuisance to the rich and other elites.
2. As young people observe this unequal treatment before the law, their dignity and citizenship are undermined.
3. Discriminatory policing practices have pushed the youth deeper into poverty. Young people choose to bribe police in order to regain their freedom when arbitrarily arrested and in a bid to avoid prosecution. Many youth said that attempting to fight the charges would only mean they would be brought to a police station, where they would face even harsher penalties, such as cash bail charges (most of which are rarely remitted to state coffers) or court fines.
4. Most young people in conflict with the law lack legal advice or representation, and therefore usually plead guilty to offenses in order to avoid prolonged detention. As a result, they rack up a criminal record, which hurts their chances of finding meaningful and sustainable jobs in the formal sector that require police certificates of "good conduct."
5. Being young and poor in Kenya is a crime—so the adage goes in the informal settlements. Most extrajudicial executions committed by police are against young people.¹¹ Experience shows that when young people are arrested and they are unable to pay a bribe to get released, they are more vulnerable to further forms of persecution.

¹⁰ Christopher Gitari, International Center for Transitional Justice, "Situating Security Sector Reforms in Kenya's Discourse on Inclusion and National Dialogue Process" (March 2019), www.ictj.org/sites/default/files/ICTJ_Briefing_KenyaInclusionDiscourse_Web.pdf.

¹¹ Independent Medico-Legal Unit, "Deaths from Police Bullets from January to December 2016: Report on Extrajudicial Executions by State Agents in Kenya" (2016), <https://imlu.org/index.php/shortcode/reports/typgra-phy/send/3-reports/46-extra-judicial-executions-2016-full-report>.

Youth Perspectives on the National Dialogue Process

Extrajudicial Killings

More than six years ago, the Truth, Justice and Reconciliation Commission (TJRC) report identified state security agencies, particularly the police and the military, as the main perpetrators of loss of life and bodily integrity human rights violations in Kenya, including massacres, enforced disappearances, torture and ill-treatment, and sexual violence.¹² The Kenya National Commission on Human Rights (KNCHR) has issued two reports—“The Cry of Blood” in September 2008 and “The Error of Fighting Terror with Terror” in September 2015—that focus on extrajudicial killings and enforced disappearances.¹³ The first report reiterated a previous finding of the commission: Between June and October 2007, the police had executed 500 mostly young people accused of being members of Mungiki, a criminal gang drawn primarily from the Kikuyu ethnic group. In the second report, the KNCHR found that in Nairobi and the coastal and northeastern regions, the police and military were collectively responsible for about 120 deaths or disappearances over a one-year period recorded in 2015. The victims were mostly young men accused of being members of the Al Shabaab terror group. Reaffirming this finding, the youth who took part in the 2019 dialogues with ICTJ mentioned peers who either were executed by the police or disappeared after being picked up by police officers.

According to the Independent Medico-Legal Unit (IMLU), the period from 2014 to 2017 saw a trend of police lethally using firearms, in violation of the NPS Act. IMLU reports that in 2014 there were 34 reported summary executions, and in 2015 there were 27; then, there was a sharp spike in the use of lethal force in 2016, with 122 documented summary executions.¹⁴ No sufficient explanations have been given for this extreme use of lethal force, nor has the NPS investigated these deaths as required by the NPS Act.

Discriminatory Policing

Due to a high youth unemployment rate in Kenya (at 42 percent in 2017), a vast majority of young people are poor.¹⁵ According to UNICEF, 62 percent of the population in Kenya is below 24 years old, and over 75 percent of children and adolescents have experienced one or more deprivations of their economic and social rights.¹⁶ This poverty makes them more vulnerable to abuse. All the social justice centers with which ICTJ has interacted argue that police officers have criminalized poverty by targeting young people in the slums with extortion, summary execution, and enforced disappearances. The young people from these areas contrast their treatment to general police conduct in more affluent areas of Kenya and Nairobi in particular, where young people are rarely profiled, unlawfully detained, extorted, tortured, or extrajudicially executed. This, they believe, is because the poor are usually automatically assumed to be criminals, unlike those in the more affluent areas. According to participants in the discussions, despite undertaking uni-

12 TJRC Kenya, “Report” (2013), 33.

13 KNCHR, “The Cry of Blood: Report on Extra-Judicial Killings and Disappearances” (2008); KNCHR, “The Error of Fighting Terror with Terror: Preliminary Report of KNCHR Investigations on Human Rights Abuses in the Ongoing Crackdown against Terrorism” (September 2015).

14 Independent Medico-Legal Unit, “Deaths from Police Bullets Reports” (2014–2017). See:

<https://imlu.org/index.php/shortcode/press-release>;

<https://imlu.org/index.php/shortcode/reports/typgraphy?start=20>; <https://imlu.org/index.php/shortcode/reports/typgraphy/send/3-reports/46-extra-judicial-executions-2016-full-report>

15 Samuel Hall, UK Department for International Development, “Youth Employment in Kenya” (October 2017), www.britishcouncil.co.ke/sites/default/files/ng_kenya_youth_employment_in_kenya.pdf.

16 UNICEF, “Kenya at a Glance: Situation of Children and Adolescents,” www.unicef.org/kenya/overview_15603.html.

form training, the police are restrained in affluent neighborhoods but will not hesitate to shoot youth in Dandora, Mathare, or Kayole without provocation or on flimsy grounds instead of charging them if they are involved in crime. In the slums, police officers do not give young people an opportunity to explain themselves or their actions, as they would their counterparts in more affluent areas. Thus, the suggestion that slum residents should simply carry themselves *kiheshima* (that is, as “a wealthy person”) is a disingenuous one. In the coastal and northeastern regions, police link Muslim youth to terrorism, with many young men being executed, forcibly disappeared, harassed through arbitrary arrests, or brought up on trumped-up charges of terrorism.

This discriminatory policing further entrenches the exclusion that was started by the colonialists and has endured for decades.¹⁷ The structures of economic, social, and political exclusion established by the British colonialists and amplified by successive independence governments have resulted in patterns of poverty and a disproportionate lack of access to key services.¹⁸ According to the youth who spoke in the dialogues, those who become involved in crime do so as a result of the grinding poverty that characterizes their daily lives. The structural injustices they face can only be blamed on the state, which does nothing to create desperately needed jobs and thus denies them the opportunity to earn a decent livelihood. There would be no insecurity if the youth had jobs. As one participant summarized, “Security is a full tummy. One does not engage in crime when they are well fed.”

According to the youth participants, the NPS should learn or borrow from contexts where ex-convicts are absorbed back into society after serving their terms, and where they are given an opportunity to join the security sector. In Kenya, genuinely reformed young people still become a soft target for harassment, which is counterproductive because it leads some of them to return to crime. Failure to erase the criminal records of reformed youth after a certain period only perpetuates discrimination, in addition to preventing the youth from finding employment in the future.

Collective Punishment

Security agents still undertake collective punishment, mostly targeting young people in the slum areas. Such collective punishment is usually applied to a community during political protests or whenever an unknown group of people or a gang commits a serious breach of the law. The security sector metes out retaliatory measures to the wider community in the form of violence, either to send a message to the gang or to punish the community for allegedly “harboring” such elements. Youth participating in the discussions pointed out that the police response to such incidents is typified by mass arrests of young people followed by extortion and unlawful detention. In some instances, young people resist arrest or defend themselves against harassment by a police officer, after which youth and men from that particular area are rounded up and punished collectively through torture and beatings. Police often appear to ignore the fact that when an individual or two commits a wrong, it does not mean the whole community is guilty.

Collective punishment was observed during the 2017 general elections by the Kenya National Commission on Human Rights. In its 2017 report, the KNCHR noted that the police would collectively round up and detain the youth in urban slum areas during police operations.¹⁹ It documented cases of harassment, assault, and arbitrary arrests of

17 TJRC Kenya, “Report” (2013), 20.

18 Gitari, “Situating Security Sector Reforms.”

19 KNCHR, “Mirage at Dusk: A Human Rights Account of the 2017 General Elections” (2017).

residents following the deployment of police officers in Nairobi (specifically in Dandora Phase 4), in Kisumu (in Nyalenda, Ahero, and Awasi), and in Mombasa (at Bokole in Changanwe)—the majority of these arbitrary arrests being in informal settlements. Most victims were male and were collectively rounded up by the police. In a majority of the cases documented, police officers forcefully entered people's houses, specifically looking for young people who would then be arrested and detained for prolonged periods of time.²⁰

The TJRC report notes that policing in Kenya has historically exhibited a certain readiness to abandon and ignore the rule of law under the guise of operating in a difficult environment. This was best exemplified whenever a native area was described as “disturbed or dangerous;” by extension, the communities residing in that area would also be labeled dangerous and a threat to national security. Special operations were mounted under the Collective Punishment Ordinance, which allowed the entire community to be punished for the transgressions of a few. The police would, in the course of such operations, extract payment from communities for the cost of the operation launched to pacify them. The police would thereby simply raid the property of the communities under the guise of policing.

Undergirding almost all operations was the sense that people had to be punished, harshly treated and—if necessary—forcefully made to understand that they had to comply with discriminatory rules and regulations applied during the colonial time. The futility of using such punitive methods to enforce respect for the law was entirely lost on authorities.²¹

The youth participants feel strongly that the NPS should reconsider the manner in which it undertakes police deployment. Police should be deployed to serve in their own communities in the interests of effectiveness and protection against abuses, as they are less likely to violate the rights of their own community members and because they know the terrain and local dynamics. Deployment to unknown areas is seen as a deliberate move to undertake operations that at times result in violations.

Youth, Corruption, and the Police

Youth consider the police to be a corrupt institution from top to bottom. Human rights violations committed by the police often take place when the victims refuse to give bribes or be extorted. Police officers also play a significant role in obstructing justice when they are bribed to hinder investigations. One youth gave the example of a poor Somali girl who was raped by a wealthy perpetrator, who then bribed the police to impede the court process. The police are also seen as being used by the government to protect corrupt officials. When communities unite to protest against any form of exploitation, such as misappropriation of public funds, grabbed land, blocked public roads, or blocked sewer drainages, for example, the government often responds by sending security officers (whom the slum dwellers refer to as the “red beret”) who do not engage with the protesters to find out and address the cause of the protest, but instead beat up civilians and in some instances maim or kill them.

ICTJ made the following observation in its policy brief on the police vetting exercise and its exposure of corruption networks within the NPS:

²⁰ *Ibid.*, 211.

²¹ TJRC Kenya, “Report” (2013), 59.

During the vetting process, a number of junior traffic officers confessed to sending illegally obtained assets (bribes) to their seniors over long periods of time through mobile money transfers—and were unable to credibly explain the sources of their assets or reasons for continuously sending money to their seniors. This implicated a group of senior police officers in wrongdoing, some of whom had been cleared by the NPSC [National Police Service Commission] during the vetting process. The NPSC was hard pressed to explain its inability to remove adversely named senior officers who it had cleared.²²

According to a Transparency International report, most public transportation workers preferred to bribe the police when arrested for committing traffic offenses. Up to 80 percent of truck drivers and motorbike operators readily admitted to bribing police officers, arguing that the judicial system is too inefficient to deal with it properly. Police, prosecutors, and judicial officers also abuse their offices to ensure that those who use the criminal justice system are highly inconvenienced and pay astronomical amounts of fines if found guilty.²³

The youth participants pointed out that if Kenya is to be a more democratic country, it must strive to end the corruption that pervades the criminal justice sector, which is exclusionary in its favoring of those who can pay bribes and condemnatory of those who are poor and cannot pay bribes. The youth participants said that they face prolonged detention and jail terms for this very reason. Many young people are also unable to hire a lawyer and plead guilty to offenses for which they may have a legitimate defense. Youth feel that the judiciary at the level of county government should handle petty offenses, such as touting, loitering, and hawking, for which the police have used extortion. Currently, those who commit such offenses are lumped in with murderers and perpetrators of robbery with violence; the affected youth end up serving undeserved jail terms when they are unable to pay a bribe or bail. Laws allowing unnecessary mass and arbitrary arrests and trumped-up charges such as idleness, drunk and disorderly conduct, and loitering should be repealed. These laws have been used by the police to exploit young people, with officers even planting “evidence” on them in order to charge them with crimes.²⁴

Recruitment in the Security Sector and Youth Experiences

Several youth participants said they had taken part in the recruitment process to join either the NPS or Kenya Defence Forces (KDF). Recruiters, rather than basing their decisions on applicants' qualifications, demanded bribes or excluded applicants due to ethnicity. In the eyes of many young people, recruitment exercises are undertaken for public relations purposes only as the recruiters have already preselected candidates—mainly through nepotism or bribery. Exclusion based on gender is also perpetuated during recruitment; women get fewer slots even though they are subject to different and sometimes more lenient standards during the recruitment exercises. The role of bribery in NPS and KDF recruitment is blamed for the increasing corruption in the security sector as well as the lack of passion among officers to serve the public and to protect the rule of law. In a High Court decision, the court agreed with the National Police Service Commission's

22 Hilton Otenyo, “Traffic Bosses Extort Money from Juniors, Vettors Learn,” *The Star*, August 18, 2016, www.the-star.co.ke/news/2016/08/18/traffic-bosses-extort-money-from-juniors-vettors-learn-c1405042; K24 TV, “Vetting Reveals How Senior Police Officer Demand Money from Juniors,” *YouTube*, May 25, 2016, www.youtube.com/watch?v=oeejtQVovhU.

23 Transparency International, “Traffic Legislation Gaps and Drivers of Corruption in Traffic Matters” (2018), 17.

24 Young people gave examples of officers forcing youth to carry machetes or pangas and taking photos of them, and thereafter framing them as part of a ferocious criminal gang in Mombasa known as Wakali Kwanza.

own finding that a 2014 police recruitment exercise was marred by nepotism, corruption, tribalism, and other malpractices.²⁵ Although the commission argued that these flaws were not widespread, the court disagreed and found that the exercise warranted wholesale cancellation. The concerns of young people are therefore justified: The manner in which the police recruit officers is still flawed and does in fact contribute to the general feeling of exclusion.

Other criteria related to police recruitment that youth felt are used to exclude them include having to be a particular height, have a perfect set of teeth, and run at a certain speed, instead of more generally having the ability to undertake the expected responsibilities. These criteria also contribute to the lack of understanding of the requirements of the job in the police service (i.e., serving the public and upholding law and order). Although the young people's sentiments are valid, there are also legitimate reasons for having criteria related to physical characteristics, given the nature of the work, terrain of operation, and physical demands of policing; key is how the criteria are determined and applied.

Freedom of Association and Youth Experiences

Increasingly, communities and especially minority groups whose voices have been ignored in the past are realizing that protests are a useful tool to make themselves heard. They are getting fed up with the lack of action that follows dialogues with government actors and are resorting to protests to fight exclusion—for example, to resist harassment by police officers and police chiefs and their assistants, or to demand improvements in infrastructure, such as water systems and roads, and medicine in local dispensaries. They are also turning to the courts when need be. For protests to materialize, communities must know their rights and how to articulate their demands, which requires continued civic education. The government's response to protests is often violent, although this reportedly depends on the location of the protest. In major towns, slums such as Kibera, and the western region, responses have involved the use of tear gas and other anti-riot tools, while in other places, such as the northeastern region, people have even been killed. Nonviolent responses to protests often involve hasty, short-term solutions—for example, responding to protests about water scarcity by providing water tanks, rather than by offering a permanent solution such laying water and sewer pipes.

Police officers should respect protests, including by offering security to the protesters. Article 37 of the Constitution recognizes demonstrations as a fundamental right. It states, "Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.

This right can be limited as stipulated in Article 24(3) in conjunction with Article 24(1),²⁶ or if notice of another assembly at the same venue, time, and date has already been received.²⁷ It is also governed under the Public Order Act, which says an assembly may be stopped or prevented when there is clear, present, or imminent danger of a breach of the peace or public order. Peaceful assembly is also protected under international law, and

25 *Independent Policing Oversight Authority and another v Attorney General and 660 others*, Petition 390 of 2014; see <http://kenyalaw.org/caselaw/cases/view/103031/>.

26 Limitation of Rights and Fundamental Freedoms under Article 24 (1) and (3) reads: "(1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including (3) The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied."

27 Section 5(4) Public Order Act.

restrictions may be placed on it only “in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”²⁸

The Social Justice Centers Working Group, together with the civil society in Kenya, frequently notes the nonobservance of the law by the police and the extreme use of force and unlawful use of lethal force in the management of protests. This nonobservance is despite authorities receiving notice,²⁹ as stipulated by Kenyan law, of an intended public assembly at least 3 and at most 14 days before it is scheduled to take place.³⁰ The participating youth rightly pointed out that the police quickly resort to using live ammunition; beating protestors with truncheons; applying collective punishment to all people within the protest vicinity, including passersby; and committing sexual violence against female protestors and passersby caught up in the protest.³¹

The proper management of peaceful assemblies calls for everyone involved to respect a broad range of rights. These rights include freedom of opinion and expression; freedom of association; freedom of thought, conscience, religion, or belief; the right to life and bodily integrity (which includes the right to security); the right to be free from torture and cruel, inhumane, and degrading treatment or punishment; and the rights to due process, fair trial, and effective remedy for human rights violations.³²

Recommendations on Policing from the Dialogue Sessions with Youth

The police should adhere to the constitution and respect the rule of the law as well as the diversity of the Kenyan people in terms of class, culture, religion, language, and sexual identity when providing security to all, particularly young people. The Ransley Report highlights some of the key values and principles the policing agencies must respect and abide by, including recognition of and respect for the value and integrity of every Kenyan, commitment to the use of reasonable force and to the use of lethal force only when a police officer or another person is in imminent danger of death or physical injury, guarantees to all people (regardless of race, ethnicity, religion, gender, or disability) of equal protection under the law, and sensitivity to citizens' complaints.

Some key recommendations that emerged from the dialogues with youth about policing culture in Kenya include the following:

- The Building Bridges Initiative (BBI) to Unity Advisory Task Force should foster inclusivity by inviting the Social Justice Centres Working Group to give a presentation on their experiences and collaborate in making recommendations to the state on security sector reforms, emphasizing human rights protection as a primary objective and ensuring that youth grievances in relation to the police are adequately addressed.

28 Article 19, Independent Policing Oversight Authority, KNCHR, and United Nations Human Rights Office of the High Commissioner, “The Right to Freedom of Peaceful Assembly: A Checklist for the Kenyan Police and the Public” (2017), 6.

29 Section 5(5) Public Order Act.

30 Section 5(2) Public Order Act.

31 KNCHR, “Mirage at Dusk.”

32 Article 19 et al., “The Right to Freedom of Peaceful Assembly.” The National Police Service and the state should understand that in the long term, this approach to policing tends not only to harden criminals but also to undermine good policing efforts undertaken by other police officers. As a young member of the Dandora Social Justice Centre explained, “Collective punishment of youth through swoops conducted in slums have ended up being counterproductive as the youth stay indoors until the swoop hours are over, after which they venture out. In the process, some engage in crime without fear of arrest as officers leave after collecting bribes.”

- To deter future violations as well as promote transparency and respect for human rights, the task force's recommendations should encompass accountability measures for past violations perpetrated by police officers and other security sector agents. These recommendations should incorporate pertinent recommendations on security sector reforms from the reports of past national processes—the TJRC, Commission of Inquiry into the Post-Election Violence (CIPEV), and Ransley—as well as from the Independent Policing Oversight Agency (IPOA).
- Oversight agencies, such as the IPOA, KNCHR, and Internal Affairs Unit, should forge stronger partnerships with the Social Justice Centres Working Group in a bid to improve the standard of policing in informal settlements and the policing of young people.
- The state should support the Social Justice Centres Working Group's idea of memorializing young people who have been victimized by the security sector through extrajudicial executions and enforced disappearances, including those of Somali-Kenyan origin who have been the most affected by violations in connection with the government's fight against terrorism and violent extremism.

Conclusion

As duly pointed out by President Kenyatta and Rt. Hon. Odinga in their joint communiqué, guaranteeing inclusion is one of the greatest challenges faced by Kenyans. Youth, and not just those residing in urban slums, have continued to complain of feeling excluded in all areas, including as a result of the conduct of security sector agents. Notably, previous processes initiated by the government (including, among others, the TJRC report, the CIPEV report, and the BBI process) have addressed issues related to women and girls, men and boys, and minorities, but have not specifically dealt with youth as a group, despite statistics indicating that they compose the largest percentage of the population. The security sector is critical in safeguarding inclusion, especially for youth people.

The culture and practices of the security sector must be reformed so that human rights are respected and safeguarded in accordance with national as well as international human rights law. That said, the well-being of security sector agents (police officers and others) must be addressed as well.

The process of building a strong and cohesive Kenya will be successful only if there is inclusion for all. Naturally, security sector agents, especially police officers, will only be inclined to respect human rights if their own rights are also respected. The work environment for police officers should not be overly stressful and threatening; their work environment should be a supportive and professional one that respects the rights of these officers.