

IMPERATIVES FOR POLICING TRANSFORMATION: AN INITIAL RESPONSE TO BUILDING BRIDGES INITIATIVE IMPLEMENTATION ROAD MAP 30 October 2020

We the undersigned are civil society organisations under the umbrella of the Police Reforms Working Group-Kenya (PRWG-K) which offers platform for support of policing reform in Kenya. We are guided by the common principles of human rights-based policing, public participation and oversight, police welfare and capacity and quality policing services.

The PRWG-K has completed a preliminary analysis of the BBI report proposals on policing reform. Based on this analysis, it is our opinion that the BBI Steering Committee recommendations do not yet sufficiently build on the achievements and address the challenges currently being faced by the National Police Service under the Constitution of Kenya 2010.

In our opinion, it is not legal or structural challenges that has weakened the critical pillars of police transformation but substantive governance and resourcing shortcomings. While the BBI process has provided the nation another critical opportunity to look at the state of the policing sector, it is important that any new reforms boldly address our common interest in a respectable, professional, human rights compliant service that caters for their welfare.

The starting point for any new proposals must be the Philip Ransley Taskforce Report on Police Reform, Philip Waki Report on Post-Elections Violence and the Constitution of Kenya 2010. The very essence of our reforms to date has been to deliberately insulate the National Police from political and executive interference. The key pillars of this are objective recruitment and appointment procedures for the Inspector General and top commanding police officers, the Independent Policing Oversight Authority as an independent civilian oversight authority and the creation of a civilian and professional Police Service Commission to deal with human resource issues. Combined, these measures have reduced executive political interference, inculcated accountability and ensured professionalism and welfare of the NPS.

While sharing these observations, we remain open to policy and public dialogue that will deepen public oversight and accountability, professionalism and effectiveness across police service.

PROPOSED CONSTITUTIONAL, LEGAL AND POLICY AND ADMINISTRATIVE INTERVENTIONS

A. Replacement of the National Police Service Commission by Kenya Police Council

Policing is a noble profession. The role of the NPSC is to ensure that the recruitment, training, compensation, deployment and performance of our police officers matches international best practices. It is not yet clear how the Kenya Police Council (KPC) adds any value to the current structure of the NPSC.

More alarmingly, as currently designed, the proposed Council further undermines the independence of the Office of the Inspector General. The current proposal envisages a Council chaired by the Internal Security Cabinet Secretary, Internal Security Principal Secretary, Police Inspector General and two senior members of the National Police Service all appointed by the President.

By expanding executive and presidential control over the National Police Service, the independence envisaged in the constitution is weakened. Should this proposal pass in its current form, the country will be predictably returned to an era when the police acted and were perceived an extension of the ruling executive.

We note that an aspect of this role is already being fulfilled by the Security and Intelligence Committees from Ward to the Ministerial levels. These administrative measures enable national government to coordinate security and safety without interfering with the independent command of the Police Service. We also note that the robust and independent recruitment of the IG through the NPSC was tragically removed by parliament in 2014. The BBI recommendations do not address this. In our view, this would be the place to start.

Based on the above, we would propose the retention and strengthening of the NPSC with robust parliamentary oversight over all its functions.

B. Functional and financial independence of the National Police Service

Based on our preliminary understanding of the BBI Steering Committee report, the recommendations do not address the lack of authority by the IG to incur expenditure (AIE) as envisioned by the Constitution. This weakness hinders his ability to account, budget, allocate and reallocate resources. Despite clear direction by the President in September 2018, the Government has yet to implement Section 116 of the NPS Act 2011 that provides for the IG to have autonomy over the budget.

The Government has ambitious plans to equip 700 new police stations over the next three years. It is imperative that the government consider allocating substantial NG-CDF resources to building and equipping modern police stations. It is only by doing this that the Government will address the challenges identified in IPOA inspection reports related to efficient gender and customer care desks, habitable holding cells, equipment for officers and vehicles to scale up patrols.

C. Public Participation in Community Policing

The BBI report provides a clear description of the negative impact of a police service that is estranged from the communities they serve. This was a clear policy pronouncement in the President's 2018 declaration that police officers would be retrained and supported to live within the communities that they served. Regrettably, the report pays scant attention to the constitutional obligation on the IG and the entire NPS to breathe life into Article 244 (e) to "*foster and promote relationships with the broader society*" and Section 96 of the NPS Act "*The Service shall liaise with communities through Community Policing initiatives.*"

We urge the Government and the advisory BBI Steering Committee to return to and address the critical need for guidelines and the establishment of the 47 County Policing Authorities and 1,300 Community Policing Committees at police station level. The Government must allocate adequate budgetary resources for the operationalisation of both authorities and committees. This would provide a sustainable platform for police, citizens including women, youth, PWDs, investors among others and county governments and national government administration (NGAO) to identify security and safety challenges and identify local solutions.

D. Public Accountability and Oversight for Human Rights Policing

The people of Kenya have repeatedly identified police brutality, impunity and lack of professionalism as key challenges to their safety and dignity. During the management of the pandemic, millions of Kenyans were publicly exposed to excessive use of force and police brutality during curfew.¹ Coupled with cronyism and nepotism in the recruitment, deployment, transfers and promotions, the vision of a professional, modern and human rights based profession has been stifled. We agree with the urgency in the BBI report that this must be decisively addressed.

We have carefully considered the proposal to elevate the Independent Policing Oversight Authority to the level of a constitutional commission. For the proposal to be substantive, it must distinguish what new and additional powers and functions the new body will have. It is our considered view that IPOA already has robust legal powers to execute its mandate. The challenge BBI must address is the worrying trend of police officers refusing to implement current IPOA recommendations and non-cooperation with or obstruction of IPOA in investigations.

We note and welcome the growing proactiveness of the Internal Affairs Unit (IAU). We further recommend that IAU offices be properly resourced and rolled out in all counties and the IG fully implements their decisions and recommendations.

Thirdly, we draw the attention of the Government and the advisory BBI Steering Committee to the urgent need to conclude the process initiated by the Inspector General, the Office of the Director of Public Prosecutions and human rights organisations to establish guidelines for public order policing in relation to the freedom of assembly and association. We consider this important and urgent alongside the comprehensive review of the **Public Order Act** to align it with the Constitution of Kenya and international human rights standards.

COVID-19 cases have begun to spike as the political campaigns towards a constitutional referendum and 2022 general elections gain momentum. National policy and public dialogue is critical to guaranteeing safety during elections and public order as well as pre-empt gender based violence, unlawful killings, enforced disappearances, torture and ill-treatment as witnessed in previous elections and in the enforcement of COVID-19 containment measures. As always, we remain open to further dialogue on these issues.

This statement is signed by members of the Police Reforms Working Group-Kenya, an alliance of national and grassroots organisations committed to professional and rule of law policing. They include the Kariombagi Paralegal Network, Women Empowerment Link, Social Welfare Development Program, Independent Medical Legal Unit, Katiba Institute, Kenya Human Rights Commission, Defenders Coalition, Amnesty International Kenya, International Centre for Transitional Justice, The Kenyan Section of International Commission of Jurists (ICJ Kenya), Usalama Reforms Forum, Transparency International Kenya, Shield For Justice, Wangu Kanja Foundation, Peace Brigades International, Kenya's for Peace, Truth and Justice, Constitution and Reform Education Consortium.

¹ <https://www.amnestykenya.org/katiba-at-10-distressed-yet-defiant/>

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