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This is the fourth Issue of **Nguzo za Haki**, (the Pillars of Rights), published by the Kenya National Commission on Human Rights (KNCHR). The KNCHR produces **Nguzo za Haki** twice a year, as part of its programme of research. It aims at keeping Kenyans and the world informed of the Commission's activities, raising awareness on topical issues of human rights, and highlighting the challenges of human rights with a view to activating individual, collective and official action.

In publishing **Nguzo za Haki**, the Commission is determined to provide its readers with well researched analytical articles on human rights issues that should contribute to relevant policy formation and provide programmatic ideas on effective approaches to human rights work. The articles also review political, economic, social and cultural issues impacting on human rights. The publication carries a section "Editors Choice, In a Few Words" that reviews books and publications of choice.

In each Issue of **Nguzo za Haki**, we will carry about four guest contributor articles. The Editorial Team invites articles that fall within the broad categories described above. Since we intend to reach the general public, the articles should not be too technical as to be inaccessible to the intended audience. Case studies of innovative, practical ideas on enhancing the protection and promotion of human rights are particularly encouraged. Articles should not exceed 2,500 words. To be considered for publication guest articles must be received in **October for the February Issue** and **May for the September Issue** and sent to:

- 4 Human Security  
A Framework for the Realisation of Human Rights for Kenyans  
*by Lawrence Mute*
- 8 Community Security vs Individual Freedoms & Security: Tensions and Dilemmas  
*by Mutuma Ruteere*
- 12 Security Policies in Brazil, Uganda and South Africa: Pitfalls Kenya should Avoid  
*by Niall Mulligan*
- 16 Interview: Is Private Security the Way to Go?
- 18 Shoot-to-Kill is Ill Advised: It Undermines the Security for All  
*by Miriam Kahiga*
- 20 License to Kill?  
*By Khelef Khalifa and Sameer Saran*
- 24 Security and Human Rights - KNCHR Raises the Dilemmas Facing Security Policy Makers and Police Officers
- 25 Government's Response to KNCHR Security Concerns
- 26 Vox Pop
- 28 Crime: A Growing Challenge to Security & Human Rights  
*by Jan Kamenju*
- 34 Citizens' Role in Combating Insecurity  
*by Linda Ochiel*
- 37 Book Review - Human Rights and Human Security
- 39 Book Review - Private Security in Kenya
- 42 Useful Resources

# Human Security

## A Framework for the Realisation of Human Rights for Kenyans

### Unpackaging the Concept of Human Security

At the dawn of Kenya's independence, the Government identified several key priority areas in which it would concentrate its development efforts. These areas were the fights against ignorance, illiteracy and disease. Without stating it in so many words, the Government had put its finger on human security and human rights as the entwined touch-stones which would determine the destiny of the people of Kenya.

In common parlance, security refers to freedom from danger, fear and anxiety. Human security describes the interrelated threats associated with civil war, genocide and the displacement of populations.<sup>3</sup> Traditionally, the concept of human security was by and large dominated by concerns of national security, defined in terms of the military capabilities between and amongst states to protect their territorial integrity, international integrity as well as protecting their national leaderships.<sup>4</sup> On these matters, each state would protect itself from actual or perceived threats emanating from other states.<sup>5</sup>

In recent years, national security has been reinforced by the concept of human security whose profile has grown to encapsulate threats emanating from quarters other than states. It has been acknowledged that external non-state actors such as terrorist organisations may bear credible threat on state security; but the more significant recognition is that where individuals within a state are threatened either directly or indirectly, that too amounts to insecurity. Threats to human well-being may arise from ill-health, poor nutrition and illiteracy.<sup>6</sup>

Poverty, unemployment and inflation affecting individuals can threaten the security of states or even regions. As part of the global village, for example, economic implosion in Africa can affect the rest of the world. Other non-military threats to human security include environmental, economic, societal and political aspects of security.

***“There is recognition now on behalf of the rich world that they cannot continue to be rich if the world is destabilised by poverty.”***

***James Wolfensohn,  
former President of the  
World Bank<sup>1</sup>***

***“Peace is not just an absence of war, violence and hostilities but rather a situation where all people have equal access to economic and social justice to the entire range of human rights and fundamental freedoms.”<sup>2</sup>***

<sup>1</sup>Cited in Mariam Bibi Jooma, “Southern Africa Assessment: Food Security and HIV/AIDS”, African Security Review, Vol. 14, No. 1, 2005, P.59.

<sup>2</sup>Eric Masinde Aseka, “Globalisation, Intellectuals and Security in Africa”, in Makumi Mwagiru (Ed): African Regional Security in the Age of Globalisation, Heinrich Boll Foundation, Nairobi, 2004, P.23.

<sup>3</sup>The Human Security Report 2005

<sup>4</sup>Supra F.N. 2, P.33.

<sup>5</sup>For example, the heyday of the nuclear stand-off between Soviet-led and US-led states was managed in the context of the doctrine of “MAD” – “Mutually Assured Destruction” which contended that either side would be restrained from prosecuting nuclear war because of the knowledge that neither side would survive such a war.

<sup>6</sup>Ibid.

International Monetary Fund), were well advanced in supervising the destruction of the welfare state model. It will, for example, be recalled that the World Bank insisted on Structural Adjustment Programmes (SAPs) as the panacea for the problems of developing countries, and aid was made conditional on radical reforms whose effect was drastic cut-downs of resources from social programmes such as health and education. Chweya points out the correlation between robbery in cities, livestock rustling in the countryside and spousal and child parental assault in families to socioeconomic hardship leading from transition from the welfarist to the neo-liberal system.<sup>12</sup> In our view, the reality of this assertion is less stark since even non-poor societies can generate insecurity; and furthermore, welfarist Africa was not particularly secure either. But in overall terms, the thesis holds true.

What, then, might be an effective approach to ensure holistic human security in Kenya?

While universal free primary education may have been born as part of a populist campaign package, this is a commendable policy whose immediate result was increased enrolment of pupils (from 5.9 million to 7.2 million in 2003). Finessing and sustaining this policy will mean that all future generations of Kenyans will be literate. Literacy and numeracy will nudge the intellect towards innovation rather than destruction, and threats of thuggery and robbery will recede. Policy-making in the realm of education must, however, acknowledge that primary education without the support of secondary and tertiary education does not sharpen the human intellect well enough. Bursary schemes for secondary education remain woefully inadequate and poorly targeted. Action is called for to support all the poor bright children who fall off the educational system because they cannot pay school fees. Finally, it is increasingly becoming clear that most Kenyans cannot afford university education. In recent years, public universities have, as well as merit, based their entry requirements on the criteria of availability of places. While research should be done to determine the exact consequences and rectitude of this policy, it is quite likely that university education will be foreclosed from potential students from poor families while their richer contemporaries always have the option of registering in those same public universities to undertake parallel degree programmes.

The Kenyan realities of the right to education has been used here to illustrate the correlation between human security, human rights and sustainable development; and the same too is true of other economic and social rights – the right to health,<sup>13</sup> the right to work,<sup>14</sup> the right to food,<sup>15</sup> among others.

<sup>12</sup>Ibid.

<sup>13</sup>The National Social Health Insurance Fund Bill, 2004, was passed by Parliament as the way for ensuring that the people of Kenya would access health-care on a sustainable basis. It is critical that the Government resolves the concerns which have caused the President not to sign this Bill into law; for only then will health become a source for strengthening the state rather than for weakening it.

<sup>14</sup>The fairly simplistic terms articulated to us in our infancy also happen to be a truism: that idle minds are the devil's workshop! 500,000 new jobs every year would mean that 500,000 Kenyans would be busy "building the nation" rather than "destroying" it.

<sup>15</sup>A hungry person is an insecure person! Food security anticipates for "all people, at all times able to have physical and economic access to sufficient, nutritious food for active and healthy lives." In Martin R. Rupiya, "Food Aid: Implications for Food Security in Africa", in African security review, Vol 13 No. 1, 2004, P.83. Food shortages have caused riots in many countries.



# Community Security vs Individual Freedoms & Security: Tensions and Dilemmas

*The practical reality of everyday life is made up of trade-offs and compromises. From birth to death, giving up something for another is the ordinary stuff of life.*

## Introduction

A large percentage of Kenyans are willing to support extra-legal measures by the police force in their fight against crime. At the same time, newspaper accounts regularly report on the poor opinion with which Kenyans hold the police force with respect to human rights.<sup>1</sup> The dilemma so far is that the same public that wants the police to uphold rights at the same time would apparently be willing to accept violations of human rights if this would result in increased security. How do we resolve this apparent contradiction? To put it in another way, how can individual freedoms be secured while attending to the demands for the security of the larger community? Even more importantly, what does this contradiction mean for the protection of human rights and the maintenance of security in an emerging democracy like Kenya? This is the question that this article seeks to answer.

## Human Rights Theory

To begin with, let us say a few words about human rights. Broadly summarized, human rights are the rights of the individual human being by virtue of membership to the human species. Human rights, suggest a moral vision of the human being.<sup>2</sup> In the face of bad laws, injustices in the name of the state, culture or community, it is this moral vision that allows us to say, "That is no way to treat a human being." The advocates of an individualist nature of human rights are correct that it is this individualism that has allowed human rights the powerful universalization that it has achieved in the last fifty years.<sup>3</sup>

Because the modern idea of human rights gained prominence in opposition to the organized power of the state, there is an understandable temptation to view the claims of the state as dangerous and antithetical to human rights.<sup>4</sup> To many, the state as a champion of human rights is therefore not only utopian but also paradoxical.<sup>5</sup> In classical human rights theory and practice the human rights struggle is a battle between the vicious state and the virtuous individual in civil society.<sup>6</sup>

Yet at the same time human rights assume a constituted political society. Human rights are useful only to the extent

<sup>1</sup>Many anecdotal accounts in national newspapers as well as reports by human rights groups like the Kenya Human Rights Commission point to a persistent record of poor human rights record by the Kenyan Police. The police force is ranked as the most corrupt in five of the six indicators of the Transparency International Bribery Index. See Transparency International, The Kenya Bribery Index 2005 at: <http://www.tikenya.org/documents/Kenya%20Bribery%20Index%202005.pdf>

<sup>2</sup>See Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2002); Michael Freeman, *Human Rights: An Interdisciplinary Approach* (Cambridge: Polity, 2002).

<sup>3</sup>The most articulate advocate of this view is Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001). In a more celebratory and ideological tone, Francis Fukuyama has made a similar argument. Francis Fukuyama, *The End of History and the Last Man* (New York: Free Press, 1992). The Euro-centric nature of this view has been widely criticized both within and outside the West. An important critique of the ideological underpinnings of this perspective is by Makau wa Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2002).

<sup>4</sup>Debates over the origins of the idea of human rights still rage on. The major Western writers on human rights claim that human rights are descended from the history of the modern Western state. At the same time, they advocate its universal applicability. For the claims by Western writers, see generally, Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2002); Michael Freeman, *Human Rights: An Interdisciplinary Approach* (Cambridge: Polity, 2002); Rhoda Howard, *Human Rights and the Search for Community* (Boulder, Co: Westview Press, 1995). For a nuanced critique of these claims, see Cecelia Jimenez in "Human Rights in the Post-Cold War Era: The Cases of North Korea, China, and Burma," *Human Rights Dialogue* ser. 1, no. 1 (New York: Carnegie Council on Ethics and International Affairs May 1994); Norani Othman, "Grounding Human Rights Arguments in Non-Western Culture: Shari'a and the Citizenship Rights of Women in a Modern Islamic State," in Bauer and Bell, *The East Asian Challenge for Human Rights*, pp. 169-192; Amartya Sen, "Democracy as a Universal Value" *Journal of Democracy* 10.3 (1999) 3-17.

<sup>5</sup>Makau wa Mutua has suggested the possibility of human rights state, a view endorsed by Willy Mutunga. Mutua and Mutunga provide an outline of some of the features that such a human rights state would have. Given that most of these features draw from international human rights law, it is possible that human rights would not be immune to the paradoxes and conflicts that afflict the present imperfect state since rights themselves often conflict. See Makau Mutua, "Hope and Despair for a New South Africa: The Limits of Rights Discourse" in *Harvard Human Rights Journal* Vol. 10 (1997), 63-114; Willy Mutunga, "The Human Rights Movement and the Struggle for Human Rights States in East Africa" (2005). Unpublished paper on file with author

<sup>6</sup>Karl Marx of course was one of the earliest critics of the assumptions of the virtues of the civil society. See, Karl Marx, "On the Jewish Question" in Frederick L Bender, (ed), *Karl Marx: Essential Writings* (New York: Harper and Row, 1972).



human rights prevail in certain circumstances, whether they are invoked or rejected, when they fail; are all products of the conflictual and imperfect political processes that constitute our modern state. A pragmatic view therefore recognizes and wrestles with the contradictions thrown up by the idea of human rights. It is this approach that this essay endorses.

Nevertheless, a pragmatic view of human rights must warn itself of the dangers of elevating the “perplexities of human rights”<sup>14</sup> into surrender to the seduction of those who would substitute the idea of human rights with the benevolent preferences of the powerful. To recognize limits is different from rejecting the validity and value of a concept. In any event, we take it as a matter of course now that the intellectual and political battle over the value and validity of human rights has already been won.

No one seriously rejects their relevance. Anyone who does is rarely taken seriously. This non-controversy therefore need not detain us. More problematic and interesting is the business of balancing human rights over the practical demands of keeping communities safe. It is to this question that we now turn.

## Between Security and Human Rights Protection

A useful way of evaluating the dilemma of the society safety and protection of individual rights is by posing the question: to what end does a society desire security? If we begin from the safe assumption that a free society is constituted with the individual at its core, it follows then that society values cannot be construed in such a manner as to make an individual worse off than if the individual had remained a non-member. Any other other conclusion would leave that individual a slave to the collective good rather than a beneficiary. Consequently, that which we call security is a means that allows individuals to pursue a life of dignity. Divorced from the fate of the individual, security itself is of little value.

The security of a society is not the security of a geographical expanse, of trees and boulders but of a society of human beings. This individual-centered security has been termed ‘human security’ in recent international development and security literature.<sup>15</sup> Such a view privileges neither the vantage point of the human rights defender, nor that of the policy maker concerned with crime control. Rather, it places the two values side by side, and applies them to the question of the ends to which they are designed: allowing individuals to lead fulfilling lives in the society.<sup>16</sup>

***Consequently, that which we call security is a means that allows individuals to pursue a life of dignity. Divorced from the fate of the individual, security itself is of little value.***

The question might be raised at this point as to the relevance of such an argument to a society faced with a security emergency. Where crime has run out of control or some other emergency imperils the security of the society, it might be argued then, that human rights must be taken off the table. Rightly, the place of human rights in extraordinary circumstances is an important question. In the wake of

the September 11 2001 attacks on the US, and more recently in Spain and Britain, concern over terrorism has generated an important debate over human rights, vis a vis security measures.

However, it is important to point out that everyday crime management and control is distinct from such security emergencies as terrorist attacks. While evidence points to alarmingly high levels of crimes in Kenya the threat they pose cannot be said to rise to that of external or internal terrorism. Terrorist attacks are essentially political and therefore their message is about an entire political system or group. Terrorism as a technique is often eliminated when the political cause no longer remains, as in the Algerian war of independence, or the Mau Mau war of independence in Kenya.<sup>17</sup> So far, no scientific evidence exists to prove that you can effectively fight crime by employing militaristic approaches. Where law enforcement authorities have adopted militaristic approaches, they have only precipitated horrific outcomes, as in the killing of street children in Brazil.<sup>18</sup> The so-called zero tolerance approaches to crime have been revealed as largely ineffective.<sup>19</sup> Zero tolerance measures have proved to be a slippery step towards criminalization of groups at the margins of the society, without sufficient attention given to the causes of crime.<sup>20</sup> At the end of the day, what has

<sup>14</sup>Arendt, *Origins* (1958), 290.

<sup>15</sup>The literature on human security is growing. See Fen Osler Hampson, “Human Security: A Review of Scholarly Literature” at: [http://www.humansecuritybulletin.info/archive/en\\_v112/\\_articles/Fen\\_fulldocument.pdf](http://www.humansecuritybulletin.info/archive/en_v112/_articles/Fen_fulldocument.pdf)

<sup>16</sup>This view is close to the capabilities approach of Martha Nussbaum. See Martha Craven Nussbaum, *Women and Human Development: The Capabilities Approach* (New York: Cambridge University Press, 2000).

<sup>17</sup>Charges of terrorism were made with regard to the conduct of the parties in these two conflicts. However, what qualifies as terrorism remains undefined. If it is broadly taken to mean armed attacks on civilians, it is possible to find acts that might qualify on all sides of the conflicts. This however is a legalist determination that does not take into account the ideological justification for the acts.

<sup>18</sup>A 1991 human rights report recorded at least 2,288 cases of Brazilian street children killed between 1984 and 1999, while another study quoting police statistics reported that 4,611 children were victims of violence between 1998 and 1999 with 2,150 children killed in the state of Sao Paulo alone. See Human Rights Watch, *World Report 1992* (New York: 1992).

<sup>19</sup>Bill Dixon, *The Globalization of Democratic Policing Sector Policing and Zero Tolerance in The New South Africa*, Occasional Paper Institute of Criminology University Of Cape Town (2000) At: [Http://Web.Uct.Ac.Za/Depts/Sjrp/Publicat/Global1.Htm](http://Web.Uct.Ac.Za/Depts/Sjrp/Publicat/Global1.Htm)

<sup>20</sup>See generally, Mutuma Ruteere and Marie-Emmanuelle Pommerolle, “Democratizing Security or Decentralizing Repression? The Ambiguities of Community Policing in Kenya,” *African Affairs* 102:587-604 (2003).



## Security Policies in Brazil, Uganda and South Africa: Pitfalls Kenya should Avoid

This article considers cases of the management of insecurity in three states which share many characteristics with Kenya: Uganda, Brazil and South Africa. All three have emerged from repressive regimes in the recent past, and in each case there exists security challenges similar to Kenya's. It is expected that these cases will provide some lessons for Kenya's policy makers. These lessons include examples of both successes and failures in security policy. While clearly, the context of implementation is bound to differ, the broad policy issues may apply across borders.

### Uganda

In June 2002, Kampala suffered an upsurge in criminal activity, with numerous violent robberies and murders taking place. In response, a new Joint Security Team, named Operation Wembley, was instituted. This scheme took the form of an ad hoc collaboration between the intelligence services, police and army, the establishment of the General Court Martial to try suspects, the implementation of a "shoot to kill" policy and the use of so-called "safe houses" to hold and interrogate detainees. These "safe houses" are unofficial facilities where detainees are held incommunicado, without charge, for periods in excess of those lawfully permitted, and where detainees are often subjected to torture<sup>1</sup>.

Trial by Court Martial removes many of the legal and constitutional protections afforded to accused persons, and its application outside of strictly defined military circumstances may be seen in itself as a gross violation of

basic human rights. Its widespread application in the context of Operation Wembley relied upon the Uganda Peoples' Defence Forces Act<sup>2</sup> granting jurisdiction to the Courts Martial over civilians found in possession of military property or those accused of terrorism, treason and related offences. Essentially, it appears that virtual carte blanche has been granted to the security services to imprison without trial and torture and deny rights with impunity in the name of fighting crime.

Following public outcry, Operation Wembley was terminated in August of 2002. In its place the Violent Crime Crack Unit (VCCU) was instituted to take over its functions. However, it appears that the pattern of torture and impunity has survived the change of name, with a similar number of complaints being reported to the Uganda Commission on Human Rights against the VCCU in 2003, as were reported against Operation Wembley in 2002<sup>3</sup>.

"Safe houses" are not, however, reserved for criminals. There exist numerous documented cases of the arbitrary and prolonged detention and torture of political opponents of the regime, particularly members of the opposition party Forum for Democratic Change (FDC). Detainees are very often accused of involvement with the People's Redemption Army, a paramilitary group based in the Democratic Republic of Congo, despite the fact that there is no evidence that this group has ever operated within Uganda. Under the Ugandan constitution, a period of 360 days in detention without trial or bail is permitted for persons accused capital offences, including treason or terrorism<sup>4</sup>, and in a great

<sup>1</sup>Human Rights Watch: Concerns Regarding Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Uganda, May 2005; Closing remarks of the UN Committee against Torture, 34th Session.

<sup>2</sup>The Uganda Peoples' Defence Forces Act, Cap 307 (formerly called the National Resistance Army Statute)

<sup>3</sup>Uganda Human Rights Commission: Annual Report, 2005

However, despite these difficulties, there have been success stories in the favelas, the most notable of which took place in the São Paulo suburb of Diadema, one of the most notoriously violent districts in the world, which in 1999 suffered a staggering murder rate of 141 per 100,00 people<sup>12</sup>. In the past ten years, numerous measures have been put in place in this area, including controls on the sale of alcohol, the creation of sporting, cultural and recreation facilities, the installation of street lighting and the initiation of a Public Security Forum, leading to a reduction by 50% of the number of homicides over three years from 2000<sup>13</sup>. The enormity of this achievement cannot be overstated.

## South Africa

South Africa suffers similarly from the ravages of gang violence, with the scale of the problem such that one gang, is thought to comprise 5,000 members. An estimated 130 gangs operate in the Cape Flats alone, with a combined membership of 100,000. Approximately 70% of crime in this region is regarded as being "gang related"<sup>14</sup>. The rise of gangs may in part be attributed to the transition from the repressive security apparatus of the apartheid state to a police service suitable in a pluralist democracy, which opened the space for an upsurge in criminal activity. This was particularly problematic in the early years post-apartheid, during which time the policy focus for security was directed primarily towards demilitarising the police and establishing central control of the security services.

From 1996 until 2000, security policy was defined by the National Crime Prevention Strategy (NCPS), a document which envisioned a holistic approach to security, dealing with reform in the police and criminal justice system, as well as measures to tackle the structural, social and developmental causes of crime, and the involvement of government departments other than the police, together with civil society. However, remoulding the system to fit its new operating environment proved difficult, and the project suffered under the weight of the bureaucracy required to co-ordinate such extensive co-operation between departments. With the opportunistic

expansion of crime in these years, the issue of security became a topic of serious public concern and a favoured issue for opposition politicians.

Accordingly, given the severe pressure to achieve immediate results, the government introduced the National Crime Combating Strategy (NCCS), which supplanted the NCPS with a considerably more law enforcement orientated approach. At the same time, the role of the internal civilian police oversight body, the Secretariat for Safety and Security, was downgraded, to the extent that it no longer exercises an oversight function. While the external body, the Independent Complaints Directorate is now well established, its role is the investigation of specific instances of abuse by the police force rather than overseeing policy. This shift in policy focus has also led to the abandonment of many developmental aspects of crime prevention contained in the NCPS. In fact, with the exception of the victim support scheme, none of the social programmes set out in the NCPS have been realized<sup>15</sup>.

Public perceptions of criminal activity have continued to deteriorate since the institution of these policies, with more than half of South Africans believing that crime in their areas has increased in the past three years<sup>16</sup>, with many people believing that the system is weighted in favour of criminals.

A key strand of the NCCS programme is to combat organized and gang based crime, utilising the 1998 Prevention of Organised Crime Act. This legislation criminalises gang membership and enumerates draconian penalties of life imprisonment, or a fine of one billion Rand for the offence. Furthermore, the Act allows for the forfeiture of the proceeds of crime from convicted members of criminal groups and allows for the extensive involvement of state prosecutors in the investigative process. Identification of gang members is extremely difficult however, with the act enumerating factors such as whether the individual lives in a gang's area, and their code of dress, language or tattoos. This is a haphazard set of identifiers, to say the least.

***To attempt to deal with security issues by force alone and neglect the causes of these problems is analogous to pulling up a weed without removing its root, which can only be a superficial solution.***

<sup>11</sup>Alvaro Vargas Llosa; "Liberty for Latin America: How to Undo Five Hundred Years for State Oppression"; Farrar, Strauss and Giroux, 2005

<sup>12</sup>Bruno Paes Manso; Why so many executions in São Paulo's periphery?; 25 Fernand Braudel Institute of World Economics, 2000

<sup>13</sup>Bruno Paes Manso, Maryluci de Araújo Faria and Norman Gall; Frontier violence and civilization in São Paulo's periphery; Diadema; 36 Fernand Braudel Institute of World Economics, 2005

<sup>14</sup>Andre Standing; The threat of gangs and anti-gangs policy, Policy discussion paper; ISS Paper 116, August 2005

<sup>15</sup>Gavin Cawthra; Security Governance in South Africa; 14 3 African Security Review, 2005

<sup>16</sup>Anton du Plessis and Antoinette Louw; Crime and Crime Prevention in South Africa: 10 Years After; Crime and Justice Program, Institute for Security Studies (South Africa) 2005

## Are Private Security Firms the Way to Go?

*In the last two years, a nasty streak of violence has cropped up all over the country. Ordinary citizens including security guards are beaten, injured or hacked to death, even when most of the time nothing is stolen. Rapes, carjacking and burglaries are rampant even in small towns. Are private security firms the way to go?* Mr. Niklas Brian Rodgers, General Manager Security Group, a multinational security firm with its base in East Africa spoke to Linda Ochiel.

### 1. How is the private security industry evolving in Kenya?

Private security is one of the fastest growing industries in Kenya. Its rapid expansion is undoubtedly due to the untamed runaway insecurity in the country. Of great concern to us as Kenyans and as security providers, is the uncontrolled proliferation of private security firms in the country. This inevitably contributes to the deteriorating security. We can choose to blame the rampant insecurity on a weak regulatory framework for security providers as has been the case in some media reports. Along with the concerns that there is no adequate law to regulate the private security firms, the government has also failed to enforce laws such as the minimum wage and statutory conformity. Consequently we have to rely on a code of conduct developed by the Kenya Security Industry Association (KSIA). There are gaping holes in the registration process for private security firms, which has led to mushrooming of unregulated and standardized informal security firms.

### 2. How can security firms be made more accountable if they must be trusted by society?

Private security firms can be made more accountable if, prior to being issued a license to operate, they are required to be vetted by the National Security Intelligence Service (NSIS). Unfortunately, this is not the case. The lack of a proper vetting system has led to the proliferation of an informal, unregulated sector that is likely to impact negatively on the private security industry. Firms that do not meet the acceptable standards for providing security either due to lack of facilities, training and/or adequate human resources are increasing. The government must come up with proper policy regime to regulate the industry and weed out companies displaying lack of moral obligations such as those specified by KSIA towards providing security. There is a further need for compulsory and state of the art training for all security guards to be able to cope with challenges of advanced technology. The guards need regular refresher courses to ably meet the growing needs of their clients. It would be inappropriate to talk about making security firms accountable if we do not mention the need for good working conditions for employees of all cadres. Poor remuneration of security guards often hampers their efforts to devote themselves to work. Most security companies violate labour laws. Their employees receive remunerations far below the stipulated rates and fail to provide insurance and compensation as stipulated by the Workman's Compensation Act.

### 3. The cost of hiring security services and all that goes with security provisions, is beyond what most Kenyans can afford hence the proliferation of all manner of self help security providers.

I disagree with this statement. There is a misconceived

perception that private security services in Kenya are expensive and can only be afforded by the affluent or the powerful. This is not the case. Security services can be afforded by the middle class and to some extent even by the low income earners. On average, security services cost approximately Kshs 4000 (\$54) per month. Such a cost can be shared by multiple households to bring the costs down. Many families in Kenya employ untrained security guards (often referred to as Maasais) at the cost of approximately Kshs 1000 (\$14) per month. The untrained security guards often cannot do much in case of a situation of threat. Whilst at the same cost or less families can jointly enlist the services of private security provider and enjoy professional security services including alarms, other electronic services, prompt security response with reliable back-up, ambulance services, free cash management and risk management consultancy. They are misadvised and misinformed to go for cheap but impractical security.

### 4. How can this industry be regulated to become more credible, reliable and effective?

As I have indicated earlier, there needs to be a proper vetting system for any private security firm to be registered to ensure security of people and property. Of the approximately 500 private security firms licensed to operate in Kenya, only 20 meet the standards set up by KSIA. This definitely compromises their credibility, reliability and effectiveness. Without properly trained guards, state of the art operational gadgets, cooperation and goodwill from the police and public, the firms cannot operate successfully. Security firms must therefore strive to uphold high standards of technical quality and service proficiency by exercising diligence in selection and assignment of personnel; uphold high standards in use of state of the art equipment; and they must develop amicable working relationship with the police and the public. We, as the Security Group, have endeavored to continually improve the quality of our products, the efficiency of our techniques and the standard of our services by an on going review of our business processes, quality and objectives. By doing so we have tremendously increased our clients base.

### 5. What are the standards that currently regulate the industry? How effective are they?

There are no specific standards to regulate private security firms by government. However, KSIA has provided a code of conduct to be adhered to by all its members in providing security in Kenya. All members pledge to observe the particular prescriptions of KSIA regulations, the KSIA technical standards, the KSIA 'Customer Care' charter and the code of conduct which is binding to all members. To start with, for all KSIA members, the safety of people, property and environment is paramount. In all matters, members are required to conduct their business and operations in an honorable manner with due



# Shoot-to-Kill Practice is Ill Advised: It Undermines the Security of All



Police officers shooting 'armed' suspects on sight may at first appear reassuring to the all too insecure mwananchi, living in dread of the visitation of an armed robber. It certainly seems justified to the police on the beat who are, after all, the ones who have to confront suspects. Nevertheless, the shoot-to kill practice so common in Kenya today is a blatant human rights violation that is symptomatic of an ill-equipped police force and an equally ill-advised policy on security.

Internationally acceptable standards for law enforcement officials demand the utmost respect for human rights, primary among which is the right to life of every person, even a suspected criminal. It matters little that such a person may be armed, the duty and priority of a well trained police officer should always be to subdue the suspect and prevent a crime.

Lethal force should be employed only in situations where the life of the police officer or that of others is threatened. All too often however, the Kenya Police open fire on the basis of what has become a familiar recital by senior police officers addressing the media. "We asked them to surrender but they shot at us. Therefore my boys opened fire and two suspects fell down".

The glee with which police shoot-outs are reported on prime-time television news in Kenya is indicative of a lack of

understanding and appreciation of what policing is or ought to be: a public service paid for by tax payers, in return for maintenance of law and order for and among citizens. In this respect reporters, the spectating public and the police each

appear oblivious of the fact that the sprawling blood-soaked bodies of dead suspects, others writhing in pain, is an affront to the security and dignity of us all. Today it is them, tomorrow it might be me, you or someone we know and care for.

The violence accompanying policing and the response to crime in Kenya today highlights the need for every mwananchi and law-enforcer to take it upon themselves to study and uphold the Universal Declaration of Human Rights (UDHR) in its entirety. It behoves every citizen to know, respect and encourage the protection of life and the maintenance of law and order.

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For the police force in particular, some specific articles that are of particular relevance to their work and should be reflected in their practice as a matter of course. Principal among these are:

**Article 3:** Everyone has the right to life, liberty and security of person

**Article 5:** No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment

**Article 7:** All are equal before the law and are entitled without any discrimination to equal protection of the law

The unrestricted use of firearms by Kenyan security personnel has the effect of creating a climate of fear among law-abiding citizens and

criminals alike. That the police can open fire at any time and in any situation has often meant that it is not only the suspects who are injured or killed. Many times, wananchi going about their business become victims. Similarly,

# License to Kill?

**“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”**

*Article 6(1), International Covenant on Civil and Political Rights (ICCPR)*

*On 10th August 2004, Maluki Kilonzo small hotel operator in Mtito Andei in Mwingi District was arrested by the police over a robbery complaint. Handcuffed to an accomplice Maluki left in the custody of the police never to return home. His body was later found in police custody, his wrists handcuffed. The police and the Division Officer (DO) say Maluki was accidentally shot in crossfire between the police and Maluki's accomplice. The accomplice managed to escape. Maluki had no criminal record. The police have failed to explain how a handcuffed suspect managed to pull out a gun while in their custody, or how one of the handcuffed suspects managed to escape, while the other was shot.*

*On 27th July 2005, a matatu owner, a driver and a matatu tout were shot in cold blood at a police station in Bombolulu Mombasa. The three, Said Feisal Yahya, Khamisi Kaingu, Sylvester Safari Katana were refueling their vehicle at a Total gas station when they were caught up in a crossfire between the police and suspected criminals. They were all shot dead. No investigations have been conducted. No arrests have been made to date.*

*Ismail Salim Senti, resident of Ukunda, was shot dead on 13th August 2005 while returning home early in the morning from a taarab (musical evening) with two other friends. He was shot dead by plainclothes police officers who were pursuing suspected criminals. The surviving witnesses said that the police made no attempt to either identify themselves or verify the identity of the deceased. No statements have been recorded from the witnesses to date<sup>1</sup>.*

*On 1st April 2004, three suspected criminals were shot by the police in Makadara, in Mombasa following a tip of an impending crime. It is alleged by eyewitnesses that, the police shot the suspects in cold blood despite the fact that the suspects had surrendered. The police have turned down the*

*request by the Kenya National Commission on Human Rights (KNCHR) to release the names of the deceased<sup>2</sup>.*

Incidents of Kenyans being summarily executed by the Police on the pretext of a shootout are not news. The above incidents are just a few of many similar ones. The two important questions to ask are; “why do the police shoot suspects?” and “why are they not held accountable?” As the custodians of law and order, and legally entrusted with the means of “violence and force”, there are bound to be instances when the use of force and killings by the police could be justified. But what process is

used in determining if the killing was justified or not? How can the society determine if the police are abusing their powers like so many other public offices do in a culture of impunity?

The police force in Kenya has a history of impunity. Very few officers have been apprehended or held accountable for the numerous shootings of suspected criminals in the country. Investigations or

prosecutions are seldom launched against police officers. Investigations conducted by the Kenya National Commission on Human Rights, confirm this. When put under pressure to conduct investigations, the police frequently delay the process or simply fail to release the findings. Often no statements are taken from witnesses or evidence is tampered with. Many times, the witnesses are intimidated not to provide evidence.

In such an environment, even in cases where there is sufficient evidence to prosecute a police officer for shooting a suspect, the possibility of cover-up by colleagues is immense.

***There are bound to be instances when the use of force and killings by the police could be justified. But what process is used in determining if the killing was justified or not?***

<sup>1</sup>The Commission interviewed the witnesses for their statements as part of its investigations during the last week of August 2005. Until then the police had not approached any of the witnesses for their testimonies.

<sup>2</sup>The request was made in writing to the Commissioner of Police and Provincial Police Officer for Coast Province in a letter dated 5th April 2004. There was no compliance of the request until April 12th 2004 when the request was made again through the newspapers.

working conditions, leaves the police as one of the most demotivated workforces.

However, the above challenges cannot justify deliberate extra-judicial killings of suspects. Without doubt, the responsibility that the police have and the risks they take in executing their duties are enormous. However, the police are obligated like anyone else to respect the rights of every person as laid down by the law. Whereas it is true that criminals violate the rights of the innocent, article 11(1) of the Universal Declaration on Human Rights states clearly that “everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to the law in a public trial at which he has had all the guarantees necessary for his defence.”

It may perhaps be reasonable to assume that a “shoot to kill”

policy would act as a deterrent and aid in crime reduction. Whilst there is rampant insecurity in the country, the directive to shoot and kill cannot be considered a solution to security problems in the country.

The National Commission and other human rights organizations have been frequently accused of protecting the rights of criminals while neglecting the rights of police officers who die in the line of duty. Criminals or not, Section 70 (1) of the Constitution of Kenya is very clear that “No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Kenya of which he has been convicted.”

Deviation from law, whether by the criminals or the police, for whatever purported objective, is equally unacceptable.

## The Way Forward

### Increased Accountability

With great power comes great responsibility. Devoid of proper checks and balances, no structure of authority can work without abusing its power. Such checks and balances are exactly what the Kenyan police lack. A functioning system of carefully monitoring and streamlining the use of police authority is needed.

In order to guarantee accountability, the police should not conduct investigations and prosecute offenders themselves in cases of complaints of police. There is need for an independent investigative body to handle investigations and a body to handle prosecutions. An oversight body is necessary to receive complaints and information from the public in order to win the public trust. The Kenya National Commission on Human Rights has the capacity to act as such a body. However, although mandated to investigate such cases, KNCHR receives negligible support from the police while conducting its investigations.

The oversight body would ensure that the police do not misuse their powers and are accountable to the people.

Civilian oversight bodies not only act as effective watchdogs, but are also useful in investigating cases of police abuse. This would increase citizen participation in government and restore the balance of power in the equation between police and society. South Africa presents an excellent example in this regard. South Africa has an independent oversight agency called the Independent Complaints Directorate (ICD). In addition to this body, there are provisions for community police forums at each police station. Despite initial hiccups, over time, the positive outcomes of these institutional and policy reforms have been encouraging. The police as an institution has benefited by having independent bodies assist them in removing corrupt and negative elements from the force and thereby improving their public image and rapport. Such public participation leads to a more democratic form of policing.

The Kenya National Commission on Human Rights is currently working out a mechanism with the African Policing Oversight Forum (APCOF) for establishing an oversight body under its mandate. It will soon present to the Government a proposal for the same. Through programs such as APCOF and others, the Commission is attempting to address the problems outlined in the article and fulfill the objectives mentioned above.

***An oversight body is necessary to receive complaints and information from the public in order to win the public trust.***

# Security and Human Rights – KNCHR Raises the Dilemmas Facing Security Policy Makers and Police Officers

## The Minister, Internal Security,

According to the report “Globalization of Private Security” released in January 2005 ‘fear and insecurity have become defining features of life in Kenya.’ This has resulted in the proliferation of private security providers who reports say are in the upwards of 2,000. The environment within which such companies and public police operate has become more dangerous and difficult to manage because of the influx of illegal arms in the wrong hands. The challenge this poses to policing is enormous and as illegal guns get increasingly employed by criminals, police on patrol are constantly put in circumstances of permanent presence of danger. The public expects the police to deal with this situation in ways that reduce the sense of fear and insecurity that currently ‘defines life’ in most parts of the country.

Secondly, this increasingly criminalized environment has had the effect of eroding public confidence particularly in the police force and the government in general. Fear that crime especially that perpetrated by the use of illegal guns leaves most Kenyans feeling helpless as it appears too well organized for an equally helpless police and government to tackle effectively. This probably explains the enthusiasm with which the public received the Internal Security Minister’s statement that appeared to give the police the green light to deal firmly with illegal gun-wielders. Almost all members of the public interviewed by the media on what was interpreted as a ‘shoot-to-kill’ directive, expressed support for such a policy.

Like the related issue of death penalty this question evokes animated debates that end up crowding the issues more than they clarify them. While in Kenya the shoot-to-kill policy has never quite been acknowledged formally, police practice reflects its existence. Hardly a week goes without police exhibiting guns they have ‘recovered’ after shooting-to-kill their wielders. In April this year, the Minister for Internal Security came close to giving this practice a veneer of a government-sanctioned directive when he suggested that those with illegal firearms should surrender them or they will be ‘finished’ by the police. This attracted such hullabaloo from human rights defenders.

Elsewhere in the world a number of governments are less shy to categorically state that the ‘shoot-to-kill-to-protect’ policy is a clear operational guideline for the police. This is assuming a new ‘legitimacy’ in view of increased fear of international terrorism. In July this year, the International Association of Police Chiefs, an association of police from all over the world, approved a guideline encouraging officers to shoot people they suspected to be suicide bombers in the head! Elsewhere Lord Stevens, a former police chief of Metropolitan London, remarked, following the shooting of an innocent Brazilian after the London bombing, that ‘we are living in dangerous times... and the ‘shoot-to-kill-to-protect’ policy is justified ‘even when there is a chance of error.’

Information shows that in Germany 12 out of 16 states permit officers to kill suspects in order to save the lives of innocent people ...but only as a last resort.

Generally in most police guidelines, it is held that potentially lethal force could only be used if there were reasonable grounds for believing that the suspect posed an immediate threat of serious bodily harm or had committed a crime involving the infliction or threatened infliction of serious bodily harm.

Kenya has twice been a victim of international terrorism and there are no guarantees that it will not be hit again. Secondly, the number of Kenyans dying everyday from gun and related crime sends more fear and creates more insecurity as its manifestations are more real than the international terrorists’ strike that is largely calculated as a possibility. There is wide concensus that something must be done about illegal guns in this country. The government has the responsibility of controlling arms possession, access and use. At this point it is not clear what action government is taking especially in Nairobi.

Secondly, in spite of the clear challenges that the police have in fighting crime, the government appears shy of providing an unequivocal guideline that takes the changed policing circumstances into consideration. The Kenya National Commission on Human Rights is keen on having the police explain the dilemmas it is facing in managing crimes, especially as this relates to stemming the rising tide of gun-wielding criminals.

### Request:

In our next Issue of *Nguzo za Haki*, to be published in September this year, we are exploring dilemmas and imperatives that the new environment engenders. Several Kenyans including police officers have been killed and or maimed in the hands of such criminals. What are these dilemmas and challenges, what specific actions would the police like to see taken by the public, human rights groups and other key actors as part of collective action in dealing with the growing gun-violence? What is the position of the police on the ‘shoot-to-kill-to-protect’ proposal especially given the moral-legal dilemmas that the individual police officer faces whenever they have make the decision to shoot-to-kill-to-protect? How does this issue rest with the demand for police accountability – in terms of for example, releasing periodic reports on all suspects killed by police, and the circumstances and where the police may have erred, being able to take responsibility?

To explore these issues, in order to share with Kenyans the view of the police, we at the KNCHR would appreciate your views on the questions raised herein.

\*For more details see, Abrahamsen, Rita and Williams C. Michael: The Globalization of Private Security, Country Report: Kenya, 2005





Highway banditry used to be common in much of the North-Eastern Province and Eastern Province but it has reduced significantly. These areas are remote, sparsely populated and have poor infrastructure. Our biggest security nightmare in the North Eastern Province is the recurrent, localized incidents of violent cattle rustling, counter-raids, ethnic conflict, tribal/clan rivalry, and armed banditry. The government has been employing particular clans in the North Eastern province at the expense of others which breeds hatred and rivalry. The same clans are used by the Provincial Administration to frustrate and intimidate other clans. This is unacceptable. The oppressed clans are bound to retaliate by attacking the favoured clans. Instead of bringing our people

together politicians concentrate only on activities that increase their salaries. It is rather unfortunate that our members of Parliament earn colossal amounts of money while the people in North Eastern Province are butchering each other over disputes such as water points. Our communities are harassed by the police over Identity Cards. Immoral searches for firearms and ammunitions are conducted on our highways targeting our communities. When you talk about security issues, remember that our community is at the mercy of the government. North Eastern Province is a forgotten province. We could just as well not be considered a part of Kenya. Cross-border violence occurs periodically. The areas near Kenya's border with Somalia and Ethiopia have been the site of a number of incidents of violent criminal activity, including kidnappings. A number of deaths were reported in the violent clashes in Turbi but there is no solution in the offing. Northern Kenyan border areas continue to be plagued by cross-border inter-clan and intra-clan clashes. Security problems in the North can be solved even without proper reconciliation mechanisms if there is an improvement in infrastructure.

## Ibrahim Mohammed

*Islamic teacher and businessman*

Kenya has a significant security problem. There is a high crime rate in all regions of the country, particularly Nairobi, Mombasa, Kisumu, and the coastal beach resorts. There are regular reports of attacks on tourists by groups of armed assailants. Pickpockets and thieves carry out "snatch and run" crimes on city streets and crowded areas. Visitors are discouraged from walking alone, at night, especially in downtown areas, public parks, along footpaths, on beaches, and in poorly lit areas. This is indeed, dangerous. Some other visitors from Germany had their purses stolen on their first night here. Though I have been lucky and have not been a victim of insecurity, I still feel insecure in this beautiful country. I don't trust people. Many tourists, businessmen and women visiting the country such as myself are convinced that security forces have refused to deal with insecurity in the city primarily due to corruption. Nevertheless, Kenyans should not blame the Government alone. The fight against corruption and insecurity should start from the home. Parents should teach positive values to their children and people should help each other in the community.



## Georgette Springmann

*Business Woman Visiting Kenya from Germany*

# Crime: A Growing Challenge to Security & Human Rights

## Introduction

Security is a human right. Security is a fundamental need, shared by individuals, communities and governments alike. Whereas governments have the primary responsibility to promote and protect human rights, citizens share a common goal of promoting and maintaining respect for human rights particularly as set out in the Universal Declaration of Human Rights (UDHR) and international humanitarian law.

At the international level, the threats to peace and security in the 21st Century include not just international war and conflict, but civil violence, organized crime, terrorism and weapons of mass destruction. They also include poverty, deadly infectious disease, and environmental degradation since these can have equally catastrophic consequences. All of these threats can cause death or lessen life expectancy on a large scale. All of them can undermine states as the basic unit of the international system.<sup>1</sup>

There is no generally accepted description of what security means and how it should be defined. Security is a contested, broad, complex and vague concept. Questions always rise as to the definition of security; security for whom, the needs to be secured, what is enough security, etcetera. Security is essentially about the protection of basic and innermost values of actors. These values differ from person to person, community to community, state to state and so on. Therefore, the concept of security is dependent on who defines security and in what context.

A logical concept of collectivities such as nation states has been made by Barry Buzan<sup>2</sup> who conceptualizes that there are five major factors that affect national security: military, political, economic, societal and environmental factors. The modern concept of security will further include personal or human security, which should be understood to mean the freedom, at the individual level, from fear and from danger, meaning protection from direct and indirect violence, and a sense of safety and well-being by individuals. It entails the safety of material possessions of individuals from any danger, whether loss or destruction, and the feeling that one's self, family, friends, and possessions are safe.<sup>3</sup>

<sup>1</sup>See Kofi Annan, 'A historic opportunity in 2005' on <http://www.un.org/lagerfreedom/contents.htm> para 78.

<sup>2</sup>Buzan, B., *People, States and Fear. An Agenda for Social Security Studies in the Post-Cold War Era* (Hemel Hempstead: Harvester Wheatsheaf 1991 2nd Edition) Introduction

<sup>3</sup>Francis Wairagu, JAN Kamenju, Mwachofi Singo, *Private Security in Kenya*, p16

<sup>4</sup>See book edited by Ibo Mandaza, *Peace and Security in Southern Africa*, p6

**Table 1: Crime Trend over the last 4 years, 2000-2003**

Type of Crime	2000		2001		2002		2003	
	Frequency	Percent	Frequency	Percent	Frequency	Percent	Frequency	Percent
Robbery	331	56.1	412	40.2	286	34.6	549	41.7
Hijacking	100	16.6	142	13.8	103	12.5	237	18
Banditry	81	13.5	143	14	40	4.8	30	2.3
Personal crime	23	3.8						
Animal robbery	15	2.5	29	2.8	50	5.1	53	4
Illegal firearms	14	2.3	107	10.4	48	5.8	50	3.8
Others	37	5.2	193	18.8	299	37.2	396	30.2
<b>Total</b>	<b>601</b>	<b>100</b>	<b>1026</b>	<b>100</b>	<b>826</b>	<b>100</b>	<b>1315</b>	<b>100</b>

Source: Extract from Kenya Crime Survey 2000, 2001, 2002, and 2003 by Security Research and Information Centre (SRIC)

## Recurrent Crimes in Kenya

In the past four years, the Security Research and Information Centre (SRIC) has been extracting crime-related incidences reported in the three leading daily newspapers, the Daily Nation, East African Standard and the People Daily. The need to look for data from the dailies was prompted by the realization that there was hardly any readily available statistics and information on crime trends in Kenya. Even though the police have some statistics on crimes reported on a daily basis, this had not been for public consumption in the recent past and it is not easily available. Armed with this knowledge our organization decided to tap information on crime which is readily available in the local dailies.

From our research findings we can authoritatively affirm that robbery is the most prolific crime in Kenya, followed by hijacking, banditry, illegal possession of firearms and misuse of firearms by security agents.

In the past four consecutive years, we extracted and analyzed incidences reported in the dailies as follows; in 2000 a total of 608 articles were cut out for analysis. There were 337 robbery incidents, 100 hijacking cases, 81 banditry activities and 13 cases of cattle rustling.

Table 2: Crime Trend over the last 10 years, 1994-2003 | [pg 31 >>](#)

Indeed, the Government is making a lot of effort towards crime reduction through, for instance, community policing, addressing small arms-related problems and opening up to the public by way of encouraging them to report crime directly. Practically, a lot more still needs to be done. The policies-with-a-human face approach still remains one of the most plausible solutions in terms of linking all policies — economic, political, social or otherwise — to human rights. Therefore, human rights activists must, in partnership with other stakeholders, continue pushing the Government on the human rights agenda.

An analysis of recent trends in improving policing and crime prevention is well enunciated in the current Kenya Police Strategic Plan, which has six objectives, several strategies to achieve these objectives and defined outputs for the next five years.<sup>6</sup> These objectives have also been used for the development of the widely talked about performance-indexed contracts.

The Strategic Plan indicates a sense of direction that the police are willing to take to make Kenya a better place to live in. The objectives are;

1. To prevent and detect crime, maintain law and order, and bring offenders to justice
2. To improve human resource management
3. To improve and expand facilities, equipment and technologies
4. To build a positive image
5. Strengthen the institutional framework
6. To improve disaster management operations

## Challenges

The limited number of police officers and the enormous work they have had to do have denied them room to patiently interact with the public. The impression created by this is one of arrogance and a don't-care attitude. The situation is complicated further by lack of sufficient resources and equipment to respond to distress calls made by the public, thus eroding confidence in the police. The working and living conditions of the police have played a great role in lowering the confidence of police officers because their plight had, for a long time, been ignored by the Government. This calls for immediate correction. The facilities and resources extended by an employer clearly show the placing of the services offered by an institution or

an office. The status of policing duties must be placed where they rightly belong.

The Kenya Police Force derives its culture from its history and is enhanced further by the working environment. The establishment of a Police Force in Kenya by the colonial government was purely for control of the public and to give room for the extraction of resources by the colonial companies. The police was not for the people, but for the rulers. This culture overflowed to independent Kenya as politicians used the police for personal gain. This further contributed to the alienation of the police from the public as many continued to believe that the Force is inherently partial. According to research findings, nearly a quarter of the police are partial while 41% are partly partial — meaning they will be partial or impartial as circumstances unfold and pressures to act in a certain manner mount.

The Force suffers from a number of institutional deficiencies, among them inadequate resources for the reform process; the declining quality of police service; a tainted public image that is symptomatic of a loss of public confidence in the police as service providers; an inability to deal effectively with new and organized crimes due to limited capacity and limited use of crime Intelligence.

To change this poor image, professionalisation must come top of the agenda.

Police reform in Kenya must entail professionalisation, which creates a civil police institution responsible for internal security and public order. The aim is to have an efficiently dispersed, visible, accessible and service-oriented force that interacts freely and gently with its community and sees its primary duty as protecting citizens. The end goal is to make the police more effective, strengthening the Force's capability to enforce the law and to maintain public order with a minimum of physical force by developing leadership, organizational, administrative and training systems; transportation and communications systems and training technicians to operate and maintain these systems; appropriate equipment; and improved capability to conduct urban, rural and border patrol operations, investigations, and other specialized functions

Over the past four decades, the police administration has come under severe pressure from the politicians in power. This is particularly evident in the matter of recruitment,

<sup>6</sup>For details of the strategies and outputs, see the Kenya Police Strategic Plan 2004-2008



# Citizens' Role in Combating Insecurity

## Introduction

In this time of economic slow down, security matters cannot be taken for granted. The proliferation of light weapons and prolonged economic difficulties have spurred a sharp rise in insecurity, outstripping the ability of the security forces to control the rising crime in Kenya.

With globalization, the concentration and centralization of power has grown, and with it the geographic spread of insecurity.<sup>1</sup> Indeed, the lack of access to resources and the growing pressure on our natural resource base; for instance, the loss of arable land, scarcity of water and pasture for pastoralist communities has exacerbated insecurity in the country. Further, the growing poverty, inequality, war and violent conflicts have resulted into massive displacement of populations in neighboring countries. Terrorism, corruption, food insecurity, HIV/AIDS, unemployment and poor governance continue to mitigate against efforts to curb insecurity in the country.

Several approaches have been adopted around the world to curb insecurity and achieve peace. Some of these approaches provide useful lessons for Kenya. As can be learnt from the teachings of Jenny Clover (a coordinator of Africa Security Analysis at the Institute of Security Studies in South Africa), when the country faces many security challenges, there is need to adjust its thinking if it intends to recognize and come to terms with these new challenges. In order to adopt diverse and multi dimensional approaches in addressing insecurity, there is firstly a need to recognize that insecurity takes many forms.

This calls for a critical view of structures, institutions and processes likely to threaten and undermine insecurity. Further, we must adopt a more holistic concept of human security. Recognition that security threats cover a far broader spectrum including ethnic polarization, divisions within a ruling government, political instability in neighboring countries, poor public distribution of scarce resources, diseases, global warming and religious

fundamentalism is essential to begin addressing security matters in Kenya. We must, as a country, begin to address questions such as whose security? Security from what? And how do we sustain security?

## Security: Whose Responsibility?

The prevalence of outdated ideas in reducing insecurity combined with the 'hands off' approach by local communities who claim that the responsibility of security rests with the government, may have contributed to the upsurge of insecurity in Kenya. The attempts to curb insecurity were never intended to be the sole responsibility of the police. But, over the years, wananchi have effectively abdicated their responsibility.

***A lasting and sustained change can come only if society empowers and provokes its citizens to take greater responsibility for the well-being of their own lives and communities.***

As a society, we must start thinking seriously about how we can reduce insecurity. We must begin to ask our questions - How do we balance the benefits of freedom to live, work and travel, with measures to prevent that freedom from being exploited? Or, how do we respond to citizens' insecurity during a time of rapid social and political change,

without undermining the prosperity and equality which citizens rightly seek? Further, how can we develop our sense of citizenship, identity and cohesion so that we all contribute in the solution to the social challenges we face as a society?<sup>3</sup>

In the war against insecurity, building a foundation of security, public order and stability is the basis for the trust and confidence which individuals, families and communities need to fulfill.<sup>4</sup> A lasting and sustained change can come only if society empowers and provokes its citizens to take greater responsibility for the well-being of their own lives and communities, in a way that establishes a complementary relationship between the government and the governed. There is a need to balance a tough government stance on security, the enforcement of public protection, and the security of our borders, alongside measures to invest locally in active citizenship. The strength of our communities and the voluntary sector, the well-being of individuals and families in tackling crime and promoting

<sup>1</sup>See African Security Review, Volume 14 pg 104

order in places where crime and general insecurity had traditionally gone unreported due to the assumption that nothing could or would be done. Similar projects have since been introduced in various parts of the country.<sup>6</sup>

In order to develop the concept throughout the country, community based policing has been introduced in national policy initiatives. "Saferworld", an international NGO involved in security monitoring, is working with the police and other stakeholders to promote the concept at national level. President Mwai Kibaki last year appointed a taskforce on police reform that is leading this process. A new national policy on community-based policing has also been developed. This new policy underpins the reform process – because previously for many people, community policing had come to mean vigilantism. It makes clear that community-based policing is not about the community taking the law into its own hands, but rather working in partnership with the police to address local problems. A new training curriculum on community-based policing has also been developed in consultation with the civil service training college – the Kenyan Institute of Administration. A series of training courses are provided for police officers and community leaders across the country. Training police and local people side-by-side helps break down the barriers that previously existed and encourages greater collaboration. In addition, the Kenyan National Focal Point on small arms – an interdepartmental coordinating body – has also been revitalized and given a wider mandate including community-based policing and peace-building.

At the center of community policing are three essential and complementary core components: community partnership, problem solving, and change management. Community partnership recognizes the value of bringing citizens back into the policing process. All elements of society must pull together as never before if we are to deal effectively with the unacceptable level of crime claiming our neighborhoods. Problem solving identifies the specific concerns that community members feel as most threatening to their safety and well-being. These areas of concern then become priorities for joint police-community interventions.

Change management requires a clear recognition that forging community policing partnerships and implementing problem-solving activities will necessitate changes in the

organizational structure of policing. Properly managed change involves recognition of the need for change, the communication of a clear vision that change is possible, the identification of concrete steps needed for positive change to occur, the development of an understanding around the benefits of change, as well as the creation of an organization-wide commitment to change. The police are now teaming up with the private sector, civil society organizations and local communities in an effort to combat crime. Through community policing programmes, the police are encouraged to work with communities to gain intelligence and support for the control and prevention of crime and insecurity.

Critics of the community policing projects, however, say that amongst other things, the Police Service needs better information from local communities to tackle insecurity, as well as the means of transport, communications and analytical capacity to collect, process and use such information effectively, if the community policing projects are to succeed. They argue that unless the government guarantees protection for witnesses and informants, and prosecutes police officers who disclose confidential details about sources, the citizens will continue to shy away from disclosing vital information essential for collaboration in reduction of insecurity. These critics advocate for the introduction of security hotlines so that information from the public is treated confidentially.

In addition, building lasting trust and effective co-operation between the public and police depends on mutual respect, but a legacy of distrust still exists between the police and some communities. Delays in the prosecution of those charged with offences relating to massive corruption and the release of apprehended criminals without charge undermines the efforts of the community policing project.

In conclusion, citizens must be willing to make significant contribution to the fight against insecurity, at the same time, the government and other stakeholders must work together and empower local communities to tackle insecurity. ■

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<sup>6</sup>See Global Future – A World Vision Journal of Human Development – First Quarter, 2005

must now shift from the security of the state to the security of the people, and therefore human security. The security of the state (which includes conflicts and wars) and that of the people, are two aspects that are mutually dependant. In this struggle therefore, the human security component is seen as complimentary to state security, and therefore any policies and institutions must respond to these insecurities in stronger and more integrated ways.

The book also emphasizes the security between states and how issues of conflict affect the enjoyment of rights. The security between states remains a necessary condition for the security of people, and national security, it is argued, is not sufficient to guarantee peoples' security. State security is inextricably linked to global security, which needs global and integrated interventions. In this respect the author argues that strategies which help to reduce conflicts and other forms of insecurity, must also integrate initiatives that promote the protection and enjoyment of human rights to succeed. This is because international security cannot be achieved without the global realization of human rights. This means that human security has been broadened from an exclusive concern regarding security of the state, to a larger concern including the security of people.

Whether it is the quest for security, the quest for respect and tolerance among peoples, or the quest for the reduction of poverty, the promotion and protection of universal human rights will be the decisive element. A society that is striving in good faith for human rights "that is imbued with the spirit of respect for human rights, that is aspiring for a culture of human rights, is one that can lessen the risks of conflict" and other such insecurities.

Essentially, this book denotes the very interesting dimensions of human security, and how to integrate the same with issues of human rights and development. It is recommended reading for government bureaucrats, human rights defenders, Non Governmental Organizations, academics and development practitioners who are seeking to sharpen their strategies around how to integrate the concept of human rights enjoyment, and the question of security in their work. ■

*By Mavisi Violet Khadi*

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Small firms dominate the private security sector. The study reports that 48 per cent of the private security firms are run as sole proprietorships. What are the implications of this regime of operation in the management of such a crucial sector?

A frequently asked question in Kenya is whether it would be useful to arm private security guards. The study reports that consumers of private security services are divided on this issue. Fifty-four percent of those interviewed support the arming of guards with guns, while forty-three percent oppose it. It seems that those who support arming guards see this as an appropriate response to the increased use of weapons by criminals. A rungu wielding guard is no match for a gun-totting criminal. The question this poses, and which is not addressed in the study, is whether 'equalisation' of arms between guards and criminals can be a useful deterrent to armed crime. It would have been useful to find out in this study what the private security guards and the private security companies think about the issue. Examining comparative experiences from Uganda, Tanzania, and Rwanda where guards are armed with guns would also have been enlightening.

The study reports that security guards are underpaid; 50 percent of those interviewed earn less than Ksh 2,500 per month. The study concludes that this is too little, especially given the high cost of living in the urban areas where most of them are employed. A corollary conclusion is that the temptation for disgruntled guards to either steal or participate in the organisation of the theft of property if promised a share of the loot is hard for them to resist. The underpayment of salaries reported in the study constitutes a violation of Kenya's labour laws, and is a matter that should attract the attention of labour officers with a view to prosecuting culpable employers.

Companies and individuals employing guards should seriously consider why it is that 74 percent of guards feel insecure in their jobs. Guards are also a very unhappy lot; less than 6 percent of those interviewed reported enjoying 'excellent' levels of job satisfaction. A person's job satisfaction is related to job security, pay and benefits, the possibility of career advancement, and work culture. Private security guards need to bargain collectively for improved pay and conditions of work. Not surprisingly, only 15 percent of guards belonged to trade unions at the time of the study. The study concludes that the shutting out of labour unions in most private security companies may explain the poor working conditions under which most such workers operate. Clearly, guards need to know that it is their basic human right to join trade unions.

There exist some gaps in the study. Insufficient emphasis is placed on the structural causes of the rising tide of insecurity which has led to the proliferation of private security firms. In dealing narrowly with the operating environment of the private security sector, the authors spurned the opportunity to explore innovative and novel measures, aside from hiring askaris, which may be employed by security firms, businesses, communities and individuals in protecting their interests.

The report fails to distinguish between the empirical finding of the research and the opinions and interpretations of the authors; the two are at times confused. For example, on page 95 of the report, the authors state that '... arming guards is not a welcome solution' yet 54 percent of consumers of private security services interviewed support it. The authors have a preconceived opinion of the undesirability of arming guards. The study is also littered with generalisations, unsupported by facts. On page 103, the authors write that 'commercial operations run by private security companies are rapidly gaining an undue exploitative



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<http://www.africanreview.org/>

<http://www.africanreview.org/docs/humsecjun04.pdf>

<http://www.humansecuritynetwork.org/>

<http://www.humansecuritygateway.info/>

<http://www.iss.co.za/>

## RELEVANT CONVENTIONS AND TREATIES ON SECURITY ISSUES

Universal Declaration on Human Rights

International Covenant on Civil and Political Rights

Convention against Transnational Organized Crime

International Convention on the Suppression of Terrorism

AISA Convention Against Proposed Model Act

United Nations Conventions Against Torture and Other Cruel and Inhuman Treatment

United Nations Convention Against Trafficking in Women and Children

Convention Against Terrorist Bombing (1977)

Laws of Kenya, Preservation of Public Security Act Chapter

International Convention on Elimination of All Forms of Racial Discrimination